Nos. 25-1765 & 25-1766

United States Court of Appeals
FOR THE SEVENTH CIRCUIT

CONSUMERS CONCRETE CORP.,

Plaintiff-Appellee,

v.

CENTRAL STATES FUND, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND,

Defendants-Appellants,

Appeal from the United States District Court for the Northern District of Illinois, Nos. 1:23-cv-02695, 1:23-cv-03005
Honorable LaShonda A. Hunt, District Judge, Presiding

BRIEF FOR *AMICUS CURIAE* PENSION BENEFIT GUARANTY CORPORATION

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I. INTEREST OF PENSION BENEFIT GUARANTY CORPORATION AS *AMICUS CURIAE*

The issues in this case arise in the context of a multiemployer defined benefit plan under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1301–1461—presenting the question of when the credit under 29 U.S.C. § 1386(b)(1) that a withdrawn employer receives for prior partial withdrawal liability should be applied in calculating its additional liability for a subsequent withdrawal. The Pension Benefit Guaranty Corporation ("PBGC") administers and enforces the multiemployer insurance program under Title IV of ERISA.

In response to an invitation from the Court issued on April 21, 2026, PBGC submits this *amicus curiae* brief. PBGC has interpretive authority for the withdrawal liability provisions in Title IV of ERISA, including under Congress's express delegation to issue regulations pursuant to 29 U.S.C. § 1386. However, PBGC has not finalized regulations under § 1386[1] that directly address the issue presented here.

II. PBGC'S POSITION ON THE QUESTION PRESENTED

This is a hard case—no two ways about it. There is significant textual evidence on both sides of the ledger. And the parties read the complex statutory

[1] *See* 29 C.F.R. § 4206.

cross-references at issue differently. But an appreciation for ERISA's integrated withdrawal liability structure vindicates PBGC's consistently held view that the statute is best read to give effect to the full credit Congress prescribed for prior partial withdrawal liability. That reading follows the statutory distinction between determining withdrawal liability under § 1381(b)(1) and reducing that liability under § 1381(b)(1).

PBGC's longstanding interpretation of the relevant Title IV provisions is that withdrawal liability for a subsequent withdrawal is first determined under 29 U.S.C. § 1381(b)(1), without regard to the prior partial withdrawal, and that the unamortized portion of the previously assessed partial withdrawal liability (the "Credit") is later applied to reduce that liability. The employer also continues to be liable for withdrawal liability determined under the partial withdrawal. PBGC first articulated that interpretation in 1985 in Opinion Letter 85-4 and later reaffirmed the same underlying principles in a 1987 notice of proposed rulemaking ("NPRM"), emphasizing both the need to avoid "double-charging" employers for the same unfunded vested benefits and the need to ensure that employers remain responsible for liability attributable to subsequent plan experience and participation.[2]

[2] *See* Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal, 52 Fed. Reg. 37329–30 (Oct. 6, 1987).

The NPRM demonstrates PBGC's consistent understanding of 29 U.S.C. § 1386(b)(1). In particular, the proposed rule assumed the same sequencing reflected in Opinion Letter 85-4, namely that the Credit operates against already determined subsequent withdrawal liability, and addressed only whether, and under what circumstances, the amount of that Credit should be adjusted under § 1386(b)(2).[3] Given the "thoroughness evident in [PBGC's] consideration, the validity of its reasoning, [and] its consistency with earlier and later pronouncements"—evidenced by the Opinion Letter and the NPRM—PBGC's interpretation reflects a "body of experience and informed judgment to which [the Court may] properly resort for guidance."[4]

Moreover, applying the Credit in this manner reflects a holistic reading of ERISA's withdrawal liability provisions as an integrated statutory scheme. The provisions governing the calculation, adjustment, limitation, and reduction of withdrawal liability are cross-referenced and interdependent, and they are best understood by reading the statutory framework as a coherent whole rather than by isolating individual clauses or phrases. This understanding is supported by

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[3] *Id.*

[4] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 388 (2024) (*citing Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)); *see United States v. Mead Corp.*, 533 U.S. 218, 234–35 (2001).

bedrock principles of statutory interpretation requiring courts to read individual provisions in the context of their broader statutory framework.

