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Challenging Multiemployer Pension Withdrawal Liability Assessments

Evaluating Whether to Challenge Assessments,
Navigating the Procedural Framework, and Leveraging Defenses

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Challenging Multiemployer Pension Withdrawal Liability Assessments

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Challenging Multiemployer Pension Withdrawal Liability Assessments

- ◆ Overview of Withdrawal Liability
- ◆ Procedural Framework
- ◆ Defending a Withdrawal Liability Claim

Introduction

- ✦ Once upon a time (mostly in the period from 1945 to 1965), multi-employer or Taft-Hartley plans were established by unions and employers to provide benefits to employees represented by the unions
- ✦ IRC set minimum funding requirements but this rarely had any practical impact on employers contributing to Taft-Hartley plans (or any pension plans for that matter)
- ✦ CBA set contribution rates, subject to approval of Plan Trustees
- ✦ Employers could withdraw without penalty

Introduction

- ✦ ERISA enacted in 1974
- ✦ Funding requirements were tightened and Taft-Hartley plans were classified as “defined benefit” plans
- ✦ However, there was no practical impact on employers
- ✦ Still no withdrawal liability
- ✦ In 1974, 45% of active private sector workers in the U.S. were covered by a defined benefit pension plan. Less than 20% were covered by a defined contribution plan

Introduction

- ✦ MPPAA enacted in 1980
- ✦ Withdrawal liability created, so that an employer who ceased to contribute could be required to pay its proportionate share of the Plan's unfunded vested liabilities, even if the employer had fully paid the contributions required by the CBA
- ✦ Since 1980, unions and defined benefit pension plans have fallen out of favor
- ✦ There are approximately 1,500 Taft-Hartley DB plans in the U.S.; almost all of them are not fully funded for withdrawal liability purposes

Withdrawal Liability

- ✦ Withdrawal liability is payable only upon the occurrence of a withdrawal, as defined by ERISA.
- ✦ A withdrawing employer is liable to the pension plan for employer's share of plan's unfunded vested benefits ("UVBs"), if any; determination of UVBs depends on actuarial assumptions and methodologies.
- ✦ Title IV of ERISA specifies two types of employer withdrawals that can trigger payment of liability
 - Complete withdrawals; and
 - Partial withdrawals

Complete Withdrawal

- ◆ “Complete Withdrawal” is defined under ERISA as:
 - A permanent cessation of the employer’s obligation to contribute under the plan;
or
 - A permanent cessation of the employer’s covered operations under the plan.

- ◆ Permanent cessation of employer’s obligation to contribute
 - Upon expiration and non-renewal of collective bargaining agreement (“CBA”) that obligated employer to contribute to the plan (unless employer has an ongoing duty under the NLRA to continue to contribute under the terms of the expired CBA)
 - Where a fund terminates an employer’s participation in the fund. See e.g. *Borntrager v. Central States, SE & SW Areas Pension Fund*, 2008 WL 1800645 (N.D. Iowa, 4/22/08)
 - Where the employees decertify the union (subject to debate)

Complete Withdrawal

- ◆ Permanent cessation of employer's "covered operations"
 - Refers to those business activities for which the employer is required to contribute to the plan
 - May be triggered by layoffs, plant closures or sale of the business

- ◆ What is "permanent cessation"?
 - Permanence is something less than eternal;
 - An employer's expressed intent to resume operations must be corroborated by extrinsic evidence;
 - Liquidation or total shutdown of the employer is not necessary so long as the employer has ceased conducting business activity that gives rise to the contribution

Partial Withdrawal

- ◆ ERISA § 4205(a) defines a partial withdrawal as follows:
 - A cessation of contribution obligation under one, but not all bargaining agreements, and continuation of work in CBA jurisdiction of the type for which contributions were previously required, or a transfer of such work to another location or another entity owned or controlled by employer, or
 - A cessation of contribution obligation at one but not all facilities, and continuation of work at the facility of type for which contributions previously required, or
 - 70% decline test (mathematical test which compares contribution base units (CBU's) in each of past three plan years to the high two-year average in the preceding five years).

