PENSION PLAN
Multi-Employer Pension Plan Withdrawal Liability: Buyer Beware
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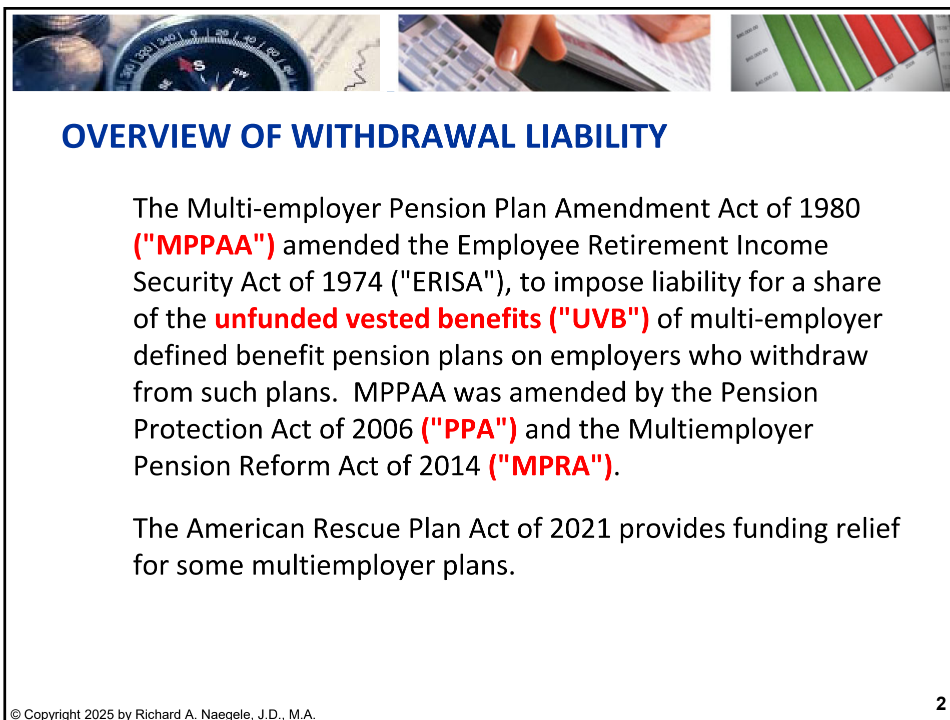
OVERVIEW OF WITHDRAWAL LIABILITY
The Multi-employer Pension Plan Amendment Act of 1980 ("MPPAA") amended the Employee Retirement Income Security Act of 1974 ("ERISA"), to impose liability for a share of the unfunded vested benefits ("UVB") of multi-employer defined benefit pension plans on employers who withdraw from such plans. MPPAA was amended by the Pension Protection Act of 2006 ("PPA") and the Multiemployer Pension Reform Act of 2014 ("MPRA").
The American Rescue Plan Act of 2021 provides funding relief for some multiemployer plans.
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Under MPPAA when an employer withdraws from a multi-employer defined benefit pension plan which has UVBs, the employer is generally liable to the pension plan for a share of the unfunded vested benefits in an amount determined under MPPAA.

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PPA modified the funding provisions of ERISA for pension plans, including provisions to shore up ailing defined benefit pension plans.

PPA creates three status groups for funds:

- funds which meet the funding standards and have a funding percentage of >80% (**Green Zone**);
- "endangered" or "seriously endangered" funds (**Yellow Zone**); and
- "critical" or "critical and declining" funds (**Red Zone**).

The fund's actuary must certify the fund's status within 90 days of the start of each plan year.

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Endangered Status (Yellow Zone). A fund is in endangered status if it either: **(a) has a funding percentage of 80% or less** or **(b) faces a funding deficiency within the next 6 years**. A fund is in **seriously endangered** status if it satisfies both conditions.

- The fund must **adopt a funding improvement plan** to increase its funding over 10 years (15 if seriously endangered).

