

## Private Equity Funds Saddled with Pension Liability

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On March 28, 2016, a Massachusetts District Court ruled that two affiliated private equity funds (Sun Capital Partners Fund III, LP and Sun Capital Partners Fund IV, LP) were jointly and severally liable for the unfunded vested benefits owed to a multiemployer pension fund by its bankrupt portfolio company.

In 2013, the First Circuit ruled that a private equity fund can be a “trade or business” for purposes of ERISA, which struck a blow at the private equity industry’s first line of defense to avoiding pension plan withdrawal liability.

Now, on remand, the District Court ruled that the two funds cannot avoid ERISA pension liability, even though the two funds split ownership of a company 70%/30% (that is, with neither fund owning the threshold 80% required by the ERISA statute). The court found that the economic reality was that the Sun Capital Funds together formed a partnership-in-fact that owned 100% of the portfolio company and thus are liable for the entire ERISA pension liability.

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