Special Industry Rules

- ✦ ERISA § 4203 provides for special rules for certain plans in the following industries: Construction (29 USC §1383 (b)); Entertainment (29 USC § 1383(c)); Trucking (29 USC § 1383(d)); Retail Food (29 USC § 1385(c)); and Coal (29 USC § § 1391(d), 1396)
- ✦ The special rules applicable to these industries may alter the conditions under which a withdrawal and partial withdrawal occur, the effect of a withdrawal or the method for calculating withdrawal liability in a particular industry

Special Industry Rules

- ◆ In regard to the Construction Industry, for example: Complete withdrawal occurs in regards to a construction industry plan only if (a) construction industry employer ceases to have an obligation to contribute under the plan and (b) continues to perform work in the jurisdiction of the collective bargaining agreement of for which contributions were previously required. Partial withdrawal occurs only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the CBA of the type for which contributions are required.

Definition of Employer

- ✦ Employer's contribution obligation arises in its collective bargaining agreement.
- ✦ Many Trust Funds require a separate agreement between the employer and Trust.
- ✦ An employer's liability is determined by the bargaining agreement, any agreements with the Trust Fund, the Trust document and bylaws, Trust Agreements, and any other documents under which the Trust Fund operates.

Definition of Employer

- ✦ Employers may be unaware of the obligations imposed by these documents, unless employer obtains and reviews them. Agreements often bind the employer to rules that the employer has never seen.
- ✦ Union does not speak for and does not bind the Fund.
- ✦ For purposes of withdrawal liability, all corporations, “trades or businesses” under common control are treated as a single “employer” and are jointly and severally liable for withdrawal liability of any controlled group member.

Definition of Employer

- ✦ Under “controlled group” rules, if several members of a controlled group contribute to the same multiemployer plan, when one member stops contributing, there may be no withdrawal, or at most a partial withdrawal.
- ✦ If one member of the controlled group withdraws, all members have joint and several liability and must timely exercise their rights to challenge the assessment of liability.

Who is in the Controlled Group?

- ✦ There is no individual shareholder responsibility per se for withdrawal liability. However, the Seventh Circuit held an individual personally liable for withdrawal liability because the individual owned the stock of the withdrawing corporate employer and also engaged in activities that qualified as trades or businesses by (i) owning and leasing property to the employer; and (ii) providing management services as an independent contractor. *Central States Pension Fund v. Nagy*, 2013 U.S. App. LEXIS 7912 (7th Cir. 2013). In so holding, the Seventh Circuit confirmed that certain leasing activity is categorically a trade or business for purposes of individual liability under ERISA.

Who is in the Controlled Group?

- ✦ A 2007 PBGC Opinion Letter opined that a private equity fund was a trade or business and was therefore jointly and severally liable for the underfunded liabilities of a pension plan sponsored by one of its portfolio companies.
- ✦ First Circuit has ruled that a private equity fund is a “trade or business” that could be liable for the multiemployer pension plan withdrawal liability of one of its portfolio companies. *Sun Capital Partners III LP v. New England Teamsters & Trucking Indus. Pension Fund*, 724 F.3d 129 (1st Cir. 2013); cert denied (2014).

Who is in the Controlled Group?

- ✦ *Board of Trustees, Sheet Metal Workers' National Pension Fund v. Palladium Equity Partners, LLC*, 722 F.Supp. 2d 845 (E.D. Mich. 2010) denied summary judgment motion of private equity firm regarding withdrawal liability as owners of a bankrupt company. Case settled before trial.
- ✦ What about the single employer or joint employer doctrine under the NLRA? Split of authority.

