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The Multiemployer Pension Plan Amendment Act's Evade or Avoid Provision: A Review of the Confounding Jurisprudence

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In this article, the author provides an overview of the "evade or avoid" provision of the Multiemployer Pension Plan Amendment Act. The author first comments on the legislative intent. Next, he highlights landmark cases in this area, analyzing the development of the jurisprudence culminating with the recent rulings from the U.S. Court of Appeals for the Third Circuit in Steelworkers Pension Trust v. Renco Group and from the U.S. Court of Appeals for the Second Circuit in New York State Teamsters v. C&S Wholesale Grocers, Inc. Finally, the author offers perspective and a legal analytical framework for considering "evade or avoid" claims.

It did not take long after ERISA's enactment for its shortcomings to become evident. The primary criticism arose from its failure to "protect plans from the adverse consequence that resulted when individual employers terminate[d] their participation in, or [withdrew] from multiemployer plans."[1]

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Congress attempted to remedy this by enacting the Multiemployer Pension Plan Amendments Act (MPPAA) in 1980. It provides that under certain circumstances when an employer ceases to participate in a multiemployer pension plan (MEPP), or their level of participation declines, an employer incurs "withdrawal liability" to the MEPP. An employer's withdrawal liability is its "proportionate share of the plan's 'unfunded vested benefits'" – that is, the difference between the present value of vested benefits (benefits that are currently being paid to retirees and that will be paid in the future to covered employees who have already completed some specified period of service) and the value of the plan's assets.[2]

Perhaps presciently, Congress recognized that efforts would be made by employers to circumvent their withdrawal liability and it sought to get ahead of those through enacting Section 4212(c) of ERISA, commonly referred to as MPPAA's "evade or avoid provision."

Courts and MPPAA arbitrators have struggled with applying Section 4212(c). Some courts have suggested there must be an element of "bad faith"[3] involved or it must be a "sham"[4] transaction. Others have taken pains to explore what is meant by "a transaction."[5] And some wrestle with whether that transaction constituted a principal purpose, or if there were more than one principal purpose, or if evading withdrawal liability was just a "minor, subordinate purpose."[6]

These exercises in thinking like a linguist have produced decisions that are hard to reconcile, even with analogous fact patterns. With some exceptions – those involving patently clear efforts to dissipate assets – reasonable minds can perhaps disagree on the correct application of Section 4212(c) to the same set of facts. Though all would likely agree it is a highly fact sensitive inquiry.

As many MEPPs have experienced declining contribution bases and declines in funding levels, employers' withdrawal liability has increased exponentially. At the same time corporate transactions have evolved and become more sophisticated and complex, employers' bargaining strategies more informed, and employers have taken measures to protect assets and those of trades or businesses under common control. The highly fact sensitive nature of the legal analysis, together with funds pursuing more creative and inventive theories of liability to unique facts, lead to uncertainty for practitioners.

Can any strategy or advice offered to mitigate an employer's liability exposure arguably be construed as having a purpose of evading or avoiding liability? What separates a transaction that is structured in a manner that accommodates both sides' interests, and the shifting of liability from one side to the other is reflective in the purchase price, from one that is framed as an effort to evade or avoid liability and will be disregarded? Or what separates prudent planning and a collective

bargaining strategy designed to minimize the likelihood of liability being triggered, or the amount if it is, from a scheme that purposefully seeks to minimize or escape liability?

A review of the case law, and especially recent trends, suggests that the line between a transaction with a principal purpose of evading or avoiding withdrawal liability, with one that is not, is quite blurry.

LEGISLATIVE HISTORY AND POLICY GOALS

Legislative history is considered by judges and arbitrators when a statute is unclear, or if its application would produce an absurd or unjust result.[7]

Section 4212(c) of MPPAA states:

> If a principal purpose of any transaction is to evade or avoid liability under this part, this part shall be applied (and liability shall be determined and collected) without regard to such transaction.[8]

This – most would agree – is not a model of clarity. Accordingly, legislative history is commonly looked to for insight.