Properly contextualized, § 1386(b)(1)'s directive that withdrawal liability "shall be reduced" is best understood to operate on the fully-adjusted amount of withdrawal liability determined under § 1381(b)(1), rather than on intermediate figures used in the calculation process. This reading gives coherent effect to the statute's distinction between the determination of withdrawal liability and subsequent reductions to that liability, while remaining consistent with Congress's instruction that an employer's liability "properly reflect[] the employer's share of liability with respect to the plan."[5] Furthermore, preserving the full value of the Credit encourages continued participation in plans.

III. SUMMARY OF ARGUMENT

Section 1386(b)(1) provides that an employer's withdrawal liability in a subsequent plan year "shall be reduced" by the amount of prior partial withdrawal liability. But the statute does not expressly specify whether that reduction occurs as an "adjustment" under 29 U.S.C. § 1381(b)(1), or after the adjustments under that section have been applied. The parties identify plausible textual indicators supporting competing interpretations.[6]

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[5] 29 U.S.C. § 1386(b)(2).

[6] Appellant's Br. at 13–21; Appellee's Br. at 14–45.

The sequencing question, however, cannot be resolved by isolating individual phrases from the broader statutory framework. The Supreme Court has repeatedly instructed that statutory interpretation is a "holistic endeavor"[7] and that courts must read statutory language "in [its] context and with a view to [its] place in the overall statutory scheme."[8] That interpretive principle is critical in ERISA, a "comprehensive and reticulated statute" with "interlocking, interrelated, and interdependent" provisions.[9] As this Court has recognized, "[i]nterpretation is a contextual enterprise," and "[s]tatutory words take color from their many contexts."[10] Read in that manner, the Credit is best understood as a full dollar-for-dollar reduction of the liability for a subsequent withdrawal, and it must be applied after withdrawal liability has been calculated under § 1381(b)(1).

That reading coheres with the text and structure of the statute. Section 1386(b)(1) provides that withdrawal liability "shall be reduced by the amount" of any prior partial withdrawal liability, and the amount to be credited under that provision is itself a fully calculated withdrawal liability amount. Applying the Credit after all § 1381(b)(1) adjustments have been made preserves the full value

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7 *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988).

8 *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000); *see West Virginia v. EPA*, 597 U.S. 697, 721 (2022).

9 *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985); *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 447 (1999).

10 *Heath v. Varity Corp.*, 71 F.3d 256, 258 (7th Cir. 1995); *NBD Bank, N.A. v. Bennett*, 67 F.3d 629, 631 (7th Cir. 1995).

of the previously assessed liability. By contrast, applying the Credit as an adjustment under § 1381(b)(1) risks diluting the Credit. In particular, if the Credit is applied before the annual payment limitation under 29 U.S.C. § 1399(c)(1)(B), the later application of that limitation diminishes or eliminates the practical value of the Credit. In that circumstance, the employer's subsequent withdrawal liability will *not* be reduced by the full amount of the Credit, even though § 1386(b)(1) expressly provides that subsequent withdrawal liability "shall be reduced by the amount" of prior partial withdrawal liability.

PBGC has maintained its post-calculation interpretation of the statute for decades.[11] The agency first articulated that interpretation in Opinion Letter 85-4 and later elaborated on the same principles in the 1987 NPRM, which likewise treated the § 1386(b)(1) Credit as a reduction applied against already-calculated subsequent withdrawal liability.[12] PBGC explained that the purpose of the Credit is to avoid "double-charging an employer for the same plan unfunded vested benefits," while also ensuring that liability attributable to later plan experience and later employer participation is not improperly shifted onto remaining employers.[13]

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[11] Pension Benefit Guar. Corp., Op. Ltr. 85-4 1985 WL 32704 (Jan. 30, 1985).

[12] Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal, 52 Fed. Reg. 37329–30 (Oct. 6, 1987).

