CASE COMMENT ON *CENTRAL STATES V. LAGUNA DAIRY*

RICHARD NEHRBOSS

I. BACKGROUND

Under ERISA, multiple employers can contribute to the same collectively bargained pension plan. These are called, unsurprisingly, "multiemployer plans."[1] But this arrangement has a lurking problem: Plans can incur significant liabilities as employees earn benefits that must be paid out in the future, and employers could try to withdraw from their plans to avoid being on the hook.[2] To address that, the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) amended ERISA to make a withdrawing employer liable for its portion of the plan's unfunded obligations.[3] The MPPAA also imposes joint and several liability on other entities that share common control with the withdrawing employer.[4]

Determining that "withdrawal liability" can be difficult.[5] So the MPPAA choreographs steps to arrive at a figure, as codified in 29 U.S.C. §§ 1399, 1401. First, the plan sponsor (referred to as the "fund") must notify the employer of its liability assessment and demand payment per § 1399(b)(1). Then the employer has ninety days to ask the fund to review that assessment under § 1399(b)(2)(A). After review, the fund must respond with its decision, the basis for that decision, and the reason for any assessment revision under § 1399(b)(2)(B). If they disagree on liability, the parties may also arbitrate under § 1401(a)(1), which contains different timelines for starting arbitration based on where the parties are in the liability-determination process. Finally, the statute provides two routes to enforce the ultimate liability figure: If there is a final arbitration award, either party may bring suit in federal court within thirty days of the award being issued under § 1401(b)(2). But if neither party "initiate[s]" arbitration within an allotted window, "the amounts demanded by the plan sponsor" become due and enforceable in federal court under § 1401(b)(1).[6] Taken together, though, this scheme leaves a potential gap—parties could agree to

---

[1] 29 C.F.R. § 2510.3-37 (2025).

[2] *See* Connors v. Ryan's Coal Co., 923 F.2d 1461, 1463 (11th Cir. 1991).

[3] Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, 94 Stat. 1208 (codified as amended in scattered sections of the U.S. Code).

[4] *See id.* § 302(a), 94 Stat. 1291–92 (codified as amended in 29 U.S.C. § 1301(b)(1)). That means, for example, that if a subsidiary company withdraws from its plan but cannot meet its obligations, the parent company and its other subsidiaries are also liable.

[5] *See* 29 U.S.C. §§ 1381, 1391.

[6] *Id.* § 1401(b)(1).

a settlement after arbitration begins but before the arbitrator enters an award. That would not clearly authorize either of § 1401(b)'s causes of action.

II. THE THIRD CIRCUIT'S OPINION IN *CENTRAL STATES V. LAGUNA DAIRY*

The Third Circuit addressed this gap in *Central States, Southeast & Southwest Areas Pension Fund v. Laguna Dairy, S. de R.L. de C.V.*[7] In November 2014, two entities, Borden Dairy Company of Ohio, LLC and Borden Transport Company of Ohio, LLC (referred to collectively as "Borden"), withdrew from their multiemployer plan (the "Fund").[8] The Fund sent Borden a withdrawal liability assessment, and Borden contested the Fund's assessment under § 1399(b)(2)(A).[9] After failing to come to an agreement, the parties began arbitration.[10] But before the arbitration finished, they entered into a settlement, with Borden agreeing to make reduced monthly payments of $183,225 for twenty years, dismiss the ongoing arbitration, and waive any right of review or future arbitration.[11] Then, after making a few years' worth of payments, Borden petitioned for bankruptcy.[12] The Fund failed to satisfy the outstanding liability from the bankruptcy and sued for recovery from the other members of Borden's control group (the "Related Employers").[13]

The District Court for the District of Delaware granted the Related Employers' Rule 12(b)(6) motion and dismissed the case.[14] It found that the Fund did not have a statutory cause of action under either § 1401(b)(1) or § 1401(b)(2).[15] Borden had initiated an arbitration proceeding, so § 1401(b)(1)—which allows suit if "no arbitration proceeding has been initiated"—was unavailable.[16] And the parties settled before a final arbitration award was entered, so the proceeding had not "complet[ed] . . . in favor of one of the parties," as required by § 1401(b)(2).[17] The court also rejected the Fund's argument that the settlement agreement itself could provide the basis for a suit under § 1401(b)(1).[18] Because the settlement did not include a reason for the new liability assessment, it could not meet § 1399(b)(2)(B)'s formal notice requirement.[19] Without