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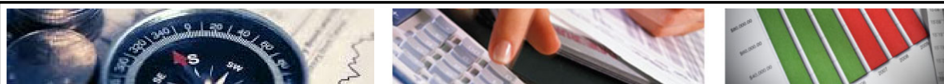

- The fund must provide the bargaining parties with two schedules to pick from for the next CBA:
  - One to maintain the current contributions but reduce benefits (the default schedule).
  - One to maintain benefits and increase contributions.
  - If the parties don't select a schedule within 180 days after the contract expires (or upon impasse) the fund must implement the default schedule.
- Generally, there can be no plan changes or benefit increases that increase the pension fund's benefit obligations.

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- The fund cannot accept a CBA or participation agreement that provides for:
  - a reduction in the level of contributions for any participants;
  - a suspension of contributions with respect to any period of service, or
  - any new direct or indirect exclusion of younger or newly hired employees from plan participation.

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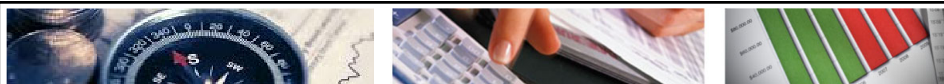

Critical Status (Red Zone). A funding percentage of 65% or less or **projected to have a funding deficiency or cash-flow crisis within 3 to 6 years**. The effects are the same as being endangered, plus:

- Fund must adopt a **"rehabilitation" plan** to emerge from critical status in 10 years. Additional Employer Contributions are **Rehab Plan Increases**.
- Within 30 days of receiving notice from the fund, the employer must pay a 5% **"PPA Surcharge"** on contributions (10% after the initial year) until the effective date of a CBA in which the parties adopt one of the fund's contribution schedules.

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- Prospective benefit reductions are permitted for "adjustable benefits", such as full early retirement, post-retirement death benefits, disability benefits not in pay status, or 60-month guarantees.
- Future benefit accrual rates can be reduced, but not to less than 1% of contributions.

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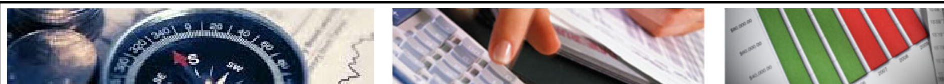

- American Rescue Plan Act of 2021 ("ARPA").

  ARPA established the Special Financial Assistance ("SFA") Program to provide funding assistance to severely underfunded multiemployer pension plans ("MEPP").

  The SFA is administered by the Pension Benefit Guaranty Corporation ("PBGC").

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PBGC issued a Final Rule with respect to the SFA Program in July, 2022 with respect to MEPPs receiving SFA.

- Allows plans to invest up to 33% of their SFA funds into return-seeking investments (e.g., publicly traded common stock and equity funds that invest primarily in public shares); with the remaining 67% invested in investment grade fixed income investments.
- Modifies the SFA calculations to provide for two separate interest assumptions, one for calculating the return on non-SFA assets and a separate rate for SFA assets.

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- Withdrawal liability: ERISA Section 4044 annuity interest rates are mandated to determine unfunded liabilities in computing an employer's withdrawal liability for the later of 10 years or the projected SFA payout period.
- In determining underfunding for withdrawal liability purposes plans must phase in recognition of the SFA aspects over the projected SFA payout period.
- PBGC approval is needed for settlements of withdrawal liability greater than $50 million.

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- In *In re: Yellow Corporation*, Case No. 23-11069, Bankr. D. Del. 11/12/2024, the Court held that the PBGC SFA Regulations do not conflict with the text of the American Rescue Plan Act of 2021. As such, the PGBC SFA Regulations are consistent with the underlying statue and valid.