[13] *Id.*

Under *Loper Bright*, the Court must exercise its independent judgment in interpreting Title IV of ERISA. PBGC submits that its longstanding interpretation of the withdrawal liability provisions warrants respectful consideration under *Skidmore* because it addresses the precise sequencing issue presented here, distinguishes the calculation of withdrawal liability under § 1381(b)(1) from the subsequent reduction required by § 1381(b)(1), and is consistent with PBGC's later regulatory treatment of the amount as a credit against new withdrawal liability.[14] Congress assigned PBGC significant responsibility for administering and implementing ERISA's withdrawal liability provisions,[15] and PBGC has consistently maintained the same interpretation. That longstanding position is reflected in Opinion Letter 85-4 and reaffirmed in the agency's 1987 NPRM. The interpretation has remained consistent over decades, reflects PBGC's expertise in administering this complex statutory scheme, and rests on a reasoned effort to harmonize the interrelated provisions governing withdrawal liability. Because PBGC's interpretation best reconciles 29 U.S.C. §§ 1381 and 1386 within ERISA's integrated withdrawal liability framework, the Court should affirm the judgment below.

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[14] *Loper Bright*, 603 U.S. at 388 (*citing Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)); 29 C.F.R. § 4206.

[15] *See* 29 U.S.C. §§ 1302(b)(3), 1303(a), 1402(b).

IV. ARGUMENT

A. Myopic Readings of Portions of Statutory Text Do Not Resolve the Sequencing Question

This case turns on when the credit for a prior partial withdrawal under 29 U.S.C. § 1386(b)(1) should be taken: as an adjustment that is part of the calculation under 29 U.S.C. § 1381(b)(1), or after the adjustments under that section have been applied (the "post-calculation approach"). Section 1386(b)(1) provides:

> [i]n the case of an employer that has withdrawal liability for a partial withdrawal from a plan, any withdrawal liability of that employer for a partial or complete withdrawal from that plan in a subsequent plan year shall be reduced by the amount of any partial withdrawal liability . . . of the employer with respect to the plan for a previous plan year.

The statute requires that an employer receive credit for prior partial withdrawal liability when the employer incurs withdrawal liability in a subsequent plan year. But the statute does not directly specify whether the Credit applies as an adjustment under § 1381(b)(1) or after those adjustments have been completed. The parties accordingly advance competing and plausible textual interpretations of how §§ 1381(b)(1) and 1386 operate within ERISA's withdrawal liability scheme.[16]

Plaintiff-Appellee Consumers Concrete Corp. (the "Employer") notes that the adjustments under § 1381(b)(1) are adjustments to the "allocable unfunded

[16] *See* Appellant's Br. at 13–21, Appellee's Br. at 14–17.

vested benefits" calculated under § 1391, and not to "withdrawal liability"—which is the result of those adjustments.[17] Because § 1386(b)(1) refers to "withdrawal liability," the Credit cannot be included under § 1381(b)(1), the Employer contends. On that reading, "withdrawal liability" refers to the employer's final calculated liability, rather than intermediate figures used during the calculation process.[18] The Employer further emphasizes the distinction between the "allocable amount of unfunded vested benefits," which serves as an input into the statutory calculation, and "withdrawal liability," which is the result of that calculation.[19] The Employer also relies on PBGC Opinion Letter 85-4, arguing that it adheres to the statute's text, structure, and defined terms.[20]

Defendant-Appellant Central States, Southeast and Southwest Areas Pension (the "Fund") advances a different reading. The Fund argues that the Credit is applied as part of the second of a series of adjustments under § 1381(b)(1). As evidence, the Fund points to § 1381(b)(1)(B)'s instruction that, "in the case of partial withdrawal," liability be adjusted "in accordance with section 1386." Because the provision references § 1386 generally, the Fund argues, it must include the Credit under § 1386(b).[21] On that reading, the Credit is applied before

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17 Appellee's Br. at 16–25.
18 *Id.* at 19.
19 *Id.* at 20–25.
20 *Id.* at 50–51.
21 Appellant's Br. at 14–15.