[7] 132 F.4th 672 (3d Cir. 2025).
[8] *Id.* at 675–76. The opinion refers to the plan sponsor and the plan itself interchangeably.
[9] *Id.* at 676.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.* at 676–77.
[14] Cent. States, Se. & Sw. Areas Pension Fund v. Laguna Dairy, No. 22-cv-1135, 2023 WL 8005254, at *3 (D. Del. Nov. 17, 2023), *rev'd*, 132 F.4th 672 (3d Cir. 2025).
[15] *Id.*
[16] *Id.* (quoting 29 U.S.C. § 1401(b)(1)).
[17] *Id.* (quoting 29 U.S.C. § 1401(b)(2)).
[18] *Id.* at *4.
[19] *Id*. The district court also found that the settlement did not qualify as a "schedule set forth by the plan sponsor" under § 1401(b)(1) because it was only a private agreement between the Fund and Borden. *Id.* (quoting 29 U.S.C. § 1401(b)(1)).

that notice, the court suggested that § 1401(b)(1) was unavailable as it would have been impossible to initiate an arbitration on the assessment.[20]

The Third Circuit reversed.[21] Writing for the panel over a dissent by Judge Bibas, Judge Ambro[22] held that the Fund had a cause of action under § 1401(b)(1).[23] In a nutshell, the opinion contended that the settlement agreement itself qualified as a revision of the liability assessment, and the employers had not filed for arbitration on *that* assessment.[24] To the majority, those circumstances met § 1401(b)(1)'s requirements to allow suit in federal court.[25] But to reach that result, the opinion had to clear a few hurdles.

The majority first needed to establish that the Fund had the power to revise its assessment through a settlement agreement. As support, the opinion pointed to sister circuit precedent showing that "the purpose of the MPPAA is to ensure the solvency of multiemployer plans."[26] For instance, the Seventh Circuit in *National Shopmen Pension Fund v. DISA Industries, Inc.* had rejected the argument that a fund could only revise its liability assessment in response to an employer challenge or via arbitration or court proceedings.[27] *DISA* emphasized the MPPAA's "strong preference" for collecting "withdrawal liability in a manner that protects the solvency of multiemployer plans."[28] The Fourth Circuit in *Masters, Mates & Pilots Pension Plan v. USX Corp.* used similar reasoning to find that a fund could revise its assessment on its own even after arbitration started.[29] Despite focusing on the statute's purpose, Judge Ambro also contended that the settlement's text meant that it revised the assessment within the statutory scheme—the agreement referenced sections of the MPPAA and characterized the settlement as revising the Fund's first liability assessment.[30]

But what limits are there on a fund's ability to revise a liability assessment? The majority argued that revision was permissible "so long as the employer is not prejudiced and the revision was made in good faith."[31] And to justify this broad power, the opinion highlighted the Pension Benefit Guaranty Corporation's (PBGC's)[32] statements that "plan fiduciaries have general authority to compromise disputed claims" and that "[r]ules which allow the trustees of a

---

[20] *Id.* Separately, the district court found that the Fund had no cause of action under an entirely different provision, 29 U.S.C. § 1451(a)(1). *Id.* at *4–6.

[21] Cent. States, Se. & Sw. Areas Pension Fund v. Laguna Dairy, S. de R.L. de C.V., 132 F.4th 672, 675 (3d Cir. 2025).

[22] Judge Krause joined the majority opinion. *See id.* at 674, 683.

[23] *Id.* at 675.

[24] *Id.* at 675, 678.

[25] *Id.*

[26] *Id.* at 678.

[27] *Id.* at 677 (citing Nat'l Shopmen Pension Fund v. DISA Indus., Inc., 653 F.3d 573, 579 (7th Cir. 2011)).

[28] *Id.* (quoting *DISA*, 653 F.3d at 580).

[29] *Id.* at 677–78 (citing Masters, Mates & Pilots Pension Plan v. USX Corp., 900 F.2d 727, 735–36 (4th Cir. 1990)).

[30] *Id.* at 678.

[31] *Id.* at 679 (first citing *DISA*, 653 F.3d at 580; and then citing *Masters*, 900 F.2d at 736).

