

# Multi-employer Pension Plan Arbitration Rules for Withdrawal Liability DISPUTES

Sponsored by the International Foundation of Employee Benefit Plans  
Effective June 1, 1981  
Revised Effective September 1, 1986

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For the Arbitration of Future Disputes:

The American Arbitration Association recommends the following arbitration clause for insertion in plan documents:

## Standard Arbitration Clause

Any arbitration under ERISA Section 4221 shall proceed in accordance with the Multiemployer Pension Plan Arbitration Rules for Withdrawal Liability Disputes of the American Arbitration Association.

## For the Submission of Existing Disputes:

We, the undersigned parties, hereby agree to submit to arbitration under the Multiemployer Pension Plan Arbitration Rules for Withdrawal Liability Disputes of the American Arbitration Association the following controversy:

## Introduction

Section 4221 of the Employee Retirement Income Security Act of 1974 (ERISA), added by Section 104(2) of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), provides that "Any dispute between an employer and a plan sponsor of a multiemployer plan concerning a determination made under Sections 4201 through 4219 shall be resolved through arbitration...conducted in accordance with fair and equitable procedures to be promulgated by the [Pension Benefit Guaranty] Corporation."

The issues subject to arbitration under this section of ERISA may include, but are not limited to, the following:

- The determination of whether a withdrawal--complete or partial--has occurred;
- The amount of the employer's withdrawal liability;
- The schedule of withdrawal liability payments; and
- The reasonableness of actuarial assumptions in the aggregate, or whether a significant error was made in applying the actuarial assumptions or methods.

In August 1985 the PBGC issued a final arbitration rule under Section 4221 effective September 26, 1985. Section 2641.13(c) of the rule provides that the PBGC may approve alternative arbitration procedures. A Notice of Approval of these Rules, published by the PBGC in the *Federal Register* on September 19, 1985 and effective September 26, 1985, reads in part as follows:

"This notice advises employers, plan sponsors of multiemployer pension plans and other interested parties that the PBGC has on its own initiative, determined that the Multiemployer Pension Plan Arbitration Rules effective June 1, 1981, sponsored by the International Foundation of Employee Benefit Plans and administered by the American Arbitration Association will be substantially fair to all parties involved in the arbitration of a withdrawal liability dispute and that the American Arbitration Association is neutral and able to carry out its role under the procedures. Accordingly, the PBGC hereby approves the AAA/IFEBP Multiemployer Pension Plan Arbitration Rules. This approval is effective as of September 26, 1985, and will remain effective until revoked by the PBGC through a *Federal Register* notice."

The American Arbitration Association and the International Foundation of Employee Benefit Plans are pleased to offer these procedures for the arbitration of disputes arising under the withdrawal liability provisions of ERISA. The current rules, which were approved by PBGC on June 20, 1986, include changes that reflect both PBGC-approved procedures and those suggested by AAA's experience administering its MPPAA caseload under the prior Rules.

## International Foundation of Employee Benefit Plans

The International Foundation of Employee Benefit Plans is the largest educational association serving the employee benefits and compensation industry. For almost 50 years, The International Foundation has served as the premier source of education and information to the industry. The International Foundation is a nonprofit, nonlobbying organization. Total membership includes 35,000 individuals representing 8,400 multiemployer trust funds, corporations, public employee groups and professional advisory firms throughout the United States and Canada.

Jointly administered multiemployer labor-management employee-benefit trust funds grew from the Taft-Hartley Act of 1947 and exist to provide employees and their families and dependents with pensions upon retirement. They are administered by boards of trustees on which labor and management are equally represented. The boards receive contributions and distribute funds to employees in the form of benefits, in accordance with provisions of collective-bargaining and trust agreements and law. As such, the operation of employee-benefit trust funds is an area of legal complexity.

## Multiemployer Pension Plan Arbitration Rules for Withdrawal Liability Disputes

### Section 1. AGREEMENT OF PARTIES

Parties may arbitrate under these Rules by referring to them in multiemployer pension plan documents, in agreements to arbitrate disputes thereunder, or in a submission to arbitration in connection with a particular dispute. These Rules and any amendment thereof shall apply in the form obtaining at the time the arbitration is filed at any Regional Office of the AAA.

## Section 2. NAME OF TRIBUNAL

Any Tribunal constituted by the parties for the settlement of their dispute under these Rules shall be called the Multiemployer Pension Plan Withdrawal Liability Arbitration Tribunal.