Sale of Businesses

- ◆ Stock sale generally does not cause a withdrawal
- ◆ Asset sale does cause seller to withdraw unless parties comply with ERISA §4204
- ◆ But beware of the alter ego doctrine (*Retirement Plan of UNITE HERE National Retirement Fund v. Kombassan Holdings*, 629 F.3d 282 (2d Cir. 2010))
- ◆ And beware of successorship liability (*Einhorn v. Ruberton Construction Co.*, 632 F.3d 89 (3d Cir. 2011)(not a withdrawal liability case))

Sale of Businesses

- ✦ The Seventh Circuit has held that a Chapter 7 liquidation proceeding was not a per se bar to successor liability for withdrawal liability. Court denied the new company's motion to dismiss on the theory that the Fund could recover if the successor had notice of the withdrawal liability claim before acquiring the old company's assets and there was substantial continuity in the operation of the business. *Chicago Truck Drivers, Helpers & Warehouse Workers Union (Indep.) Pension Fund v. Tasemkin, Inc.*, 59 F.3d 48 (7th Cir. 1995)
- ✦ 4204 requires “a bona fide, arm's length sale of assets to an unrelated party”

Sale of Businesses

- ✦ Purchaser must have an obligation to contribute for substantially the same number of contribution base units and must timely post a bond or escrow for five years (unless exemption applies)
- ✦ Purchaser assumes Seller's pre-sale contribution history for five-year period
- ✦ Seller must agree, in the sale contract, to secondary liability in the event buyer defaults within five years
- ✦ Seller also must post bond or escrow in the event of liquidation or distribution of substantially all assets within the five year period

Business Transactions and Successorship

- ✦ Business reorganizations (mergers, spin-off, or change in structure) are not a withdrawal if no interruption in contributions and the obligation to contribute continues. ERISA 4218; see *Central States v. Sherwin-Williams*, 71 F.3d 1338 (7th Cir. 1995); *Teamsters Pension Trust Fund of Philadelphia v. Central Michigan Trucking, Inc.* 857 F.2d 1107 (6th Cir. 1988); PBGC Opinion Letters 82-4 (Feb. 10, 1982), 84-7 (Dec. 20, 1984).
- ✦ BUT sale of assets cuts off seller's contribution obligation, and ERISA 4204 must be followed for seller to avoid withdrawal liability.
- ✦ Joint venture is not an ERISA 4218 reorganization. *Bowers v. Andrew Weir Shipping Ltd.* 27 F.3d 800 (2d Cir. 1994).

Calculating Withdrawal Liability

- ✦ A withdrawing employer is liable to the pension plan for employer's share of plan's unfunded vested benefits, if any; determination of UVBs depends on actuarial assumptions and methodologies.
- ✦ There are several different calculation methods.
- ✦ ERISA imposes no withdrawal liability with respect to welfare plans, but some welfare plans impose such liability by contract.

Allocation Formulas

- ✦ ERISA §4211 and PBGC regulations permit the Fund to select one of four allocation methods or to develop its own allocation method subject to PBGC approval.
- ✦ The allocation method must be spelled out in the Fund's trust documents or the statutory "presumptive", "20-pool" method will apply.
- ✦ Once adopted, the method must be followed by the Fund.

Actuarial Assumptions and Methods

- ◆ Actuarial assumptions are critical in calculating withdrawal liability. Small change in the discount interest rate greatly impacts valuation of the Fund's future benefit obligations.
- ◆ The UVBs are determined by the Fund's actuary, who must make that determination based on "assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience." ERISA §4213(b)(1).

Dates of Withdrawal and Valuation

- ✦ ERISA §4203(e) defines the date of an employer's complete withdrawal as "the date of cessation of the obligation to contribute or the cessation of covered operations." The date of valuation is usually the last day of the plan year preceding the date of withdrawal. For withdrawal from calendar year plan in 2014, the valuation date will be December 31, 2013.
- ✦ ERISA §4205(a) defines the date of an employer's partial withdrawal as the last day of the plan year in which such partial withdrawal occurs. Under ERISA §4206(a),
 - the valuation date for 70% decline is the last day of the first plan year in the three year testing period.

Dates of Withdrawal and Valuation

- the valuation date for partial cessation of contribution obligation is the last day of the plan year preceding the date of withdrawal.
- ✦ The determination of the date of withdrawal liability is fact dependent and subject to determination of the arbitrator.
- ✦ Withdrawal date is the date for determining controlled group members.

