Breaking Up Is Hard To Do: An Employer's Crash-Course on Withdrawal Liability

By Jeff Herman and Heather Mehta

Does the acronym ERISA make you shudder? Do you not know—and maybe not care—what a multiemployer pension plan is? Are you unfamiliar with the term "withdrawal liability"? If you run a business or advise clients who run a business, then you may want to keep reading. A little bit of knowledge may go a long way toward averting disaster.

In a nutshell, withdrawal liability is a sum of money employers are statutorily required to pay when they leave an underfunded multiemployer pension plan (*i.e.*, a defined benefit union plan). In 2015, a federal study showed that 98.3 percent of multiemployer plans were underfunded.[1] Collectively, that underfunding surpassed $560 billion. Of the nearly 1,300 multiemployer plans, 463 plans covering 4.6 million participants were classified as "endangered or seriously endangered," "critical," or "critical and declining" status. The chances are high that an employer leaving a multiemployer pension plan will face some type of withdrawal liability. And, if the plan at issue is severely underfunded, that liability could be unexpectedly large and crippling, especially for small and mid-sized companies.

Our goal in this article is to provide a basic overview of withdrawal liability to help attorneys and employers identify and address issues. We will not go into great detail. We describe the basics: (1) what withdrawal liability is; (2) the issues businesses may face at different times; and (3) what happens when an employer is assessed liability.

I. What is Withdrawal Liability?

Under the Employee Retirement Income Security Act of 1974 ("ERISA"), defined benefit pension plans must be sufficiently funded.[2] The amount of funding required depends on such factors as accrued benefits, participant characteristics, and actuarial assumptions.[3]

A "multiemployer" plan refers to a plan covering the workers of two or more unrelated employers pursuant to collective bargaining agreements ("CBAs"). These plans are established and maintained for the benefit of workers who participate in particular unions.[4] Originally, ERISA did not include the concept of withdrawal liability. It was added in 1980 with the passage of the Multiemployer Pension Plan Amendments Act, which forces an employer leaving a plan to pay its share of the plan's unfunded vested benefits.[5] An employer's share is usually based on its proportionate share of all employer contributions to the plan.[6] Withdrawal liability applies only to multiemployer defined benefit pension plans.[7] Contributions to defined contribution plans, such as 401(k) plans, do not implicate withdrawal liability.

As the name suggests, withdrawal liability is assessed when an employer "withdraws" from an underfunded multiemployer plan. There are two types of withdrawals: complete and partial. An employer may completely withdraw from a plan in two ways: (1) by no longer having an obligation to make contributions to the plan (*i.e.*, by effectively terminating all the CBAs requiring the employer to make contributions); or (2) by permanently ceasing all covered operations under the plan (*i.e.*, by discontinuing union operations).[8] There are special rules for employers in some industries, however, such as the building and construction, entertainment, long and short haul trucking, household goods moving, and public warehousing industries.[9]

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1. Congressional Res. Serv., *Data on Multiemployer Defined Benefit 1 (DB) Pension Plans* (Aug. 10, 2018), available at <https://fas.org/sgp/crs/misc/R45187.pdf>.
2. 29 U.S.C. § 1082.
3. 29 U.S.C. § 1084.
4. The term "multiemployer plan" may easily be confused with the term "multiple employer plan," a type of plan that also includes unrelated employers but without the involvement of CBAs.
5. *Cuyamaca Meats, Inc. v. San Diego and Imperial Counties Butchers' and Food Employers' Pension Trust Fund*, 827 F.2d 491, 499 (9th Cir. 1987).
6. 29 U.S.C. § 1391.
7. *See* 29 U.S.C. § 1321.
8. 29 U.S.C. § 1383.
9. *See* 29 U.S.C. §§ 1383(b), (c), (d). *See also* § 1391(d) (special rules for certain bituminous coal industry plans).