[32] The PBGC is a federal government corporation that insures ERISA pension plans. *See* 29 U.S.C. § 1302; Davis v. Pension Benefit Guar. Corp., 571 F.3d 1288, 1290 (D.C. Cir. 2009).

multiemployer pension plan to modify and lower a . . . withdrawal liability payment schedule are consistent with ERISA."[33] To the majority, this reading still conformed to the MPPAA's timelines because a revision "starts the clock anew" for when an employer needs to ask for review of the assessment (called a "comment") or seek arbitration.[34] In this case, the Related Employers were not prejudiced by the settlement agreement because they had a chance to challenge that assessment, and the majority found no evidence the Fund had acted in bad faith.[35]

The opinion then considered whether the settlement agreement had met § 1399(b)'s procedural requirements for liability assessments. While it agreed that the Fund had not complied with § 1399(b)(2)(B)'s more stringent "notice-and-demand criteria," the opinion argued that provision was inapplicable.[36] Section 1399(b)(1) applied instead, the majority held, because it concerned "liability assessment[s] to which the Related Employers did not object or seek arbitration."[37] And unlike § 1399(b)(2)(B), this section did not require the Fund to give a reason for the revision, meaning the settlement agreement sufficed.[38] Ultimately, the majority "dr[e]w the line" between those statutory provisions based on whether or not an employer has commented on the assessment: Section 1399(b)(1) "applies when an employer chooses not to comment on an assessment . . . whereas (b)(2)(B) applies when an employer comments on an assessment."[39] Judge Ambro stressed that such a reading would not make § 1399(b)(2)(B) superfluous because those requirements would still apply following an employer's comment.[40] Because the settlement met § 1399(b)(1)'s requirements, the majority found it was a valid revision; and because the employers had not started arbitration based on that settlement, it supported a cause of action under § 1401(b)(1).[41]

Finally, the majority rebutted alternative interpretations. If liability settlements could not be enforced in federal court, the majority asserted, they would be unenforceable "traps."[42] Indeed, the majority argued that would mean parties could not obtain any enforceable relief once they started arbitration unless there was an award.[43] The opinion accordingly rejected potential escapes from those "traps." Even if the parties could enforce settlements under state law, as

---

[33] *Cent. States*, 132 F.4th at 679–80 (first quoting Pension Benefit Guar. Corp., Letter No. 87-12 (Oct. 27, 1987); and then quoting Pension Benefit Guar. Corp., Letter No. 91-6 (Aug. 19, 1991)).

[34] *Id.* at 681.

[35] *Id.* at 678–79 (citing 29 U.S.C. §§ 1399(b)(2), 1401(a)(1)). In contrast to the district court, the majority also held that the settlement met 29 U.S.C. § 1401(b)(1)'s requirement of being "set forth by the plan sponsor" because the plan sponsor was still involved in setting the payment schedule. *Compare Cent. States*, 132 F.4th at 680, *with* Cent. States, Se. & Sw. Areas Pension Fund v. Laguna Dairy, No. 22-cv-1135, 2023 WL 8005254, at *4 (D. Del. Nov. 17, 2023), *rev'd*, 132 F.4th 672 (3d Cir. 2025).

[36] *Cent. States*, 132 F.4th at 681.

[37] *Id.*

[38] *Id.* at 681–82.

[39] *Id.* at 682.

[40] *Id.*

[41] *Id.* at 675, 678–82.

[42] *Id.* at 682.

[43] *Id.*

suggested by the dissent, "remedies in another court system under another body of law have no bearing" on this inquiry for federal courts.[44] And to the majority, the idea that the arbitrator could enter the settlement as a final award to then allow a § 1401(b)(2) suit was a mere "suggestion of formalism."[45] Judge Ambro concluded that all this would violate the MPPAA's purpose of ensuring multiemployer plans remain solvent.[46]

Judge Bibas dissented.[47] He would have granted the motion to dismiss and held that the Fund lacked a cause of action to enforce the settlement.[48] On the dissent's reading, the statute provided two mutually exclusive paths: (1) arbitrate and enforce a final award or (2) enforce an assessment without arbitration.[49] The parties "went astray" when they attempted to jump from one path to another—by starting arbitration but then settling and suing to enforce that agreement—rather than seeking a final arbitration award.[50] Even if there were a gap, Judge Bibas noted that it would not be a court's "job to fill it in to build a different statute."[51]

On the other hand, the dissent highlighted problems with the majority's interpretation. Allowing unbounded revisions would preclude "certainty and finality" by creating a "potentially infinite loop" where a fund could continually revise its assessment and make the employer restart the liability-determination process.[52] That would also frustrate § 1401(a)(1)'s timelines for when parties can trigger arbitration.[53] In a similar vein, Judge Bibas charged the majority with inventing its good-faith requirement, thereby "inserting words Congress chose to omit."[54] Instead, the dissent presented the "fixes" discussed above—the parties could rely on state law remedies or simply request that the arbitrator enter the settlement as an award.[55] Those alternatives ensured that settlements remained enforceable, even after arbitration began.