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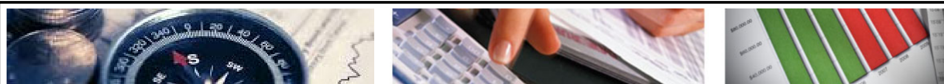

Questions to ask in a merger or acquisition:

- Is there a collective bargaining agreement?
- Does the employer contribute to a pension plan on behalf of union employees?
- Is the pension plan a multi-employer plan or a single employer plan?
- If it is a multi-employer plan, is it a defined benefit plan or a defined contribution plan?
- If the plan is a multi-employer defined benefit plan, is it underfunded and is there a withdrawal liability?

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- If there is a withdrawal liability:
  - A sale of assets may trigger withdrawal liability for the seller.
  - A purchase of stock may result in an assumption of the potential withdrawal liability as a contingent liability of the buyer.
  - A purchase of assets may also result in assumption of the potential withdrawal liability by the buyer.

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DETERMINATION OF WHETHER A WITHDRAWAL HAS OCCURRED

Complete Withdrawal. ERISA §4203(a).

A complete withdrawal from a multi-employer plan occurs when an employer:

- Permanently ceases to have an obligation to contribute under the plan; or
- Permanently ceases all covered operations under the plan.

The date of a complete withdrawal is the date of the cessation of the obligation to contribute or the cessation of covered operations.

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Partial Withdrawal. ERISA §4205.

A partial withdrawal from a multi-employer plan occurs on the last day of a plan year in which there is either (1) a seventy percent decline in contribution base units; or (2) a partial cessation of the employer's contribution obligation.

NOTE: It is possible for multiple partial withdrawals to occur in consecutive or non-consecutive years.

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- **Seventy percent contribution decline.** ERISA §4205(a)(1).

  A seventy percent decline in contribution base units occurs if, during the plan year and each of the preceding two plan years (the **three-year testing period**), the number of **contribution base units or "CBUs"** (the units upon which contributions to the plan are based, such as "hours worked" or "weeks worked") for which the employer was required to make plan contributions **did not exceed thirty percent** of the number of contribution base units for the "high base year." The **"high base year"** is determined by averaging the employer's contribution base units for the two plan years for which such units were the highest within the five plan years preceding the three year testing period.

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- **Partial cessation of an employer's contribution obligation.** ERISA §4205(a)(2). A partial cessation occurs in either of the following situations:

  - A **"bargaining unit take-out (a "Chattanooga Claim")."** ERISA §4205(b)(2)(A)(i).

    An employer who is required to contribute to a plan under two or more collective bargaining agreements ceases to have an obligation to contribute under at least one but not all of the agreements, but continues work in the jurisdiction of the agreement of the type for which contributions were previously required or transfers such work to another location.

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  - **A "facility take-out."** ERISA §4205(b)(2)(A)(ii).

    An employer permanently ceases to have an obligation to contribute under the plan for work performed at one or more but fewer than all of its facilities covered under the plan, but continues to perform work at the facility of the type for which the obligation to contribute ceases.

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Building and Construction Industry Exception. ERISA §4203(b).

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Under the BCI Exception, employers in the Building and Construction Industry may be exempt from withdrawal liability if three requirements are satisfied:

- "Substantially all" (generally, at least 85%) of the employer's employees under the MEPP work in the building and construction industry;
- The MEPP either: (a) "primarily" covers employees in the building and construction industry or (b) states that the BCI Exception applies to employers in the building and construction industry;
- The employer does not continue or resume work within five years in the jurisdiction of the CBA of the type for which contributions were previously required or, if the employer does resume such work, it also resumes making contributions to the MEPP.

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Mass Withdrawal Liability.

- A multi-employer pension plan can terminate due to the "mass withdrawal" of all contributing employers. 29 U.S.C. §1341a(a)(2). A "mass withdrawal" means:
    - the withdrawal of every employer from the plan,
    - the cessation of the obligation of all employers to contribute under the plan, or
    - the withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw.

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- Employers involved in a mass withdrawal not only have to pay the "initial" withdrawal liability as outlined below, but **also must pay the amounts which would otherwise be excluded under the *de minimis* and 20-year limitation provisions**. 29 U.S.C. §§1389(c), 1399(c)(1)(D); 29 C.F.R. §§4219.11, 4219.12.

