



MARTONE LEGAL

Integrity. Mastery. Purpose.®

Andrew J. Martone
Direct Dial 314.862.0608
andym@martonelegal.com

Ninth Circuit adopts broad definition of "Building and Construction Industry" for exemption to withdrawal liability

© 2025 by Andrew J. Martone and Martone Legal, L.L.C.

Construction industry employers secured a significant win when the Ninth Circuit ruled that the "building and construction industry" exemption to withdrawal liability extends beyond the erection of new structures and improvements to real property. In *Walker Specialty Construction, Inc. v. Board of Trustees of the Construction Industry and Laborers Joint Pension Trust*, the court held that asbestos abatement work qualifies for the construction industry exemption because it involves structural alterations and repairs that are essential to a building's usability. This decision is particularly important because the Ninth Circuit is not traditionally considered to be an employer-friendly court.

By way of background, ERISA imposes substantial liability on employers that withdraw from multiemployer (union) pension plans that have significant unfunded vested benefits but exempts employers in the building and construction industry that can meet the statutory tests. This exemption created by Congress is due to the transitory nature of construction work – when one construction employer leaves the market or completes a project, its workers typically find employment with other contributing employers.

Walker Specialty performed asbestos abatement and ceased contributing to a union pension plan in 2019. The plan's trustees assessed Walker nearly \$2.84 million in withdrawal liability, which Walker contested by claiming that the building and construction industry exemption applied to its withdrawal and that it did not owe withdrawal liability as a result. The plan disagreed, asserting that asbestos abatement did not fall within the definition of "building and construction industry" because the work did not include actually erecting a structure.

The Ninth Circuit agreed with Walker and rejected the fund's argument, noting that the National Labor Relations Board ("NLRB") interpreted the term "building and construction industry" broadly to include not only the erection of new structures but also maintenance, repair, alterations, and demolition work. The court held that because Congress intended to incorporate the NLRB's broad definition of "building and construction" into the withdrawal liability statute for purposes of applying the construction industry exemption, asbestos abatement work should be considered "building and construction" work for withdrawal liability purposes.

This Ninth Circuit decision provides clear authority that renovation, repair, maintenance, demolition, and remediation work is considered building and construction work for withdrawal liability purposes. The Second and Eighth Circuits have taken the same approach, creating consistent law across multiple jurisdictions.

The Association of General Contractors of America supported the *Walker* case by filing an amicus curiae brief with the court. Andy Martone represented the AGC of America in this case.

A copy of this decision can be found [here](#).