

NO WITHDRAWAL LIABILITY BUT AN EXIT FEE OWING?

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Four-C-Aire, Inc. was a contributing employer to the Sheet Metal Workers National Pension Fund, a multiemployer pension plan. In 2016, Four-C-Aire ceased to have an obligation to contribute to the Fund as the terms of the Collective Bargaining Agreement expired and Four-C-Aire had not entered into a new agreement requiring it to contribute to the Fund. Following that, the Fund notified Four-C-Aire that Four-C-Aire had withdrawn under Title IV of ERISA because it had not entered into a new agreement requiring contributions to the Fund but continued to perform work in the jurisdiction covered by the Fund. Thus, Four-C-Aire would not have qualified to avoid withdrawal pursuant to the construction industry exception.

The Fund demanded that Four-C-Aire pay an amount to the Fund which did not represent withdrawal liability. The actual withdrawal liability owed by Four-C-Aire was eliminated because of the Fund's de-minimus rule eliminating liability as the amount was less than \$150,000. Instead, the Fund requested the payment of approximately \$97,000 as an "exit fee" based on an amendment made to the Fund's governing plan document.

The Fund sued Four-C-Aire to collect the exit fee. The district court granted Four-C-Aire's motion to dismiss holding the exit fee could not be imposed on Four-C-Aire under the terms of the collective bargaining agreement.

The Fund appealed to the Fourth Circuit Court of Appeals. The Fourth Circuit found that it was improper to dismiss the action against Four-C-Aire. The circuit court found that the Collective Bargaining Agreement contained a provision whereby Four-C-Aire agreed to be bound by the terms of the Plan Documents, including any amendments made by the Fund. Thus, the Fourth Circuit held that the amendment to the Fund documents to impose an exit fee was agreed to by Four-C-Aire and the action should not have been dismissed. The Fourth Circuit remanded the case back to the district court where one of the issues may be whether the Fund properly adopted the amendment.

Recently, multiemployer pension funds have been extremely aggressive in trying to impose withdrawal liabilities and, as shown in this case, using other means to collect funds from an employer. Employers who participate in multiemployer funds should carefully review any participation agreements they have with the Fund and obtain current plan documents and fund rules to see whether the fund may impose liabilities

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of which the employer may not otherwise be aware. There is no indication in this case that the employer was aware of the amendment made by the Sheet Metals Fund that would impose an exit fee where the employer owed no withdrawal liability. *Bd. of Trs. of Sheet Metal Workers' Nat'l Pension Fund v. Four-C-Aire, Inc.* (4th Cir. 2019).

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