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Litigation

ERISA's Hotel California

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Those of us who are old enough to have gray hair know life is not a bowl of cherries. Because we are human, we make mistakes. Our collective mistakes are usually called “isms,” like consumerism, communism, ageism. “Isms” become grossly amplified when they are made into laws. Most laws, of course, start with a simple, pure purpose—to make our world a better place. Sadly, the hackneyed saying “The path to hell is paved with good intentions” has more than a kernel of truth to it.

Thirty years ago this September, Congress took action to correct a prior mistake. When ERISA was passed in 1974, its withdrawal liability provisions came with an escape hatch. An employer who contributed to an underfunded multiemployer pension plan could leave that pension plan and not be assessed any withdrawal liability if the pension plan survived for five more years. Many employers rushed for the

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exits, imperiling many multiemployer plans as well as causing the newly formed Pension Benefit Guaranty Corporation (PBGC) to hemorrhage money. To close this loophole, Congress passed a new law requiring any withdrawing employer to continue funding its proportionate share of the plan's unfunded benefit obligations.¹

Trustee Bias?

An important characteristic of withdrawal liability determinations is that they are not made by a computer algorithm, or by an impartial third party, but by the pension plan's trustees. The Taft-Hartley Act requires an equal number of employees and employer representatives on a multiemployer pension plan's board of trustees.² Unlike a computer algorithm, a pension plan's trustees have a direct economic interest in collecting the maximum possible amount of withdrawal liability.

Unlevel Playing Field

The trustees' economic interest in maximizing the cost of withdrawal to a depositing employer arises in four ways:

First, the trustees have a natural interest in increasing the plan's assets, to keep the plan solvent and possibly increase benefits for their own employees. Moreover, the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) makes no provision for periodic adjustment of an employer's withdrawal liability and permits reductions in only a handful of situations.³ The trustees thus have a compelling interest to set withdrawal liability as high as possible to help protect against subsequent shortfalls in the plan's funding.

Second, the employer trustees have an obvious interest in avoiding any exposure to themselves of withdrawal liability. If an employer were permitted to withdraw and not pay its full share of unfunded vested benefits, then the remaining employers would ultimately have to belly up and pay the departed employer's costs.

Third, the employer trustees are members of the same industry as the withdrawing employer and, therefore, are almost always the withdrawing employer's direct competitors. To the extent that imposition of large withdrawal liability damages the withdrawing employer's financial status or puts the withdrawing employer out of business, the remaining employers will benefit from the assessment of withdrawal liability.

Fourth, calculating the withdrawal liability so as to maximize the amount owed by a withdrawing employer is ostensibly consistent with the fiduciary duties imposed on the trustees by ERISA.⁴ The Supreme Court has made it clear that trustees are to act solely and exclusively in the interest of a plan's beneficiaries.⁵

Thus, when the trustees representing plan beneficiaries and those representing non-withdrawing employers make withdrawal liability determinations, their interests are identical: each may benefit from the collection of as large a withdrawal liability amount as possible, and neither owes a duty to the withdrawing employer. For the typical contributing employer, the refrain “You can check out any time you like, but you can never leave,” is literally true. Welcome to ERISA’s Hotel California.

Types of Plans Covered by MPPAA

The MPPAA only applies to employers who contribute to “multiemployer defined benefit pension plans.”

Multiemployer Pension Plans

A “multiemployer plan” is a defined benefit pension plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more unions and more than one employer.⁶ This definition does not include “single employer plans,” which are plans to which only one employer is required to contribute and which may be maintained either pursuant to a collective bargaining agreement or otherwise. This definition also does not include “multiple employer plans,” which are those plans maintained by more than one employer, but not pursuant to a collective bargaining agreement.

Defined Benefit Pension Plan

A “defined benefit plan” means a pension plan under which the participants’ pensions are based upon a stated formula—such as the number of years for which contributions have been made on behalf of the participant times 3 percent of the participant’s final monthly salary—and without reference to a specific account maintained on the participant’s behalf.

