

**Bodman PLC**

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### **Sixth Circuit Rules that Pension Fund Did Not Properly Calculate Withdrawal Liability**

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#### **The Issue**

When an employer has an obligation to contribute to a multiemployer pension fund, and the fund is underfunded (a deficit between assets and future projected payout obligations), an employer who ceases to have an obligation to contribute to the fund will be assessed a share of the unfunded liability under the Employee Retirement Income Security Act. Importantly, when the fund's minimum funding levels are calculated (critical to the withdrawal liability assessment), the actuary takes into account their best estimate of investment rate of return.

In, *Ace Saginaw Paving Co. v. Operating Eng'rs Local 324 Pension Fund*, Docket No. 24-1288/1305, \_\_\_\_ F.4th \_\_\_\_ (6<sup>th</sup> Cir. 2025), the fund used a 7.75% best estimate of rate of return. When determining a withdrawing employer's liability for unfunded obligations, the fund actuary uses an interest rate to discount the employer's unfunded liability to present value. The extent to which the discount rate is lower than the best estimate of rate of return is very impactful on the amount of withdrawal liability assessed.

#### **The Decision**

The Sixth Circuit held that the Operators Local 324 Pension Fund did not comply with ERISA by using the Pension Benefit Guarantee Board's rate of 2.27% as its discount rate given that the fund's best estimate that the rate of return on investments would be 7.75%. Ace-Saginaw estimated that this method overestimated its withdrawal liability by about 10 million dollars. In any event, the fund's actuary acknowledged that his method of calculating withdrawal would overestimate withdrawal liability 77-95% of the time.

The court held that the actuary did not use their best estimate of the discount rate but stopped short of mandating use of a rate equivalent to the best estimate of rate of return. The result is that the fund will need to recalculate withdrawal liability, and the actuary can adjust where justified, but the court cautioned, "there is a limit to the kinds of adjustments that can be made." This decision is in line with other courts of appeals addressing this

issue. See e.g. *United Mine Workers of Am. 1974 Pension Plan v. Energy W. Mining Co.*, 39 F.4th 730 (D.C. Cir. 2022; *Sofco Erectors, Inc. v. Trs. of Ohio Operating Eng'rs Pension Fund*, 15 F.4th 407, 419 (6th Cir. 2021).

A related case, *Michigan Paving Company v. Operating Eng'rs Local 324 Pension Fund*, Docket No. 24-12019, was also pending at the time of the *Ace-Saginaw* decision. *Michigan Paving* involved the same issue as *Ace-Saginaw*. On August 27, 2025, the Sixth Circuit ordered the Operating Engineers Local 325 Pension Fund to recalculate Michigan Paving's withdrawal liability using assumptions and methods that are consistent with ERISA and the court's decision in *Ace-Saginaw*.

## The Bottom Line

Pension funds will need to carefully justify discount rate assumptions that deviate from the fund's best estimate of rate of return. Employers in Michigan, Ohio, Kentucky and Tennessee (areas covered by the Sixth Circuit) who withdraw from underfunded multi-employer pension plans are one step closer to less onerous withdrawal liability assessments.

If you have questions about withdrawal liability or other employment or labor issues, contact the author, Gary S. Fealk (248-743-6060 | [gfealk@bodmanlaw.com](mailto:gfealk@bodmanlaw.com)), or any member of Bodman's [Workplace Law Group](#). Bodman cannot respond to your questions or receive information from you without establishing an attorney-client relationship and clearing potential conflicts with other clients. Thank you for your patience and understanding.

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