



TOPIC:

United States Supreme Court Rules that Unpaid Workers' Compensation Premiums Owed to Insurance Company Are Not Entitled to Bankruptcy Court Priority as Employee Benefit Plan Contributions

EXECUTIVE SUMMARY: IN A 6-3 DECISION RENDERED ON JUNE 15, 2006 IN *HOWARD DELIVERY SERVICE, INC. v. ZURICH AMERICAN INSURANCE COMPANY* (547 US ___(2006)), THE U. S. SUPREME COURT REJECTED ZURICH'S ARGUMENT THAT UNPAID WORKERS' COMPENSATION INSURANCE PREMIUMS QUALIFY AS CONTRIBUTIONS TO AN EMPLOYEE BENEFIT PLAN FOR PURPOSES OF PRIORITY TREATMENT UNDER FEDERAL BANKRUPTCY LAWS.

THIS SUPREME COURT DECISION IS GOOD NEWS FOR OUR MEMBER EMPLOYEE BENEFIT PLANS AS IT RESOLVES A CONFLICT IN DECISIONS AMONG THE VARIOUS COURTS OF APPEAL. IT STRENGTHENS OUR PLANS' ABILITY TO COLLECT DELINQUENT CONTRIBUTIONS FROM COMPANIES WHO SEEK TO DISCHARGE THEIR DEBTS IN BANKRUPTCY COURT AND LEAVES INTACT THE \$10,000 CAP ON SUCH PRIORITY CLAIMS, UNDILUTED BY UNPAID WORKERS COMPENSATION PREMIUMS.

IN ITS DECISION, THE SUPREME COURT APPEARS TO HAVE TAKEN INTO CONSIDERATION ARGUMENTS FROM THE NCCMP'S AMICUS BRIEF. WE ARGUED 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. THE COURT AGREED THAT POSITION IS SUPPORTED BY THE UNAMBIGUOUS LANGUAGE IN THE STATUTE AND IN THE LEGISLATIVE HISTORY TO THE BANKRUPTCY PRIORITY PROVISIONS.

PURPOSE: INFORMATIONAL

CATEGORY: COURT DECISION

COURT: UNITED STATES SUPREME COURT

TARGET AUDIENCE: TRUSTEES OF AND PLAN ADVISORS TO MULTIEMPLOYER DEFINED BENEFIT AND DEFINED CONTRIBUTION PENSION, HEALTH BENEFIT AND TRAINING TRUST FUNDS

FORWARD COMMENTS TO: Multi-Elert@nccmp.org

REFERENCE: VOL.6, ISSUE 4

FOR ADDITIONAL BACKGROUND: NCCMP AMICUS BRIEF IN SUPPORT OF HOWARD DELIVERY SERVICE, INC.'S APPEAL AND SUBSEQUENT US SUPREME COURT DECISION (COPIES ATTACHED)

U. S. Supreme Court's Decision in *Howard* Answers the Question of Claims Priority in Federal Bankruptcy Actions: Will Unpaid Workers' Compensation Premiums be Treated As "contributions to an employee benefit plan"?

In a 6-3 decision handed down on Thursday, June 15, 2006, the U. S. Supreme Court ruled that unpaid workers' compensation insurance premiums owed to an insurance company by an employer do not qualify as contributions to an employee benefit plan for purposes of priority treatment under federal bankruptcy laws.

Background

Howard Delivery Services, Inc. ("Howard") was the owner of a freight trucking company. Howard employed approximately 500 workers and operated in multiple states. Howard was required by several states to maintain workers' compensation insurance in the event of on-the-job injuries. The trucking company purchased its workers' compensation from Zurich American Insurance Company ("Zurich").

Howard filed for bankruptcy protection on January 30, 2002. Zurich filed as an unsecured creditor, seeking from Howard \$400,000 in unpaid insurance premiums, which Zurich maintained were entitled to priority status under Section 507(a)(5) of the federal Bankruptcy Code as "contributions to an employee benefit plan." Howard argued that the premiums were not in the nature of contributions to an employee benefit plan.