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- ***Employers who withdraw within three years of a mass withdrawal*** are presumed to have withdrawn pursuant to an agreement or arrangement to withdraw and ***may be liable for reallocation liability***. This presumption may be rebutted by a preponderance of the evidence. 29 U.S.C. §§1389(d), 1399(c)(1)(D); 29 C.F.R. §4219.12(g). Reallocation liability is an amount of UVBs which are not otherwise collected or collectible by the pension plan, such as amounts uncollectible due to the bankruptcy of employers.

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CALCULATION OF WITHDRAWAL LIABILITY

Methods for Computing Withdrawal Liability. ERISA §4211.

MPPAA established a **"presumptive method"** for computing and allocating withdrawal liability. ERISA also provides several alternative methods upon which plans may compute withdrawal liability. However, the presumptive method will generally apply unless a plan specifically adopts one of the alternative methods.

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An individual employer's percentage share of the plan's total Unfunded Vested Benefits (UVBs) is basically equivalent to the ratio between the employer's contributions to the plan and the total contributions made to the plan by all employers for the same period. For example, an employer who contributes one percent of the total contributions made to the plan will have a withdrawal liability equal to approximately one percent of the plan's UVBs.

A plan may calculate an employer's withdrawal liability percentage based on the employer's contributions to the plan over a **specific period such as the 5 or 10 year period prior to the withdrawal**.

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PRACTICE NOTE:

Employer Contributions based on:

1. **Rehab Plan Increases**; or
2. **PPA Surcharges**

are **not included for** purposes of determining either:

- **Withdrawal Liability**; or
- **Withdrawal Liability Payments**.

Board of Trustees, IBT Local 863 Pension Fund v. C&S Wholesale Grocers, 802 F.3d 534 (3d Cir. 2015).

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Reduction Under the ***de Minimis* Rule**. ERISA §4209.

An employer's withdrawal liability will be reduced by the lesser of (1) $50,000; or (2) three-fourths of one percent of the plan's unfunded vested benefits determined as of the end of the most recent plan year ending before the date of withdrawal. The amount offset under the *de minimis* rule is reduced, dollar-for-dollar, as an employer's withdrawal liability, determined without regard to the *de minimis* rule, exceeds $100,000. Therefore, the exemption under the *de minimis* rule is only applicable when an employer's withdrawal liability is less than $150,000.

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De Minimis Rule: Examples

- Withdrawal liability of $45,000 would be reduced to $0;
- Withdrawal liability of $75,000 would be reduced by $50,000 and final liability would be $25,000;
- Withdrawal liability of $110,000 would be reduced by $40,000 and final liability would be $70,000; and
- Withdrawal liability of $150,000 would not be reduced at all.

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DETERMINATION OF WITHDRAWAL LIABILITY PAYMENTS.

ERISA §4219(c)(1)(C).

The payment schedule under which the withdrawing employer is required to pay its withdrawal liability is determined by the plan sponsor pursuant to a specific formula.

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Annual amount of withdrawal liability payment equals

Average annual number of contribution base units (*e.g.*, hours worked or weeks worked) for the three consecutive plan years during the ten consecutive plan year period ending before the plan year in which the withdrawal occurs in which the number of contribution base units for which the employer had an obligation to contribute under the plan were the highest.

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Highest contribution rate (*e.g.*, dollars per hour or dollars per week) at which the employer had an obligation to contribute under the plan during the ten plan years ending with the plan year in which the withdrawal occurs.

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The amount determined under this formula is the level annual payment which is to be paid over a period of years necessary to amortize the liability, subject to the twenty-year payment cap discussed below.