## Section 3. ADMINISTRATOR

When an arbitration is initiated under these Rules, the AAA is thereby constituted administrator of the arbitration. The authority and obligations of the administrator are prescribed in these Rules, in plan documents and in any relevant written agreement of the parties.

## Section 4. DELEGATION OF DUTIES

The duties of the AAA under these Rules may be carried out through Tribunal Administrators, or such other officers or committees as the AAA may direct.

## Section 5. NATIONAL PANEL OF ARBITRATORS

The AAA shall establish and maintain a National Panel of Multiemployer Pension Plan Withdrawal Liability Arbitrators and shall appoint Arbitrators therefrom as hereinafter provided.

## Section 6. OFFICE OF TRIBUNAL

The general office of a Tribunal is the headquarters of the AAA, which may, however, assign the administration of an arbitration to any of its Regional Offices.

## Section 7. INITIATION OF ARBITRATION

Arbitrations under these Rules are initiated in the following manner:

(a) (i) The initiating party gives notice to the other party of its intention to arbitrate (Demand) which notice shall set forth a brief description of the dispute and shall include the amount involved, and (ii) files at any Regional Office of the AAA two (2) copies of said notice, together with the appropriate administrative fee as provided in the Administrative Fee Schedule.

(b) Parties to an existing withdrawal liability dispute may commence an arbitration under these Rules by filing at any Regional Office of the AAA two (2) copies of a written agreement to arbitrate under these Rules (Submission), signed by the Parties. It shall contain a brief description of the dispute and shall include the amount involved, together with the appropriate administrative fee as provided in the Fee Schedule.

(c) In the case of an initiation under subsection (a) the AAA shall give notice of such filing to the other party. If it so desires, the party upon whom the Demand for Arbitration is made may file an answering statement in duplicate with the AAA within seven days after notice from the AAA, in which event said party shall simultaneously send a copy of the answer to the other party. If a monetary claim is made in the answer, the appropriate fee provided in the Fee Schedule shall be forwarded to the AAA with the answer. If no answer is filed within the stated time, the claims will be deemed to have been denied. Failure to file an answer shall not operate to delay the arbitration.

## Section 8. FIXING OF LOCALE

The parties may mutually agree on the locale where the arbitration is to be held. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within seven days after notice of the request, the initial locale shall be the one requested. If the locale is not designated within seven days from the date of filing the Demand or Submission, or if there is a dispute, the AAA shall have the power initially to determine the locale, subject to final decision by the Arbitrator, upon the application of either party at any time after appointment.

## Section 9. NEUTRALITY OF ARBITRATOR

Any Arbitrator appointed pursuant to these rules shall be neutral, subject to disqualification for the reasons specified herein.

## Section 10. NUMBER OF ARBITRATORS

The dispute shall be heard and determined by one Arbitrator, unless the parties agree otherwise.

## Section 11. APPOINTMENT FROM PANEL

The Arbitrator shall be appointed in the following manner: Immediately after the filing of the Demand or Submission, the AAA shall submit simultaneously to each party to the dispute an identical list of names of not less than five (5) persons, with a brief biographical profile and fee structure of each, chosen from the Panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names objected to, number the remaining names to indicate the order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an Arbitrator to serve. If the parties fail to agree upon any of the persons named, or if acceptable Arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the Panel without the submission of additional lists.

## Section 12. NOTICE TO ARBITRATOR OF APPOINTMENT

Notice of the appointment of the neutral Arbitrator, whether appointed by the parties or by the AAA, shall be mailed to the Arbitrator by the AAA, together with a copy of these Rules. The signed acceptance of the Arbitrator shall be filed prior to the opening of the first hearing.

## Section 13. DISCLOSURE AND CHALLENGE PROCEDURE

A person appointed as neutral Arbitrator shall disclose to the AAA any circumstances likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their counsel. Upon receipt of such information from such Arbitrator or other source, the AAA shall communicate such information to the parties, and, if it deems it appropriate to do so, the Arbitrator and others. Thereafter, the AAA shall determine whether the Arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

## Section 14. VACANCIES

If any Arbitrator should resign, die, withdraw, refuse, be disqualified or be unable to perform the duties of the office, the AAA may, upon proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these Rules.

In the event of a vacancy in a panel of Arbitrators, the remaining Arbitrator or Arbitrators may continue with the hearing and determination of the controversy unless the parties agree otherwise.

