

**PUBLICATIONS**

## The Benefit of Whose Bargain? Courts Grapple with Administrative Expense Priority for Postpetition Withdrawal Liability Claims

**September 2012**

Two circuit level court decisions have directly addressed whether the postpetition portion of the liability incurred by a debtor for withdrawing from a multi employer benefit plan (i.e., withdrawal liability) is entitled in a bankruptcy case to payment as an administrative expense with priority over other general unsecured creditors. In *United Mine Workers of America 1974 Plan and Trust v. Lexington Coal Co., LLC (In re HNRC Dissolution Co.)*, the Sixth Circuit Bankruptcy Appellate Panel held that the postpetition portion of the debtors' withdrawal liability was not entitled to administrative expense priority because it did not provide a direct and substantial benefit to the debtors' estates. More recently, however, in *In re Marcal Paper Mills, Inc.*, the Third Circuit Court of Appeals held that the postpetition portion of withdrawal liability is entitled to payment as an administrative expense of the bankruptcy estate because the liability was incurred in return for and on account of the employee's postpetition services.

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