

# EMPLOYER MAY NOT CHALLENGE AMENDMENT TO MULTIEMPLOYER PLAN REHABILITATION PLAN THAT AFFECTS WITHDRAWAL LIABILITY

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**Practices & Industries**

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If a multiemployer pension plan's funding status is less than 65%, the plan must adopt a rehabilitation plan that is intended to enable the plan to improve its funding status or forestall possible insolvency. In a recent case, a multiemployer plan had amended its rehabilitation plan in 2013 to provide that, if an employer withdraws from the plan when the plan has an accumulated funding deficiency under Section 304 of ERISA, then the withdrawing employer will be liable for its pro rata share of that accumulated funding deficiency in addition to any withdrawal liability determined to be owed by the employer. When a participating employer withdrew from the plan in 2016, the plan demanded payment from the employer for its pro rata share of the accumulated funding deficiency. The employer filed an action for declaratory relief in Federal district court seeking an order that the amendment to the rehabilitation plan permitting the plan to assess the pro rata share of the accumulated funding deficiency violated ERISA.

The court held that, while an employer has standing under Section 502(a)(10) of ERISA to file a civil action to require a multiemployer plan to adopt, update, or comply with a rehabilitation plan in accordance with Section 305 of ERISA, an employer does not have standing under ERISA to challenge a plan's amendment to its rehabilitation plan or the plan's compliance with its rehabilitation plan. *Keyes Fibre Corp. v. Pace Industry Union-Management Pension Fund*, M.D. Tn. 2017).