## Section 15. PREHEARING CONFERENCES

At the request of the parties or at the request of the AAA or the Arbitrator, prehearing conferences will be held among the Administrator or the Arbitrator and the parties or their counsel to arrange matters which will expedite the arbitration including, but not limited to venue, discovery, clarification of issues, exchanges of information, marking documentary exhibits, stipulations to uncontested facts, identification of witnesses to be called, resolution of preliminary evidentiary questions, and preparation of prehearing memoranda, if any.

## Section 16. PREHEARING DISCOVERY

The Arbitrator may allow any party to conduct prehearing discovery by interrogatories, depositions, requests for the production of documents, or other means, upon a showing that the discovery sought is likely to lead to the production of relevant evidence and will not be disproportionately burdensome to the other parties. The Arbitrator may impose appropriate sanctions if the Arbitrator determines that a party has failed to respond to discovery in good faith or has conducted discovery proceedings in bad faith or for the purpose of harassment.

## Section 17. TIME AND PLACE

The Arbitrator shall fix the time and place for each hearing. The AAA shall mail to each party notice thereof at least five days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof.

## Section 18. REPRESENTATION BY COUNSEL

Any party may be represented by counsel. A party intending to be so represented should notify the other party and the AAA of the name and

address of counsel at least three days prior to the date set for the conference or hearing at which counsel is first to appear. When an arbitration is initiated by counsel, or where an attorney replies for the other party, such notice shall be deemed to have been given.

## **Section 19. STENOGRAPHIC RECORD**

Any party wishing a stenographic record shall make such arrangements directly with the stenographer and shall notify the other parties of such arrangements in advance of the hearing. The cost of such record shall be paid as provided herein.

## **Section 20. ATTENDANCE AT HEARINGS**

The Arbitrator shall maintain the privacy of the hearings. Any person having a direct interest in the arbitration shall be entitled to attend hearings. The Arbitrators shall otherwise have the power to require the exclusion of any witness or potential witness during testimony of any other witnesses. The Arbitrator shall have the discretion to determine the propriety of the attendance of any person.

## **Section 21. ADJOURNMENTS**

The Arbitrator may grant adjournments upon the request of a party or upon the Arbitrator's own initiative and shall do so when all of the parties agree.

## **Section 22. OATHS**

Before proceeding with the first hearing or with the examination of the file, each Arbitrator shall take an oath of office. The Arbitrator may require witnesses to testify under oath administered by any duly qualified person or, if required by law or demanded by either party, shall do so.

## **Section 23. MAJORITY DECISION**

When ever there is more than one Arbitrator, all decisions and awards of the Arbitrators must be by at least a majority.

## **Section 24. ORDER OF PROCEEDINGS**

A hearing shall be opened by the filing of the oath of the Arbitrator and by the recording of the place, time and date of the hearing, the presence of the Arbitrator and parties, and counsel, if any, and by the receipt by the Arbitrator of the statement of the claim and answer, if any.

The Arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The complaining party shall then present its claim and proofs and its witnesses, who shall submit to questions or other examination. The defending party shall then present its defense and proofs and its witnesses, who shall submit to questions or other examination. The Arbitrator has discretion to vary this procedure but shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs.

Exhibits, when offered by either party, may be received in evidence by the Arbitrator.

The names and addresses of all witnesses and exhibits in order received shall be made a part of the record.

## **Section 25. ARBITRATION IN THE ABSENCE OF PARTY**

The arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator shall require the party who is present to submit such evidence as the Arbitrator may require for the making of an award.

## **Section 26. EVIDENCE**

The parties may offer such evidence as they desire and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. The Arbitrator may subpoena witnesses or documents upon the Arbitrator's own initiative or upon the request of any party. The Arbitrator shall be the judge of the relevancy and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all the Arbitrators and of all the parties, except where any of the parties is absent by reason of default or has waived the right to be present.

## **Section 27. EVIDENCE BY AFFIDAVIT**

The Arbitrator shall consider the evidence of witnesses by affidavit, and give it only such weight as the Arbitrator deems appropriate after consideration of any objections made to its admission.

## **Section 28. FILING OF DOCUMENTS**

All documents not filed with the Arbitrator at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the AAA for transmission to the Arbitrator. All parties shall be afforded opportunity to examine such documents.

## **Section 29. CONSERVATION OF PROPERTY AND PROTECTION OF CONFIDENTIAL INFORMATION**

At any time after appointment, the Arbitrator may issue such orders (a) to safeguard property which is the subject matter of the arbitration without prejudice to the rights of the parties or to the determination of the dispute or (b) to protect any trade secrets, proprietary information or other confidential matters.