Jeff Herman is an associate at Greensfelder, Hemker & Gale, P.C., where he sits in both the Employee Benefits and Health Care practice groups. He has represented numerous construction companies and other businesses with respect to their withdrawal liability. Jeff graduated *magna cum laude* from the Saint Louis University School of Law in 2010.

Heather Mehta is an officer in Greensfelder, Hemker & Gale, P.C.'s Employee Benefits practice group. Heather advises clients on ERISA and Internal Revenue Code compliance and litigates benefit claims and ERISA class actions. Her experience includes appellate work in federal and state courts, including the United States Supreme Court. Heather graduated *magna cum laude* from Washington University School of Law in 2011.

An employer may partially withdraw from a plan in three ways: (1) by terminating its obligations under one CBA, but not all CBAs, under which contributions are required to the plan; (2) by permanently ceasing to have an obligation to contribute under the plan with respect to work performed at one or more but fewer than all of the employer's covered facilities; or (3) if the employer experiences a "70-percent contribution decline."[10] The amount of an employer's total liability is reduced for a partial withdrawal.[11] And as with complete liability, there are special partial withdrawal liability rules for employers in some industries, such as the building and construction, entertainment, and retail food industries.[12]

If an employer triggers complete or partial withdrawal liability, then all employers in the same "controlled group" may be sued to collect that liability.[13] Put very simply, a controlled group consists of two or more trades or businesses that share sufficient common ownership, such that all of the trades or businesses are treated as being a single employer. As an introduction to the concept (because the rules are extraordinarily complicated), there are three basic types of relationships that may draw one company into another's controlled group:[14]

Parent-Subsidiary Group—When one entity (the "parent") owns at least 80 percent of the total voting power or the total value of the other (the "subsidiary").

Brother-Sister Group—When (1) the same five or fewer individuals own at least 80 percent of each organization (a "controlling interest") and (2) taking into account each individual's lowest ownership interest among the organizations, such individuals own at least 50 percent of each organization ("effective control").

Combined Group—When a common parent organization is also a member of a brother-sister group.

It's as if, in a divorce, your ex-spouse can sue your parents, your children, and your siblings to collect support. It is an extraordinarily broad power. It doesn't matter if the related companies are on the other side of the country and had nothing at all to do with the union operations. Employers often learn about the concept the hard way, when it's too late to do anything about it. It is wise to periodically identify all the trades or businesses in the controlled group and to analyze how any proposed transaction will impact the controlled group.

Participating in a multiemployer pension plan is a long-term commitment that comes with a variety of risks. The funding of the plan—and thus the amount of the potential withdrawal liability—often rises and falls with the stock market. Employers have the right to request a withdrawal liability estimate from the plan in order to get a good idea of what their liability may be.[15] But for employers of all sizes, the amount of withdrawal liability can be shocking.

II. When Should You Consider Withdrawal Liability?

With this background in mind, we'll discuss times during a business's lifecycle when it should think about withdrawal liability. However, a word of caution before we proceed: the best time to consider withdrawal liability is before there is any. A contributing employer in an underfunded multiemployer plan—or a member of the employer's controlled group or even a potential buyer of the employer—must be careful about how it addresses withdrawal liability. ERISA addresses attempts to evade or avoid withdrawal liability. Section 4212(c) of ERISA states that, "[i]f a principal purpose of any transaction is to evade or avoid liability under this part, this part shall be applied (and liability shall be determined and collected) without regard to such transaction."[16] Under the "plain language" of the statute, "a contributing employer" may be liable for withdrawal liability if it enters a transaction with a principal purpose of escaping its duty to pay the plan.[17] Transactions that alter the controlled group are especially at risk of violating this rule. For example, Section 4212(c) has been applied to hold a parent company liable for selling a subsidiary that subsequently incurred withdrawal liability.[18] But some courts have applied Section 4212(c) beyond its plain language to authorize "the recovery of improperly transferred assets from the party to whom they have been illegitimately transferred."[19] Thus, "any party" who engages in an evasive transaction with an employer may be liable to pay the plan any improperly transferred assets.[20]