Turning to precedent, Judge Bibas argued that the majority's cases employed "outdated purposivist reasoning."[56] The Seventh Circuit in *DISA* had found the statute "silent" on whether a fund had the power to revise its liability assessment and so relied on the PBGC's reading of the

---

[44] *Id.* at 683.

[45] *Id.* Judge Ambro also rejected the Related Employers' arguments that they were not bound by Borden's settlement agreement and thus free to pursue arbitration. While the entities were indeed not parties to the arbitration agreement, "[t]hey slept on their rights" by failing to petition for arbitration within the statutorily defined period. *Id.* at 678–79.

[46] *Id.* at 682.

[47] *Id.* at 683 (Bibas, J., dissenting).

[48] *Id.* at 683–84.

[49] *Id.* at 684–85.

[50] *Id.* at 686.

[51] *Id.* at 687.

[52] *Id.* at 687–88.

[53] *Id.* at 687.

[54] *Id.* at 688 (quoting Lomax v. Ortiz-Marquez, 140 S. Ct. 1721, 1725 (2020)).

[55] *Id.*

[56] *Id.*

statute[57]—an approach out of step with *Loper Bright*.[58] The Fourth Circuit in *Masters* similarly ignored the statute's text after finding it "silent" on the revision question.[59] Both cases then fell back on the MPPAA's "motivating purpose[]" of ensuring employers pay withdrawal liability.[60] To Judge Bibas, such an approach risks realizing Blackstone's fear of "destroy[ing] all law, and leav[ing] the decision of every question entirely in the breast of the judge."[61]

III. FLAWS IN *CENTRAL STATES*'S ANALYSIS

Like its sister circuits, the panel in *Central States* elevated its sense of the MPPAA's purpose over the statute's own text, and it made a few errors along the way. First, the opinion gave funds a broad power to revise their assessments without meeting § 1399(b)(2)(B)'s notice requirements. Then, it stretched the meaning of § 1401(b)(1) to allow suit even after arbitration proceedings have begun. And to justify this, the majority catastrophized how the statute would operate as it is written. But when faced with functional concerns stemming from its own reading, the panel invited uncertainty by relying on an amorphous good-faith and no-prejudice standard. Rather than rewrite the statute, the court should have looked to the guardrails that Congress already included in the MPPAA.

As a threshold matter, the majority erred in finding that a fund can revise an assessment at its discretion under § 1399(b)(1) instead of in specific circumstances under § 1399(b)(2)(B). Those sections make this clear through contrasting language. An assessment under § 1399(b)(1) must be given "[a]s soon as practicable after an employer's complete or partial withdrawal."[62] That phrase fits when a fund takes a first crack at assessing a withdrawing employer's liability. But an assessment *revision* under § 1399(b)(1) could hardly come "[a]s soon as practicable" because it would definitionally happen later than the first assessment.[63] And that section includes no other verbiage alluding to a "review" or "revision." This suggests that § 1399(b)(1) serves as an "original assessment," as *Masters* implicitly recognizes.[64] By contrast, § 1399(b)(2)(B) explicitly contemplates revision by referring to an assessment "[a]fter a reasonable review" of an employer's comment and by requiring the fund to provide "the reason for any change" of the assessment.[65] In that light, §§ 1399(b)(1) and 1399(b)(2)(B) bookend the steps leading to arbitration or suit. Section 1399(b)(1) tells funds to provide the initial liability assessment, while

[57] *Id.* (quoting Nat'l Shopmen Pension Fund v. DISA Indus., Inc., 653 F.3d 573, 580 (7th Cir. 2011)).
[58] *Id.* (citing Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2273 (2024)).
[59] *Id.* (quoting Masters, Mates & Pilots Pension Plan v. USX Corp., 900 F.2d 727, 735 (4th Cir. 1990)).
[60] *Id.* (first citing *DISA*, 653 F.3d at 580; and then quoting *Masters*, 900 F.2d at 735–36).
[61] *Id.* at 689 (alterations in original) (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES *62).
[62] 29 U.S.C. § 1399(b)(1).
[63] *See id.*
[64] *Masters*, 900 F.2d at 735.
[65] 29 U.S.C. § 1399(b)(2)(B), (B)(iii).

§ 1399(b)(2)(B) lets funds revise their assessments when an employer asks for review of its liability.

