

INDEMNIFICATION OBLIGATION FOR WITHDRAWAL LIABILITY UNDER COLLECTIVE BARGAINING AGREEMENT DOES NOT SURVIVE TERMINATION OF AGREEMENT

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Nitterhouse Concrete Products, Inc. and Nitterhouse Masonry Products, LLC (“Nitterhouse”) were parties to a collective bargaining agreement with the Glass, Molders, Pottery, Plastics & Allied Workers International Union, AFL-CIO, CLC and its Local Union 201 B (the “Union”). The collective bargaining agreement required Nitterhouse to contribute to a multiemployer pension plan on behalf of Union employees. The collective bargaining agreement also included a provision that the Union would indemnify Nitterhouse for any withdrawal liability Nitterhouse incurred to the multiemployer pension plan.

Five days before the collective bargaining agreement was scheduled to expire, the Union notified Nitterhouse that the collective bargaining agreement would not be renewed. As a result, Nitterhouse incurred a complete withdrawal from the multiemployer pension plan upon the expiration of the collective bargaining agreement and was assessed withdrawal liability in the amount of \$680,698. Nitterhouse invoked the indemnification provision under the collective bargaining agreement, but the Union refused to pay. The district court granted summary judgment in favor of the Union.

On appeal, the Third Circuit Court of Appeals upheld the district court’s granting of summary judgment in favor of the Union, noting that the indemnification provision in the collective bargaining agreement did not survive the termination of the agreement. Applying ordinary principles of contract law, the Court of Appeals explained that an indemnification obligation expires at the time the contract expires, unless (a) the liability accrued during the contract period, (b) the parties intended that the indemnification provision would survive the termination of the contract, or (c) a contractual exception applies. In the present case, (a) the liability accrued because the agreement had terminated at the time the liability arose, (b) even though the agreement was silent on whether the indemnification obligation would survive the termination of the agreement, the relevant extrinsic evidence was not ambiguous that the indemnification obligation would not survive the termination of the agreement, and (c) there is no judicial presumption that an

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indemnification obligation is intended to survive the termination of an agreement. *Nitterhouse Concrete Products, Inc. v. Glass, Molders, Pottery, Plastics & Allied Workers International Union, and Local Union 201 B, AFL-CIO CLC* (3d Cir. 2019).

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