



TOPIC: NCCMP Amicus Brief in *Howard Delivery Service, Inc. v. Zurich American Insurance Company* Asserts Unpaid Workers' Compensation Premiums Owed to Insurance Company Not Entitled to Bankruptcy Court Priority as Employee Benefit Plan Contributions

EXECUTIVE SUMMARY: *THIS 4TH CIRCUIT DECISION POTENTIALLY DILUTES A CRITICAL PROVISION OF FEDERAL BANKRUPTCY LAW THAT PERMITS OUR EMPLOYEE BENEFIT PLANS TO COLLECT DELINQUENT CONTRIBUTIONS FROM COMPANIES WHO SEEK TO DISCHARGE THEIR DEBTS IN BANKRUPTCY COURT. THE DECISION THREATENS TO SERIOUSLY REDUCE THE \$10,000 DOLLAR LIMIT APPLICABLE TO EMPLOYEE BENEFIT PLANS' PRIORITY STATUS WITH RESPECT TO "CONTRIBUTIONS ARISING FROM SERVICES RENDERED". IN THIS CASE, ZURICH AMERICAN INSURANCE COMPANY CONVINCED THE 4TH CIRCUIT COURT OF APPEALS THAT UNPAID WORKERS' COMPENSATION INSURANCE PREMIUMS QUALIFY AS CONTRIBUTIONS TO AN EMPLOYEE BENEFIT PLAN FOR PURPOSES OF PRIORITY TREATMENT UNDER FEDERAL BANKRUPTCY LAWS.*

DUE TO THE SIGNIFICANCE OF THE ISSUE FOR MANY MULTIEMPLOYER PLANS THROUGHOUT THE COUNTRY, THE NCCMP FILED AN AMICUS BRIEF SUPPORTING A REVIEW OF THE CASE BY THE U.S. SUPREME COURT. NCCMP ARGUES THAT SINCE UNPAID WORKERS' COMPENSATION PREMIUMS ARE NOT WAGES OR SALARY, OR WAGE OR SALARY SUBSTITUTES, AS FRINGE BENEFITS ARE, SUCH PREMIUMS DO NOT QUALIFY AS "CONTRIBUTIONS" TO AN EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF THE FEDERAL BANKRUPTCY LAW. NCCMP'S POSITION IS BORNE OUT BY THE UNAMBIGUOUS LANGUAGE IN THE STATUTE AS WELL AS LEGISLATIVE HISTORY TO THE BANKRUPTCY PRIORITY PROVISIONS.

WE WILL KEEP YOU APPRISED OF FURTHER DEVELOPMENTS AS WE HEAR OF THEM.

PURPOSE: INFORMATIONAL

CATEGORY: AMICUS BRIEF FILING RELATED TO APPEAL OF COURT DECISION

COURT: UNITED STATES SUPREME COURT

TARGET AUDIENCE: TRUSTEES OF AND PLAN ADVISORS TO MULTIEMPLOYER DEFINED BENEFIT AND DEFINED CONTRIBUTION PENSION AND HEALTH BENEFIT PLANS

FORWARD COMMENTS TO: Multi-Elert@nccmp.org

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FOR ADDITIONAL BACKGROUND: NCCMP AMICUS BRIEF IN SUPPORT OF HOWARD DELIVERY SERVICE, INC.'S APPEAL (COPY ATTACHED)