And this distinction matters. That is because the statute is not entirely "silent" on a fund's power to revise an assessment on its own outside of § 1399(b)(2)(B).[66] While it does not expressly forbid such revisions, the MPPAA gives assessments legal force by pairing them with different process requirements. To start, a fund's assessments are not just suggestions; they are "presumed correct unless" the contesting party shows the assessments are "unreasonable or clearly erroneous."[67] And specific types of assessments have their own force. For instance, a § 1399(b)(1) assessment makes a fund's demand "payable . . . no later than 60 days after the date of" that assessment, while a § 1399(b)(2)(B) revision is one of two potential triggers that allow either party to start arbitration.[68] These provisions also come with specific procedures. A revision under § 1399(b)(2)(B) requires funds to provide designated notice-and-demand information—which an employer could use in an arbitration. And the original assessment under § 1399(b)(1) must be given "as soon as practicable"—which could ensure that withdrawal payments start quickly to keep multiemployer plans liquid.[69] Allowing a fund to revise its assessments without adhering to § 1399(b)'s careful sequence would give legal significance to the fund's assessment without the requisite process.

The majority's approach tries to distinguish between §§ 1399(b)(1) and 1399(b)(2)(B) based only on whether a withdrawing employer has "comment[ed]" on the liability assessment.[70] But as applied in *Central States*, that reasoning begs the question. The parties reached a settlement only after Borden (the withdrawing employer) had sought review of the Fund's initial assessment under § 1399(b)(2)(A) and instituted an arbitration proceeding.[71] Using the majority's terms, Borden had commented on the assessment.[72] So any revision should have been controlled by § 1399(b)(2)(B). Yet the majority implies that, because the settlement counted as a § 1399(b)(1) revision which restarted the liability-determination process, the settlement effectively wiped away the employer's comment on its first § 1399(b)(1) assessment, such that the employer never commented at all. Of course, that assumes the very classification—as a § 1399(b)(1) assessment—that the majority is trying to prove. To be sure, if the settlement here were given pursuant to § 1399(b)(1), then Borden's failure to comment on it under § 1399(b)(2)(A) would mean the Fund would not be required to provide a § 1399(b)(2)(B) assessment. But that *subsequent* comment (or lack thereof) does not affect the underlying classification of the settlement. In short, whether

[66] *Contra* Nat'l Shopmen Pension Fund v. DISA Indus., Inc., 653 F.3d 573, 580 (7th Cir. 2011); *Masters*, 900 F.2d at 735.
[67] 29 U.S.C. § 1401(a)(3)(A).
[68] *Id.* §§ 1399(c)(2), 1401(a)(1)(A).
[69] *Id.* § 1399(b)(1).
[70] Cent. States, Se. & Sw. Areas Pension Fund v. Laguna Dairy, S. de R.L. de C.V., 132 F.4th 672, 682 (3d Cir. 2025).
[71] *Id.* at 676.
[72] *Id.* at 682.

§ 1399(b)(2)(B) is triggered does depend on an employer's comment, but it depends on whether the employer commented before the assessment is given, not after.

What's more, the majority's reading creates serious superfluity between those two provisions. If the facts of *Central States* failed to trigger § 1399(b)(2)(B), then a fund would never be predictably required to meet that standard. Whenever a fund revises a liability assessment after an employer's comment—just as the Fund purported to do with the settlement agreement—it could simply classify it as a "new" liability assessment, governed by § 1399(b)(1).

Pointing to the majority's good-faith and no-prejudice requirement to rescue § 1399(b)(2)(B) from superfluity is not much help.[73] Under the majority's interpretation, a fund could only respond to an employer's request for review by classifying a revised assessment as a § 1399(b)(1) assessment if it would be in good faith and would not cause prejudice to the withdrawing employer. Otherwise, the fund must fulfill § 1399(b)(2)(B)'s disclosure requirements. That qualifier would presumably give effect to § 1399(b)(2)(B) in some circumstances. But those circumstances remain ambiguous. When, for example, would it prejudice an employer not to be given the reason for a revised liability assessment?[74] More importantly, this stretches the statutory text to a breaking point by functionally inserting words directly into § 1399(b)(2)(B)—not just into a judicially-created revision power. Although Congress commanded that "the plan sponsor shall notify the employer of" § 1399(b)(2)(B)'s disclosure requirements after reviewing an employer's comment, this would rewrite the statute to require that "the plan sponsor shall notify the employer of" those disclosures *unless* failing to do so would be in good faith and would not prejudice the employer.[75] So rather than patch up the majority's interpretation, this reasoning leaves funds with broad latitude to revise assessments bounded only by uncertain constraints.