Adjustments to Withdrawal Liability

- ◆ The *de minimis* rules require that small amounts of withdrawal liability be overlooked. ERISA 4209(a).
- ◆ Net worth limitation upon sale of all assets and insolvency. ERISA 4225.
- ◆ Annual and 20-year caps on withdrawal liability periodic payments. Surcharges not included in calculation. See *IBT Local 863 Pension Fund v. C&S Wholesale Grocers, Inc.*, 5 F. Supp. 707 (D. N.J. Mar. 19, 2014).
- ◆ Special rules apply to increase liability in the case of “Mass Withdrawals” under ERISA 4219 and PBGC regulations.
 - *De minimis* rule and 20-year cap do not apply and different actuarial assumptions may apply.
 - Employers face “redetermination liability” and “reallocation liability.”

What Is a Mass Withdrawal?

- ◆ Under ERISA 4219, “mass withdrawal” occurs
 - upon withdrawal of every employer from the plan, or
 - upon withdrawal of substantially all the employers pursuant to an agreement to withdraw.

- ◆ An employer that withdraws during the three plan years preceding the mass withdrawal date during which substantially all employers withdraw is presumed to have withdrawn pursuant to an agreement to withdraw.
 - This presumption may be rebutted by a preponderance of the evidence.

- ◆ Rules regarding mass withdrawal are complex and unsettled.

Transactions to Evade or Avoid Liability

◆ ERISA § 4212(c) provides:

“If a principal purpose of any transaction is to evade or avoid liability under [the provisions governing employer withdrawals from multi-employer plans, those provisions] shall be applied (and liability shall be determined and collected) without regard to such transaction.” See *CIC-TOC Pension 3104 Fund v. Weyerhaeuser Co.*, 2012 WL 5879525 (D. Ore. Nov. 20, 2012); appeal pending No. 13-35000 (9th Cir.)

◆ Test for disregarding a transaction:

- Was a principal purpose to evade or avoid withdrawal liability
- The transaction need not be a sham or constitute fraud
- See *Santa Fe Pacific Corporation v. Central States S.E. & S.W. Area Pension Fund*, 22 F.3d 725, 727 (7th Cir. 1994) (“It needn’t be the only purpose; it need only have been one of the factors that weighed heavily in the Seller’s thinking”)

Transactions to Evade or Avoid Liability

- ✦ Can cover otherwise bona-fide, arms-length transactions. See e.g., *SuperValu, Inc. v. Bd of Trustees of S.W. Pa. and W. Md. Teamsters & Employers Pension Fund*, 500 F3d 334 (3rd Cir. 2007)(Section 4212(c) applied to CBA where the union understood, and agreed with, company's goal of avoiding liability).
- ✦ Where § 4212(c) applies, the transaction in question must be disregarded in determining withdrawal liability.
- ✦ Courts have allowed the assertion of liability against non-employers under this provision. See *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049 (2d Cir. 1993)(assets transferred by an agreement that violates §4212(c) are recoverable from transferee).

Challenging Multiemployer Pension Withdrawal Liability Assessments

- ◆ Overview of Withdrawal Liability
- ◆ **Procedural Framework**
- ◆ Defending Withdrawal Liability Claims

Procedural Framework

- ◆ Notice and Demand
- ◆ Request for Review
- ◆ Arbitration
- ◆ District Court
- ◆ Circuit Court of Appeal

The Notice and Demand

- ✦ “As soon as practical” following withdrawal (ERISA 4219(b)), the Fund must provide the employer notice of withdrawal and demand payment, giving the employer the option of 1) lump sum payment or 2) periodic payments (monthly or quarterly).
- ✦ Periodic payments are based on the employer’s pre-withdrawal contribution rates. It is possible that the value of total periodic payments will be less than the lump sum withdrawal liability.

