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Second Circuit Prohibits Retroactive Changes to Withdrawal Liability Interest Rate Assumptions

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The Second Circuit Court of Appeals recently issued a withdrawal liability decision of which both multiemployer pension plans and their contributing employers should be aware. Specifically, in *National Retirement Fund v. Metz Culinary Management, Inc.*, No. 17-1211, 2020 WL 20524 (Jan. 2, 2020), the Second Circuit held that the interest rate used to calculate an employer's withdrawal liability is the rate that was in effect on the last day of the fund's plan year preceding the year of the employer's withdrawal, *i.e.*, the "measurement date." In so holding, the Court rejected the plan actuary's decision to use a lower discount rate adopted after the measurement date that had the effect of substantially increasing the amount of the employer's liability. The Court reasoned that retroactive changes to the actuarial methods and assumptions used to calculate withdrawal liability are inconsistent with the legislative history of ERISA § 4214, which requires the fund to provide advance notice to employers of any "plan rules and amendments" that affect withdrawal liability. The Court also observed that withdrawal liability estimates provided under ERISA § 101(l) would be of "no value" if such retroactive changes were permitted. Going forward, multiemployer plans may need to coordinate with their actuaries to ensure that decisions regarding the methods and assumptions used to calculate withdrawal liability are made and communicated in a timely manner consistent with this decision.

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