

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 15 2012

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

LOCALS 302 & 612 )  
INTERNATIONAL UNION OF )  
OPERATING ENGINEERS )  
CONSTRUCTION INDUSTRY )  
HEALTH AND SECURITY FUND; )  
LOCALS 302 AND 612 OF )  
THE INTERNATIONAL UNION )  
OF OPERATING ENGINEERS- )  
EMPLOYERS CONSTRUCTION )  
INDUSTRY RETIREMENT FUND; )  
WESTERN WASHINGTON )  
OPERATING ENGINEERS- )  
EMPLOYERS TRAINING TRUST )  
FUND; LOCAL 302 )  
INTERNATIONAL UNION OF )  
OPERATING ENGINEERS, )  
) )  
Plaintiffs – Appellees, )  
) )  
v. )  
) )  
ACE PAVING CO., INC., a )  
Washington corporation, )  
) )  
Defendant – Appellant. )  
) )  
\_\_\_\_\_ )

No. 10-36007

D.C. No. 2:10-cv-00896-JPD

**MEMORANDUM\***

Appeal from the United States District Court  
for the Western District of Washington

\_\_\_\_\_  
\*This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

James P. Donohue, II, Magistrate Judge, Presiding

Submitted March 5, 2012\*\*  
Seattle, Washington

Before: FERNANDEZ and PAEZ, Circuit Judges, and KOH, \*\*\* District Judge.

Ace Paving Co., Inc. appeals the district court's grant of summary judgment in favor of Locals 302 & 612 of the International Union of Operating Engineers Construction Industry Health and Security Fund; Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Fund; Western Washington Operating Engineers-Employers Training Trust Fund; and Local 302 of the International Union of Operating Engineers. We affirm.

Ace asserts that the district court erred when it determined that Ace must pay liquidated damages based upon the amount of contributions that remained unpaid when the action commenced, even if those were paid before judgment was entered. We disagree; the law of this circuit required that result. See Nw. Adm'rs, Inc. v. Albertson's, Inc., 104 F.3d 253, 257–58 (9th Cir. 1996); see also Idaho Plumbers & Pipefitters Health & Welfare Fund v. United Mech. Contractors, Inc., 875 F.2d

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\*\*The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

\*\*\*The Honorable Lucy H. Koh, United States District Judge for the Northern District of California, sitting by designation.

212, 215 (9th Cir. 1989). We reject Ace's assertion that we are not bound by those cases. See Hart v. Massanari, 266 F.3d 1155, 1171 (9th Cir. 2001); see also Cetacean Cmty. v. Bush, 386 F.3d 1169, 1173 (9th Cir. 2004).

AFFIRMED.