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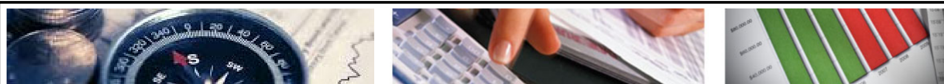

The calculation of the annual payments is independent of the UVBs and the calculation of the amount of the withdrawal liability.

The length of the payments is based on the UVBs, not the amount of the payments.

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Length of Payments: **Twenty-Year Payment Cap.** ERISA §4219(c)(1)(B).

The employer is required to make level annual payments to the pension plan for the lesser of (1) the number of years it would take to amortize its withdrawal liability (determined under the actuarial and interest assumptions used in the most recent actuarial valuation of the plan); or (2) twenty years.

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The twenty-year payment cap **does not apply** if a multi-employer pension plan terminates due to a Mass Employer Withdrawal. In such a case, the total UVBs of the plan are allocated to all employers.

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STATED LIABILITY V. EFFECTIVE LIABILITY

The 20 year payment cap creates an effective cap on the amount of the withdrawal liability.

The withdrawal liability based on the UVBs is the STATED LIABILITY.

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The application of the 20 year payment cap means that the effective amount of an employer's liability (EFFECTIVE LIABILITY) is the present value (PV) of the payments under the 20 year payment cap.

Settlements or lump sum payments of withdrawal liability should be based on the PV of the payments under the 20 year payment cap, even if the UVBs are higher.

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Prepayment of Withdrawal Liability. ERISA §4219(c)(4).

The employer is entitled to prepay the outstanding amount of the unpaid annual withdrawal liability payments, plus accrued interest, if any, in whole or in part, without penalty.

Discuss payment of present value of twenty-year payments with Pension Fund Trustees.

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Default. ERISA §4219(c)(5).

If an employer defaults in payment of its withdrawal liability, **the plan sponsor may require immediate payment of the balance of the employer's withdrawal liability** plus any accrued interest from the due date of the first payment which was not timely made. Default occurs if the employer fails to make any payment of its withdrawal liability when due and then fails to make payment within sixty days after receiving written notice from the plan sponsor of such failure.

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RESOLUTION OF DISPUTES CONCERNING WITHDRAWAL LIABILITY

Request for Review of Plan Sponsor's Determinations. ERISA §4219(b)(2).

An employer may *request* that the plan sponsor review any specific matter relating to the determination of the employer's withdrawal liability and schedule of payments ***within ninety days after the employer receives the initial notice*** and demand for payment of its liability. During the ninety-day period, the employer may identify any inaccuracies in the determination of the amount of the employer's withdrawal liability and furnish the plan sponsor with any additional relevant information.

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Arbitration Proceeding. ERISA §4221.

Any dispute between an employer and the plan sponsor relating to withdrawal liability is to be resolved through an arbitration proceeding. Either party may ***initiate the arbitration proceeding within a sixty day period following the earlier of (1) the date the plan sponsor notifies the employer of its decision*** *after a reasonable review of any matter raised under ERISA §4219(b)(2)(B);* ***or (2) 120 days after the employer requests a review of the plan sponsor's determination of withdrawal liability*** under ERISA §4219(b)(2)(A). The plan sponsor and the employer may jointly initiate arbitration within a 180-day period following the date of the plan sponsor's initial notice of withdrawal liability and demand for payment.

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Payments During Arbitration Period. ERISA §§4221(b)(1) and (d).

Pending resolution of the dispute and during arbitration, the employer is required to pay withdrawal liability payments in accordance with the determinations made by the plan sponsor.

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Preservation of Rights by Employer.

It is critically important that an employer take immediate action to preserve its rights if it receives a notice of withdrawal liability from a multi-employer plan. *If the employer fails to request a review of the plan sponsor's determinations and does not request arbitration within the appropriate time periods, the employer may have waived all of its rights to challenge the assessment of the withdrawal liability.*

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EMPLOYER LIABILITY

Controlled Group.

Definition of an "Employer" for Withdrawal Liability Purposes. ERISA §4001(b)(1).

