

The Legal Intelligencer

## Pennsylvania Labor & Employment Law

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Page printed from: [The Legal Intelligencer](#)

[Back to Article](#)

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## School Districts Denied Surplus Funds From Health Care Trust

A trust fund governing the health and welfare benefits for 11 Northeast Pennsylvania school districts has succeeded on appeal in reclaiming more than \$6 million a trial judge had awarded toward benefits for two former members of the fund, now that the Commonwealth Court has endorsed the theory the trust was a "pooled" one.

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A trust fund governing the health and welfare benefits for 11 Northeast Pennsylvania school districts has succeeded on appeal in reclaiming more than \$6 million a trial judge had awarded toward benefits for two former members of the fund, now that the Commonwealth Court has endorsed the theory the trust was a "pooled" one.

A unanimous en banc panel of the court reversed a Luzerne County trial judge, who decided the Northeast Pennsylvania School Districts (Health) Trust was an aggregate of separate, single-employer health plans in awarding the money back to Dallas School District and Pittston Area School District, both in Luzerne County. The school districts entered the trust with the goal of leveraging group buying power to drive down individual costs, but, after Pittston and Dallas pulled out, the districts argued they were owed money attributable to contributions they made as members. The lower court awarded Pittston about \$2.3 million and about \$2.9 million to Dallas, plus interest.

But the Commonwealth Court panel ruled the fund's language allowed it to operate as a single one, where a single employer's contributions are based on benefits paid to all the employees of the funds. The trust, whose remaining members pursued the appeal, received hearty amicus support from several filers, some of whom were backed by lawyers at large law firms in Philadelphia.

Pittston and Dallas first filed suit after the school districts pulled out of the trust in 2007 (because of having better-than-expected health care claims experiences, according to the trust's lawyer). The districts argued they were entitled to a share of the \$18.3 million in surplus funds under theories of breach of contract,

unjust enrichment and breach of fiduciary duty. The Commonwealth Court's opinion said the districts withdrew from the trust for two reasons, the court noted. First, they took issue with how the trustees chose to calculate contributions of each member district and, secondly, how the trustees used surplus funds that grew in the fund over time.

The panel, led by Judge P. Kevin Brobson, was guided by language in the trust — language describing the trust, authorizing a third-party administrator, governing withdrawals and irrevocability of contributions, for example — and an agreement reached by its once 13 members over how to handle deficits and surpluses as they arose. That agreement was dubbed the "Scoda Resolution," named after the agreement's main proponent, the opinion said.

"Both the trial court and the school districts find it unfair that under Section 5.4(a)(2) (on withdrawal from the trust) and the Scoda Resolution, withdrawing school districts may have to pay money into the trust fund, but may not receive a share of any surplus existing in the fund upon withdrawal," Brobson wrote in a 27-page opinion in *Dallas School District v. Northeast Pennsylvania Districts (Health) Trust*. "Fair or not, however, that is how both the trust agreement and the Scoda Resolution are written."

He went on: "By electing to join the trust, the school districts agreed to be bound by the terms of the trust agreement, including terms that granted broad authority to the trustees. There are no provisions in the trust agreement or in the Scoda Resolution that entitle a withdrawing school district to a transfer of trust assets to fund a new single-employer plan for its employees."

The Northeast Pennsylvania school districts entered into the multiple-employer trust agreement in 1999 because it gave them the best available costs for health and welfare benefits for their employees, the opinion said. The employers leveraged their buying power as a large purchaser to drive down costs for individual employers.

But Pittston and Dallas eventually pulled out, according to the opinion, because of the growth of the surplus and their dissatisfaction as to how the trustees used the surplus — or, rather, how the trustees did not use the surplus.

Brobson said the districts took issue with the fact that the trustees did not use the money to reduce employer contributions.

Howard J. Bashman, who represented the trust on appeal, said the districts were having "a better-than-expected claims experience," meaning fewer than previous years, which prompted the withdrawal.

Bashman, who writes an appellate law column for *The Legal*, said that after the trial judge found in favor of the districts, the remaining members of the trust greenlit the appeal.

"What the Commonwealth Court has ruled, very much correctly in our view, was the trust was operated as a pooled trust," Bashman said. "Any surplus that results from a particular school district's having a better-than-expected claims experience becomes available for the benefits of all members and all participating school districts."

Bashman didn't plead his case alone. The trust garnered a host of amicus filers, such as the County Commissioners Association of Pennsylvania, the Association Of Government Risk Pools and the Pennsylvania League of Cities and Municipalities, all of whom were represented by Ballard Spahr lawyers Patrick J. Harvey and Atarah J. Hornezes.

The Pennsylvania Trust company submitted a brief in support of the trust through attorneys William C. Moffitt of Fox Rothschild and Michael A. Balducci. The Pennsylvania State Education Association, represented by Michelle F. Duggan, filed an amicus brief for the trust.

For the school district's attorney, the reversal on appeal was "just wrong as a matter of law."

"If you look at what the decision said, they distinguished between a pooled trust and segregated trust," said attorney Howard M. Levinson of Rosenn, Jenkins & Greenwald in Wilkes-Barre. "The fact is the trial judge found it was a segregated trust. He found it as a matter of fact."

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(Copies of the 30-page opinion in *Dallas School District v. Northeast Pennsylvania Districts (Health) Trust*, PICS No. 130303, are available from Pennsylvania Law Weekly. Please call the [Pennsylvania Instant Case Service](#) at 800-276-PICS to order or for information.) •



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