Even if a fund could revise an assessment at any time under § 1399(b)(1), the majority failed to grapple with another fundamental question: Would that revision "reset" the sequence such that any initiated arbitration proceeding no longer counts for the purposes of triggering § 1401(b)(1)? The statute's text suggests no. Section 1401(b)(1) provides a cause of action "[i]f no arbitration proceeding has been initiated pursuant to subsection (a)."[76] Congress declined to include a qualifier that, for example, the "arbitration must be based on the fund's current, not unrevised, assessment." So in cases like *Central States*, where a fund purportedly revises its assessment through a settlement, that does not obviate the fact that arbitration has still been initiated "pursuant to subsection (a)"—even if arbitration started when the fund's original assessment included a different liability figure.

[73] *See id.* at 679.
[74] *See* 29 U.S.C. § 1399(b)(2)(B)(iii).
[75] *See id.* § 1399(b)(2)(B).
[76] *Id.* § 1401(b)(1).

The statute's use of the phrase "has been initiated" supports this reading.[77] Proceedings have been "initiated" when they start, regardless of whether they remain ongoing.[78] And arbitration undeniably started in *Central States*, even if it terminated later.[79] To resist this conclusion, a fund could point to the provision's present perfect construction ("has been") to try to read in a requirement that the initiated proceeding be continuing to preclude § 1401(b)(1). But using that tense does not always require the underlying action to be ongoing. For instance, a hypothetical provision could allow suit only if an arbitration "has been concluded." Instead, this construction describes the *status* of initiation as ongoing—an arbitration has still been "initiated" even after a termination, just as an arbitration remains "concluded" after it ends. What's more, requiring arbitration to be ongoing could defeat the statutory scheme.[80] If an arbitrator does enter a final award, the arbitration may finish before § 1401(a)(1)'s deadline to begin arbitration has ended. Then § 1401(b)(1)—allowing suit if no arbitration "has been initiated" under § 1401(a)(1)—would be available given that arbitration would not be ongoing.[81] The fund could thus sue to enforce "the amounts demanded" by the fund's original § 1399(b)(1) assessment, notwithstanding the arbitration award.[82] Such a paradoxical outcome could undermine the arbitration and leave a withdrawing employer with no way to challenge the fund's original assessment.

The majority's out-of-circuit precedent does support its reading, but those cases are not squarely on point. They mainly considered whether a fund can revise its liability assessment, not whether that revision means arbitration never commenced for purposes of § 1401(b)(1). In *DISA*, for instance, the withdrawing employer only filed for arbitration *after* the fund had revised its liability assessment upwards.[83] The employer then withdrew its arbitration demand after a district court found that it was not required to pay the higher assessment while arbitration was pending.[84] And in *Masters*, the fund did revise its liability assessment after the employer requested arbitration, but the arbitrator then entered an award.[85] So despite reasoning in that direction, neither case held that revising a liability assessment after arbitration begins can allow a § 1401(b)(1) suit.

---

[77] *Id.*

[78] *See Initiate*, BLACK'S LAW DICTIONARY (5th ed. 1979) ("Commence; start; originate; introduce; inchoate.").

[79] Cent. States, Se. & Sw. Areas Pension Fund v. Laguna Dairy, S. de R.L. de C.V., 132 F.4th 672, 676 (3d Cir. 2025).

[80] *Cf.* Pugin v. Garland, 143 S. Ct. 1833, 1841 (2023) ("We should not lightly conclude that Congress enacted a self-defeating statute." (quoting Quarles v. United States, 139 S. Ct. 1872, 1879 (2019))).

[81] This assumes, of course, that the parties did not start new arbitration proceedings before the § 1401(a)(1) window closed—highly unlikely if the original proceeding ended with entry of a final award. Moreover, entry of an award would authorize a § 1401(b)(2) action. But it is unclear how § 1401(b)(1) would interact with § 1401(b)(2) in this counterfactual.

[82] 29 U.S.C. § 1401(b)(1).

[83] Nat'l Shopmen Pension Fund v. DISA Indus., Inc., 653 F.3d 573, 577 (7th Cir. 2011).

[84] *Id.* The appellate court did reason that a "revision resets the statutory time limitations governing when an employer may challenge the assessment." *Id.* at 581. And it went on to imply that a § 1401(b)(1) suit was available following DISA's withdrawal of its demand for arbitration and failure to make payments. *Id.* at 582.