Representative Frank Thompson, one of MPPAA's chief sponsors and whose testimony in the House debates is frequently cited, described the purpose underlying Section 4212(c) as follows:

> [T]he bill provides that transactions undertaken to evade or avoid withdrawal liability may not be used as a method of escaping withdrawal liability that would otherwise be imposed. It is intended that the plan sponsor, the arbitrator, and the courts follow the substance rather than the form of such transactions in determining, assessing, and collecting withdrawal liability.
>
> Furthermore, we intend that the term "employer" be construed in a manner consistent with the bill and its purposes. We intend that employers not be able to evade or avoid withdrawal liability through changes in identity, form, or control, or through transactions which are less than bona fide and arm's length. Hence, for example, a building and construction industry employer – or for that matter any employer contributing to a plan – will not be able to evade withdrawal liability by going out of business and resuming business under a different identity.[9]

With other, limited exceptions, there is sparse reference to the "evade and avoid" provision in the remainder of the legislative history.

Of course, MPPAA's policy goals of ensuring the solvency and stability of MEPPs are clear. Setting the "evade and avoid" provision against the backdrop of MPPAA's underlying policy notions has undoubtedly informed its application.

OFFLOADING

In enacting ERISA Section 4212, Congress took aim at "essentially fraudulent maneuvers lacking in economic substance," not at bona fide cessations of all operations.[10] Some of the earlier cases applying the "evade and avoid" provision analyzed cases where an underperforming entity was sold, or offloaded, and it was readily apparent the motivation was to sidestep withdrawal liability.

A particularly instructive case in this line is Sherwin Williams Co. v. New York State Teamsters Conference Pension & Retirement Fund.[11] Sherwin Williams, a manufacturer and distributor of paint products, acquired Lyons, a transportation firm, with the aim of addressing inventory challenges. However, this venture struggled, leading to continuing losses. Faced with the decision to sell off Lyons, or continuing to subsidize its losses, Sherwin Williams decided on the former.

After receiving several offers, Sherwin Williams settled on a stock sale to J.R.C. Acquisition Corporation, an entity with no assets, financial backing or corporate affiliations. In light of Lyons' underperformance, J.R.C. was unable to secure financing, but Sherwin Williams nonetheless proceeded with the deal. Approximately six months after the sale closed, J.R.C. and Lyons filed a Chapter 11 bankruptcy case. The New York State Teamsters Conference Pension & Retirement Fund demanded payment from Sherwin Williams, arguing that a principal purpose of the sale of Lyons' stock to J.R.C. was to evade or avoid withdrawal liability.

The arbitrator found that Sherwin Williams sold Lyons knowing that:

- The sale of stock would, on its face, allow Sherwin Williams to rid itself of Lyons without triggering withdrawal liability;
- Lyons could not survive without the purchaser continuing to subsidize losses; and
- Neither Lyons nor J.R.C. was an economically viable operating entity.

Although presented with other offers for Lyons, Sherwin Williams selected a stock sale to J.R.C., the one offer that would not subject it

to withdrawal liability. The arbitrator, district court, and the U.S. Court of Appeals for the Sixth Circuit all agreed that while Sherwin Williams was motivated to sell Lyons to eliminate negative cash flow, selling it to a shell corporation with no assets, in a highly leveraged deal, reflects that a purpose was also to avoid the $1.6 million in withdrawal liability it knew would inevitably result.

Similarly, in Santa Fe Pacific. Corp. v. Central States, Se. & Sw. Areas Pension Fund,[12] Santa Fe Pacific Corporation sold a trucking subsidiary – Santa Fe Trails Transportation Company (SFTT) – in a leveraged buyout of the stock. Santa Fe determined that while a sale of assets would generate more money, the sale of stock would ultimately be more profitable as Santa Fe could escape the withdrawal liability. Or so it thought. A year later, the purchaser of SFTT failed, and the fund sought to recover from Santa Fe under the theory that Santa Fe had sold SFTT in a stock sale, rather than an asset sale, with a principal purpose to avoid withdrawal liability.