This definition does not include “defined contribution plans,” such as 401(k) plans, money purchase pension plans, or profit sharing plans in which the participant’s pension is based exclusively on the amount that was contributed into a separate account on his or her behalf. The withdrawal liability rules of MPPAA also do not apply to nonpension plans such as health and welfare benefit plans.

What Is Withdrawal Liability?

“Withdrawal” under MPPAA comes in two flavors: a “complete” withdrawal and a “partial” withdrawal.

Complete Withdrawal

A complete withdrawal usually occurs when an employer either:

1. Permanently ceases to have an obligation to contribute to the plan; or
2. Permanently ceases all covered operations for employees covered by the plan.

The date of withdrawal is the date of the cessation of the obligation to contribute, or the cessation of the covered operations.⁷ Under these definitions, a “complete withdrawal” can be triggered by the following types of events:

1. Decertification of the union whose collective bargaining agreement gave rise to the obligation to contribute;⁸
2. Closure by an employer of all its facilities covered by the collective bargaining agreement which formerly required contributions; or
3. The employer bargains with its employees’ union and agrees to contribute to another pension plan.

There are several exceptions to this general definition of a “complete” withdrawal, some of which apply to almost all employers and some of which apply only to particular industries.

General Exceptions

Labor Dispute Exception. A withdrawal does not occur when an employer temporarily suspends pension contributions during a strike or other labor dispute.⁹ For example, the cessation of contributions during a strike when striking employees are not earning pension benefits does not constitute a withdrawal. (The National Labor Relations Board (NLRB) has held that employers have no obligation to make pension contributions on behalf of strike replacements.)¹⁰

Change from Corporate to Unincorporated Form of Business. An employer’s change from a corporate to an unincorporated form of business enterprise does not constitute a “withdrawal” if the change causes no interruption in the employer’s contributions or obligation to contribute.¹¹

Corporate Reorganization. Corporate reorganization—such as change in identity, form, place or organization, liquidation into a parent corporation or merger, consolidation, or division if there remains an obligated successor corporation—does not constitute a “withdrawal” within the meaning of the MPPAA.¹²

Withdrawal Liability

Congress created withdrawal liability to save multiemployer pension plans and the PBGC from insolvency due to an onslaught of employer withdrawals. The simple solution devised by Congress requires withdrawing employers to pay their “proportionate share” of the multiemployer pension plan’s unfunded vested benefits (UVBs). But what are UVBs?

Unfunded Vested Benefits (UVBs)

A multiemployer pension plan’s UVBs are promised pensions for which the pension fund does not have existing or anticipated assets. The most common causes of unfunded vested benefits are:

- Poor investments;
- Past service credits;
- Administrative expenses;
- Increased benefits; and
- Actuarial assumptions.

Poor Investments. Multiemployer pension plans do not need all collected employer contributions to fund benefits for current retirees; the difference is invested and the resulting profits are used to help defray the cost of administrative expenses and increased benefits. However, if the pension fund’s investments perform poorly, the fund can earn no money, or even worse, lose money on its investments, thereby increasing the fund’s level of unfunded vested benefits.

Past Service Credits. It has long been customary for multiemployer pension plans to grant “past service credits” to the employees of a new employer as an inducement for joining the plan.

Past service credits allow employees of new contributing employers to count pre-participation years of employment for both vesting and benefit accrual calculation purposes. Thus, the extension of past service credits grants new participant employees pension benefits for which their employer has never made contributions.

ERISA does not prohibit this practice, nor does it require entering employers to pay the cost of the extended past service credits in one lump sum; rather, ERISA simply requires that the value of extended past service credits be paid by *all* contributing employers through slightly increased contributions.