A. Before Beginning Contributions.

An employer (or a third-party on

10. 29 U.S.C. § 1385. A 70-percent contribution decline occurs if, over each of three consecutive years, the employer's contribution base units ("CBUs") never exceed 30 percent of the CBUs during the "high base year." The high base year is the year with the highest CBUs during the five years preceding the three-year period. CBUs describe the unit of time pursuant to which contributions must be made to the plan. Most plans require contributions per hour worked by an employee, but some require contributions per day or week worked.

11. 29 U.S.C. § 1386.

12. *See*, e.g., 29 U.S.C. §§ 1385(c), 1388(d).

13. *See* 29 C.F.R. §§ 4001.2, 4001.3.

14. *See* 26 C.F.R. § 1.414(c)-2.

15. 29 U.S.C. § 1021(l). Because all the information necessary to calculate the liability is not available until the end of a plan year, withdrawal liability estimates are by nature not current. But they may be used to reasonably estimate current liability. Some plans may attempt to pass on the cost of an actuary to issue their estimates.

16. 29 U.S.C. § 1392(c).

17. *See, e.g., SUPERVALU, Inc. v. Bd. of Trustees of Sw. Pennsylvania & W. Maryland Area Teamsters & Employers Pension Fund*, 500 F.3d 334, 341 (3d Cir. 2007).

18. *See Penske Logistics LLC v. Freight Drivers & Helpers Local Union No. 557 Pension Fund*, 721 F. App'x 240, 242 (4th Cir. 2018).

19. *Teamsters Joint Council No. 83 of the Virginia Pension Fund v. Weidner Realty Assocs.*, 377 F. App'x 339, 344 (4th Cir. 2010).

20. *IUE AFL–CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1056 (2d Cir. 1993).

the employer's behalf) must sign a CBA before incurring an obligation to contribute to a multiemployer plan. Before doing so, an employer should assess the risks for potential withdrawal liability in the near or distant future. Even participating in an underfunded plan for a short period of time could lead to withdrawal liability in the hundreds of thousands or millions of dollars. To that end, several things should be done:

1. Review and research. Thoroughly review the CBA(s) and identify the retirement plan(s) involved. If the union does not provide plan documents, the websites for multiemployer plans often contain copies of plan documents, trusts, summary plan descriptions, annual funding notices, rehabilitation plans (if applicable), or other documents. Examine the trust agreement under the plan in order to determine if there are any rules that may affect withdrawal liability or the collection thereof. You will want to gain as much information possible about the plan's funded status and how many employers and employees participate in the plan. Search the U.S. Department of Labor's website to see if the plan has issued any notices of critical, critical and declining, or endangered status. There is also a searchable database[21] of Form 5500s, which may provide additional information, such as the number of participants, funding, and actuarial reports.[22] If you have trouble finding or reviewing these documents, contact ERISA counsel.

2. Identify any methods of eliminating or reducing future withdrawal liability. There are rules under ERISA that may reduce or even eliminate withdrawal liability in some circumstances. First, under the "free-look" rule, subject to numerous conditions, employers new to a multiemployer plan will not be responsible for a complete or partial withdrawal if the employer had an obligation to contribute to a plan for no more than the lesser of: (1) six consecutive plan years preceding the date of withdrawal; or (2) the number of years required for vesting under the plan.[23] If it applies, this is a very helpful tool for a buyer who decides after a short while that the union operations were not right for it.

Second, under de minimis rule, for withdrawal liability amounts up to $100,000, the amount of liability is reduced by $50,000.[24] For liability exceeding $100,000 but less than $150,000, the amount of the reduction gradually declines dollar-for-dollar until it disappears at $150,000. Alternatively, multiemployer plans have the option of using a $100,000 reduction for liability amounts up to $150,000, followed by a gradually decreasing reduction that disappears at $250,000. Again, this is helpful for employers that want to dip their toes in the water and see how it goes. But be careful: even minor operations may incur substantial withdrawal liability.