The highly quotable Judge Posner observed that "[t]he issue is purpose, a state of mind inferred from testimony and other evidence."[13] After considering the evidence, he found that "[t]he record permits only one conclusion concerning the issue under appeal – that a principal purpose of the sale of SFTT's stock was to avoid withdrawal liability."[14] By exalting the form of the divestiture over substance and the potential for a higher sale price due to the concerns about withdrawal liability, the court held that the transaction constituted one within the meaning of Section 4212(c).

More recently, in Steelworkers Pension Trust v. Renco Group,[15] the U.S. Court of Appeals for the Third Circuit applied "evade or avoid" to hold Renco Group liable for the withdrawal liability of its former subsidiary. The dispute arose out of Renco's efforts to structure external financing for its subsidiary, RG Steel Holdings, LLC, an owner of various steel mills, and do so in such a way so that when the financially distressed subsidiary reached its likely fate of bankruptcy and withdrew from the Fund, the subsidiary would be outside the Renco controlled group.

The narrow issue centered on Renco's push to structure the sale so that in exchange for the financing Cerebus, the external financier, would accept membership units instead of permanent warrants. The effect of this was to move RG Steel outside of the Renco controlled group. Less than five months after Renco persuaded Cerebus to accept this structure, RG Steel permanently ceased operations, resulting in withdrawal liability in excess of $70 million.

The arbitrator found, and the district court and Third Circuit affirmed, that a principal purpose of the transaction was to evade withdrawal liability and structuring the transaction to use direct equity in place of warrants was for the sole purpose of ensuring that Renco would clearly exit the RG Steel controlled group.

In particular, it was noted that the transaction may have had multiple purposes, including a legitimate purpose – of securing necessary infusion of capital - and also an illegitimate purpose – of removing Renco from the controlled group. The decision about how to engage in the transaction, through use of direct equity instead of warrants, and the last-minute change from using warrants to equity, offered insight into Renco's intent. The arbitrator also found that Renco had misled and deceived the PBGC in regard to single employer plans sponsored by RG Steel, which factored into the assessment of the purpose of the transaction as a whole.

DISSIPATION OF ASSETS

Another area in which "evade or avoid" cases commonly arise involves efforts by employers to dissipate assets or otherwise frustrate the efforts of the pension fund to collect. These cases underscore that Section 4212(c)'s reach extends to and allows for recovery from those who received transferred assets.

In IUE AFL-CIO Pension Fund v. Herrmann,[16] Locke Manufacturing, Inc., through its president, Thomas Herrmann, engaged in a series of transactions, including gratuitous bonuses to Herrmann, in advance of Locke's sale, which had the effect of rending it insolvent, and attempted to carefully structure the sale in such a manner that would circumvent a claim for withdrawal liability. Importantly, the U.S. Court of Appeals for the Second Circuit held that to give effect to Section 4212(c) meant that claims could lie against any parties to whom any assets were transferred.[17]

Another example of furtive attempts by employers eager to shield assets from recovery includes making repayments on alleged loans before a pension fund's withdrawal liability assessment arrives. In Retirement Benefits Plan of the GCIU Local 2-B v. Standard Bindery Co., the court found that the characterizations of capital infusions as loans to be repaid to shareholders, immediately after learning of withdrawal liability and a special meeting with their attorney, was "a clear attempt to evade or avoid liability."[18]

Likewise, in Carpenters Pension Trust Fund for Northern California v. Lindquist Family, LLC,[19] just mere weeks before judgment was entered against him personally for withdrawal liability, Mark Lindquist executed amended promissory notes purporting to secure loans with his interest in a family limited liability company. Unpersuaded by the argument that the perfected liens on Lindquist's interest in the family limited liability company were superior to the pension fund's claims against Lindquist's interest, the court found that the circumstances of the amended notes satisfied all three factors of a test it set forth to find

that they constituted efforts to "evade or avoid" the liability. The court reasoned that:

