Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HOWARD DELIVERY SERVICE, INC., ET AL. *v.* ZURICH AMERICAN INSURANCE CO.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 05–128. Argued March 21, 2006—Decided June 15, 2006

The Bankruptcy Code accords priorities, among unsecured creditors' claims, for unpaid "wages, salaries, or commissions," 11 U. S. C. §507(a)(4), and for unpaid contributions to "an employee benefit plan," §507(a)(5). Petitioner Howard Delivery Service, Inc. (Howard), was required by each State in which it operated to maintain workers' compensation coverage to secure its employees' receipt of health, disability, and death benefits in the event of on-the-job accidents. Howard contracted with respondent Zurich American Insurance Co. (Zurich) to provide this insurance for Howard's operations in ten States. After Howard filed a Chapter 11 bankruptcy petition, Zurich filed an unsecured creditor's claim for some $400,000 in premiums, asserting that they qualified as "contributions to an employee benefit plan" entitled to priority under §507(a)(5). The Bankruptcy Court denied priority status to the claim, reasoning that because overdue premiums do not qualify as bargained-for benefits furnished in lieu of increased wages, they fall outside §507(a)(5)'s compass. The District Court affirmed, similarly determining that unpaid workers' compensation premiums do not share the priority provided for unpaid contributions to employee pension and health plans. A Fourth Circuit panel reversed without agreeing on a rationale.

Held: Insurance carriers' claims for unpaid workers' compensation premiums owed by an employer fall outside the priority allowed by §507(a)(5). Although the question is close, such premiums are more appropriately bracketed with liability insurance premiums for, *e.g.*, motor vehicle, fire, or theft insurance, than with contributions made for fringe benefits that complete a pay package, *e.g.,* pension plans and group health, life, and disability insurance, which undisputedly

are covered by §507(a)(5).

United States v. *Embassy Restaurant, Inc.,* 359 U. S. 29, 29–35, and *Joint Industry Bd. of Elec. Industry* v. *United States,* 391 U. S. 224, 228–229, held that an employer's unpaid contributions to collectively-bargained plans providing, respectively, life insurance and annuity benefits to employees did not qualify as "wages" entitled to priority status under the prior bankruptcy law. Congress thereafter enacted what is now §507(a)(5) in order to provide a priority for the kind of fringe benefits at issue in those cases. Notably, Congress did not enlarge the "wages, salaries, [and] commissions" priority, §507(a)(4), to include fringe benefits, but instead created a new priority, §507(a)(5), one step lower than the wage priority. The new provision allows a plan provider to recover unpaid premiums—albeit only after the employees' claims for "wages, salaries, or commissions" have been paid. The current Code's juxtaposition of the wages and employee benefit plan priorities manifests Congress' comprehension that fringe benefits generally complement, or substitute for, hourly pay. Congress tightened the linkage of §507(a)(4) and (a)(5) by imposing a combined cap on the two priorities, currently set at $10,000 per employee. See §507(a)(5)(B). Because §507(a)(4) has a higher priority status, all claims for wages are paid first, up to the $10,000 limit; claims under §507(a)(5) for benefit plan contributions can be recovered next up to the remainder of the $10,000 ceiling. No other §507 subsections are so joined together.

Apart from the clues provided by *Embassy Restaurant, Joint Industry Bd.,* and the textual ties binding §507(a)(4) and (5), Congress left undefined the §507(a)(5) terms, "*contributions* to an *employee benefit plan* . . . arising from *services rendered*." (Emphases added.) Maintaining that §507(a)(5) covers more than wage substitutes like the ones at issue in *Embassy Restaurant* and *Joint Industry Bd.,* Zurich urges the Court to borrow the encompassing definition of employee benefit plan contained in the Employee Retirement Income Security Act of 1974 (ERISA): "[A]ny plan, fund, or program [that provides] its participants . . . , through the purchase of insurance or otherwise, . . . benefits in the event of sickness, accident, disability, [or] death." 29 U. S. C. §1002(1). Federal courts have questioned whether ERISA is appropriately used to fill in blanks in a Bankruptcy Code provision, and the panel below parted ways on this issue. In any event, ERISA's signals are mixed, for §1003(b)(3) specifically exempts from ERISA's coverage the genre of plan here at issue, *i.e.*, one "maintained solely for the purpose of complying with applicable work[ers'] compensation laws." That exemption strengthens the Court's resistance to Zurich's argument. Rather, the Court follows *United States* v. *Reorganized CF&I Fabricators of Utah, Inc.,* 518 U. S.

213, 219, in noting that "[h]ere and there in the Bankruptcy Code Congress has included specific directions that establish the significance for bankruptcy law of a term used elsewhere in the federal statutes." *Id.,* at 219–220. No such directions are contained in §507(a)(5), and the Court has no warrant to write them into the text.

This case turns instead on the essential character of workers' compensation regimes. Unlike pension plans or group life, health, and disability insurance—negotiated or granted to supplement, or substitute for, *wages*—workers' compensation prescriptions modify, or substitute for, the common-law tort *liability* to which employers were exposed for work-related *accidents*. Workers' compensation regimes provide something for employees, assuring limited fixed payments for on-the-job injuries, and something for employers, removing the risk of large judgments and heavy costs in tort litigation. No such trade-off is involved in employer-sponsored fringe benefit plans. Moreover, employer-sponsored pension and health plans characteristically insure the employee (or his survivor) only. In contrast, workers' compensation insurance shields the insured enterprise. When an employer fails to secure workers' compensation coverage, or loses coverage for nonpayment of premiums, an affected employee's remedy would not lie in a suit for premiums that should have been paid to a compensation carrier. Instead, employees who sustain work-related injuries commonly have recourse to a state-maintained fund or are authorized by state law to pursue the larger recoveries successful tort litigation ordinarily yields. Further distancing workers' compensation and fringe benefits, nearly all States require employers to participate in workers' compensation, with substantial penalties, even criminal liability, for failure to do so. It is relevant, although not dispositive, that States overwhelmingly prescribe and regulate insurance coverage for on-the-job accidents, while commonly leaving fringe benefits to private ordering.

Zurich's argument that according its claim a §507(a)(5) priority will give workers' compensation carriers an incentive to continue coverage of a failing enterprise, thus promoting rehabilitation of the business, is unpersuasive. Rather than speculating on how such insurers might react were they to be granted a §507(a)(5) priority, the Court is guided by the Bankruptcy Code's objective of securing equal distribution among creditors, see, *e.g., Kothe* v. *R. C. Taylor Trust,* 280 U. S. 224, 227, and by the corollary principle that preference provisions must be tightly construed, see, *e.g., id.,* at 227. Cases like Zurich's are illustrative. The Bankruptcy Code caps the amount recoverable for contributions to employee benefit plans. Opening the §507(a)(5) priority to workers' compensation carriers could shrink the amount available to cover unpaid contributions to plans paradigmatically qualifying as wage

surrogates, primarily pension and health benefit plans. Pp. 5–16.

403 F. 3d 228, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, THOMAS, and BREYER, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which SOUTER and ALITO, JJ., joined.