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Game Changer for Pension Withdrawal Liability: Seventh Circuit Orders Return of Withdrawal Liability Payments

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Last Friday, a three-judge panel of the United States Court of Appeals for the Seventh Circuit [reversed a district court's decision](#) upholding an arbitration award requiring an employer to pay more than \$2.3 million in withdrawal liability payments to a multiemployer pension fund. The Seventh Circuit remanded the case to the district court with instructions to order the pension fund to repay the withdrawal liability it collected from Bulk Transport ("Bulk"), a client of Conn Maciel Carey LLP.

The long-running dispute centered around a contract Bulk landed in 2004 to haul commodities, work known as the "LISCO work." Commodities hauling had previously been covered by a collective bargaining agreement with Local 142, the Steel Mill Addendum. However, in 2003 the parties had agreed to exclude commodities hauling from the Steel Mill Addendum, which from that point covered "**Steel Mill Operation Work only.**" 

When Bulk secured the LISCO work, it approached the union about negotiating a collective bargaining agreement to cover it, but Local 142 instead insisted that Bulk apply the Steel Mill Addendum to the LISCO work and threatened to strike if it did not. Although it objected that the Steel Mill Addendum did not cover such work, Bulk capitulated to the union's demand and made pension contributions for such work pursuant to the terms in the Steel Mill Addendum. Bulk eventually lost the LISCO work and almost seven years later, the pension fund demanded more than \$2 million in withdrawal liability due to the decrease in contributions.

Bulk disputed the fund's assessment, but paid the amounts demanded and moved to arbitration with the pension fund. Eventually, the arbitrator found that although the Steel Mill Addendum did not cover the LISCO work by its terms, Bulk had adopted the agreement by its conduct in making the payments. The district court agreed with the arbitrator's ruling and denied Bulk's request to vacate the arbitrator's ruling.

Bulk appealed to the Seventh Circuit, where it continued to press its argument that the lack of a written agreement covering the LISCO work meant that its contributions could not be used as a basis for withdrawal liability. Bulk asserted that 29 U.S.C. § 186(c)(5)(B) requires a written agreement to specify "the detailed basis on which such [pension contributions] are to be made," and that because the Steel Mill Addendum specifically and explicitly excluded all work other than steel mill operation work, the LISCO work did not qualify. As it had before the arbitrator and district court, the pension fund again argued that Bulk had adopted the Steel Mill Addendum by

its conduct.

In *Bulk Transport Corp. v. Teamsters Union No. 142 Pension Fund*, issued on March 22, 2024, the Seventh Circuit agreed with Bulk, stating that “adoption by conduct does not change the substantive provisions” of a written agreement, and that “the terms of pension contributions to multiemployer plans cannot be changed orally.” Instead, “[t]he precise terms must be in writing – and, having been reduced to writing, must be enforced without any consideration of equitable arguments.” Indeed, because “Congress made the writings conclusive” through 29 U.S.C. §§186(c)(5)(B) and 29 U.S.C. § 1145, “employers and unions cannot opt out of those statutes orally or by their course of conduct.”

As this left no basis for the fund’s assessment of withdrawal liability, the Seventh Circuit remanded the case to the district court with instructions to order the pension fund to repay the amounts it had collected from Bulk.

An employer faced with an assessment of withdrawal liability should ensure the assessment is based only on legitimate contributions required by the precise terms of a written agreement. If it is otherwise, the employer may have grounds to contest the withdrawal liability.