

THIRD CIRCUIT ADDRESSES PARTIAL WITHDRAWAL LIABILITY SITUATION

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Caesar's Entertainment Corporation operated four casinos in Atlantic City, New Jersey. Each casino was covered by a collective bargaining agreement for engineering work that required contributions to IUOE Local 68 Pension Fund. In 2014, Caesar's closed its Showboat Casino in Atlantic City. It continued to operate the other three casinos and continued to contribute to the Fund for the engineering work that was performed at those locations. The closure of the Showboat Casino operation reduced Caesar's contributions to the Fund by 17%. Thus, the cessation of operations at the Showboat Casino did not trigger a partial withdrawal because total contributions made by Caesar's to the Fund remained well above the 70% decline threshold for a partial withdrawal.

The Pension Fund sought to impose withdrawal liability under a different partial withdrawal rule. Under this other so called "bargaining out" provision, an employer would have a partial withdrawal if it ceases to have an obligation to contribute to a plan under one or more but fewer than all collective bargaining agreements and it continues to perform work in the jurisdiction of the type for which contributions were previously required. The Fund argued that the shutdown of the Showboat operation resulted in a cessation of the obligation to contribute under one collective bargaining agreement and that Caesar's continued to perform work in the jurisdiction as Caesar's performed engineering work at the other three casino locations. The Fund won this argument at the arbitration level. The district court overturned the arbitrator's decision and the Third Circuit Court of Appeals now agreed that a partial withdrawal had not occurred.

The Third Circuit found that for a partial withdrawal to occur it was necessary for work to continue to be performed within the jurisdiction and that the work did not result in contributions to the Fund. Here, because the work at the other casinos continued and contributions to the Fund were made, there was no partial withdrawal. The Court found that a mere closing of one location and shifting the work to other locations with continuing contributions to the Fund would not result in a withdrawal liability. The Court also pointed to guidance in an opinion letter issued by the PBGC that reached this same conclusion.

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The employer in this case was successful in defeating the Fund's claim of withdrawal liability. However, this case again demonstrates that multiemployer plans are increasingly aggressive in their attempts to impose withdrawal liability in many day-to-day situations. *Caesars Entertainment Corp. v. Int'l Union of Op. Engineers Local 68 Pension Fund*, 3d Cir., 2019