

# MULTIEMPLOYER PENSION FUND ADDITIONAL ASSESSMENT UPHELD ON PROCEDURAL GROUNDS

*Hodgson Russ Newsletter*  
June 29, 2017

**Practices & Industries**

Employee Benefits

The Pace Industry Union-Management Pension Fund is a multi-employer defined benefit plan. The Fund is in critical status and pursuant to the Pension Protection Act of 2006 it was required to adopt a rehabilitation plan to improve its funding position. The Fund initially adopted this Plan in 2008. Subsequently, in 2010, the Fund amended its rehabilitation plan and provided that an employer who withdrew from the Fund must pay a portion of the Fund's accumulated funding deficiency. An accumulated funding deficiency arises even in multiemployer plans when total contributions by employers are less than the required amount calculated under Internal Revenue Code funding requirements. Once a multiemployer plan adopts a rehabilitation plan, the funding standard requirements do not apply during the period the rehabilitation plan is in effect. As a consequence of the Fund's actions, an employer that withdraws from the Fund must pay any withdrawal liability due to the Fund plus, under the rehabilitation plan provision, would be required to pay its share of the accumulated funding deficiency that arose prior to the rehabilitation plan's adoption.

WestRock RKT Company was a contributing employer to the Fund. WestRock brought an action challenging the Fund's ability to require withdrawing employers to pay their share of accumulated funding deficiencies that exists within the Fund. The Court of Appeals for the 11<sup>th</sup> Circuit held that WestRock did not bring a proper action to challenge the Fund's adoption of the rehabilitation plan provision.

WestRock brought its action under two provisions of ERISA. The first was under ERISA §502(a)(10)(B) which allows a claim if the Fund sponsor fails to update or comply with the terms of its rehabilitation plan. WestRock sought an expansive reading of this provision. The Court rejected this claim finding that WestRock did not allege that Fund's rehabilitation plan failed to meet the ERISA requirements. Further, the Court found that the provisions of the Pension Protection Act of 2006 do not preclude a multiemployer plan from adopting such a provision.

As a second claim WestRock challenged the provision under ERISA §4301 as an improper amendment relating to the calculation of withdrawal liability. The Court rejected this argument finding the claim for accumulated funding deficiencies was not part of the withdrawal liability assessment, it was in addition to that assessment,

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and therefore, the claim could not properly be brought under the provisions of ERISA §4301. *WestRock RKT Co. v. Pace Indus. Union-Mgmt. Pension Fund* (11th Cir., 2017).

