

Update to Buyer Beware! Multiemployer Pension Plan Successor Liability Following an Asset Sale

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Earlier this month, in [Resilient Floor Covering Pension Tr. Fund Bd. of Trs. v. Michael's Floor Covering, Inc.](#) (9/11/15), the US Court of Appeals for the *Ninth Circuit*, for the first time, found successor liability as a means to hold companies responsible for multiemployer pension plan withdrawal liability. Although the Ninth Circuit has previously applied successor liability in other labor and employment contexts, including in situations where multiemployer plans seek delinquent multiemployer pension plan contributions from companies under a successor liability theory, this is the first time the appeals court has explicitly applied successor liability in the context of multiemployer pension plan withdrawal liability.

In Michael's Floor Covering, the court found that, in general, a successor employer may be subject to multiemployer pension plan withdrawal liability and, in particular, a construction industry successor employer can be subject to such liability, "so long as the successor took over the business with notice of the liability." For purposes of imposing such withdrawal liability, the court held that "the most important factor in assessing whether an employer is a successor [] is whether there is substantial continuity in the business operations between the predecessor and the successor, as determined in large part by whether the new employer has taken over the economically critical bulk of the prior employer's customer base." The court's ruling also sets out the list of factors courts should consider when deciding whether a company is a successor that can be held liable for multiemployer withdrawal liability.

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