Bankruptcy Court Upholds PBGC Rules, Says Massive Pension Fund Bailouts Can't Reduce Employer's Withdrawal Liability: Your 5 Key Takeaways

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A bankruptcy court in Delaware recently upheld rules issued by the Pension Benefit Guaranty Corporation (PBGC) that severely impact how liability is calculated for employers withdrawing from multiemployer pension plans receiving federal bailout money. The decision was a major blow to a bankrupt trucking company (and its non-pension creditors) that urged the court to set aside those rules, which would have significantly reduced how much "withdrawal liability" it owed to various union pension funds receiving billions in bailouts from the agency. But the September 13 ruling, which will likely be appealed, included at least one silver lining for employers. We'll explain everything you need to know and give you five employer takeaways.

The *Yellow* Case: Court Upholds PBGC Rules on Post-Bailout Withdrawal Liability Calculations

Yellow Corporation, once one of the largest U.S. trucking companies, ceased operations in 2023 and filed for bankruptcy. In the process, the company withdrew from a number of multiemployer pension plans to which it had contributed. The union pension funds then filed claims in Yellow's bankruptcy case, seeking millions of dollars in "withdrawal liability" — a statutory exit penalty employers must pay when they stop contributing to a multiemployer pension plan that has unfunded vested benefits.

Eleven of Yellow's plans were in such poor financial condition that they were entitled under the American Rescue Plan Act (ARPA) to receive over $40 billion in "special financial assistance" from the PBGC, a federal government agency that regulates and insures private-sector pensions. Yellow's financial obligations to these plans would be materially reduced if the bailout funds counted as "plan assets" for purposes of calculating withdrawal liability. However, PBGC regulations – which were designed to prevent this type of result – provide that for withdrawal liability purposes such bailout funds:

- **must be phased in over time** (even if received in a lump sum) when determining the value of plan assets; and
- **may not be considered plan assets** when awarded but not yet paid.

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Citing the Supreme Court's recent decision in *Loper Bright Enterprises v. Raimondo*, a landmark ruling that stripped power from federal agencies, Yellow contended that the bailout money should be included in "plan assets" for withdrawal liability purposes because the PBGC regulations were either arbitrary and capricious or exceeded the agency's statutory authority and were invalid.

The bankruptcy judge disagreed. The U.S. Bankruptcy Court for the District of Delaware issued a decision on September 13 that applied *Loper Bright* to actually *uphold* the PBGC regulations challenged by Yellow. According to Judge Craig T. Goldblatt:

- **the ARPA gave PBGC express authority** to "impose by regulation ... reasonable conditions on an eligible multiemployer plan that receives special financial assistance relating to ... withdrawal liability";
- **ERISA gave PBGC general authority** to adopt "regulations as may be necessary to carry out the purposes of Title IV of ERISA" (the sections of ERISA that govern withdrawal liability); and
- **the ARPA's requirement that bailout funds be used only to "make benefit payments and pay plan expenses"** revealed Congress's intent that bailout funds should not be used to reduce withdrawal liability.

As a result, the 11 pension plans receiving more than $40 billion under the ARPA are not required to consider that cash when calculating Yellow's withdrawal liability – resulting in a major loss for the company.

5 Key Employer Takeaways

At first blush, the pension funds appear to have received a windfall: billions of dollars in bailout money plus withdrawal liability calculated as if they hadn't received a cent. Bailout money is clearly a plan asset, regardless of the PBGC's limitations on how that asset is valued in the withdrawal liability calculation. However, here are five important points – both good and bad – for employers to keep in mind:

1. **Bankruptcy Context.** Yellow is in bankruptcy, and pension funds owed withdrawal liability are generally treated as any other unsecured creditor. When the dust settles, the pension funds will likely not receive anything close to the withdrawal liability demanded.
2. **The Case Is Not Over.** This is the first time these issues have been presented to a court. The court has already been asked by Yellow and some creditors to reconsider parts of its opinion, and the merits of the case will likely be appealed. As a result, the final word has yet to be written on Yellow's arguments.
3. **Support for a Different Outcome.** While there is no question that ERISA and the ARPA both give express authority to the PBGC to issue conditioning regulations, a different court could apply *Loper Bright* to strike down or limit the conditions issued by the agency relating to withdrawal liability. The bankruptcy judge's reliance on the ARPA's requirement that bailout money be used

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only to "make benefit payments and pay plan expenses" doesn't necessarily support a conclusion that taking these plan assets into account when determining withdrawal liability is "using" them for other purposes. ERISA generally requires that plan assets only be used for paying benefits and defraying reasonable expenses, yet until now no one thought that taking into account all plan assets when determining withdrawal liability was an improper "use" of those assets.

4. **Employers Must Stay Vigilant.** Regardless of *Loper Bright* and its potential to limit PBGC and other regulations, the PBGC has every incentive to side with multiemployer pension plans whenever they try to collect more money through withdrawal liability. And the PBGC has issued a separate proposed rule approving calculation of plan underfunding using low interest rate assumptions that have nothing to do with the higher interest rates the plans assume they will earn, in yet another effort to maximize withdrawal liability assessments. The *Yellow* decision may embolden the agency to finalize this rule.
5. **The Silver Lining.** Withdrawal liability assessments are paid in installments that are limited to a term of no more than 20 years. Installment amounts are calculated separately from the amount of withdrawal liability assessed, meaning in many cases the entire amount is not paid before the 20-year period expires and much of the assessed withdrawal liability is eliminated. In the *Yellow* case, the 20-year cap reduced the company's exposure by millions of dollars. The bankruptcy judge refused to allow claims in excess of the cap, rejecting the plans' arguments that the cap should not apply when the employer defaults on its withdrawal liability payments. Claiming insecurity and accelerating the whole amount claimed is a common tactic used by funds to avoid the 20-year cap limitation. Assuming it stands, this ruling will be useful for employers defending against such claims.

Conclusion

The *Yellow* decision is just the first move in a *Loper Bright* battle among employers, the PBGC, and multiemployer pension funds, so stay tuned as developments unfold. In the meantime, withdrawing employers need to be vigilant when it comes to defending withdrawal liability claims. Pension funds make demands that stretch the requirements of ERISA in an effort to maximize their recoveries. A careful review of withdrawal liability demands is always necessary to separate legitimate claims from those which have been inflated improperly.

If you have questions about defending withdrawal liability claims, feel free to reach out to your Fisher Phillips attorney, the author of this Insight, or any attorney in our Employee Benefits and Tax Practice Group. We will continue to provide tips, guidance, and updates on employee benefits and other workplace law topics, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information directly to your inbox.

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