The Bankruptcy Court denied Zurich's claim for priority under Section 507(a)(5), saying that the insurance premiums were not in the nature of bargained benefits that were intended to substitute for wages. The District Court affirmed the Bankruptcy Court's ruling based on the same reasoning. The Court of Appeals for the Fourth Circuit reversed in a 2 to 1 decision without providing a rationale.

The Supreme Court granted certiorari in order to settle a conflict of opinion among the federal courts of appeal. The Sixth, Eighth and Tenth circuits had all resolved cases in which they denied priority status to unpaid workers' compensation premiums, while the First, Ninth and now the Fourth circuits had accorded priority status to such premiums.

The NCCMP filed an amicus brief with the Supreme Court in support of Howard's position.

The Issue in Howard

Whether Section 507(a)(5) of the Bankruptcy Code confers priority status on an insurer's claim for unpaid premiums with respect to a policy purchased by an employer to cover workers' compensation injuries?

The Opinion

Writing the majority opinion in *Howard*, Justice Ginsberg reasoned that priority provisions must be construed strictly. A strict reading of the bankruptcy statute indicated that unpaid employee benefit plan contributions were recoverable only after wages had been paid. Further, both wages and employee benefit plan contributions were subject to a single \$10,000 limitation, indicating that Congress intended to tie the two priority classes together. As a result, the statute made it clear that employee benefit plan contributions means contributions that substitute for wages. Zurich wanted the Court to use an expansive reading of the definition of employee benefit plan, borrowing from the all-encompassing ERISA definition. The court noted, however, that neither the Bankruptcy Code nor ERISA were instructive as to how to define the term “contributions to an employee benefit plan....arising from services rendered” in this context. The Court said that barring a specific instruction in the bankruptcy statute to import the ERISA definition of employee benefit plan, it was not inclined to go that far. And, the Court noted, a subsequent section of ERISA exempts workers’ compensation coverage from the definition of employee benefit plan.

Instead of relying on the definition of an employee benefit plan, the Supreme Court held that the *Howard* case turned on the special nature of workers’ compensation programs. Whereas pension plans and health plans are negotiated or otherwise provided to supplement income or substitute for wages, workers’ compensation is provided to substitute for the civil liability to which an employer would be subject with respect to employee injuries occurring on the job. Under Workers’ Compensation programs, employers agree to pay a fixed amount of compensation in exchange for escaping the potential for large awards and high lawsuit costs, in effect accepting a no-fault liability. While private pension plans protect the employee (or the employee’s beneficiary), Workers’ Compensation protects an entire business interest in exchange for the payment of a fixed amount of compensation to the injured employee. The Court also based its decision on the premises that the Bankruptcy Code tries to secure equal distribution of assets among creditors and that a creditor is only entitled to preferential treatment if Congress clearly authorizes such treatment.

For the reasons stated, the Court held that Workers’ Compensation premiums do not qualify for Section 507(a)(5) protection.

Implications

The *Howard* decision is good news for employee benefit plans. The decision leaves the \$10,000 cap on priority assets under the Bankruptcy Code undiluted by amounts not qualifying as fringe benefits. Thus, the plan’s ability to collect delinquent contributions from those employers who try to escape their obligations by filing for bankruptcy protection will be unhindered by claims for competing priority status by insurance companies looking to recover unpaid premiums, up to the maximum amount.

It is also good news for those employee benefit plans which operate in multiple states. As a result of this ruling, the priority status of a Workers’ Compensation claim for unpaid premiums is clear. Plans will no longer need to focus their priority concerns based on the circuit in which the Plan filed the case.

As with all matters concerning interpretations of the law and / or regulations applicable to multiemployer plans, Plan trustees and sponsors should rely on their own attorneys and other professional advisors for advice on the meaning and application of the Howard case for their particular funds.

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If you have questions about the NCCMP, or about this or other issues of Multi-Elert, please contact us by phone at (202) 737-5315 or by e-mail at: nccmp@nccmp.org.
