

Employer Exempt from Withdrawal Liability

April 10, 2011

The Seventh Circuit Court of Appeals upheld an arbitrator's decision that Georgia-Pacific's withdrawal from the Central States, Southeast and Southwest Areas Pension Fund was "solely" because of its arms-length sale of assets to a third party, where the purchaser assumed liability for the plan's contributions and posted a bond to ensure payment. In one of the first appellate court decisions to interpret the phrase "solely because" in 29 U.S.C. § 1384 (ERISA § 4204), the Court stated that "the best understanding of this phrase is one that concentrates on the transaction at issue: If the sale had not occurred, everything else has remained the same, and no withdrawal liability would have accrued, then the sale to a buyer that continues the pension contributions does not entail withdrawal liability." The Court cautioned that if an employer completes its withdrawal in stages, with a sale being the last step, then all transactions may be consolidated and withdrawal liability assessed looking at all stages as a whole. *Central States, Southeast and Southwest Areas Pension Fund v. Georgia-Pacific, LLC*, No. 09 C 1445, (7th Cir. Mar. 29, 2011).