The Notice and Demand

- ✦ Courts have ruled that notice to any member of the controlled group constitutes notice to all controlled group members. *I.A.M. Nat'l Pension Fund, Plan A. v. Slyman Industries, Inc.*, 284 U.S. App. D.C. 21, 901 F.2d 127, 129 (D.C. Cir. 1990) (holding that notice to a bankrupt member of a controlled group also constituted constructive notice to the other members of the group); *McDonald v. Centra, Inc.*, 946 F.2d 1059 (4th Cir. 1991).

Important Concepts: Interim Payments

- ◆ Pay now, dispute later framework.
- ◆ A challenge to the Fund's withdrawal liability calculation does not excuse the employer from making required payments while the dispute is being resolved and arbitrated: 29 U.S.C. § 1399(c) (1)(E)(2).
- ◆ ERISA provides detailed dispute resolution procedures, including mandatory arbitration. 29 U.S.C. §§ 1399 and 1401. If errors are found in the original computation, these may be corrected by the arbitrator, 29 U.S.C. § 1401(d), or by judicial review, 29 U.S.C. § 1401(b)(2). *Marvin Hayes Lines, Inc. v. Central States, Southeast & Southwest Areas Pension Fund*, 814 F.2d 297, 299 (6th Cir. 1987)

Important Concepts: Default and Acceleration

- ◆ When an employer defaults, a fund is allowed to accelerate the withdrawal liability payments and require an employer to pay the entire lump withdrawal liability.
- ◆ ERISA §4219(c)(5) defines default as
 - (A) the failure of an employer to make, when due, any payment under that section if the failure is not cured within 60 days after an employer receives written notification of the failure, or
 - (B) any other event defined in a plan's rules that indicate a substantial likelihood that an employer will be unable to pay its withdrawal liability.

Important Concepts: Default and Acceleration

- ✦ See *Central States Southeast and Southwest Areas Pension Fund v. O'Neill Bros. Transfer & Storage Co.*, 620 F.3d 766 (7th Cir. 2010); *Central States, Southeast and Southwest Areas Pension Fund v. Telegraph Paving Co.*, 2010 U.S. Dist. LEXIS 89856 (N.D. Ill. Aug. 31, 2010).

The Request for Review

- ✦ ERISA 4219(b)(2) provides that an employer has a right to request review of the withdrawal liability demand within 90 days after receiving the notice and demand.
- ✦ After reasonable review, the Fund must notify the employer of: 1) Fund's decision; 2) basis for the decision; an 3) reason for any change in determination.
- ✦ Issues not properly raised at request for review stage may be waived.
- ✦ However, time to submit request for review can be extended by agreement in writing by the contributing employer and Fund.

Arbitration

- ✦ Arbitration may be initiated by either the employer or the fund within 60 days after the earlier of (i) the date the Fund denies the employer's request for a review or (ii) 120 after the employer's request for review of the initial notice. Any further dispute regarding withdrawal liability must be resolved through arbitration.
- ✦ If the employer fails to timely and properly initiate arbitration, the employer is precluded from challenging the assessment or determination of amount of withdrawal liability.
- ✦ Narrow exception to arbitration exists where company contends it is not and has never been an "employer" or controlled group member. *Transpersonnel, Inc. v. Central States*, 422 F.3d 456 (7th Cir. 2005).

Arbitration

- ◆ The issue of whether or not an entity ceased to be an employer by reason of a transaction or otherwise must be resolved in arbitration. *Galgay v. Beaverbrook Coal Co.*, 105 F.3d 137, 141 (3d Cir. 1997); *Trucking Empls. of N. Jersey Welfare Fund, Inc. v. Bellezza Co.*, 57 Fed. Appx. 972, 974 (3d Cir. 2003). “Where a party against whom withdrawal liability is being asserted is certainly a part of the controlled group of an employer subject to MPPAA at some point in time, and where the issues in dispute fall within the purview of MPPAA provisions that are explicitly designed for arbitration, the Act's dispute resolution procedures must be followed.” *Bellezza* , 57 Fed. Appx. at 974 ; see also *Flying Tiger Line v. Teamsters Pension Trust Fund*, 830 F.2d 1241, 1247 (3rd Cir. 1987).