Finally, as noted above, there are special withdrawal liability rules that protect employers in some industries.[25] If your business or your union workers may fall into one of those categories, analyze whether the rule might apply and what it requires in order to aid your company's long-term planning. For example, certain types of work fall outside the building and construction industry, such as merely manufacturing or transporting construction materials that are then installed by others on a worksite.[26] Even a bona fide construction employer may inadvertently take itself out of the exemption by making contributions on behalf of drivers or clerical and shop employees who don't perform significant onsite construction work.

3. Identify the company's controlled group and make sure the owners are adequately protected from personal liability. The controlled group should be analyzed to determine what companies may be liable and if anyone's personal assets are potentially at stake. For example, if an individual owner of an incorporated business with union operations also has a sole proprietorship performing unrelated work, that sole proprietorship may expose the owner to personal liability, since there is no corporate structure protecting him or her from such liability. In addition, pension plans have sometimes made veil-piercing, alter-ego, and similar arguments under state law in order to try to hold the owners of a corporation or other entity liable for a withdrawal.[27] The risks under those state laws should also be assessed.

B. Before Acquiring Companies.

Buying a company that has already accumulated potential withdrawal liability raises specific issues that depend on whether it is a stock sale or an asset sale. Generally, so long as the obligation to contribute continues (and the contributions themselves continue) without interruption after a stock purchase, there is no withdrawal and the potential withdrawal liability accumulated to that point simply stays with the company and becomes the buyer's responsibility.[28] This may not be ideal for the buyer, as partial or complete withdrawal liability may be assessed if the buyer ceases some or all of the operations of the target company. If the buyer intends on continuing the company's operations for a long time, the buyer bears the burden of the existing liability, as well as the risk of growth of that liability over time.

In an asset sale, in contrast, the withdrawal liability typically stays with the seller and is not the buyer's problem. There are two exceptions, however, where the buyer may be liable. First, Section 4204 of

21 . *See* U.S. Dep't of Labor, *Critical, Critical and Declining, Endangered and WRERA Status Notices*, <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/public-disclosure/critical-status-notices> (last visited Jan. 29, 2020).

22. *See* U.S. Dep't of Labor, Form 5500/5500-SF Filing Search, <https://www.efast.dol.gov/portal/app/disseminate? execution=e1s1> (last visited Jan. 29, 2020).

23. 29 U.S.C. § 1390.

24. 29 U.S.C. § 1389.

25. *See* 29 U.S.C. § 1383.

26. *See, e.g., Union Asphalts & Roadoils, Inc. v. MO-KAN Teamsters Pension Fund*, 857 F.2d 1230, 1234 (8th Cir. 1988).

27. *See, e.g., Brown v. Astro Holdings, Inc.*, 385 F. Supp. 2d 519, 525 (E.D. Pa. 2005).

28. 29 U.S.C. § 1398(a).

ERISA allows a seller and an unrelated buyer to reach an agreement on transferring withdrawal liability to the buyer for a five-year period following a sale of all or substantially all of the seller's assets.[29] The buyer has to continue covered union operations for substantially the same number of contribution base units ("CBUs") and post a bond that will be paid should a withdrawal occur within five years. The sales contract must provide that the seller will be secondarily liable for any withdrawal within five years.[30] Compliance with Section 4204 prevents the sale from automatically triggering a withdrawal due to the seller's ceasing either its covered operations or its obligation to make contributions. The rule is not likely available to employers in the building and construction industry, however.[31]

