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District Court Holds Private Equity Fund, But Not Its General Partner or Management Company, Liable for Portfolio Company's Withdrawal Liability

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Under ERISA, a participating employer that withdraws from a multiemployer pension plan must pay its share of the plan's unfunded vested benefits (i.e., its withdrawal liability). ERISA's "controlled group" rules extend this obligation to all "trades and businesses" that are under "common control" with the withdrawing employer, thereby making the withdrawing employer and each controlled group member jointly and severally liable for the withdrawal liability. In general, this means that liability extends to the withdrawing employer and certain affiliates (including parents and subsidiaries) that are linked by at least 80% common ownership.

Under the *Sun Capital* cases (discussed here and here), if the withdrawing employer is owned by a private equity fund, the plan may seek to hold the fund, its management company and general partner, and potentially its parallel funds and their portfolio companies jointly and severally liable for the withdrawal liability. That is what happened in *Longroad Asset Management LLC v. Boilermaker-Blacksmith National Pension Trust*, No. 4:23-cv-00738, 2025 WL 2406740 (W.D. Mo. Aug. 19, 2025). The district court held a private equity fund jointly and severally liable for the withdrawal liability owed by certain of the fund's portfolio companies because the court determined they were part of the same "controlled group." The court held that the private equity fund was under "common control" with the portfolio companies because it owned a 95% interest in them, and that the fund was a "trade or business" under the standard set forth in *Sun Capital I* as a result of it actively managing the portfolio companies. The court declined, however, to hold the private equity fund's general partner or management company liable, concluding that under the standard set forth in *Sun Capital II*, they did not comprise a partnership-in-fact with the private equity fund or the withdrawing employers such that they could be deemed part of their controlled group.

Background

Longroad Asset Management, LLC (the “Sponsor”) is a private equity fund sponsor. The Sponsor established Longroad Capital Partners III, LP (the “Fund”), a private equity fund organized as a limited partnership, whose purpose was to purchase stakes in businesses and seek to increase those businesses’ value in the hopes of selling them for a profit. Longroad Partners III GP, LLC (the “GP”), a limited liability company in which the Sponsor is the sole member, was formed to act as the general partner of the Fund, while the Sponsor acted as the management company of the Fund and was delegated discretionary investment authority (and other responsibilities) with respect to the Fund. The Fund had twenty-eight limited partners (“LPs”) who collectively committed $283 million in capital to purchase limited partner interests in the Fund, which the Fund then used to purchase a number of businesses. Neither the Fund nor the GP had any employees; instead, the GP contracted with the Sponsor to manage the Fund in exchange for a management fee which could be offset by at least 80% if the Sponsor received certain other fees from the portfolio companies.

Two of the Fund’s portfolio companies (the “Portfolio Companies”) were contributing employers to the Boilermaker-Blacksmith National Pension Trust (the “Plan”). The Fund owned a 95% indirect interest in the Portfolio Companies. In 2015, the Portfolio Companies ceased operations and completely withdrew from the Plan. In 2023, the Plan served a notice and demand for payment of $1,762,249 in withdrawal liability on the Portfolio Companies, the Sponsor, and the GP, alleging that they comprised a controlled group. The Sponsor, the GP, and the Fund commenced arbitration to challenge the assessment and filed suit in federal court seeking a declaration that they were not controlled group members or otherwise responsible for the withdrawal liability. Because the withdrawal liability was unpaid, the Plan filed a counterclaim seeking to compel payment.

The court awarded summary judgment to the Plan with respect to its claim that the Fund was a controlled group member. The court held that the test for determining whether a private equity fund is a "trade or business" is the "investment-plus" approach the First Circuit articulated in *Sun Capital I*. The court held that under that standard, the Fund was a trade or business because it owned and actively managed the Portfolio Companies. In particular, the Fund acted through the GP (*i.e.*, the Sponsor) to acquire, manage, and restructure the Portfolio Companies. It appointed members to their boards and embedded operational advisors, and it did so for the primary purpose of generating profit. Because it was undisputed that the Fund owned more than 80% of the Portfolio Companies, the court held the Fund was a trade or business under common control with them and thus jointly and severally liable for their withdrawal liability.

The court declined, however, to extend liability to the GP or the Sponsor. The court held that under the standard articulated in *Sun Capital II*, neither of them had entered into a partnership-in-fact with the Fund or the withdrawing employers such that they could be deemed part of their controlled group. The court held that the GP could not have been part of a partnership-in-fact, much less a trade or business, because it was a pass-through entity that had delegated all its responsibilities and powers to the Sponsor and had no employees or other operations. The court held that the Sponsor could not be held liable either because it had only a nominal, indirect ownership interest in the Fund (through the GP), and that all actions taken by it were pursuant to the terms of its management agreement with the GP. The court deemed it especially significant that the amount of the Sponsor's management fee did not depend on the profitability of the Fund's portfolio companies (including the Portfolio Companies). In addition, the Sponsor did not receive any fees or other compensation from its portfolio companies (including the Portfolio Companies) that offset its management fee.

Proskauer's Perspective

The decision in *Longroad* is a reminder to private investment funds that active participation in the management of their portfolio companies could lead to joint and several liability for the unfunded pension liabilities of such portfolio companies if the private investment fund holds an 80% or more ownership interest therein (whether alone or together with parallel funds via a partnership-in-fact). At the same time, *Longroad* should provide some comfort to private equity sponsors that extending liability pursuant to a partnership-in-fact theory to those that do not share common ownership with the private equity fund, such as a general partner or management company of the private equity fund, is a difficult showing to make.

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