Arbitration

Conducted in accordance with PBGC regulations.

- ✦ Most MPPAA arbitrations are conducted pursuant to AAA Multiemployer Pension Plan Arbitration Rules for Withdrawal Liability - available at www.adr.org
- ✦ Approved by PBGC as alternative procedure.
- ✦ Since early 1980s, AAA and International Foundation of Benefit Plans have maintained rules and list of MPPAA arbitrators.
- ✦ Review fund procedures or arbitration provisions.
 - Some funds have specific rules for how notice of arbitration is sent

Arbitration

- Specific rules that alter arbitration procedure
- Venue selection
- ✦ Cannot alter certain basic rules:
 - Time limits for initiation of arbitration
 - Arbitrator selected after initiation of arbitration
 - Opportunity to engage in discovery
 - Arbitrator's award must be made available upon request to the PBGC and contributing employers to the plan
- ✦ MPPAA arbitrations include broad discovery by PBGC regulation, similar to judicial proceedings
 - Very few decisions addressing discovery.

Arbitration

- ◆ AAA rules include right to a hearing unless waived by the parties
 - Many MPPAA arbitrations do not involve hearings
 - Decision on stipulated record
- ◆ Rules of Evidence do not apply
 - Relaxed admission of evidence
 - Can consider affidavits
- ◆ Use of experts

Review

✦ Arbitrator standard

- Legal issues *de novo*.
- Factual issues are presumed correct. Employer bears burden of persuasion. *Concrete Pipe & Products of Ca., Inc. v. Construction Laborers Pension Trust*, 508 U.S. 602 (1993).
- Actuarial methods must be shown “would not have been acceptable to a reasonable actuary.” *Id.*

✦ Appeal of arbitration decision in U.S. District Court

- Must appeal within 30 days of award
- *De novo* review of legal issues
- Deference to factual findings of arbitrator
- Right to jury trial is unclear

Challenging Multiemployer Pension Withdrawal Liability Assessments

- ◆ Overview of withdrawal liability
- ◆ Procedural Framework
- ◆ **Defending Withdrawal Liability Claims**

Defending Withdrawal Liability Claims Before the Notice and Demand

- ◆ Know when a withdrawal may occur
 - Triggers for complete and partial
 - Controlled group issues
 - Sale of business

- ◆ Obtain information from the Fund
 - PPA allows contributing employer to request estimate of withdrawal liability
 - Can also request actuarial funding information and information on plan performance

Defending Withdrawal Liability Claims Before the Notice and Demand

✦ Statement of Business Affairs

- Most funds sent out this information request to employer after learning of possible withdrawal
- Important to make sure information is accurate

What To Do When You Receive Notice and Demand

- ◆ Review determination of withdrawal
 - Did a withdrawal occur?
 - Is the date of withdrawal correct?
 - Is the partial withdrawal determination valid?

- ◆ Is the Fund attempting to accelerate?
 - Basis for acceleration - review plan rules
 - Can course be changed by sharing information about company status?

What To Do When You Receive Notice and Demand

- ◆ Do any of the industry exemptions apply?
 - Construction industry (need to make sure plan is construction industry fund)
 - May require relatively significant factual investigation
 - Review statements made by employer in SBA or communications with Fund
- ◆ Application of 20-year and annual payment caps
 - Understand impact on claim by calculating present value of payments
- ◆ Application of other employer relief provisions (sale of assets, etc)

What To Do When You Receive Notice and Demand

- ◆ Perform review of contribution history
 - Although difficult to challenge actuarial assumptions and applications of statutory formulas, contribution history susceptible to factual error
 - Can significantly affect calculation of withdrawal liability and annual payment cap
- ◆ Request necessary information from the Fund
 - Information related to calculation of contribution history
 - Plan funding information
 - Information relied upon for withdrawal date or acceleration
- ◆ Any other defects in assessment? Cannot provide an exhaustive list

Issues that Generally Do Not Constitute a Defense to Withdrawal Liability

- ◆ Lack of harm to the Fund
- ◆ Trustees Breached Duty to Properly Fund
- ◆ Economic Nexus to historic contributions of Controlled Group
- ◆ Withdrawal Liability Beyond Employer's control - constitutionality.