## **Section 30. INSPECTION OR INVESTIGATION**

Whenever the Arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, the Arbitrator shall direct the AAA to advise the parties of such intention. The Arbitrator shall set the time and AAA shall notify the parties thereof. Any party who so desires may be present at such inspection or investigation. In the event that one or both parties are not present at the inspection or investigation, the Arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

## **Section 31. CLOSING OF HEARINGS**

When the Arbitrator is satisfied that neither party has further evidence to offer, the Arbitrator shall declare the hearings closed. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the Arbitrator for the receipt of briefs. If documents are to be filed as provided for herein and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings. The time limit within which the Arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

## **Section 32 . REOPENING OF HEARINGS**

The hearings may be reopened on the Arbitrator's own motion, or upon application of a party at any time before the award is made, if the Arbitrator determines that (1) the reopening is likely to result in new information that will have a material effect on the outcome of the arbitration; (2) good cause exists for the failure of the party that requested reopening to present such information at the hearing; and (3) the delay caused by the reopening will not be unfairly injurious to any party. The Arbitrator shall have thirty days from the closing of the reopened hearings within which to make an award.

## **Section 33. WAIVER OF ORAL HEARINGS**

The parties may, by written agreement, waive oral hearings. If the parties are unable to agree as to the procedure, the Arbitrator shall specify a fair and equitable procedure consistent with Section 2641.4(c) of the PBGC regulations for the arbitration of disputes in multiemployer plans. (29 CFR 2641)

## **Section 34. WAIVER OF RULES**

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and fails to state objection thereto in writing shall be deemed to have waived the right to interpose such objection.

## **Section 35. EXTENSIONS OF TIME**

The parties may modify any period of time by mutual agreement, except for those which are prescribed under the Employee Retirement Income Security Act of 1974 (ERISA), as amended. The AAA for good cause may extend any period of time established by these Rules, except the time for making the award. The AAA shall notify the parties of any such extension of time and its reason therefor.

## **Section 36. TIME OF AWARD**

The award shall be made promptly by the Arbitrator and, unless otherwise agreed by the parties, no later than thirty days from the date of closing

the hearings, or if oral hearings have been waived, from the date of transmission of the final statements and proofs to the Arbitrator. If the Arbitrator fails to issue the award within that period and a party raises objection in writing, the Arbitrator must issue the award within twenty days following receipt of that written objection. Failure to do so shall oust that Arbitrator of jurisdiction unless the parties agree otherwise in writing. If ouster occurs, the pending arbitration shall continue, but the parties shall choose another Arbitrator in accordance with these Rules to hear and decide the case.

### **Section 37. FORM OF AWARD**

The award shall be in writing and shall state the basis for the award, including such findings of fact and conclusions of law (which need not be explicitly designated as such) which are necessary to resolve the dispute; shall adjust (or provide a method for adjusting) the amount or schedule of payments to be made after the award to reflect overpayments or underpayments made before the award was rendered or require the plan sponsor to refund overpayments in accordance with 29 CFR '2644.2(d); and shall provide for an allocation of costs in accordance with 29 CFR '2641.9. It shall be signed either by the sole Arbitrator or by at least a majority if there is more than one.

### **Section 38. SCOPE OF AWARD**

The Arbitrator may grant any remedy or relief within the scope of ERISA. The Arbitrator, in the award, shall assess against any or all parties arbitration fees, costs, expenses and arbitrator compensation, and may assess reasonable attorney fees. Any allocation of costs by the Arbitrator shall be consistent with the parties' agreement, if any, made after the employer has received notice of the plan's assessment of withdrawal liability. If any administrative fees or expenses are due the AAA, the Arbitrator, in the award, shall assess them in favor of the AAA.

### **Section 39. AWARD UPON SETTLEMENT**

If the parties settle their dispute during the course of the arbitration, the Arbitrator, upon their request, may set forth the terms of the agreed settlement in an award.

### **Section 40. COMMUNICATION WITH ARBITRATOR**

There shall be no communication between the parties and the Arbitrator other than at the oral hearings or prehearing conferences. Any other oral or written communications from the parties to the Arbitrator shall be directed to the AAA for transmittal to the Arbitrator, unless the parties expressly agree otherwise.

