

First Circuit Sun Capital Decision Increases ERISA Exposure for Private Equity Funds

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On July 24, 2013, in a controversial ruling in the Sun Capital case, the U.S. Court of Appeals for the First Circuit endorsed the view of the Pension Benefit Guaranty Corporation (PBGC) that a private equity fund can be held jointly and severally liable for the unfunded pension obligations of its portfolio companies.

Focusing on the active role of the management company affiliated with a Sun Capital fund, the First Circuit held that the Sun Capital fund was engaged in a trade or business, a critical test for control group liability for unfunded pension obligations. Similar to prior authorities in this area, the Sun Capital decision was careful to note that whether a fund is a trade or business for tax purposes may not be an identical analysis. Accordingly, the First Circuit's ruling is so far relevant only for pension liability issues.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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