Second, the buyer in an asset sale may inadvertently take on the seller's withdrawal liability under the doctrine of successor liability. The seller remains primarily responsible for withdrawal liability and must be unable or unwilling to pay before the plan and court will turn to the doctrine of successor liability. In such situations, however, courts have liberally applied the doctrine to further ERISA's purposes of stabilizing underfunded multiemployer plans. To help ensure the seller has sufficient funds to pay any liability assessed after closing, the parties should consider setting aside assets (*e.g.*, through an escrow account) for this purpose. If the seller cannot pay, successor liability may apply when a buyer: (1) has notice of the liability; and (2) substantially continues the seller's business.[32]

1. Notice. Constructive knowledge is sufficient to impose successor liability. The Seventh Circuit found that a buyer need not be aware of the amount or actual existence of withdrawal liability; knowledge of potential liability was enough. The court reasoned that the buyer should have requested an estimate of the withdrawal liability and negotiated a lower purchase price.[33]

The Ninth Circuit similarly had no sympathy for a buyer who was unaware of the actual withdrawal liability. It was enough that the buyer was aware the seller had unionized employees and had contributed to a multiemployer pension plan.[34] The Ninth Circuit faulted the buyer for not performing further due diligence, such as reviewing funding notices and other documents available on the internet, asking the seller for pension plan notices, asking the plan directly, or requiring the seller to request an estimate of withdrawal liability from the plan.[35] The Ninth Circuit contrasted the buyer's lack of diligence with regard to the potential withdrawal liability with the fact that it performed extensive diligence on the physical condition of the building.[36]

After the circuit court opinions, buyers cannot bury their heads in the sand to avoid successor liability. But following the courts' advice with regards to handling withdrawal liability in transactions could lengthen or discourage some deals. For example, a withdrawal liability estimate may take up to 180 days. Sellers may also be hesitant to make such a request, as the fund may infer the seller's withdrawal is imminent. And negotiating the purchase price to account for potential withdrawal liability may not be practical or may even kill a deal, especially when the potential liability exceeds the company's value.

2. Continuity. Courts have looked to a variety of factors—primarily derived from labor and employment law cases—in determining whether there is continuity of operations. The factors the Ninth Circuit relied on included: whether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and basically has the same body of customers.[37]

The Ninth Circuit found that the final factor—the same body of customers—was of special significance, since overall contributions to the plan decline if non-union employees begin performing the same work for the same customers.[38]

The Seventh Circuit looked at six factors: ownership, physical assets, intangible assets, management and workforce, business services, and customers.[39] The court imposed successor liability despite the fact that the buyer shared no common ownership, sold most of the physical assets, and employed only a third of the workforce and three managers. The court was persuaded by the facts that the buyer continued to provide the seller's services and continued to use the seller's goodwill and trade name. Like the Ninth Circuit, the Seventh Circuit found that continuity of customers was an important factor weighing towards liability even though the buyer had attempted but failed to court the seller's customers.[40]

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29. *See* 29 U.S.C. § 1384.

30. 29 U.S.C. § 1405.

31. *See* 29 U.S.C. § 1383(b); PBGC Opinion Letter 88-2. Because an employer to which the building and construction industry exemption applies does not experience a complete withdrawal merely by ceasing covered work, Section 4204 of ERISA does not apply by its terms.

32. *Heavenly Hana LLC v. Hotel Union & Hotel Indus. of Hawaii Pension Plan*, 891 F.3d 839, 842 (9th Cir. 2018); Tsareff v. ManWeb Servs., Inc., 794 F.3d 841, 846 (7th Cir. 2015).

33. *Tsareff,* 794 F.3d at 847-49.

34. *Heavenly Hana*, 891 F.3d at 847.

35. *Id.* at 847-48.

36. *Id*. at 848.

37. *Resilient Floor Covering Pension Trust Fund Board of Trustees v. Michael's Floor Covering, Inc.*, 801 F.3d 1079, 1097 (9th Cir. 2015) citing Fall River Dyeing & Finishing Corp. v. N.L.R.B., 482 U.S. 27, 43 (1987).