### **Section 41. SERVICE OF NOTICES**

Each party to an arbitration under these Rules shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these Rules and for any court action in connection therewith or for the entry of judgment on any award made there under may be served upon such party by mail addressed to such party or its attorney at its last known address or by personal service, within or outside the jurisdiction where the arbitration is to be held (whether such party be within or outside the United States of America), provided that reasonable opportunity to be heard with regard thereto has been granted such party.

### **Section 42. DELIVERY OF AWARD TO PARTIES**

Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the AAA, addressed to such party at its last known address or to its attorney, or personal service of the award, or the filing of the award in any manner which may be prescribed by law

### **Section 43. RELEASE OF DOCUMENT FOR JUDICIAL PROCEEDINGS**

The AAA shall, upon the written request of a party or the Arbitrator, furnish to such person, at that person's expense, certified facsimiles of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

### **Section 44. JUDICIAL PROCEEDINGS**

(a) Neither the AAA nor any Arbitrator is a necessary party in judicial proceedings relating to any arbitration under these Rules.

(b) Neither the AAA nor any Arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules.

### **Section 45. INTERPRETATION AND APPLICATION OF RULES**

The Arbitrator shall interpret and apply these rules insofar as they relate to the Arbitrator's powers and duties. When there is more than one Arbitrator and a difference arises among them concerning the meaning or application of any such rules, it shall be decided by a majority vote. If that is unobtainable, either an Arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

## Section 46. DEPOSITS

The AAA may require the parties to deposit in advance such sums of money as it deems necessary to defray the expense of the arbitration, including the Arbitrator's fee, and shall render an accounting to the parties and return any unexpended balance.

## Section 47. EXPENSES

(a) The expenses of witnesses for either side shall be paid by the party producing such witnesses.

(b) The cost of the stenographic record, if any is made, and all transcripts thereof, shall be prorated equally among all parties ordering copies, unless they otherwise agree, and paid by the responsible parties directly to the reporting agency.

(c) All other expenses of the arbitration, including but not limited to required traveling and other expenses of the Arbitrator and of AAA representatives, shall be borne equally by the parties, unless they have agreed otherwise after the employer received notice of the plan's assessment of withdrawal liability, or unless the Arbitrator, in the award, assesses such expenses or any part thereof against any specified party or parties.

## Administrative Fees

As a nonprofit organization, the AAA shall prescribe an Administrative Fee Schedule, a Refund Schedule and a Schedule of Other Service Charges to compensate it for the cost of providing administrative services. The schedule in effect at the time of filing, refunding or service shall be applicable.

The administrative fees shall be advanced by the initiating party or parties, subject to final apportionment by the Arbitrator in the award.

When a matter is withdrawn or settled, the refund shall be made in accordance with the Refund Schedule.

The AAA, in the event of extreme hardship on the part of any party, may defer or reduce the administrative fee.

## Arbitrator's Fee

Unless mutually agreed otherwise, the Arbitrator shall be compensated according to the fee structure disclosed in the Arbitrator's biographical profile submitted to the parties. Any other arrangements for the compensation of the Arbitrator shall be made through the AAA and not directly by the Arbitrator.

## Administrative Fee Schedule

The administrative fee of the AAA is based upon the amount in dispute as disclosed when the claim is filed and is due and payable at that time.

Amount in Dispute	Fee
Up to \$1,000,000	\$650
\$1,000,000 to \$3,000,000	\$1,000
\$3,000,000 to \$5,000,000	\$1,450

Where the net amount in dispute exceeds \$5 million, an appropriate fee will be determined by the AAA.

When no amount can be stated at the time of filing, the administrative fee is \$650, subject to adjustment in accordance with the above schedule as soon as an amount can be disclosed.

If there are more than two parties represented in the arbitration, an additional ten percent of the initiating fee will be due for each additional represented party.

When all oral hearings are waived, this Administrative Fee Schedule shall apply.

## Refund Schedule

If the AAA is notified that a case has been settled or withdrawn before a list of Arbitrators has been sent out, all the fee in excess of \$250 will be refunded.

If the AAA is notified that a case has been settled or withdrawn thereafter but before the due date for the return of the first list, two-thirds of the fee in excess of \$250 will be refunded.

If the AAA is notified that a case is settled or withdrawn thereafter but at least 48 hours before the date and time set for the first hearing, one-third of the fee in excess of \$250 will be refunded.

## Other Service Charges

\$50 payable by a party causing an adjournment of any scheduled hearing;

\$100 payable by a party causing a second or additional adjournment of any scheduled hearing;

\$50 payable by each party for each hearing after the first hearing which is either clerked by the AAA or held in a hearing room provided by the AAA.