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## Supreme Court backs pension termination over merger

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The Supreme Court overruled the Ninth Circuit Court of Appeals—the most overturned appeals court in the country—on an ERISA claim filed against trustees of bankrupt paper company Crown Vantage. The claim, filed by the PACE International Union, alleged that the Oakland, Calif.-based company had breached its fiduciary duty to employees by not seriously considering a merger of 12 of the company's 17 defined benefit plans with the PACE plan before terminating them in 2001.

Instead, the company purchased annuities to cover the \$84 million obligation to its employees. As the company fully discharged its obligations to the employees, the \$5 million surplus in the plan reverted to the company's creditors.

M. Miller Baker, lead counsel for Crown's bankruptcy trustee, hailed the decision, which reversed three lower court rulings. "The decision prevents the union from raiding the company's pension plan," said Mr. Baker, a partner at McDermott Will & Emery. Mr. Baker noted that the PACE pension was underfunded by several hundred million dollars.

The case revolved around whether termination of an ERISA plan was a fiduciary decision as opposed to a business decision. The court ruled it was the former and further held that the merger of the plan with another pension plan would in fact not constitute a termination at all. Meanwhile the plan's surplus could be used to pay the benefits of other participants in the union's pension plan.

Had the Supreme Court upheld the lower court's decision, it would have affected potentially hundreds of other companies, said Mark Johnson, president of ERISA Benefits Consulting.

"It would have been a significant barrier to terminating pension plans," Mr. Johnson said. "It would also have created an impossible circumstance where union plans would go looking for distressed company plans with surpluses."

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