

# Multiemployer Alert

Update on Issues Affecting Taft-Hartley Plans

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## Segal Blend method still in question for withdrawal liability

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### Withdrawal liability and the Segal Blend

When an employer ceases to have a contribution obligation to a multiemployer pension plan, they may be assessed a withdrawal liability. The withdrawal liability is their share of the plan's unfunded vested liability. The actuary selects a discount rate to determine the present value of the plan's vested benefits. The Segal Blend method considers not only the plan's long term expected return on assets which is typically used for ERISA minimum funding purposes but also the discount rate as published by the Pension Benefit Guaranty Corporation ("PBGC") which is based on current annuity pricing of insurance carriers. The effect of using this blended interest rate in the current interest environment is a lower net interest rate than the ERISA minimum funding rate and therefore a higher liability.

### New York Times case settles

A settlement was reached on September 16, 2019 ending the highly followed withdrawal liability case between The New York Times Company ("Times") and the Newspaper and Mail Deliverers' Publishers' Pension Fund ("Fund"). A key issue in the case was the challenge to the Fund's use of the Segal Blend method in determining the discount rate for the withdrawal liability assessments.

In March 2018 the U.S. District Court for Southern New York ruled that the Fund's use of the Segal Blend was, in this instance, improper. Accordingly, the withdrawal liability should be based on the plan's long term expected return on assets. The Fund subsequently filed an appeal. For the last 18 months the multiemployer pension community has anxiously awaited the outcome of this appeal. The Segal

Blend method is used for selecting the discount rate to determine withdrawal liabilities for many multiemployer pension plans. The appeal process was closely followed and included amicus briefs from several parties including one from the PBGC supporting the use of the Segal Blend method.

Subsequent to the court's ruling, numerous employers have challenged withdrawal liability assessments that were based on the Segal Blend method. Many of them have been awaiting the results of the appeal.

### Where things stand

The dismissal means that the Southern District of New York's ruling stands for this case. The ruling found that use of the Segal Blend did not meet the statutory requirement to use a discount rate that reflects the actuary's best estimate of expected plan experience.

While the withdrawal liability of the Times has been settled, the appropriateness of using the Segal Blend method has not been. Following the Times ruling, the District Court of New Jersey upheld the use of the Segal Blend in the case of Manhattan Ford Lincoln v. UAW Local 259 Pension Fund. Numerous other cases have subsequently been filed regarding assumptions for withdrawal liability assessments. The difference in opinion of the various courts keeps the door open for future challenges.

Determining appropriate assumptions for calculating withdrawal liability is an important issue for multiemployer pension plans. Plan sponsors and trustees are encouraged to consult with plan actuaries and attorneys to determine the implications for their plans.

Multiemployer Alert: Update on Issues Affecting Taft-Hartley Plans is intended to provide information and analysis of a general nature. Application to specific circumstances should rely on separate professional guidance.