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Fourth Circuit Holds That "Contingent" Proof of Claim Did Not Trigger Statute of Limitations to Collect Withdrawal Liability

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In *International Painters and Allied Trades Industry Pension Fund v. Florida Glass of Tampa Bay, Inc.*, 2026 WL 191344 (4th Cir. Jan. 26, 2026, No. 25-1312), the Fourth Circuit held that the "contingent" proof of claim a multiemployer pension plan filed in a contributing employer's bankruptcy did not constitute a "notice and demand" triggering the statute of limitations to collect withdrawal liability from the employer's controlled group members.

Background

Upon an employer's withdrawal from a multiemployer pension plan, the plan must notify the employer of the amount of its withdrawal liability and demand payment. The service of the demand triggers a "pay now, dispute later" scheme pursuant to which the employer must pay the amount demanded—usually in monthly or quarterly payments—while pursuing any challenges directly with the plan and then in arbitration. Should the employer fail to pay, the plan has six years from the date of the missed payment to file suit to compel payment, and potentially longer in the case of fraud or concealment. Should the employer fail to timely file a request for review of its assessment with the plan or timely commence arbitration thereafter, it waives all defenses to the amount demanded.

A withdrawal generally occurs when an employer ceases to have an obligation to contribute to the plan. For employers in the building and construction industry, the withdrawal only occurs if, within the next five years, the employer resumes or continues to perform the same type of work for which contributions were previously required in the jurisdiction of the applicable CBA, but without contributing to the plan. What this means is that the plan may have to wait several years before sending a notice and demand for payment—up to five years for the employer to resume or continue the work in question, and potentially longer for the plan to become aware of it.

Florida Glass, the Proof of Claim, and Subsequent Litigation

Florida Glass contributed to the International Painters and Allied Trades Industry Pension Fund until 2015, when it ceased to have an obligation to contribute to the Fund. Florida Glass was considered a “building and construction” industry employer, and thus it could not be deemed to have withdrawn from the Fund unless, within five years of the cessation of the obligation to contribute, it (or a controlled group member) resumed or continued to perform the type of work for which contributions were previously required in the jurisdiction of the applicable CBA without contributing to the Fund. The next year, Florida Glass filed for bankruptcy. The Fund filed a proof of claim in the bankruptcy for $1,577,168 “contingent” withdrawal liability, payable immediately or in monthly payments. The proof of claim was styled “contingent” because, at the time, the Fund had not yet determined whether Florida Glass (or a controlled group member) had continued or resumed covered work. The claim was allowed without objection, and the Fund later received a $48,349 distribution from Florida Glass’s liquidation.

In 2022, following further investigation, the Fund determined that Florida Glass had withdrawn in 2015 because several trades and businesses with which it was under common control had resumed or continued performing the type of work for which Florida Glass had been required to contribute to the Fund in the jurisdiction of the applicable CBA within the five years following Florida Glass's closure. The Fund sent the controlled group members a notice and demand for $1,577,168 in withdrawal liability. No payments were made and the deadline to timely commence arbitration lapsed, and in 2023, the Fund filed suit to compel payment. The issue was when the six-year statute of limitations for the Fund's action to collect withdrawal liability began to accrue. The controlled group members argued that it began to accrue when the Fund filed the proof of claim in 2016, in which case the claim would be time-barred, and the Fund argued that it began to accrue when the controlled group members failed to make their payments in accordance with the 2022 notice and demand for payment, in which case the claim would be timely. The district court ruled in favor of the Fund because it concluded that the proof of claim was not a notice and demand within the meaning of the statute. Among other things, the proof of claim was styled as "contingent," contained inconsistent figures and payment options, and did not clearly communicate an unambiguous demand and payment obligation. Because the proof of claim was not a "notice and demand," it did not trigger Florida Glass's deadline to make payments, and thus did not trigger the six-year deadline for the Fund to file suit to compel payment.

The Fourth Circuit affirmed. It held that "a proof of claim operates as a notice and demand only when it clearly satisfies the MPPAA's requirements." The court emphasized that any "[a]mbiguity should be resolved" against treating the proof of claim as a notice and demand because the "better rule" is the one that "leaves the stopwatch in the hands of the pension plan" and provides it flexibility to protect its assets. Applying this standard, the court affirmed that the proof of claim was not a "notice and demand" that triggered the six-year statute of limitations of the Fund to file suit. In particular, the court noted that the proof of claim: (i) was not labeled a "demand," (ii) did not reference the statute's dispute resolution scheme, (iii) requested payment of two different amounts without effective explanation, and (iv) despite listing a 2015 "Withdrawal Date," identified the "basis of the claim" as "contingent," suggesting that the Fund had not yet determined whether a withdrawal had occurred. The court rejected the controlled group members' argument for a per se rule that a proof of claim satisfies the statutory requirements because of the practical timing problems it would create for building and construction industry plans. In particular, the court noted that several years may lapse between the cessation of an employer's obligation to contribute to the plan and the plan's determination that there has been a withdrawal, and the only way for the plan to preserve its rights in the event of an intervening bankruptcy is to file a "contingent" proof of claim.

Proskauer's Perspective

This decision is instructive for multiemployer plans and the employers that contribute to them when there is a bankruptcy filing. For plans, the decision reinforces the importance of filing a proof of claim when an employer (or anyone whom the plan believes may be an employer) files for bankruptcy and monitoring the proceeding to ensure that the plan's rights are adequately preserved. For employers, the decision is a reminder that while bankruptcy may be used to protect the rights of the debtor who commenced the proceeding, a plan may assert its rights to collect withdrawal liability from other controlled group members outside the context of the bankruptcy, and all members of the controlled group should thus take necessary steps to preserve their rights to assert any challenges to withdrawal liability assessments.

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