

Canadian Court Won't Enforce Withdrawal Liability on Canadian Controlled Group Member

A Canadian court recently rejected an underfunded multiemployer pension plan's bid to impose ERISA withdrawal liability. The case involved collection of a withdrawal liability payment from a Canadian company in the same controlled group as a financially distressed U.S. employer that had left the plan and was unable to make the withdrawal liability payment. This decision could stymie efforts of multiemployer plans that look abroad to collect withdrawal liability when U.S. controlled group members lack the requisite capital. Nevertheless, the ruling leaves many other questions unanswered on the extraterritorial application of ERISA's multiemployer withdrawal liability rules.

Background

Under a 1980 U.S. federal law – the Multiemployer Pension Plan Amendments Act – employers withdrawing from underfunded multiemployer pension plans must pay a proportionate share of the plan's promised but unfunded benefits. For massively underfunded plans, the withdrawal liability tab can be enormous. ERISA imposes withdrawal liability not only on the withdrawing employer, but on all entities that are in same corporate ownership "controlled group" as that employer.

The Walter Energy Group is an international coal production and export company, with operations in the United States as well as Canada (Walter Canada). Its parent company is Walter Energy U.S., a subsidiary of which, Jim Walter Resources Inc., contributed to the United Mine Workers of America 1974 Pension Plan and Trust – a multiemployer plan identified as being in "critical and declining status." In 2015, Walter Energy U.S. and Jim Walter Resources (together, Walter Resources) filed for Chapter 11 bankruptcy protection. A year later, Walter Resources withdrew from the plan, incurring a withdrawal liability assessment of more than \$900 million.

Given the poor financial status of Walter Resources, the plan sued Walter Canada in Canadian court for the withdrawal liability. It argued that Walter Canada's liability stemmed from being part of the Walter Resource controlled group, as defined under ERISA.



Canadian Court Refuses to Impose ERISA’s Controlled Group Liability

In her [ruling](#), Justice Shelley Fitzpatrick of the Supreme Court of British Columbia rejected the plan’s argument. She noted that while ERISA makes a member of a controlled group responsible for the withdrawal liability of other controlled group members, the law in the Canadian provinces where Walter Canadian units were incorporated – and not ERISA – applies in this case.

The laws of Alberta and British Columbia – the provinces where Walter Canada’s entities were incorporated – lack a controlled group liability mandate. “ERISA is not part of British Columbia or Alberta law. Accordingly, the 1974 Plan’s claim must fail for that reason,” she added. Therefore, the court refused to allow the plan to impose controlled group withdrawal liability on Walter Canada.

Implications

Courts in other countries may look to the Canadian court’s decision if and when U.S. multiemployer plans ask them to impose ERISA’s controlled group liability rules on non-U.S. entities. The decision could prove to be a roadblock for multiemployer plans looking abroad to collect withdrawal liability in scenarios where the U.S. entities involved lack the requisite capital to make the payment.

Still, the ruling is not the final word on multiemployer pension plan withdrawal liability involving controlled groups with members outside the U.S. For example, Judge Fitzpatrick said she was not asked to decide whether to enforce a U.S. court judgment against Walter Canada for withdrawal liability. It remains an open question whether a multiemployer plan or the PBGC could secure a ruling in a U.S. court establishing withdrawal liability for a non-U.S. control group member. The court also left unanswered the question of a withdrawal liability claim by reason of “conduct or contract,” such as a joint venture, rather than the corporate structure at issue in the Water Resources case. It remains to be seen, therefore, if a multiemployer plan could successfully pin withdrawal liability on a non-U.S. entity by virtue of a contractual funding obligation to a U.S. pension plan.

In Closing

As a result of this ruling, multiemployer plans seeking to collect withdrawal liability payments from non-U.S. entities that are part of a withdrawing U.S. employer’s controlled group may face an uphill battle. However, the decision leaves open other questions about the extraterritorial application of ERISA’s multiemployer withdrawal liability rules.

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