Submitting the Request for Review

- ◆ Determine whether settlement discussion or informal discussion short of RFR is warranted.
- ◆ Can extend time to request review.
- ◆ The Request
 - Review fund procedures
 - RFR in letter format directed to Board of Trustees
 - May contain affidavits and other factual documentation
 - Will be used as an exhibit in arbitration
 - Detailed and persuasive
 - Include all possible disputed issues to avoid waiver

Decision on Request for Review

- ◆ Fund may issue a decision on request for review.
- ◆ Typically decided at Board of Trustee level and approved at Board of Trustee meetings.
- ◆ Presents new opportunities for further discussion with Fund on settlement prior to initiating arbitration.
- ◆ May Limit Disputed Issues

Settlement Strategy

- ◆ Impact of 20-year cap in critical status plans very important
- ◆ Lump Sum versus Payment Schedule
 - Some funds weigh credit risk more than others.
 - Lump sum discounts may be much better
- ◆ In fully amortized cases, liability is amortized using 7.5% interest rate
- ◆ Pay now, dispute later tends to drive early resolution
- ◆ Getting Letters in Exemption cases
- ◆ Should the employer asset inability to pay? There is risk of default. Possible information requests.
- ◆ What about bankruptcy?

Patrick W. Spangler

Patrick W. Spangler is a senior Associate in Vedder Price's labor and employment and benefits groups. He has defended sponsors, contributing employers and fiduciaries in a wide variety of ERISA-related disputes, including breach of fiduciary, cutback claims, retiree health and withdrawal liability litigation. Mr. Spangler also provides advice on benefits issues in the M&A context and is frequently called upon to advise businesses with exposure to multiemployer funds. Mr. Spangler has published many articles on employment and benefits issues, and has been recognized as an Illinois Emerging Lawyer, Illinois Rising Star, and is recommended by Legal 500 (2010).

He has served as chapter editor and author of the leading ERISA treatises *Employee Benefits Law* and *ERISA Litigation* (Bloomberg BNA), and has contributed articles to a number of other publications. He was also recently profiled by Bloomberg BNA as part of its Video Insights series on ERISA law, which is used by inside and outside counsel as an educational resources in the employee benefits field. Mr. Spangler serves as a subcommittee chair of the American Bar Association's ("ABA") Labor Section Employee Benefits Committee and is a member of the National Institute Faculty for the ERISA Litigation and ERISA Basics programs.



Charles B. Wolf

Charles B. Wolf (Chuck) is a shareholder in the Chicago law firm of Vedder Price P.C. and concentrates in labor, employment and employee benefits law and litigation, representing employers and multiemployer funds. He was a member of the firm's executive committee for nine years and a former leader of the labor, employment and benefits practice area. He has been lead counsel in several well-known employee benefit cases and has extensive experience in benefit plan administration, collective bargaining, NLRB and arbitration proceedings, and all types of employment law litigation. He teaches Employee Benefits Law at the University of Chicago Law School and is co-author of the treatise, ERISA Claims & Litigation, a Senior Editor of the ABA's Employee Benefits Law treatise, and a frequent speaker and author in his fields of practice.

He was co-chair of the ABA Labor Section, Committee on Employee Benefits, having previously served as co-chair of the subcommittees on multiemployer plan withdrawal liability and on collective bargaining and employee benefits. He was named by the National Law Journal as one of the top benefits lawyers in the country and by SuperLawyers as one of the top 100 lawyers in Illinois. He is listed in Who's Who in America and Chambers USA Guide to America's Leading Lawyers and is a fellow of the American College of Employee Benefits Counsel. He is a member of the bar of the United States Supreme Court and numerous Courts of Appeal. Wolf is a graduate of Brown University and the University of Chicago Law School.