As a result of this practice, most defined benefit plans have promised benefits, in the form of past service credits, that the plans were not designed to provide. Withdrawal liability, therefore, is partly the

result of the practice by multiemployer pension plans of granting unfunded past service credits.

Administrative Expenses. Most defined benefit pension plans have fairly substantial administrative expenses in the following areas:

First, the plan must retain an actuarial firm to calculate the amount of benefits the fund is obligated to pay as well as the anticipated rate of return on the plan's investments.

Second, since a multiemployer pension plan is by definition a Taft-Hartley plan (jointly managed by union and management trustees), all benefit, actuarial, and other plan decisions must be made by a board of trustees comprised of an equal number of management and union representatives, and, although trustees are not paid for their activities, the plan must generally pay for the cost of their meetings.

Third, in addition to the actuaries and trustees, defined benefit plans also commonly retain two sets of legal counsel: one from a management law firm and one from a union law firm.

Fourth, the plan must retain an administrative firm to manage the plan's day-to-day operations and perform such functions as processing pension applications, disbursing benefit checks, etc.

Fifth, defined benefit pension plans customarily hire several investment firms to invest the plan's assets in a balanced portfolio of investment opportunities.

The cost of this rather extensive infrastructure comes out of the plan's assets, which means that some plan money is thereby diverted from funding promised benefits. Thus, administrative expenses play a part in creating unfunded vested benefits and therefore withdrawal liability.

Increased Benefits. As a general rule, the level of employer contributions to a defined benefit pension plan is established at the bargaining table between union and management, and the fund's actuaries are thereafter left to calculate the amount of pension benefits that will be provided by the employer's contributions. However, the actuaries generally present several possible benefit levels—ranging from conservative to liberal estimates—to the plan's trustees, who then select the level of benefits that the plan will provide. Union trustees often urge the fund to adopt the higher benefit levels as a means of placating the union's membership, while management trustees, who as company negotiators are extremely careful not to bind their employer to exorbitant pension contribution rates, sometimes acquiesce to the union trustees' demands, since adopting the higher benefit rates does not translate into an immediate obligation for employers. In adopting benefit schedules that are not adequately financed by employer contributions, the trustees add to the plan's unfunded vested benefits. Thus, high benefit levels also contribute to a plan's unfunded vested benefits.

Actuarial Assumptions. A defined benefit pension plan's unfunded vested liability represents the difference between the anticipated cost of promised pension benefits and the fund's current and anticipated assets. Since much of this calculation is based on actuarial conjecture as to what will happen in the future with regard to such issues as the average life span of plan participants, the number of participants who will fully comply with all plan eligibility requirements, the number of early retirees who will take a reduced pension, the number of participants who will take a reduced spousal pension (all factors that go into determining the anticipated cost of promised benefits), and the anticipated rate of return on future fund investments (which is used to determine the amount of the fund's assets as compared to its promised benefit costs), a slight shift in the benefit cost projections, or the investment return projections can increase or reduce a fund's level of unfunded vested benefits. Indeed, a brief examination of several major pension funds reveals that use of seemingly unreasonable interest rate assumptions (e.g., 5 percent rate of return on investments) accounts for most, if not all, of these plans' unfunded vested benefits, and, hence, employer withdrawal liability to those plans.

Changes in the law can also adversely affect the amount of withdrawal liability. For example, the Pension Protection Act of 2006 changed IRC Section 411(a)(2). It now requires multiemployer plans to use a five-year cliff vesting or a three- to seven-year graded vesting schedule. Obviously, when a defined benefit plan is required by Congress to accelerate the vesting of the plan's participants, the proportionate share of each employer's liability is increased.

Another common problem in multiemployer plans can be traced to overly optimistic turnover assumptions. If a plan assumes that 20 percent of all new participants will not work long enough to vest in the retirement plan and it turns out that only 5 percent fit into this category, the plan's liabilities will increase. A reduction in the plan's turnover rate will also directly affect the average age of a plan participant, which is used by the plan's actuaries in calculating the plan's liabilities.

