

ONCE ACCELERATED, ERISA WITHDRAWAL LIABILITY MAY NOT BE DECELERATED

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Revcon Technology Group, Inc. and S&P Electric, Inc. were under common control and were participating employers in a multiemployer pension fund. Revcon withdrew from the Fund in 2003 and S&P withdrew in 2004. In 2006, the Fund notified the companies that they owed approximately \$400,000 in withdrawal liability and demanded 80 quarterly payments starting in October 2006. In 2006, after missing several payments, the Fund informed Revcon and S&P of their default and demanded immediate payment. Revcon failed to pay and, pursuant to ERISA, the Trustees of the Fund accelerated the outstanding withdrawal liability and filed suit for the entire amount plus interest.

Before appearing in the case Revcon offered to cure the default and resume making quarterly payments in exchange for the dismissal of the lawsuit. Revcon made up its missed payments, made three more quarterly payments, and again defaulted in 2009. The Trustees of the Fund again sued seeking the defaulted payments and the entire accelerated withdrawal liability amount.

Revcon again promised to cure its default and to resume making payments. The Trustees again voluntarily dismissed the suit. This process of default, lawsuit and promise to cure occurred three more times in 2011, 2013 and 2015.

In 2018, after another default, the Trustees filed a lawsuit in which it claimed the delinquent payments rather than just the total outstanding withdrawal liability. Revcon moved to dismiss the case, arguing that because the Trustees tried to collect the entire accelerated debt in 2008, the six-year statute of limitations expired in 2014. The district court agreed with Revcon that the case was untimely and noted that the Trustees' lawsuits in 2009, 2011, 2013 and 2015 all stated the withdrawal liability was accelerated in 2008.

On appeal to the Seventh Circuit Court of Appeals, the position of Revcon was affirmed. The Seventh Circuit found that there was no provision in ERISA to allow for deceleration of a withdrawal liability claim that had been previously accelerated. The Seventh Circuit also refused to create federal common law under ERISA to allow for this deceleration. In dismissing the case, the Seventh Circuit noted that the Trustees of the Fund may have a state law claim under the agreements with Revcon even though the claim under ERISA is now time barred.

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For both multiemployer funds and withdrawn employers who have become delinquent in payments, the ability to enter into agreements to reform delinquent contributions may become more difficult and legally complicated to accomplish. *Bauwens v. Revcon Tech. Grp., Inc.* (7th Cir. 2019).