For purposes of Title IV of ERISA, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer and all such commonly controlled trades and businesses are treated as a single employer.

The regulations issued under §414(c) of the Internal Revenue Code define a controlled group of corporations for all purposes under Title IV of ERISA, including multi-employer pension plan withdrawal liability.

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Parent-Subsidiary Controlled Group.

A parent-subsidiary controlled group is defined as one or more chains of businesses connected through ownership with a common parent organization if at least **80% of the control or value** of the organizations is controlled by one organization. IRC §1563(a)(1). Eighty Percent control is defined as a **"controlling interest"**. Treas. Reg. §1.414(c)(2)(b).

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Brother-Sister Controlled Group.

A *brother-sister controlled* group is defined as two or more organizations conducting trades or businesses if (1) the same five or fewer persons own, singly or in combination, a **controlling interest** (defined as at least **eighty percent of the voting power or total value of stock**) of each organization; **and (2)** taking into account the ownership of each such person only to the extent such ownership is identical with respect to each such organization, such persons are in **effective control** (defined as **more than fifty percent of the voting power or value of the stock**) of each organization. IRC §§414(b) and (c), 1563(a). Treas. Reg. §1.414(c)-2(c).

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The business must be involved in a **"Trade or Business"**. A Trade or Businesses must be regular and continuous and performed with a profit motive, even if not profitable.

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Potential Personal Liability for Sole Proprietorships.

Sole proprietorships may be considered "employers" under the common control rules of IRC §414(c) for purposes of determining withdrawal liability.

Sole owners of corporations who were also sole proprietors of real estate activities, leasing and consulting services, or real estate leasing activities have been found to satisfy the common control test and the sole proprietors have been held liable for the withdrawal liability of the commonly controlled corporations.

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- **Successor Employer Liability.**

  Under the common law, an asset purchaser does not assume the liabilities of an asset seller. Starting with ***Golden State Bottling Co. v. NLRB***, 414 U.S. 168 (1973), however, the U.S. Supreme Court signaled that a successor liability exception may apply for certain labor and employment related issues.

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The Seventh Circuit applied the doctrine to withdrawal liability in ***Chicago Truck Drivers, Helpers & Warehouse Workers Pension Fund v. Tasemkin, Inc.***, 59 F.3d 48 (7th Cir. 1995). The court noted that the doctrine of successor liability could apply if a court found both:

- the **successor had notice of the predecessor's liability**, and
- there was **substantial continuity in the operation of the businesses** before and after the sale.

Indices of continuity includes continuity of workforce, management, equipment and location, constancy of customers, and completion of work orders begun by the predecessor.

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In ***Tsareff v. ManWeb Services, Inc.***, 794 F.3d 841 (7th Cir. 2015), the Seventh Circuit expanded its application of the successor liability doctrine in the withdrawal liability context. In ***Tsareff***, a unionized electrical contractor (Tiernan) sold its assets to a non-union employer (ManWeb). As a result of the sale, Tiernan ceased operations and ceased contributions to a multiemployer pension fund. The Fund asserted that this resulted in a complete withdrawal and assessed withdrawal liability. Tiernan failed to seek review or arbitration and the Fund filed suit against Tiernan and ManWeb (as a successor employer).

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The Seventh Circuit held that **notice of contingent withdrawal liability is sufficient to satisfy the notice requirement** and that ManWeb's notice of contingent liability could be "both reasonably inferred and directly proven by evidence in the record." In support of this position, the Seventh Circuit cited provisions in the asset purchase agreement stating that ManWeb was not obligated to assume any liability or obligation "arising out of or related to union related activities, including, without limitation, pension obligations."

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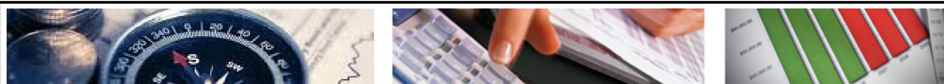

In ***Resilient Floor Covering Pension Trust Fund v. Michael's Floor Covering, Inc.***, 801 F.3d 1079 (9th Cir. 2015), the Ninth Circuit extended the successor employer liability theory to a subsequent employer that had purchased certain assets of a predecessor employer at a public auction.