- The amendment of the promissory notes was not an arm's-length transaction as there was no negotiations and they were entered into with close family members;
- The parties were clearly aware of Lindquist's withdrawal liability, and the risk to his personal assets; and
- The transaction as plainly designed to shield Lindquist's assets from judgment.[20]

TIMING

An area which has produced interesting rulings includes steps taken by an employer to time its withdrawal so as to minimize or negate withdrawal liability.

First in time was Cuyamaca Meats v. Pension Trust Fund.[21] While negotiating a successor agreement the employers proposed to cease contributions to the MEPP. A week later the employers learned that the MEPP's assets had increased significantly during the then current plan year and as a result the employers' withdrawal liability would be reduced significantly if they withdrew after the current plan year. At the next negotiating session, the employers modified their proposal to instead provide that contributions to the MEPP would cease after the end of the plan year. The bargaining parties reached impasse and the employers implemented their final proposal. The MEPP assessed the employers the higher withdrawal liability amount, as though the employers had withdrawn in the earlier plan year.

The U.S. Court of Appeals for the Ninth Circuit held that even though the employers conceded their final proposal was intended to minimize withdrawal liability, and even assuming that minimizing withdrawal liability was a principal purpose, it was not a transaction to "evade or avoid" withdrawal liability. The court reasoned that the proposal had "economic substance" and was not "deceptive." The court further stated that, "[e]mployer proposals made during negotiations toward a collective bargaining agreement, and motivated, at least in part, by a desire to minimize withdrawal liability, are not transactions entered into in order to evade or avoid withdrawal liability."

Next came SuperValu, Inc. v. Board of Trustees of the Southwestern Pennsylvania Teamsters,[22] where SuperValu and a labor union reached agreement regarding SuperValu's anticipated

closing of facilities. The bargaining parties agreed to accelerate the termination of the collective bargaining agreements requiring contributions to the MEPP so that SuperValu's withdrawal would occur in an earlier plan year. Both SuperValu and the union entered into the termination agreement knowing that ceasing the obligation to contribute before the next plan year would result in a significant savings of withdrawal liability. In exchange for the union's willingness to amend the agreements to terminate them prior to their natural expiration, SuperValu agreed to certain severance payments along with wage increases.

The Third Circuit found that the only reason SuperValu entered into the termination agreement was for "a principal purpose of escaping withdrawal liability."[23] The court determined that because of this, the termination agreement was disregarded, and SuperValu was treated as having withdrawn from the Fund when it actually ceased covered operations.

In rejecting SuperValu's argument that the termination agreement was a product of collective bargaining and thus a bona fide arm's-length transaction, the court rather succinctly concluded that there is no requirement that a transaction must be a sham or fraudulent to fall within the purview of Section 4212(c).[24]

Years later, a different result was reached in a fact pattern that is distinguishable from SuperValu, but barely. In CIC-TOC Pension Plan v. Weyerhauser Co.,[25] the employer accelerated the closing of certain facilities, merely two days before the end of the plan year, after learning that it would be subject to withdrawal liability if it continued operations into the next plan year. The plan determined, and the arbitrator agreed, that the employer's withdrawal occurred in the subsequent plan year, and calculated the liability accordingly, because the accelerated closing amounted to a transaction to evade or avoid liability and should be disregarded.