[85] Masters, Mates & Pilots Pension Plan v. USX Corp., 900 F.2d 727, 729–30 (4th Cir. 1990).

If revision did restart the statute's timelines, a good-faith and no-prejudice requirement seems to be a thin reed to allay the dissent's concern about an endless loop. Funds could conceivably prevent arbitration indefinitely by revising their assessments under § 1399(b)(1) and avoiding the two possible triggers that allow either party to start arbitration: (1) a fund's revised assessment under § 1399(b)(2)(B) and (2) an employer's comment under § 1399(b)(2)(A).[86] It is easy to see how that could work. A fund could always classify its new assessment as a § 1399(b)(1)—not § 1399(b)(2)(B)—revision, so it would never trigger the first option for arbitration. Then, under the majority's logic, a revised § 1399(b)(1) assessment would wipe away the employer's past § 1399(b)(2)(A) comment. And an employer's comment only permits initiating arbitration within a sixty-day window that begins 120 days after the comment.[87] So as long as the fund kept revising its assessment before that sixty-day window opened, the revisions would continue to restart the clock such that the employer could never rely on the second option for arbitration. As a result, the arbitration scheme would break down unless the fund's revision showed bad faith or caused prejudice, which the employer has no clear way to prove.

By contrast, the *Central States* majority unfairly rejected Judge Bibas's solutions to its "settlement trap."[88] First, consider Judge Bibas's observation that a fund could rely on its contractual rights to enforce a settlement.[89] While state contract law would indeed provide "remedies in another court system under another body of law" as the majority worries,[90] considering state remedies is fundamental to articulating the scope of federal remedies in our federal system.[91] And it should be necessary where, as here, a federal court would functionally be implying a cause of action not contemplated by the statute's text.[92] Moreover, allowing settlement enforcement only through state law for an underlying federal claim is not novel.[93] As the Supreme Court observed in *Kokkonen v. Guardian Life Insurance Co. of America*, enforcement of civil settlements based on federal claims is generally "for state courts, unless there is some independent basis for federal jurisdiction."[94] Here, there is not. By agreeing to a settlement, the

---

[86] 29 U.S.C. § 1401(a)(1). Arbitration may also be started within 180 days after a § 1399(b)(1) assessment, but in that case the fund and employer must *jointly* initiate the proceeding. *Id.*

[87] *Id.*

[88] Cent. States, Se. & Sw. Areas Pension Fund v. Laguna Dairy, S. de R.L. de C.V., 132 F.4th 672, 682–83 (3d Cir. 2025).

[89] *Id.* at 688 (Bibas, J., dissenting).

[90] *Id.* at 683 (majority opinion).

[91] *See, e.g.*, Younger v. Harris, 401 U.S. 37, 43–44 (1971); DeVillier v. Texas, 144 S. Ct. 938, 944 (2024).

[92] *See* Mont.-Dakota Utils. Co. v. Nw. Pub. Serv. Co., 341 U.S. 246, 252 (1951) (noting the Court would decline to imply a cause of action for fraud under the Power Act because a remedy would be available at common law); Minneci v. Pollard, 565 U.S. 118, 127 (2012) (collecting cases and noting that "it is consequently unsurprising that several cases have considered the adequacy or inadequacy of state-law remedies when determining whether to imply a *Bivens* remedy"); Simpson v. Cleland, 640 F.2d 1354, 1360 (D.C. Cir. 1981) (collecting cases and noting the court's "recent expressions of caution about implying federal causes of action where an adequate state remedy exists"); *see generally* Alexander v. Sandoval, 532 U.S. 275 (2001).

[93] *See* Fairfax Countywide Citizens Ass'n v. Fairfax Cnty., 571 F.2d 1299, 1305 (4th Cir. 1978); McCall-Bey v. Franzen, 777 F.2d 1178, 1185 (7th Cir. 1985).

[94] 511 U.S. 375, 381–82 (1994); *see also* Jeffrey A. Parness & Matthew R. Walker, *Enforcing Settlements in Federal Civil Actions*, 36 IND. L. REV. 33, 34–44 (2003).

Fund voluntarily left the federal scheme and transformed its ERISA obligation into state contract liability.

