

Controlled Group Companies are Potentially Liable if a Dissolving Company Does Not Terminate its ERISA Plans and is Not Replaced by a New Plan Sponsor

December 2, 2020

In *Pension Benefit Guaranty Corp. v. 50509 Marine LLC*, the U.S. Court of Appeals for the Eleventh Circuit held that where the sponsor of an ERISA plan dissolves under state law but continues to authorize payments to beneficiaries and is not supplanted as the plan's sponsor by another entity, it remains the constructive sponsor such that other members of its controlled group may be held liable for the plan's termination liabilities. In this case, Liberty Lightning Co. Inc. (**Liberty**) sponsored and administered a pension plan under ERISA (the **Pension Plan**). When Liberty went bankrupt and was dissolved under state law in 1992, Liberty continued to be the *de facto* sponsor of the Pension Plan, and the Pension Plan continued to operate. In 2012, the Pension Plan was formally terminated and taken over by the Pension Benefit Guarantee Corporation (the **PBGC**) due to the Pension Plan's pending insolvency. Six years later, the PBGC brought suit in the U.S. District Court for the Southern District of Florida against companies that were part of a controlled group with Liberty (collectively, the **Companies**) for the pension liabilities. The district court granted summary judgment to the PBGC, and the Companies appealed. The circuit court, reviewing the district court's judgment *de novo*, affirmed the judgment. In doing so, the circuit court noted that the sponsor of a defunct pension plan cannot be allowed to funnel its assets into other entities it owns, and then leave [the] PBGC holding the bag for the plan's continuing liabilities. Companies should ensure that processes are in place to terminate or select a new plan sponsor for their ERISA plans in the event of their dissolution or certain change in control events.

The court's opinion is available [here](#).