Finally, many multiemployer plans base their funding assumptions on maintaining or expanding the number of employers contributing to the multiemployer fund. In most cases, this assumption is incorrect. A declining number of contributing employers coupled with an increasing number of employees with vested retirement benefits translates into an increased amount of employer withdrawal liability.

Partial Withdrawal

A partial withdraw is defined in ERISA Section 4205,¹³ and occurs upon either:

1. A partial cessation of the employer's contribution obligation (the partial cessation test);¹⁴ or
2. A 70 percent decline in contribution base units (CBUs) (the 70 percent test).¹⁵

Partial Cessation Test

The partial cessation test is satisfied most commonly in the context of a union decertification, a plant closing, or a "bargain out." The test, set forth at ERISA Section 4205(a)(2),¹⁶ is satisfied by an employer either:

- Permanently ceasing to have an obligation to contribute under one or more (but fewer than all) collective bargaining agreements that previously had obligated the employer to contribute to a plan, but: (a) continuing to perform the type of work in the jurisdiction of the collective bargaining agreement for which contributions were previously required; or (b) transferring such work to another location; or
- Permanently ceasing to have an obligation to contribute under a plan with respect to work performed at one or more (but fewer than all) of its facilities, but continuing to perform the type of work at a facility for which the obligation to contribute ceased.

The 70 Percent Test

The 70 percent test is met by a 70 percent decline in CBUs.¹⁷ A CBU is the unit by which plan contribution obligations are determined. CBUs are commonly defined by work weeks or work hours, but can be defined differently.

For purposes of the test, a decline in CBUs is measured over a three-year "testing period," which consists of the current plan year and the two preceding plan years. The test is satisfied (and a partial withdrawal is deemed to occur) if an employer's CBUs in each of the three years in a testing period do not exceed 30 percent of the employer's CBUs in the "high base year." An employer's high base year is defined as the average of the two highest annual CBU amounts in the five-year period immediately preceding the testing period. If the test is satisfied, the partial withdrawal is deemed to occur on the last day of the current plan year.

While the rules for determining a partial withdrawal can create what may appear as a never ending "nightmare" for employers, the rules at the same time allow an employer—through careful planning—to implement a gradual reduction in force that ultimately reduces its CBUs far below 30 percent of its current workforce—without ever triggering a partial withdrawal.

Calculating the Withdrawing Employer's Proportionate Share

As a general rule, an employer's proportionate share of a multi-employer defined benefit pension plan's unfunded vested benefits is determined by dividing the employer's contributions to the fund by the total employer contributions to the fund, and multiplying the resulting fraction by the fund's unfunded vested benefits. These computations are generally done without regard to the specific amount of unfunded vested benefits attributable directly to the employees on whose behalf the employer has made contributions.

There is an exception to this general rule under the alternative "direct attribution" formula, which bases the employer's proportional share on the amount of unvested benefits directly attributable to employees for whom the employer made contributions.¹⁸ However, this alternative withdrawal liability formula is not used by the vast majority of multiemployer pension plans.

Once the plan's actuary has determined the total amount of the plan's unfunded vested liability, one of the four methods provided in ERISA Section 4211(a)¹⁹ is applied to determine the allocation of liability to the withdrawing employer:

1. The presumptive method, which bases withdrawal liability on the proportion of total employer contributions to the plan made by the withdrawing employer during certain five-year periods;²⁰
2. A modified presumptive method;²¹
3. The direct attribution method, which bases withdrawal liability on the unfunded vested benefits directly attributable to the employer's employees;²² and
4. The rolling-five method.²³

Withdrawal liability is normally determined by using the presumptive method.²⁴ PBGC has issued regulations allowing modifications to the four methods described above.²⁵

