

Court Finds Sun Funds Liable for Withdrawal Liability of Portfolio Company

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On remand by the First Circuit Court of Appeals, the Federal District Court of Massachusetts found Sun Capital Partners III, LP (‘‘Sun Fund III’’) and Sun Capital Partners IV, LP (‘‘Sun Fund IV’’, and together with Sun Fund III, the ‘‘Sun Funds’’) liable for the withdrawal liability of Scott Brass, Inc. (‘‘SBI’’), a bankrupt portfolio company of the Sun Funds. In applying the First Circuit’s ‘‘investment plus’’ test, the district court found that the Sun Funds received a direct economic benefit and were therefore engaged in a ‘‘trade or business’’ for purposes of shared liability under the Multiemployer Pension Plan Amendments Act. Even though Sun Fund III and Sun Fund IV held a 30% and 70% interest, respectively, in SBI (which each is under the 80% required for controlled group purposes), the district court found that the Sun Funds operated as a single ‘‘partnership-in-fact’’ with no meaningful independence in their co-investments. Based on these findings, the court held that the Sun Funds are liable for the withdrawal liability incurred by SBI. This case sets a precedent for private equity funds being held liable for pension liabilities of a portfolio company. *Sun Capital Partners III LP v. New England Teamsters & Trucking Indus. Pension Fund*, 2016 BL 95418, D. Mass., No. 1:10-cv-10921-DPW, (D.Mass. Mar. 28, 2016). A copy of the case can be found here: https://www.gpo.gov/fdsys/pkg/USCOURTS-mad-1_10-cv-10921/pdf/USCOURTS-mad-1_10-cv-10921-1.pdf