

## Brian A. Pepicelli

**Former federal law clerk specializing in ERISA withdrawal liability litigation.**

Brian is a key member of the firm's ERISA withdrawal liability team, which represents multiemployer pension funds in withdrawal liability cases in arbitrations and district courts throughout the United States.

Before joining Tucker Arensberg, Brian was a judicial law clerk to two federal judges in Pittsburgh: the Honorable Nora Barry Fisher, U.S. District Judge (Sept. 2017 to May 2018), and the Honorable Cynthia Reed Eddy, Chief U.S. Magistrate Judge (Dec. 2013 to Sept. 2017). During his time as a federal law clerk, Brian worked "behind the scenes" on cases at all stages of the litigation. He has drafted dozens of judicial opinions involving a myriad of substantive and procedural issues. In that process, he not only developed strong research and writing skills but also learned which types of arguments judges find most persuasive.

Brian now uses that invaluable experience to develop case strategies and craft legal arguments in withdrawal liability disputes, many of which are worth millions of dollars and implicate complicated issues of first impression. He has litigated a wide range of withdrawal liability issues, including the following:

- The Building and Construction Industry Exemption
- Transactions to evade or avoid withdrawal liability
- Successor liability
- Partial withdrawals (70% declines, bargaining outs, facility takeouts)
- Calculation of withdrawal liability
- Controlled group liability
- Interplay between ERISA and Bankruptcy Code
- Enforcement of "pay now, dispute later" rule

In addition to withdrawal liability matters, Brian helps the firm's multiemployer trust fund clients collect delinquent contributions from active employers.

### Representative Experience

- Actions to confirm a \$79 million arbitration award and recover an additional \$18 million in statutory damages; district court and Third Circuit upheld the arbitration award against the former controlled group members of a withdrawn employer who violated ERISA's "evade or avoid" provision by engaging in a complex financial transaction that was designed in principal part to insulate themselves from the employer's projected withdrawal liability; district court and Third Circuit also ordered the former controlled group members to pay an additional \$18 million in statutory damages for failing to make interim payments to the fund after being notified of the fund's claim. *Steelworkers Pension Trust v. Renco Group, Inc.*, Fed. App'x, 2021 WL 3788945 (3d Cir. Aug. 26, 2021).
- Discovery dispute in "evade or avoid" case involving the common interest privilege; district court agreed with the fund that the privilege did not apply, compelled the documents sought by the fund, denied reconsideration, refused to certify its order to the Ninth Circuit for interlocutory review, and awarded the fund all reasonable fees and expenses incurred in connection with the motions practice. *Miller v. Boilermaker-Blacksmith Nat'l Pension Trust*, 2021 WL



### SHAREHOLDER

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2935056 (E.D. Wash. Apr. 16, 2021), reconsideration denied by, 2021 WL 2934590 (E.D. Wash. Jul. 12, 2021); 2021 WL 6246617 (E.D. Wash. Sept. 14, 2021).

- Action to appoint arbitrator to preside over a \$205 million withdrawal liability dispute; federal court refused to select any of the arbitrators proposed by the company (all former judges with no prior withdrawal liability experience and whom the company had ex parte interviews); court instead chose a traditional labor and pension arbitrator proposed by the fund notwithstanding the company's generalized and speculative claims of bias. *General Electric Co. v. Boilermaker-Blacksmith Nat'l Pension Trust*, 2020 WL 2113209 (D. Kan. May 4, 2020).
- Action to compel interim payments pending arbitration; district court held as a matter of first impression that there is no equitable exception to the "pay now, dispute later" rule and ordered the employer to make payments pending arbitration regardless of whether doing so would cause the employer irreparable injury. *Boilermaker-Blacksmith National Pension Trust v. PSF Industries, Inc.*, 424 F. Supp. 3d 1103 (D. Kan. 2019).

## Presentations & Publications

- "Worth a Closer Look: The Building and Construction Industry Withdrawal Liability Exemption," Benefits Magazine, December 2020 Issue - Co-authored with Neil Gregorio, Esq.
- "Withdrawal Liability," Tucker Arensberg's Labor & Employment Update, Sept. 2019.
- "View from the Other Side of the Bench: Practical Tips for Effective Employment Law Practices in the Western District of Pennsylvania," PBI Employment Law Institute CLE, November 2017.

## Practice Areas

- Commercial Litigation
- ERISA Litigation

## Awards + Recognition

*Best Lawyers in America® Ones to Watch*, Commercial Litigation and Employee Benefits (ERISA) Law

## Professional + Community Affiliations

- Allegheny County Bar Association, Young Lawyers Division
- Allegheny County Bar Association CLE Committee, Member of Civil & Constitutional Subcommittees, A View from the Bench: The Third Circuit Judges Present Notable Cases of the Year

## Education

- Duquesne University School of Law (JD, *summa cum laude*, 2013)
  - Senior Staff Editor for the *Law Review*
  - CALI Excellence for the Future Awards in Trial Advocacy, Criminal Process and Core Competencies II
- Pennsylvania State University (BS, 2010)
  - Smeal College of Business

## Bar Admissions

- Pennsylvania

## Court Admissions

- U.S. Court of Appeals for the Tenth Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. District Court for the Western District of Pennsylvania