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In ***Resilient***, Studer's Floor Covering, Inc. ceased doing business and ceased making contributions to a construction industry multiemployer pension fund. A former salesman of Studer's started Michael's Floor Covering, Inc. and continued in the floor covering business. Michael's hired five of Studer's former employees, leased the same premises, obtained the same phone number, used similar signage and purchased 30% of Studer's tools, equipment and inventory at a public auction.

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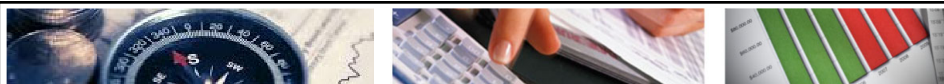

The **parties did not have a contractual relationship** and no transfer of customer lists or customer information occurred between Studer's and Michael's.

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The Ninth Circuit held that there was no reason why the successorship doctrine should not apply to either MPPAA withdrawal liability generally or to the construction industry exception in particular so long as the successor had notice of the liability.

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The Ninth Circuit gave significant weight to the portion of Studer's business that Michael's retained (the ***"market share capture"***) and stated that the focus should be the relative amount of revenue generated by Studer's former customers.

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Heavenly Hana LLC v. HU & HI of Hawaii Pension Plan, 891 F.3d 839 (9th Cir. 2018).

The 9th Circuit Court of Appeals held that constructive notice is sufficient to impose successor liability on an asset purchaser.

The successor employer in this case was held to have constructive notice of the predecessor's withdrawal liability.

See Also: ***GCIU Employer Retirement Fund v. MNG Enterprises***, Nos. 21-55864, 21-55423 (9th Cir. 10/28/2022).

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PBGC v. Findley Industries, Inc., 902 F.3d 567 (6th Cir. 2018).

Successor liability for single employer pension plan liabilities.

PBGC alleged that a purchaser of assets was liable under federal common law for the seller's Title IV plan termination liability.

The district court declined to accept the PBGC's theory.

The 6th Circuit reversed and applied the successor liability theory.

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Corporate Alter-Ego Issues.

It is possible for two unrelated entities (not members of a controlled group) to be held jointly liable for withdrawal liability under an "Alter-Ego" theory.

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In ***Local 134 Board of Trustees of the Toledo Roofers Pension Plan v. Enterprise Roofing and Sheet Metal Co. and Enterprise Roofing and Remodeling Surfaces, Inc.***, Case No. 3:10CV1869 (N.D. Ohio 2013), Judge James Carr essentially provided a checklist for the determination of potential alter-ego status.

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In ***Enterprise***, Judge Carr found that two separate entities were both liable for the multiemployer pension plan liability triggered by one of the entities by holding that the two entities were related under an alter-ego theory. Judge Carr noted numerous factors showing that two different companies are essentially the same company for labor law and pension liability purposes under the alter-ego theory.

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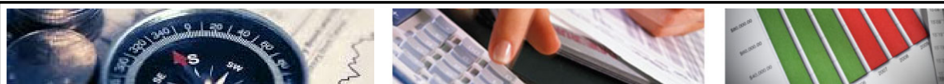

- The companies had the same or similar management;
- The companies had the same physical location;
- The companies shared phone lines or separate phone lines which ended up at the same phone;
- Family members owned both companies;
- The companies had similar names;
- There was lending of money between the companies (furthermore, the loans were neither documented nor repaid);

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- The companies shared tools;
- The companies frequently serviced the same clients;
- There was confusion by the clients as to which company is which;
- The companies had similar ownership (although the companies were not members of a controlled group of corporations);
- The companies had some of the same officers; and
- The business of the companies overlapped to a considerable degree.