Alternatively, asking an arbitrator to enter a settlement as an award fits with the MPPAA's design, despite the majority dismissing it as "formalism."[95] This requirement refocuses the dispute's outcome onto the arbitration proceeding. And that emphasis comports with § 1401(a)(1)'s general command that "[a]ny dispute between an employer and the plan sponsor of a multiemployer plan . . . shall be resolved through arbitration."[96] Separately in its brief, the Fund raised a stronger objection, arguing that having an arbitrator enter a settlement would waste judicial resources.[97] In the Fund's telling, this would force funds to sue within § 1401(b)(2)'s statute of limitations to enforce the award rather than just wait for a settlement breach that may never come.[98] That is true, assuming a fund wants federal enforcement. But ultimately, such an argument just criticizes § 1401(b)(2)'s statute of limitations itself. The same concerns apply when an arbitrator enters a final award *without* a settlement—a plain reading of § 1401(b)(2) means a fund cannot withhold suit and let an employer make payments voluntarily beyond thirty days while keeping § 1401(b)(2) enforcement on the table. And, in the case of a settlement, a fund need not use federal resources at all if it was content with state enforcement; it could wait until a breach and then rely on state contract remedies.

The strongest response to all these arguments likely arises as a functional concern. If concluding arbitration proceedings without a final award precludes federal enforcement, then a withdrawing employer would be incentivized to terminate those proceedings to avoid suit.[99] Whether this is a real risk depends in part on whether an employer can unilaterally terminate proceedings beyond the point at which § 1401(b)(1) considers them initiated.[100] Section 1401(a)(1) does not say when or how arbitration can be terminated.[101] The employer in *DISA*, for example, withdrew its arbitration request, and the fund "failed to object to [the employer's] withdrawal from arbitration."[102] But in any event, § 1401(a)(1) often allows "[e]ither party" to initiate

---

[95] *Cent. States*, 132 F.4th at 683.

[96] 29 U.S.C. § 1401(a)(1).

[97] Brief of Plaintiffs-Appellants at 27–28, *Cent. States*, 132 F.4th 672 (No. 23-3206).

[98] *Id*. at 27–30. *Compare* 29 U.S.C. § 1401(b)(2) ("[A]ny party thereto may bring an action, no later than 30 days after the issuance of an arbitrator's award . . . ."), *with id.* § 1401(b)(1) (lacking a statute of limitations). As the appellant observed, courts have suggested § 1401(b)(2) creates a thirty-day statute of limitations, *see, e.g.*, Cent. States, Se. & Sw. Areas Pension Fund v. Safeway, Inc., 229 F.3d 605, 609–10 (7th Cir. 2000), although the Third Circuit has dubiously concluded that 29 U.S.C. § 1451(f)'s three- or six-year statute of limitations applies instead, *see* Trs. of Amalgamated Ins. Fund v. Sheldon Hall Clothing, Inc., 862 F.2d 1020, 1022–23 (3d Cir. 1988).

[99] And this move could potentially avoid even state law liability if the arbitration proceeding terminated without a settlement agreement.

[100] *Cf.* JAMS, COMPREHENSIVE ARBITRATION RULES & PROCEDURES § 13(a) (2021), https://www.jamsadr.com/rules-comprehensive-arbitration/#Rule-13 [perma.cc/AJ6J-RHL2] ("No Party may terminate or withdraw from an Arbitration after the issuance of the Commencement Letter . . . except by written agreement of all Parties to the Arbitration.").

[101] Still, § 1401(b)(3) does command that arbitration "be conducted in the same manner . . . as an arbitration proceeding carried out under title 9." 29 U.S.C. § 1401(b)(3).

[102] Nat'l Shopmen Pension Fund v. DISA Indus., Inc., 653 F.3d 573, 577–78, 581 (7th Cir. 2011).

arbitration.[103] Even if an employer terminated the arbitration proceeding it brought, the fund itself might still petition for its own proceeding to achieve an award.[104]

IV. CONCLUSION

The Third Circuit's construction of the MPPAA's arbitration process cannot be reconciled with the statute's text. So in its wake, *Central States* leaves significant uncertainty about which requirements a fund must comply with—and which are ultimately optional. More uncertainty could also be on the horizon when other circuits confront this question. It is unlikely they will uniformly adopt the Third Circuit's strained approach, and a circuit split seems foreseeable. To be sure, *Central States*'s goal of keeping multiemployer plans liquid is commendable. Its way of doing that, though, comes at the expense of a predictable process for settling on a withdrawal liability figure. The MPPAA provided such a process, and it did not need judicial alteration.

[103] 29 U.S.C. § 1401(a)(1).

[104] If arbitration had been jointly initiated following only a § 1399(b)(1) assessment, the fund could not start its own proceeding unless other triggers in § 1401(a)(1) were met. *See id.*