The district court disagreed. The court focused its analysis on the term "transaction" and drew on definitions from at least four dictionaries to discern that a transaction means the occurring of business, and not the cessation of it, and must involve more than one party, or a bilateral agreement. Thus, because it was the employer alone who decided to close the facilities, without any arrangement with the union, it was not a "transaction" within ERISA Section 4212(c) "because it was a unilateral act."[26]

The court also observed that while it was undisputed that the closings occurred when they did – ahead of the originally planned schedule – in order to prevent withdrawal liability, the employer had always intended upon closing the facilities, and executing that a few weeks earlier does amount to a "sham transaction" as the Ninth Circuit requires.[27] The court said that "employers may time bona fide business

transactions to minimize withdrawal liability without fear of triggering ERISA Section 4212(c)."[28]

TRANSACTIONS THAT SURVIVED CHALLENGES

In some rare cases a MEPP's "evade or avoid" claim has not been successful.

In Chicago Truck Drivers v. Louis Zahn Drug Co.,[29] the employer, Zahn, a wholesale distributor of drugs and related products, entered into an agreement to sell its inefficient trucking operation. The sale was structured to comply with Section 4204 of MPPAA, in that the asset purchaser was required continue to contribute to the fund, the buyer posted a bond for the five-year period to ensure its continued contributions to the fund, and the seller agreed to remain secondarily liable if the buyer defaulted on its obligations to the fund.

Despite this, the fund argued that Zahn's sale resulted in a withdrawal because the principal purpose of the transaction was to evade or avoid withdrawal liability. The fund charged that there were no assets sold, as the transfer of leases for the vehicles was not an asset, and instead was a liability being passed on to the buyer.

The arbitrator analyzed the transaction as a whole – including the three separate agreements, the sublease agreement, the motor transportation agreement, and the asset purchase agreement – and determined the transaction was "designed to relieve Zahn of a part of its business that was producing significant losses – not to avoid withdrawal liability."[30] The arbitrator determined, and the court affirmed, that the leases had value to the purchaser, in considering the entirety of the transaction as they were necessary to complete the transportation responsibilities. Taking into account Zahn's business situation, the arbitrator concluded, and the district court affirmed that the transaction was not to avoid withdrawal liability.

In a case that broke new ground in developing the "investment plus" standard for purposes of determining whether a private equity fund constituted a trade or business, the court in Sun Capital Partners III, LP v. New England Teamsters & Trucking Industry Pension Fund[31] also made important findings about the application of "evade or avoid."

In Sun Capital, Scott Brass, Inc., declared bankruptcy and withdrew from a MEPP. Scott Brass was owned by a holding company, that was owned by two Sun Capital investment funds: Sun Capital Partners III, LP, which owned 30 percent of the membership interests, and Sun Capital Partners IV, LP, that owned the remaining 70 percent.

The MEPP alleged that the ownership interests were divided in the 70/30 split in order to keep the interest below 80 percent and avoid either fund having a controlling interest in Scott Brass. The MEPP

alleged that this division of ownership was done with the principal purpose to "evade or avoid" withdrawal liability. The MEPP argued that this division should be disregarded, and the ownership interests of the two funds should be aggregated and attributable to one of the funds. Sun Capital acknowledged that it purposefully kept the ownership interest below 80% in order to minimize exposure to withdrawal liability.

In rejecting the MEPP's claim, the U.S. Court of Appeals for the First Circuit reasoned that the remedy Section 4212(c) allows the court to "erase" the transaction as though it never occurred, but "[i]t does not, by contrast, instruct or permit a court to take the affirmative step of writing in new terms to a transaction or to create a transaction that never existed." Erasing the transaction would result in no investment from Sun Capital, but would not, as the MEPP sought, align the ownership so that one of the Sun Fund's ownership interest would exceed 80 percent. The court stated that Section 4212(c) "cannot serve as a basis to impose liability on the Sun Funds because, by applying the remedy specified by the statute, the [MEPP] would still not be entitled to any payments from the Sun Funds for withdrawal liability."

The most recent pronouncement in this area came from the Second Circuit in N.Y. State Teamsters Conference Pension Fund v. C&S Wholesale Grocers, Inc., where a dispute arose out of the employer, C&S Wholesale Grocer's, purchase of some, but not all, of Penn Traffic's operations. C&S structured the sale so that it did not acquire anything related to Penn Traffic's warehouse, including the Teamsters member warehouse employees, because of the withdrawal liability tied to the MEPP they participated in.

