

# Ninth Circuit Deepens Circuit Split Over Whether Delinquent Contributions Are Plan Assets



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The Ninth Circuit held that employer contributions due to a Taft Hartley fund are not plan assets until they are actually paid to the fund, irrespective of whether the plan document defines plan assets to include unpaid employer contributions. As a result, a fund could not hold a contributing employer's owner and treasurer personally liable for breach of fiduciary duty for failure to pay the contributions. (The employer was found liable for delinquent contributions under ERISA § 515.) The Ninth Circuit's decision deepens a split between, on the one hand, the Sixth and Tenth Circuits, which have similarly rejected such claims, and, on the other hand, the Second and Eleventh Circuits, which have recognized that unpaid contributions may be plan assets where the plan document defines plan assets as including unpaid employer contributions. The case is *Glazing Health and Welfare Fund v. Lamek*, No. 16-16155, 2018 WL 1403579 (9th Cir. Mar. 21, 2018).

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