

COURT HOLDS NOTICE OF WITHDRAWAL LIABILITY ASSESSMENT TO CERTAIN CONTROLLED GROUP MEMBERS SERVES AS ADEQUATE NOTICE TO OTHER CONTROLLED GROUP MEMBERS

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If a contributing employer withdraws from a multiemployer pension plan, the contributing employer may be subject to withdrawal liability for its proportionate share of the plan's unfunded vested benefits. If withdrawal liability exists, the pension plan's trustees are required to notify the withdrawing employer of the amount of the withdrawal liability and the schedule for making withdrawal liability payments. If the employer has objections to the withdrawal liability assessment, it may file a request for review with the pension plan. If the employer's objections are not resolved upon a request for review, the employer may then commence arbitration to contest the withdrawal liability assessment. Importantly, not only is the contributing employer liable for any withdrawal liability, but any member of the contributing employer's controlled group is jointly and severally liable for any withdrawal liability.

In a recent case, T&W Edmier Corp. (T&W) and The E Company operated a construction business. T&W was a party to a collective bargaining agreement that required T&W to contribute to a multiemployer pension plan. The E Company agreed to assume joint and several liability for T&W's obligation to contribute to the pension plan. In 2014, however, T&W and The E Company both ceased operations and, as a result, withdrew from the pension plan.

On April 30, 2015, the pension plan's trustees mailed a notice of withdrawal liability assessment to the two companies, a related company, and the companies' owners (the "Notice Parties"). A past due notice was then sent on August 17, 2015, which was followed by a default and acceleration notice sent on November 12, 2015. Each of these notices was ignored by the Notice Parties. The pension plan then filed suit in district court against the Notice Parties and certain related companies to recover the unpaid withdrawal liability, together with interest, liquidated damages, attorneys' fees, and costs. The district court entered summary judgment in favor of the pension plan and awarded the relief requested by the pension plan.

Attorneys

Peter Bradley
Michael Flanagan
Richard Kaiser
Ryan Murphy
Amy Walters

Practices & Industries

Employee Benefits

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On appeal, the Seventh Circuit Court of Appeals affirmed the district court's holding. In doing so, the Court held that notice to the Notice Parties was sufficient to hold the related non-Notice parties liable for the withdrawal liability. And, since the Notice Parties had not contested the withdrawal liability assessment by timely commencing arbitration, the Non-Notice Parties had similarly waived their right to contest the withdrawal liability assessment. In so holding, the Court did note that, in certain limited circumstances where a party would not have reason to believe it was a member of a controlled group with another controlled group member, notice to the other controlled group member may not be sufficient notice to the unsuspecting controlled group member. In the present case, though, the non-Notice Parties were not the type of unsuspecting parties that were entitled to this relief. *Trustees of the Suburban Teamsters Northern Illinois Pension Fund v. The E Company et al.* (7th Cir.)