Legal Framework for Challenging a Withdrawal Liability Assessment

A multiemployer pension "pay to play" plan must assess and demand withdrawal liability payment "as soon as practicable after an employer's complete or partial withdrawal."²⁶ While the statute includes a process for challenging a withdrawal liability assessment through arbitration, it also requires an employer to make regular withdrawal liability payments while any withdrawal liability dispute is pending, or the entire amount becomes immediately due.²⁷

Request for Review

In order to make a valid withdrawal liability assessment, the pension plan must first notify the employer how much withdrawal liability is owed and the schedule for payment. The pension fund's demand letter is supposed to be issued as soon as is practicable after the date of withdrawal.²⁸ Once the withdrawal liability demand has been made, the withdrawing employer then has 90 days to request a review of this initial withdrawal liability determination. It is important that any request for review of a withdrawal assessment include the following:

1. A request for a review of any specific matter relating to the determination of its liability and the schedule of payments;
2. Identification of any inaccuracy in the determination of the amount of the unfunded vested benefits it has been allocated; and
3. Furnishing of any additional relevant information it possesses that could lead the fund to a reassessment or recalculation of the determination.²⁹

A request for review should include a broad challenge to every aspect of the trust fund's determination that the withdrawing employer believes is incorrect, and should set forth all reasons why the withdrawing employer believes the withdrawal liability should be reduced or eliminated. An employer must notify the plan of its contentions on any dispute over the liability; and if the employer fails to request review on a timely basis, it loses its right to request arbitration. When it receives the plan's initial withdrawal liability assessment, the withdrawing employer should consider engaging an actuary to review the initial assessment to determine if the actuarial calculations make sense.

ERISA Section 4221(a)³⁰ states that any dispute which cannot be resolved between an employer and a plan concerning any withdrawal liability determinations shall be resolved through arbitration. Arbitration under MPPAA is governed by the Federal Arbitration Act³¹ and the regulations set forth at 29 C.F.R. Section 2641.1-13. As with the pendency of a request for withdrawal liability review, an employer is required to make withdrawal liability payments during the pendency of any arbitration proceeding.³² An employer's failure to properly initiate arbitration may result in the waiver of any defenses or objections that the employer might have concerning the fact and the amount of withdrawal liability assessed.³³

MPPAA Arbitration Procedures

The employer must make a request for arbitration of the dispute *60 days after* the *earlier* of:

1. The date of the pension plan's response to the employer's ERISA Section 4219 request for review; or
2. 120 days after the date of the employer's ERISA Section 4219 request.³⁴

If the employer does not receive a response to its request for review, it must request arbitration within 180 days of the date of its request for review, or it loses all of its rights. If, on the other hand, the pension plan does respond to the employer's request for review, the employer has 60 days from the date of the pension plan's response to request arbitration, unless the fund's response is sent more than 120 days after the initial request, in which case 180 days from the date of the employer's request for review would be the deadline. If arbitration is not requested, the fund's determination is given conclusive effect and is converted into a debt.

All issues to be arbitrated must be raised in the request for review and the request for arbitration. If the company fails to raise a possible defense in the timely initiated arbitration process, it cannot raise the defense in a collection action brought by the fund.

The PBGC's proposed regulation Section 2641.2 governing withdrawal liability arbitration provides:

The party that initiates arbitration shall include in the notice a statement setting forth the amount involved, the nature of the dispute and the remedy sought. A copy of the demand for withdrawal liability and any request for reconsideration, and the response thereto, shall be attached to the agreement or the notice.

Employer Must Make Withdrawal Liability Payments While Arbitrating

ERISA Section 4221(d)³⁵ provides that payment shall be made by the employer in accordance with the determination of the pension plan until the arbitrator issues a final decision.³⁶

Prearbitration Procedures

Prearbitration procedures include:

1. The selection of the arbitrator; and
2. Discovery.

Selection of the Arbitrator. The parties usually mutually select the arbitrator. The proposed PBGC regulations governing MPPAA arbitrations provide that the parties shall select an arbitrator within 45 days after the dispute arises; that is, within 45 days after a notice of initiation of arbitration is served. However, a plan may adopt at

any time a system or procedure for the selection of an arbitrator that is sponsored and maintained by a neutral entity.³⁷ Many parties have utilized the offices of the American Arbitration Association in the selection of an arbitrator, and some have used the Federal Mediation and Conciliation Service.