38. *Id.*

39. *Indiana Elec. Workers Pension Benefit Fund v. ManWeb Servs., Inc.*, 884 F.3d 770, 778 (7th Cir. 2018)

40. *Id*. at 782.

C. When Ceasing Operations.

There are three basic issues an employer needs to consider with any partial or total closing or sale of the company or with ceasing any union operations: (1) whether it may result in a complete or partial withdrawal; (2) whether there are options for eliminating or reducing liability; and (3) what additional measures may be taken to protect the employer.

First, as discussed above, plant closings, cessations of work, and terminating CBAs are the stuff that employer withdrawals are made of. Absent the protection of a special rule, scaling back union operations in one way or another is very likely to result in withdrawal liability.

Second, there are several options to reduce or eliminate the withdrawal liability. Some of these options were discussed above, such as the "free-look" rule, the de minimus reduction, and stock sales. A stock sale is potentially the best option for the seller, as the withdrawal liability is transferred to the new owner. A seller would be wise to disclose all information it has regarding multiemployer plans in which it participates, including annual funding notices and any information received regarding recent withdrawal liability assessments.

A Section 4204 asset sale is another option but poses risks for a seller, in particular the posting of a bond. If all or substantially all of the seller's assets are distributed within five years after the sale, or if the seller liquidates before the five-year period is over, "then the seller shall provide a bond or amount in escrow equal to the present value of the withdrawal liability the seller would have had but for this subsection."[41] This bond requirement makes a 4204 transaction much less attractive for sellers, as the bond could be very expensive. There are limited exceptions to the bond requirement, however: (1) if the bond amount would not exceed the lesser of $250,000 or two percent of the average total annual contributions made by all employers to the plan for the three most recent plan years;[42] or (2) if the employer's net income or net tangible assets meet certain criteria.[43]

There is also a special rule under Section 4225(a) of ERISA that reduces the amount of withdrawal liability following a sale of assets to an unrelated party. Under this rule, the amount of liability is reduced to a percentage of the seller's post-sale liquidation or dissolution value (determined by ignoring the withdrawal liability).[44] For example, if the post-sale liquidation or dissolution value of the company does not exceed $5 million, the withdrawal liability is capped at just 30 percent of the company's post-sale liquidation value. Some courts have held that the rule in Section 4225(a) is not available to insolvent employers (determined by including the withdrawal liability), who must instead rely on the different—and less favorable—rule set forth in Section 4225(b).[45] Under Section 4225(b) of ERISA, the withdrawal liability of an employer that is insolvent (determined by taking into account the withdrawal liability) and undergoing a liquidation or dissolution is capped at an amount equal to the sum of: (1) 50 percent of the liability; plus (2) that portion of the remaining 50 percent of liability that does not exceed the company's liquidation or dissolution value (after reduction by 50 percent of the liability).[46]

It is possible that a struggling company could eliminate all of its withdrawal liability. Some courts have found that withdrawal liability is dischargeable in bankruptcy.[47] But even if available, that will not protect controlled group members who are not bankrupt and likely will not protect the employer against claims that are assessed after the bankruptcy.[48]

Finally, employers must be proactive in protecting their interests during any sale. The sales agreement should reinforce the seller's position regarding the withdrawal liability. For example, if the transaction is a stock sale, then the agreement should require the buyer to continue the CBAs and required contributions without interruption, and the agreement's indemnity provisions should likewise be adjusted to protect the seller's entire controlled group as the result of any breach. Consideration of the building and construction industry exemption, successor liability, and other issues, may similarly compel changes to the contract.

III. What Do You Do If You Receive An Assessment of Liability?

Without going into too much detail, there are some basic rules to be aware of. First, a withdrawal liability assessment takes the form of a letter from the plan sponsor with basic information, such as the total liability assessed and the payment plan.[49] To preserve its rights, an employer must submit a written request for review to the plan within 90 days following the employer's receipt of the assessment.[50] The employer should

41. 29 U.S.C. § 1384(a)(3)(A).

