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District Court Holds Pension Fund Misapplied Prior Partial Withdrawal Liability Credit

Employee Benefits & Executive Compensation on **May 15, 2025**

A federal district court in Illinois became the first court to rule that an employer's credit for a prior partial withdrawal should be applied at the end of the statute's "waterfall" for calculating withdrawal liability. The case is *Consumers Concrete Corp. v. Central States, S.E. and S.W. Areas Pension Fund*, Nos. 23-cv-2695 & 23-cv-3005, 2025 WL 1001799 (N.D. Ill. Apr. 3, 2025).

Statutory Background

An employer's withdrawal from a multiemployer pension plan may be "complete" if it permanently ceases to have an obligation to contribute to the plan, or "partial" if (a) the employer's obligation ceases with respect to one (but not all) collective bargaining agreements or facilities, or (b) if there is a 70% reduction in the employer's contribution over a three-year period. The employer's partial withdrawal liability is a percentage of what its liability would have been if it effected a complete withdrawal from the plan (*e.g.*, 80% of $1 million, or $800,000). If an employer assessed with partial withdrawal liability subsequently effects a complete withdrawal, it will receive a credit for the prior partial withdrawal liability, subject to certain reductions, and only be liable for the balance (*e.g.*, $2 million minus $800,000).

Disputes often arise over the point in the calculation at which this credit is applied. The Multiemployer Pension Plan Amendments Act (MPPAA) provides that an employer's withdrawal liability is calculated by determining the employer's share of the fund's unfunded vested benefits pursuant to the allocation method selected by the plan's trustees, and then reducing that amount in four sequential steps: (i) for *de minimis* amounts, (ii) for partial withdrawals, (iii) to reflect the twenty-year cap on payments, and (iv) for employers whose withdrawal is the result of insolvency or a sale of substantially all assets to a third-party. Courts, including the Ninth Circuit, have held that an employer's credit for a prior partial withdrawal should be applied at the second step of the statutory waterfall of reductions. In so holding, they have rejected as unpersuasive a 1985 PBGC opinion letter stating that the statutory waterfall did not encompass the credit at all, and that it should thus be applied only after all four reductions.

District Court's Decision

Consumers Concrete Corporation was a contributing employer to the Central States Pension Fund. The employer partially withdrew from the plan in 2017 and was assessed $11.38 million in partial withdrawal liability. When the employer completely withdrew in 2019, the plan assessed it with $12.18 million in complete withdrawal liability, which was calculated by applying the credit for the prior partial withdrawal liability at the second step of the statutory waterfall. The employer commenced arbitration to challenge the calculation, arguing that the plan should have instead applied the credit at the end of the statutory waterfall, consistent with the PBGC's opinion letter, which would have reduced its complete withdrawal liability from $12.18 million to $11.44 million.

The arbitrator ruled in the plan's favor, and the District Court reversed. Based on a "holistic[]" reading of the statute, the Court concluded that the statute requires the credit to reduce an employer's "withdrawal liability," which the Court held is what an employer owes after the waterfall of exceptions is applied. The Court distinguished past rulings as overlooking the statutory distinction and also pointed to the PBGC opinion letter for support.

Proskauer's Perspective

The order in which the partial withdrawal liability credit is applied can have a significant impact on the amount an employer owes in withdrawal liability upon a complete withdrawal. The few decisions to have considered the issue have held that the credit should be applied as part of the statutory waterfall of exceptions. The ruling in *Consumers Concrete Corp.* means that, at least in one jurisdiction, a different rule may apply. Because the issue is likely to remain an open question in most jurisdictions, employers and plans should coordinate with their legal counsel to assess the impact of these decisions on existing or forthcoming withdrawal liability assessments.

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Related Professionals

- **Neil V. Shah**
  Senior Counsel
- **Sydney L. Juliano**
  Associate