Under the proposed regulations, the parties and the arbitrator must agree to a date and place for the hearing, which must be held within 30 days after written acceptance by the arbitrator is mailed to the parties.

If agreement is not reached within that time period, the arbitrator shall, within 10 additional days, choose a location and set a hearing date no later than 40 days after the mailing date of his or her written acceptance. The arbitrator's choice shall be final and binding on the parties.³⁸

Discovery. An employer, of course, can subpoena pertinent plan documents to the arbitration hearing itself; but if the employer or its actuaries are unable to look at those pertinent documents prior to the hearing, it would be very difficult to conduct an informed arbitration, and the employer is likely to need a continuance in order to have time to review what may be a large number of documents.

In order to effectively challenge a withdrawal liability determination made by a pension trust fund, it is usually necessary for the employer's actuary to review many of the data underlying the actuarial assumptions and the valuation methods used by the pension plan in arriving at its unfunded vested benefit figure. An actuary would not merely be checking the arithmetic that went into the actual calculation of the withdrawal liability; rather, the employer's actuary will be seeking to ascertain if the fund's actuary made any errors in its assumptions and determinations. To be able to make this analysis, it will be necessary for the actuary to review the underlying data and documents used by the fund's actuary.

Among the plan documents and information that the employer or its actuary may wish to review are the following:

1. The fund's liability worksheet factors, which would include the obligated contributions;
2. Withdrawal liability worksheet;
3. Certificate of Actuarial Valuation;
4. Full actuarial valuation reports;
5. Actuarial assumptions and funding methods;
6. Summary of plan provisions;
7. Actuarial costs;

8. Annual Report/Return Form 5500;
9. The PBGC liabilities for vested accrued benefits; and
10. The contribution, benefit, and investment record of the plan.

The plan sponsor has the duty to provide the employer, upon written request, with any of the general plan information upon which the plan sponsor's determination of liability was based. If the employer is unable to obtain this and the other necessary information on a voluntary basis from the fund (which is often the case), the employer has two choices:

First, it could seek, through an informal conference with the selected arbitrator, an order or directive from him or her that it be allowed access to the pertinent documents prior to the hearing. In pursuing this option the employer should seek to have the arbitrator direct that the pertinent documents are turned over to it well enough in advance of the arbitration hearing to enable it to make a thorough analysis and present a credible case.

Secondly, the employer could file a motion in federal court to direct the fund to turn over the relevant documents to it. This avenue could be a bit cumbersome, and the court may not want to invade the arbitrator's province. However, at least one court has suggested that an employer contesting withdrawal liability is entitled to full discovery under the Federal Rules of Civil Procedure.³⁹

In any event, in order for a company to make a thorough analysis of the fund's determination of unfunded vested benefits and the company's withdrawal liability, and in order to make a credible presentation at the arbitration, the company must have broad access to the documents of the fund and its actuary.

Because access to the underlying documentation is so important to evaluating a withdrawal liability assessment, sending a letter to the pension plan as soon as possible after receiving the withdrawal liability assessment is job one. That letter should ask for information relevant to the plan's calculation of the withdrawal liability. The withdrawing employer can then have its own actuary look at the pension plan's data to determine if there is a reason to challenge the assessment and attempt to check out from ERISA's Hotel California.

Notes

1. On May 22, 1980, the House unanimously approved the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA). The Senate approved its version on July 29, 1980, by a vote of 85 to 1. After differences between the two houses were resolved in September 1980, President Carter signed MPPAA into law on September 26, 1980.