the third and fourth adjustments under § 1381(b)(1) (the annual payment limitation under § 1381(b)(1)(C) and the de minimis adjustment in accordance with § 1405 under § 1381(b)(1)(D)).[22]

While the Employer emphasizes the distinction under § 1381 between the "allocable amount of unfunded vested benefits" and "withdrawal liability,"[23] the Fund counters that "withdrawal liability" can refer to the intermediate amounts generated during the statutory calculation process.[24] And the Fund notes that other provisions of § 1381(b)(1) describe adjustments in terms of "liability." For example, the limitation on annual payments under § 1399(c)(1)(B) limits "the employer's liability," rather than adjusting unfunded vested benefits.[25]

Considered in isolation, the statutory text supports plausible arguments in both directions.[26] A myopic focus on particular clauses or phrases does not itself resolve the sequencing question.

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22 *Id.* at 15–16; the de minimis adjustment under § 1405 is not at issue in this case.

23 *Id.* at 20–25.

24 *Id.* at 17–18.

25 *Id.* at 18–20.

26 Learned jurists have reached different conclusions on this question. *Compare GCIU-Emp. Ret. Fund v. Quad/Graphics, Inc.*, 909 F.3d 1214, 1218–19 (9th Cir. 2018) (concluding that the credit required by § 1386(b)(1) is applied as part of the calculation process under § 1381(b)(1)), *and Perfection Bakeries Inc. v. Retail, Wholesale & Dep't Store Int'l Union & Indus. Pension Fund,* 147 F.4th 1314, 1318–22 (11th Cir. 2025) (majority opinion) (holding that § 1386(b)(1) operates within the § 1381(b)(1) calculation sequence), *with id.* at 1322–30 (Brasher, J., dissenting) (concluding that § 1386(b)(1) operates as a reduction after liability has been determined under § 1381(b)(1) and, in so doing, finding PBGC Opinion Letter 85-4 persuasive).

B. ERISA's Integrated Statutory Framework Treats the § 1386(b)(1) Credit as a Full Dollar-for-Dollar Reduction Applied After the § 1381(b)(1) Calculation

Courts must interpret statutes holistically, reading individual provisions in context and as part of the overall statutory scheme.[27] Indeed, this Court has recognized that "[i]nterpretation is a contextual enterprise" in which statutory language "take[s] color from [its] many contexts."[28] That imperative carries particular force with respect to ERISA, a "comprehensive and reticulated statute" with "interlocking, interrelated, and interdependent" provisions.[29]

Read in that manner, ERISA's withdrawal liability provisions are best understood to require that the Credit for prior partial withdrawal liability under § 1386(b)(1) operate as a full dollar-for-dollar reduction to subsequent withdrawal liability after the employer's liability for the subsequent withdrawal has been determined under § 1381(b)(1). Section 1386(b)(1) provides that an employer's liability for a subsequent withdrawal "shall be reduced by the amount of any partial withdrawal liability" previously assessed. 29 U.S.C. § 1386(b)(1). Congress directed not merely that prior partial withdrawal liability be considered somewhere

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[27] *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 666 (2007) (internal quotation marks omitted); *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988); *United States v. Morton*, 467 U.S. 822, 828 (1984).

[28] *Heath v. Varity Corp.*, 71 F.3d 256, 258 (7th Cir. 1995); *NBD Bank, N.A. v. Bennett*, 67 F.3d 629, 631 (7th Cir. 1995).

[29] *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985); *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 447 (1999).

in the calculation process, but expressly stated that the employer's later withdrawal liability itself "shall be reduced" by that prior amount.

This reading is reinforced by the structure of the statute. The Credit referenced in § 1386(b)(1) is not an abstract actuarial factor, nor is it an intermediate adjustment. It is the unamortized balance of a previously assessed partial withdrawal liability, which is a fully determined amount. Applying that Credit after the § 1381(b)(1) calculation preserves the full value of the prior liability already assessed.

