

7th Circuit Decision Underscores Threat Of Individual Liability In Withdrawal Liability Cases

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The Seventh Circuit in its recent decision in [Central States Southeast and Southwest Area Pension Fund v. Messina Products LLC](#) reversed a District Court decision that two individual owners of a defunct trucking company had no personal liability for a \$3.1 million in withdrawal liability to the Central States Fund. The District Court had determined that the individual owners were not “trades or businesses” under 29 U.S.C. 1301(b)(1) and therefore could not be liable as the “employer” when the trucking company they owned ceased operations causing a “complete withdrawal” from the beleaguered Central States Fund.

The Seventh Circuit disagreed and reversed. In passing the Multi-Employer Pension Protection Act, Congress decided that all “trades or businesses” under “common control” with the withdrawing employer are treated as a single entity for the purpose of collecting withdrawal liability. Because the Act does not define the phrase “trades or businesses,” the Seventh Circuit had previously decided that it would apply the Supreme Court’s test from *Commissioner v. Groetzinger*, 480 U.S. 23, 35 (1987), that a “trade or business” must engage in activity (1) for the primary purpose of income or profit, and (2) with continuity and regularity.

The owners of the trucking company, according to the opinion, owned the property on which the trucking company was operated as well as an adjacent property which was used for ingress and egress. The judges noted, among other items in a very detailed analysis of the relationship between the individual owners and the company, that there were no signed property leases and that prior to 2005, the company stopped paying rent to the owners.

Messina Products is a must read for anyone dealing with issues involving individual liability for withdrawal liability under the MPPAA particularly where there are leasebacks of real estate owned by company owners.

The case is not finished with this opinion, however. Because the District Court granted judgment on the basis that the individual owners were not engaged in a “trade or business,” it did not reach the second part of the liability test as to whether the individual owners are under common control with the obligated company. In addition, the court also noted that Messina Trucking, the withdrawing employer, initiated arbitration under 29 USC 1401(a)(1) to challenge the merits of the withdrawal liability. So, there is more to come on this one.

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