

Private Equity Fund Potentially Liable for Portfolio Company's Pension Plan Withdrawal Liability

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The First Circuit Court of Appeals recently held that one of two private equity funds, which had invested in a now bankrupt portfolio company, was engaged in a "trade or business" for purposes of determining whether the fund could be jointly and severally liable for the company's withdrawal liability from a multiemployer pension plan. To be liable for the company's withdrawal liability, the fund must be (i) a "trade or business" and (ii) in the company's "controlled group." The court held that the fund was a trade or business, not a mere passive investor, because it participated in management activities with respect to the portfolio company and received a direct economic benefit—an offset against management fees—that an ordinary passive investor would not receive. The court, however, remanded the case to the district court to determine whether the fund had the necessary ownership interest to create a controlled group. Employers with pension plan investments in private equity funds may want to assess whether those funds have invested in companies which contribute to multiemployer pension plans or have other defined benefit pension plans. *Sun Capital Partners III, LP v. New England Teamsters & Trucking Indus. Pension Fund*, No. 12-2312 (1st Cir. July 24, 2013). The text of the opinion can be found [here](#).