By contrast, if the Credit is applied as merely one step within the § 1381(b)(1) calculation process, the employer's withdrawal liability will not always be "reduced" by the full amount of the prior partial withdrawal liability, as § 1386(b)(1) directs. Instead, subsequent calculation steps, most notably the annual payment limitation under § 1399(c)(1)(B), can diminish the practical effect of the Credit. Under that approach, the amount ultimately credited to the employer would depend not on the amount of prior partial withdrawal liability which Congress expressly directed be credited, but on the interaction of later statutory limitations. Nothing in § 1386(b)(1) suggests Congress intended the Credit to operate as only a partial or contingent reduction.

Reading § 1386(b)(1) to apply the Credit after the § 1381(b)(1) calculation avoids that distortion and preserves the full value of the previously assessed partial

withdrawal liability. That reading also coheres with the broader operation of ERISA's withdrawal liability framework. Preserving the full value of the Credit encourages continued participation in plans. It also avoids imposing duplicative liability for the same obligation.

Indeed, if Congress had intended the Credit to function as only a partial offset, then it could have structured the statute in a much more straightforward way to achieve that result. Congress routinely specifies limited or capped adjustments elsewhere in ERISA's withdrawal liability provisions.[30] But here, Congress directed that liability "shall be reduced by the amount" of the prior partial withdrawal liability.[31] As this Court observed, "[s]tatutory words mean nothing unless they distinguish one situation from another; line-drawing is the business of language."[32] Congress's decision not to expressly qualify or discount the Credit is therefore significant.

PBGC's reading also gives meaningful effect to § 1386(b)(2), which directs PBGC to ensure "that the liability for any complete or partial withdrawal in any subsequent year (after the application of the reduction [under paragraph (b)(1)]) properly reflects the employer's share of liability with respect to the plan." 29

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30 *See*, *e.g.,* 29 U.S.C. § 1389(a) (establishing a capped "de minimis reduction" formula); § 1399(c)(1)(B) (limiting annual payments and capping payment duration at 20 years); § 1405(a)–(b) (limiting withdrawal liability for insolvent employers).

31 29 U.S.C. § 1386(b)(1).

32 *Contract Courier Servs., Inc. v. Research & Special Programs Admin.*, 924 F.2d 112, 114 (7th Cir. 1991).

U.S.C. § 1386(b)(2). That is exactly what a dollar-for-dollar treatment of the Credit does.

A contrary interpretation would also create substantial tension within the statutory framework. Under the Fund's approach, the value of the Credit could be reduced or even effectively eliminated by later limitations in the § 1381(b)(1) sequence. But "[i]t is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant."[33] Reading § 1386(b)(1) to provide only a potentially diluted or even totally eliminated offset risks giving Congress's command that liability "shall be reduced" no independent operative force.

By contrast, the post-calculation approach harmonizes the relevant provisions and gives coherent effect to the statutory whole. When ERISA's withdrawal-liability provisions are read as an integrated statutory scheme rather than in isolated fragments, it becomes clear that the better reading is that § 1386(b)(1) operates as a full dollar-for-dollar reduction applied after withdrawal liability has been calculated under § 1381(b)(1).

[33] *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (internal quotation marks omitted).

C. PBGC's Longstanding Interpretation is Consistent with ERISA's Integrated Statutory Framework

PBGC adopted the post-calculation approach in Opinion Letter 85-4. There, PBGC considered whether the reduction required by 29 U.S.C. § 1386(b)(1) should be applied during the withdrawal liability calculation process or after withdrawal liability had been determined under § 1381(b)(1). PBGC concluded that the plan in question must first calculate withdrawal liability under § 1381(b)(1) "without regard to the prior year's partial withdrawal," and then reduce the resulting withdrawal liability by the amount of the prior partial withdrawal liability. The agency reasoned that the Credit under § 1386(b)(1) "is not an adjustment under [29 U.S.C. § 1381(b)(1)] at all," but instead operates as a reduction to "withdrawal liability" after the § 1381(b)(1) calculation has been completed.[34]

PBGC subsequently elaborated on the considerations underlying Opinion Letter 85-4 in an NPRM titled Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal.[35] The proposed rule likewise treated the § 1386(b)(1) Credit as a reduction applied against already-calculated subsequent withdrawal liability.[36] The agency noted the following consideration as being central to the calculation of

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[34] PBGC Op. Ltr. 85-4 (Jan. 30, 1985).