42. 29 C.F.R. §§ 4204.11, 4204.12.

43. 29 C.F.R. §§ 4204.11, 4204.13.

44. 29 U.S.C. § 1405(a).

45. *See, e.g., Trustees of Amalgamated Ins 45 . Fund v. Geltman Indus., Inc.*, 784 F.2d 926, 929 (9th Cir. 1986).

46. 29 U.S.C. § 1405(b).

47. *See, e.g., Carpenters Pension Tr. Fund for N. California v. Moxley,* 734 F.3d 864 (9th Cir. 2013).

48. *See, e.g., In re Caesars Entm't Operating Co., Inc.*, 540 B.R. 637 (Bankr. N.D. Ill. 2015); *Einhorn v. Dubin Bros. Lumber Co.*, 33 F. Supp. 3d 504 (D.N.J. 2014).

49. 29 U.S.C. § 1399(b)(1).

50. 29 U.S.C. § 1399(b)(2)(A). The request for review is not strictly required to be in writing, but it would be unwise to do otherwise.

object to the assessment, provide additional information, and make its arguments describing why the assessment should be reduced or eliminated. The plan may agree and reduce or eliminate the assessment. More likely, however, the plan will reject the employer's arguments. If so, the next step for the employer will be to timely initiate mandatory arbitration.[51]

Second, except in a case where the pension plan determines there is a substantial likelihood the employer will be unable to pay, withdrawal liability is paid in installments over time, rather than in a lump-sum.[52] ERISA relies on a pay now, dispute later scheme. Thus, even if an employer disputes the liability, interim withdrawal liability payments must generally be made to the plan. There are two exceptions. The first is a statutory rule that allows employers to avoid interim payments in certain situations where the employer has determined that the employer engaged in a fraudulent transaction to evade or avoid liability.[53] There may also be an argument in some jurisdictions when the payments would cause a severe hardship, although it may be unlikely to succeed.[54] If timely payments are not made to a plan, then the entire amount plus interest may become immediately due and payable.[55]

Third, the amount of the total annual payment (the payments may actually be divided into smaller monthly or quarterly payments) is generally equal to the highest contribution rate over the ten-year period ending in the year of the withdrawal, multiplied by the average number of CBUs during the period of three consecutive years with the highest average number of CBUs in the ten years preceding the year of the withdrawal.[56] However, there is a 20-year cap on withdrawal liability payments.[57] Depending on the circumstances, this could save an employer from ever having to pay the full amount of liability.

IV. Conclusions.

Withdrawal liability is a seemingly never-ending nightmare of unfunded benefits, soaring liability, and convoluted laws. This article presents only an overview of some of the basic issues you or your clients may face and the rules that apply. The sooner an employer develops an exit plan, the better. Otherwise, if left to fester, withdrawal liability is likely to grow as a problem and further limit a company's options.

51. 29 U.S.C. § 1401. *See also* Am. Arbitration Ass'n, *Multiemployer Pension Plan Arbitration Rules for Withdrawal Liability Disputes* (Feb. 2013), *available at* <https://www.adr.org/sites/default/files/ Multiemployer%20Pension%20Plan%20 Arbitration%20Rules%20for%20Withdrawal%20Liability%20Disputes.pdf>.
52. 29 U.S.C. § 1399(c)(5)(B).
53. See 29 U.S.C. § 1401(f).
54. *See, e.g., Cent. States, Se. & Sw. Areas Pension Fund v. Nitehawk Express, Inc.,* No. 95 C 3944, 1996 WL 467231 (N.D. Ill. Aug. 15, 1996) (discussing cases).
55. 29 U.S.C. § 1399(c)(5).
56. 29 U.S.C. § 1399(c)(1)(C).
57. 29 U.S.C. § 1399(c)(1)(B).