2. 29 U.S.C. § 186(c)(5)(B).
3. See ERISA § 4206, 29 U.S.C. § 1386 (adjustment for partial withdrawal), § 4207, 29 U.S.C. § 1387 (reduction or waiver of complete withdrawal liability), and § 4208, 29 U.S.C. § 1388 (reduction of partial withdrawal liability).
4. See ERISA §§ 404 and 409, 29 U.S.C. §§ 1104 and 1109.
5. *NLRB v. Amax Coal Co.*, 453 U.S. 322, 334 (1981).
6. ERISA § 3(37)(A), 29 U.S.C. § 1002(37)(A).
7. ERISA § 4203, 29 U.S.C. § 1383.
8. If the decertification vote results in the election of a new collective bargaining representative, ERISA § 4235, 29 U.S.C. § 1415, permits the transfer of the assets and liability of the “old” pension plan to the “new pension plan,” thus avoiding a withdrawal.
9. ERISA § 4218(2), 29 U.S.C. § 1398(2).
10. *Leveld Wholesale, Inc.*, 218 N.L.R.B. 1344, 1350 (1975).
11. ERISA § 4218(1)(B), 29 U.S.C. § 1398(1)(B).
12. ERISA § 4218(1)(A), 29 U.S.C. § 1398(1)(A).
13. 29 U.S.C. § 1385.
14. ERISA § 4205(a)(2), 29 U.S.C. § 1385(a)(2).
15. ERISA § 4205(a)(1), 29 U.S.C. § 1385(a)(1).
16. 29 U.S.C. § 1385(a)(2).
17. ERISA § 4205(a)(1), 29 U.S.C. § 1385(a)(1).
18. ERISA § 4211(c)(4)(A), 29 U.S.C. § 1391(c)(4)(A).
19. 29 U.S.C. § 1391(a).
20. ERISA § 4211(b), 29 U.S.C. § 1391(b).
21. ERISA § 4211(c)(2), 29 U.S.C. § 1391(c)(2).
22. ERISA § 4211(c)(4), 29 U.S.C. § 1391(c)(4).
23. ERISA § 4211(c)(3), 29 U.S.C. § 1391(c)(3).
24. 29 C.F.R. § 2642.5(a); see, e.g., *Joseph Schlitz Brewing Co. v. Milwaukee Brewery Workers Pension Plan*, 3 F.3d 994 (7th Cir. 1993), *aff'd*, 115 S. Ct. 981 (1995).
25. 29 C.F.R. § 4211.12–13.
26. ERISA § 4219(b)(1), 29 U.S.C. § 1399(b)(1).
27. ERISA § 4219(c)(2), 29 U.S.C. § 1399(c)(2).
28. ERISA § 4219(b)(1), 29 U.S.C. § 1399(b)(1).
29. ERISA § 4219(b)(2)(A), 29 U.S.C. § 1399(b)(2)(A).
30. 29 U.S.C. § 1401(a).
31. 9 U.S.C. § 1, *et seq.*

32. ERISA § 4221(d), 29 U.S.C. § 1401(d).
33. IUE AFL-CIO Pension Fund v. Barker & Williamson, Inc., 788 F.2d 118, 129–130 (3d Cir. 1986).
34. ERISA § 4221(a)(1)(A) and (B), 29 U.S.C. § 1401(a)(1)(A) and (B).
35. 29 U.S.C. §1401(d).
36. See also *Central Pa. Teamsters Pension Fund*, 693 F.2d 290 (3d Cir. 1982); §§ 4219(c)(5) and 4221(d), 29 U.S.C. §§ 1399(c)(5) and 1401(d).
37. Prop. Reg. § 2641.3(a).
38. Prop. Reg. § 2641.5(a).
39. I.A.M. National Pension Fund, Benefit Plan A v. Allied Corp., 97 F.R.D. 34 (D.D.C. 1983).

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