[35] Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal, 52 Fed. Reg. 37329–01 (Oct. 6, 1987).

[36] *Id.*

the Credit for partial withdrawal: "The purpose of the section 4206(b)(1) credit is to avoid double-charging an employer for the same plan unfunded vested benefits." Applying the § 1386(b)(1) reduction after the complete withdrawal liability calculation preserves the full value of the prior partial withdrawal liability amount, ensuring that overlapping unfunded vested benefits are not counted twice.

PBGC includes an example that illustrates the balance struck by Congress and reflected in Opinion Letter 85-4 and the NPRM.[37] As shown in the example, applying the Credit after the § 1381(b)(1) calculation preserves the full value of the prior partial withdrawal liability assessment and prevents the employer from being charged twice for overlapping unfunded vested benefits. At the same time, because the subsequent withdrawal liability calculation under § 1381(b)(1) incorporates subsequent plan experience and participation before the reduction is applied, the employer remains responsible for liability attributable to its later participation in the plan.

By contrast, applying the Credit before the § 1399(c)(1)(B) limitation substantially diminishes the practical value of the Credit and results in the employer effectively paying again for liabilities already assessed in the prior partial withdrawal. The interpretation advanced in this brief thus reflects the same balance

[37] Attached as Exhibit 1.

identified in the NPRM: avoiding duplicative liability while preserving liability properly attributable to later plan experience and later participation.

While the Court must exercise its independent judgment in interpreting the statute, PBGC's longstanding and expert interpretation is "entitled to great weight."[38] PBGC has consistently maintained this interpretation for decades, drawing on its expertise in administering the "complex and technical provisions" of Title IV,[39] and undertaking a reasoned effort to harmonize the interrelated provisions governing withdrawal liability within ERISA's broader statutory framework.[40] PBGC's interpretation therefore gives coherent effect to the statutory text and preserves the distinction between the calculation of withdrawal liability and subsequent reductions to that liability.

V. CONCLUSION

ERISA's withdrawal liability provisions should be read to require that the Credit under 29 U.S.C. § 1386(b)(1) be applied as a full dollar-for-dollar reduction after withdrawal liability has been determined under 29 U.S.C. § 1381(b)(1). Applying the Credit at that stage preserves the full value of the prior partial withdrawal liability, avoids diluting the Credit, and ensures that the employer's

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38 *Loper Bright*, 603 U.S. at 388 (*citing U.S. v. American Trucking Assns.*, 310 U.S. 534, 549 (1940)); *see also Skidmore v. Swift & Co.,* 323 U.S. 134, 140 (1944).

39 *Peick v. Pension Benefit Guar. Corp*, 724 F.2d 1247, 1267–68 (7th Cir. 1983).

40 *See Skidmore*, 323 U.S. at 140 (recognizing the relevance of an agency's "body of experience and judgment").

resulting liability "properly reflects the employer's share of liability with respect to the plan." 29 U.S.C. § 1386(b)(2). The Court should adopt that interpretation and affirm the judgment below.

Respectfully submitted,

__/s/__*Jack Lund*_____
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June 5, 2026

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ADDENDUM TO BRIEF FOR *AMICUS CURIAE* PENSION BENEFIT GUARANTY CORPORATION

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ADDENDUM

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EXHIBIT 1

Example Illustrating the Operation of the Withdrawal Liability Calculation at Issue

Consider a plan with $300,000,000 in unfunded vested benefits ("UVBs"), where a withdrawing employer is responsible for 5% of recent contributions.[41] If the employer completely withdrew from the plan, then the employer's allocable share of UVBs would be $15 million or 5% of $300 million. Further assume that the employer's annual payment amount as determined under the limitation in 29 U.S.C. § 1399(c)(1)(B) is $600,000, that withdrawal liability is calculated using a 5% actuarial interest rate assumption, and that there have been no prior partial withdrawals.

