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District Court Interprets Multiemployer Plan Fee-Shifting Provision to Encompass Attorneys' Fees and Costs Incurred in Related Litigation

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A multiemployer plan that prevails in an action to collect delinquent contributions or withdrawal liability is statutorily entitled to recover reasonable attorneys' fees and costs "of the action." In *International Painters & Allied Trades Industry Pension Fund v. Florida Glass of Tampa Bay, Inc.*, No. 23-cv-00045, 2025 WL 712965 (D. Md. Mar. 5, 2025), the court held that the statute permits a plan to recover not just the fees and costs incurred in the collection action, but also those incurred to defend a related action.

Florida Glass of Tampa Bay, Inc. was a contributing employer to the International Painters and Allied Trades Industry Pension Fund. Following Florida Glass's complete withdrawal from the Fund, the Fund filed suit to collect over $1.5 million in withdrawal liability from Florida Glass and its controlled group members. While that action was pending, the controlled group members sued the Fund and its attorneys in Florida state court, alleging that the Fund's collection action constituted defamation and abuse of process under Florida law. After the Florida action was dismissed with prejudice, the court in the collection action granted the Fund's motion for summary judgment and awarded it withdrawal liability, interest, and liquidated damages. The court also granted the Fund's motion for attorneys' fees and costs, which included the amounts incurred in both the collection and Florida actions. The court held that the phrase "of the action" in 29 U.S.C. § 1132(g)(2)(D) meant all fees and costs that were or *should have* been incurred in the collection action. The court reasoned that defendants should have raised their claims as counterclaims in the collection action rather than commencing a parallel action. The court indicated that its ruling was based in part on the need to effectuate the statutory goal of preserving fund assets, as defendants' actions unnecessarily multiplied the Fund's litigation expenses by requiring it to litigate two separate actions.

Proskauer's Perspective

The decision is notable because it interprets ERISA's mandatory fee-shifting provision for collection actions to encompass fees incurred in parallel actions where fees would not otherwise be recoverable or where the award is not mandatory. Plans and employers should consider whether the decision lays the groundwork for a mandatory award of fees to a plan that, in addition to successfully pursuing an employer for delinquent contributions or withdrawal liability, prevails in arbitration by the employer to challenge the amount of the liability.

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