Less than a year after the deal was finalized Penn Traffic filed bankruptcy, triggering a $63.6 million withdrawal liability claim in bankruptcy, only a portion of which was paid by the bankruptcy estate, leading the MEPP to pursue C&S.

The MEPP advanced several theories of liability against C&S, including that structuring the deal so as to not assume control of the warehouse or its employees constituted an "evade or avoid" transaction.

In rejecting the MEPP's arguments, the Second Circuit held that C&S was not an "employer" within the meaning of MPPAA as C&S had no obligation to contribute, nor was it a trade or business under common control with Penn Traffic. Also, no facts were alleged suggesting an exceptional circumstance such as fraud or an improper transfer of assets resulting in a MEPP being unable to recover from the employer with the obligation to contribute.

Further, the court reasoned that C&S made the rational and "perfectly sensible business decision" not to purchase assets – the warehouse operation – to which withdrawal liability would attach. The court found that the relief under Section 4212(c) would allow it to

erase the transaction, but not to allow the court to create a new transaction, imposing on C&S the obligation to purchase the warehouse which it declined to do, for good reason.

PERSPECTIVE

"Evade or avoid" claims result from the natural tension between MEPPs and employers.

All employers, generally speaking, want to minimize their MEPP exposure. When presented with the choice between having, or paying, more or less MEPP liability, an employer's choice is obvious. Said differently, evading or avoiding liability is a natural objective of rational actors.

While MEPPs, on the other hand, have an interest, indeed a fiduciary duty, to pursue collection of amounts due them. Where a maneuver results in a MEPP being unable to recover some or all of an assessment, they are arguably compelled to pursue an "evade or avoid" claim.

While some bright-line principles can be drawn from the cases, much of the analysis turns on unique facts. Reconciling decisions and attempting to develop a consistent analytical framework that can be applied is challenging.

Timing is really important. In Renco, the arbitrator and courts focused considerable attention on the change from warrants to direct equity. After apparently considerable time had been spent developing the deal terms, the shift at the last minute raised questions as to why? And the obvious answer to that restructuring was to move RG Steel out of the controlled group, which evidently had only been determined late in the deal process.

How important is timing? If at the outset in Renco the deal was always structured as equity, and there was no pivot at the eleventh hour, would the same result have been reached? Similarly, what if in Standard Bindery the "loans" by shareholders to the corporation were properly memorialized and repaid years before the withdrawal?

The timeline can inform as to a state of mind and can offer compelling evidence both ways. For MEPPs it is important to use a long lens and analyze deal terms and if there has been an evolution of the course of the transaction. Similarly for employers, even before a letter of intent it is important to fully explore MEPP considerations and maintain a consistent overall structure.

Relatedly, for informed employers that keep close watch on changes to their MEPP exposure and take steps to mitigate liability through timed withdrawals, the cases offer a seeming disconnect that is reconcilable on closer inspection. A takeaway from SuperValu is

that bargaining over ceasing an obligation to contribute in advance of when a CBA was due to expire will likely prove ineffective. The ability of an employer to discontinue pension fund contributions is constrained by labor law, and under SuperValu will always constitute a transaction because it will require agreement between the employer and a labor union. But Cuyamaca can be read to stand for the proposition that bargaining over ceasing contributions to a MEPP at its natural expiration, with knowledge that doing so will mitigate liability, is simply a product of collective bargaining, and not an "evade or avoid" transaction. Further, Weyerhauser suggests that simply ceasing covered operations before the CBA's expiration date may be an effective work-around.

In SuperValu had the facility simply closed and covered operations ceased in advance of the upcoming plan year, would there have been a transaction? Or would it have been a unilateral act as in Weyerhaeuser?

