
First Circuit Holds Private Equity Fund is a “Trade or Business” for Purposes of ERISA Controlled Group Pension Liability Rule

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In a recent decision impacting the potential liability of private equity investment funds for their portfolio companies' pension obligations, the First Circuit Court of Appeals held that Sun Capital Partners IV, LP (“Fund IV”), a member of the private equity fund group managed by affiliates of Sun Capital Advisors, Inc. (“SCAI”), qualified as a “trade or business” for purposes of assessing controlled group liability under Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). The Court further held that neither Fund IV, nor the parallel funds Sun Capital Partners III, LP and Sun Capital Partners III QP, LP (referred to together as “Fund III”), were subject to liability under ERISA’s anti-avoidance provisions by reason of the structure of their investment in SBI Scott Brass, Inc. (“SBI”), a portfolio company, for multiemployer plan withdrawal liability triggered by SBI.

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