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INTEREST RATES / ACTUARIAL ASSUMPTIONS

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Challenge to Interest Rates used for withdrawal liability.

The interest rate / discount rate used is a key factor in the calculation of the UVBs under the plan.

The lower the interest rate, the higher the UVBs (and withdrawal liability).

Interest rates should be based on the fund actuary's best estimate for the plan's future experience.

The Segal Blend is a weighted blend of the plan's funding rate and the PBGC termination rate.

The blended rate results in a lower interest rate and higher withdrawal liability.

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PBGC Proposed Rule under ERISA Section 4213 Issued 10/14/2022 establishes PBGC guidance on which interest rate assumptions may be used to calculate multiemployer pension plan withdrawal liability.

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The PBCG Proposed Rule permits a multiemployer plan actuary to use any of three approaches to calculate withdrawal liability: (1) The Minimum Funding Rate; (2) The PBGC plan termination rate; (3) A blended rate.

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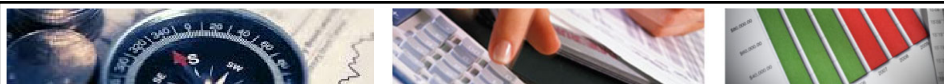

Minimum Funding Rate. Use the same interest rate assumption that is used by the actuary to determine the plan's minimum funding requirements under IRC Section 431(b)(6) and ERISA Section 304(b)(6) (i.e., the funding rate of return).

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PBGC Plan Termination Rate. Use the rate prescribed by the PBGC to determine the present value of annuities in single employer plan terminations and to value non-forfeitable benefits in multiemployer plans following mass withdrawal (ERISA Section 4044).

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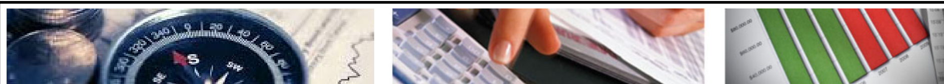

Blended Rate. Use a blend of the multiemployer plan's Minimum Funding Rate and the PBGC Plan Termination Rate under ERISA Sections 304(b)(6) and 4044, respectively.

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Generally, the Minimum Funding Rate will be higher than the PBGC Plan Termination Rate and the Blended Rate will be somewhere between the two rates.

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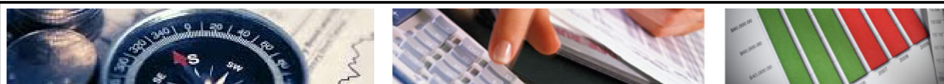

The PBGC Proposed Rule does not mandate the use of any particular interest rate assumption. A plan actuary can use the actuary's best estimate under ERISA Section 4213(a)(2).

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Recent court cases on interest rates will likely be impacted by the PBGC Proposed Rule under ERISA Section 4213.

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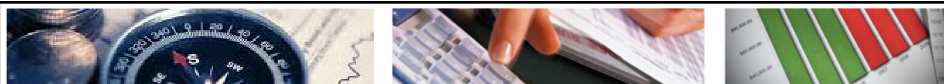

Safeco Erectors, Inc. v. Trustees of the Ohio Operating Engineers Pension Fund, 15 F.4th 407 (6th Cir. 2021).

In ***Safeco***, the 6th Circuit held that the Segal Blend rate was not the actuary's best estimate of the plan's anticipated experience because the methodology diluted the best estimate (the funding rate) with the lower PBGC termination rate.

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UMWA 1974 Pension Plan v. Energy West Mining, 39 F.4th 730 (D.C. Cir. 2022). The DC Circuit held that the actuary was required to base his assumptions on the Plan's actual characteristics. The discount rate must be similar but need not be identical to the interest rate used to calculate minimum funding.

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GCIU Employer Retirement Fund v. MNG Enterprises, Nos. 21-55864, 21-55923, (9th Cir. 10/28/2022). The 9th circuit held that the GCIU Fund erred in using the PBGC plan termination rate to calculate withdrawal liability.

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