What to do with a struggling subsidiary with MEPP exposure? Santa Fe and Sherwin Williams suggest that employers should plan for the subsidiary to eventually fail and the MEPP to closely scrutinize the sale. Opting for a stock sale over an asset sale with a lower purchase price so that the entity burdened with the MEPP liability will no longer be part of the controlled group is not likely to be a victorious defense to an "evade or avoid" claim. But what about fractionalizing ownership interests? Instead of selling 100 percent of the equity in J.R.C., had Sherwin Williams only sold 80 percent – so that Sherwin Williams no longer had a controlling interest – would that have been a "perfectly sensible business decision" like C&S and lead a reviewing court to find that it could not rewrite the transaction? Or would a court say that it could erase the transaction as in Sun Capital and leave Sherwin Williams with the 80 percent interest it thought it sold?

In Santa Fe Pacific, Judge Posner posited that the analysis of an "evade or avoid" claim must consider intent, stating "[t]he issue is purpose, a state of mind inferred from testimony and other evidence." As a number of the cases reflect, intent was the lynchpin of the analysis. But in others, where the employer's intent was unabashedly to mitigate their MEPP exposure, the "evade or avoid" claims were unsuccessful.

Does intent matter? And if so, how much? The answer, it seems, is like every question in law school: it depends.

The evidence that supports intent is always unique to the facts. In a fact pattern involving a dissipation of assets, or where the "evade or avoid" theory relates to the unique structuring of a sale, surely intent is relevant and might even been dispositive. In connection with a timed withdrawal, it might matter. But in connection with fractionalizing ownership interests or strategically avoiding acquiring a bargaining unit or a facility, intent, it seems, does not matter at all.

NOTES

1. Pension Ben. Guar. Corp. v. R.A. Gray & Co., 467 U.S. 717, 723 (1984).

2. Id., at 725; 29 U.S.C. §§ 1053, 1381, 1391.

3. Dorn's Transport v. Teamsters Pension Trust Fund, 787 F.2d 897, 901 (3d Cir. 1986).

4. Flying Tiger Line v. Teamsters Pension Trust Fund, 830 F.2d 1241, 1247 (3d Cir. 1987).

5. CIC-TOC Pension Plan v. Weyerhauser Co., 911 F.Supp.2d 1088, 1094 (D. Or. 2012).

6. Santa Fe Pacific. Corp. v. Central States, Se. & Sw. Areas Pension Fund, 22 F.3d 725, 727 (7th Cir. 1994).

7. See e.g., Trustees of Iron Workers Local 473 Pension Trust v. Allied Prod, 872 F.2d 208, 213 (7th Cir. 1989).

8. 29 U.S.C. § 1392(c).

9. 126 Cong.Rec. 23038 (1980) (statement of Rep. Frank Thompson).

10. Cuyamaca Meats, Inc. v. San Diego & Imperial Counties Butchers' & Food Employers' Pension Trust Fund, 827 F.2d 491, 499 (9th Cir 1987).

11. 158 F.3d 387 (6th Cir. 1998).

12. 22 F.3d 725 (7th Cir 1994).

13. Id. at 727.

14. Id. at 730.

15. No. 19-3499 (3d Cir. Aug. 26, 2021).

16. 9 F.3d 1049 (2d Cir. 1993).

17. Id. at 1056.

18. 654 F.Supp. 770, 773 (E.D. Mich. 1986).

19. 2014 WL 2601648 (N.D. Cal., 2014).

20. Id. at 10.

21. 827 F.2d 491 (9th Cir. 1987).

22. 500 F.3d 334 (3d Cir. 2007).

23. Id. at 342.

24. Id. at 343.

25. 911 F.Supp.2d 1088 (D. Or. 2012).

26. Id. at 1095.

27. Id. at 1097.

28. Id.

29. 890 F.2d 1405 (7th Cir. 1989).

30. Id. at 1412.

31. 724 F.3d 129, 149 (1st Cir. 2013).

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