



Some Aspects of Vicarious Liability for Coal Industry Employee Benefits

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Synopsis

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**§ 5.01. Introduction.**

For more than 45 years, collective bargaining agreements between the United Mine Workers of America (UMWA) and bituminous coal operators have required signatory operators to make contributions (based on hours worked, tonnage royalties, or both) to multiemployer employee benefit plans (collectively, the “UMWA Funds” or the “Funds”).<sup>1</sup> For at least the same period, the UMWA Funds have sought to collect delinquent contributions from operators, relying, where appropriate, on theories of vicarious liability to collect from those entities or individuals with full pockets when a signatory operator has none.

This chapter reviews two aspects of vicarious liability to the UMWA Funds. One is judge-made and imposes personal liability on corporate principals for delinquent contributions and withdrawal liability; the theory is that “due and owing” contributions are Fund assets in the employer’s hands, thereby making responsible corporate executives ERISA<sup>2</sup>

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<sup>1</sup> Until 1992, the various UMWA Funds included the 1950 Pension Plan, the 1974 Pension Plan, the 1950 Benefit Plan and Trust, and the 1974 Benefit Plan and Trust. The Coal Industry Retiree Health Benefit Act of 1992 (CIRHBA) (Pub. L. No. 102-486(1992) codified at 26 U.S.C. §§ 4761-7708) mandated the merger of the 1950 Benefit Plan and the 1974 Benefit Plan into a single entity, the UMWA Combined Benefit Fund. CIRHBA also required creation of the 1992 UMWA Benefit Fund. CIRHBA is discussed at § 5.09 *et seq.*, *infra*.

<sup>2</sup> Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. No. 94-406 (1974), codified at 29 U.S.C. § 1001-1461 (1995).

fiduciaries because of their discretion over the disposition of plan assets. The second basis of vicarious liability is purely statutory. The Coal Industry Retiree Health Benefit Act of 1992 (CIRHBA),<sup>3</sup> imposes joint and several liability on “related persons” to operators signatory to coal wage agreements, which are primarily liable under CIRHBA to fund retiree health benefits for retired miners.

**§ 5.02. The Normal Rule: No Personal Liability to the UMWA Funds for Delinquent Contributions.**

**[1] — Standard ERISA Collection Remedies.**

Under the Employee Retirement Income Security Act of 1974 (ERISA),<sup>4</sup> a multiemployer plan has a powerful statutory remedy for the collection of delinquent contributions. ERISA §§ 515 and 502(g)(2)<sup>5</sup> require the court to award a plan which obtains a judgment in a collection action the unpaid contributions, the greater of interest or liquidated damages provided under the terms of the plan, of up to 20 percent (or a greater percentage if provided under federal or state law)<sup>6</sup> of the unpaid contributions, plus reasonable attorneys fees and costs. The statutory remedy gives the plan significant leverage even where there is a legitimate legal dispute, because the court will award attorney’s fees and interest or liquidated damages even if the plan succeeds on only part of its claim.<sup>7</sup> The court can also award other equitable and legal relief,<sup>8</sup> and a plan can obtain an injunction under either ERISA or the Labor Management Relations Act (LMRA) to force an employer to make its contractual

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<sup>3</sup> 106 Stat. 3036. CIRHBA is Title XIX, Subtitle C, §§ 19141-43, of the Energy Policy Act of 1992, Pub. L. 102-486 (1992), and is codified at Internal Revenue Code (IRC) Subtitle J, §§ 9701-9722, 26 U.S.C. §§ 9701-9722 (West Supp. 1995). In this article, CIRHBA will be cited to the Internal Revenue Code as “IRC § 97\_\_.” See *infra* § 5.09 *et seq.*

<sup>4</sup> Pub. L. No. 94-406 (1974), codified at 29 U.S.C. § 1001-1461 (1995).

<sup>5</sup> 29 U.S.C. §§ 1145 and 1132(g)(2)(1995).

<sup>6</sup> ERISA § 502(g)(2)(C)(ii), 29 U.S.C. § 1132(g)(2)(C)(ii)(1995).

<sup>7</sup> See, e.g., *Combs v. Ryan’s Coal Co.*, 785 F.2d 970 (11th Cir. 1986), *cert. denied*, 479 U.S. 853 (1986).

<sup>8</sup> ERISA § 502(g)(2)(E), 29 U.S.C. § 1132(g)(2)(E)(1995).