The present value of $1 payable for 20 years at 5% interest calculates out to $13.08532. Thus, absent any prior partial withdrawals, the annual payment limitation in § 1399(c)(1)(B) would limit the amount of withdrawal liability from $15 million to $7,851,192, calculated as $600,000 multiplied by 13.08532.

Assume instead that the employer incurred an 80% partial withdrawal in a previous year. In that event, both the allocable share of UVBs and the annual payment amount would be reduced proportionally. The employer's allocable share of UVBs would therefore be $12 million and the annual payment amount under § 1399(c)(1)(B) would be $480,000. Applying the annual payment limitation under

[41] All dollar amounts in this example are rounded to the nearest dollar. The payment period figures use the same annuity convention used to calculate the 20-year present value factor.

§ 1399(c)(1)(B) would yield withdrawal liability of $6,280,954, calculated as $480,000 multiplied by 13.08532. The remaining 20% of the withdrawal liability that would have been assessed in the event of a complete withdrawal is therefore $1,570,238.

Now assume that the employer completely withdraws in the following plan year. Further assume that the plan's UVBs have declined to $250,000,000, that the employer's share of recent contributions has declined to 4.2%, and that the employer's annual payment amount has decreased to $504,000. Each of those changes would tend to reduce the employer's remaining withdrawal liability relative to the prior year.

Because the complete withdrawal follows a partial withdrawal, the employer is entitled to a Credit under 29 U.S.C. § 1386(b)(1). PBGC regulations determine the Credit amount based on the allocation method used by the plan. For purposes of this example, assume that the plan uses the rolling-5 allocation method and applies 29 C.F.R. § 4206.6. Under that provision, the Credit equals the unamortized amount of withdrawal liability attributable to the prior partial withdrawal, calculated as if amortized over five years. Accordingly, the previously determined partial withdrawal liability amount of $6,280,954, reduced by one year of amortization, yields a Credit of $5,144,260.

Apart from accounting for the Credit, withdrawal liability for the subsequent complete withdrawal is determined in the same manner as in the prior year but using the updated plan information. The employer's allocable share of UVBs would be $10.5 million, or 4.2% of $250 million, and the annual payment amount would be $504,000. The following examples illustrate two alternative approaches to applying the Credit.

Method 1 – Applying the Credit after the § 1381(b)(1) calculation, consistent with Opinion Letter 85-4

Under this approach, the annual payment limitation under § 1399(c)(1)(B) first reduces the employer's withdrawal liability from $10.5 million to $6,595,002, calculated as $504,000 multiplied by 13.08532. The Credit of $5,144,260 is later applied against that amount, yielding additional withdrawal liability of $1,450,742. At annual payments of $504,000, the liability would be satisfied in 3.02 years. That amount is comparable to, but somewhat less than, the remaining 20% of withdrawal liability that would have been assessed had the employer completely withdrawn in the prior year, reflecting both the improved funding status of the plan and the employer's reduced share of contributions. This result is consistent with avoiding duplicative liability for the same UVBs.

Method 2 – Applying the Credit before the § 1399(c)(1)(B) limitation

Under this approach, the Credit of $5,144,260 is first subtracted from the initial liability amount of $10.5 million, resulting in withdrawal liability of $5,355,740. Because that amount falls below the § 1399(c)(1)(B) limitation, the annual payment limitation no longer reduces the employer's liability. That amount is equivalent to 14.46 annual payments of $504,000. This result exceeds by more than threefold the remaining 20% of withdrawal liability that would have been assessed had the employer completely withdrawn in the prior year, even though the plan's funding position improved and the employer's contribution share declined in the interim.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Seventh Circuit Rule 29 because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), this brief contains 3121 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14-point Times New Roman typeface.

June 5, 2026

/s/ Jack Lund
Jack Lund

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit via the Court's CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the CM/ECF system.

June 5, 2026

/s/ Jack Lund
Jack Lund

Counsel for Amicus Curiae