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

BAY AREA LAUNDRY AND DRY CLEANING PENSION TRUST FUND *v.* FERBAR CORPORATION OF CALIFORNIA, INC., ET AL.

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

No. 96–370. Argued November 10, 1997– Decided December 15, 1997

Under the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA or Act), employers who withdraw from underfunded multiemployer pension plans must ordinarily pay "withdrawal liability." 29 U. S. C. §1381(a). The MPPAA allows employers to discharge that obligation by making a series of periodic payments. §§1399(c)(1)(C), (c)(3). The Act directs the plan's trustees to set an installment schedule and demand payment "[a]s soon as practicable" after the employer's withdrawal. §1399(b)(1). If the employer fails to pay according to the schedule, the plan may, at its option, invoke a statutory acceleration provision. §1399(c)(5). Plan fiduciaries "adversely affected by the act or omission of any party under" the MPPAA may also sue to collect the unpaid debt, §1451(a)(1), within the longer of two limitations periods: "6 years after the date on which the cause of action arose," §1451(f)(1), or "3 years after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action," §1451(f)(2).

Petitioner Bay Area Laundry and Dry Cleaning Pension Trust Fund (Fund) is a multiemployer plan for laundry workers. Respondents Ferbar Corporation and Stephen Barnes (collectively, Ferbar) owned laundries and contributed to the Fund for several years, but ceased such contributions in March 1985. On December 12, 1986, the Fund's trustees demanded payment of Ferbar's withdrawal liability, which they calculated as $45,570.80. The trustees informed Ferbar that the company could satisfy its obligation by paying $345.50 per month for 240 months, beginning February 1, 1987. Ferbar has never made any payments. On February 9, 1993, the Fund filed this action seeking enforcement of Ferbar's unpaid withdrawal liability. The District Court granted Ferbar summary judgment on statute of limitations grounds. Even if §1451(f)(1)'s six-year "accrual" rule applied, the District Court reasoned, the trustees filed suit eight days too late, for the six-year period began to run on February 1, 1987, the date Ferbar missed its first payment. The Ninth Circuit affirmed on different reasoning– specifically, that the six-year period began to run on the date Ferbar withdrew from the Fund, in March 1985. Under this view, the trustees commenced suit nearly two years too late.

Held:

1. The MPPAA's six-year statute of limitations on a pension fund's action to collect unpaid withdrawal liability does not begin to run until the employer fails to make a payment on the schedule set by the fund. A limitations period ordinarily does not begin to run until the plaintiff has a "complete and present cause of action." *Rawlings* v. *Ray*, 312 U. S. 96, 98. A cause of action does not become "complete and present" until the plaintiff can file suit and obtain relief. See *Reiter* v. *Cooper*, 507 U. S. 258, 267. Section 1451(f)(1), which starts the six-year limitations period on "the date on which the cause of action arose," incorporates these general rules. The MPPAA does not give a pension plan any claim for relief against an employer on the date of withdrawal; therefore, that date cannot trigger the statute of limitations. Instead, the plan's interest in receiving withdrawal liability ripens into a cause of action triggering the limitations period only when two events have transpired. First, the trustees must calculate the debt, set a schedule of installments, and demand payment pursuant to §1399(b)(1). Second, the employer must default on an installment due and payable under the trustees' schedule. Only then has the employer defaulted on an obligation owed the plan under the MPPAA, and only then does the statute of limitations begin to run. The Court rejects diverse arguments invoked by Ferbar and the Ninth Circuit in favor of a date-of-withdrawal rule. Pp. 7–12.

2. A pension fund's action to collect unpaid withdrawal liability is timely as to any installment payments that came due during the six years preceding the suit, but payments that came due prior to that time are lost. Pp. 13–17.

(a) The Fund has waived any right to urge before this Court its entitlement to recover the $345.50 payment missed on February 1, 1987. In the Court of Appeals, and in briefing on the merits and at oral argument here, the Fund argued that its action was timely even as to that first installment. In its petition for certiorari, however, the Fund characterized as "determinative" the question that has divided the Third and Seventh Circuits: whether a plan that sues too late to recover the first payment forfeits the right to recover any of the outstanding withdrawal liability, or whether it may still recover any succeeding payments that came due within six years of the complaint. Having urged the resolution of that question as a reason why the Court should grant certiorari, the Fund is not positioned to revive its claim for Ferbar's first payment. Cf. *Taylor* v. *Freeland & Kronz,* 503 U. S. 638, 645. Pp. 13–15.

(b) The MPPAA creates an installment obligation. This Court agrees with the Third Circuit that the MPPAA incorporates the limitations rule typically governing installment obligations: a new cause of action, carrying its own limitations period, arises from the date each payment is missed. That is true even though a plan has the option to accelerate and collect the entire debt if the employer defaults. See §1399(c)(5). Normally, the existence of a permissive acceleration clause does not alter the limitations rules that apply to installment obligations. The Court finds no indication that Congress intended to depart from the norm when it enacted the MPPAA. Unless the employer prepays, the MPPAA requires it, like any other installment debtor, to make payments when due. Like the typical installment creditor, the plan has no right, absent default and acceleration, to sue to collect payments before they fall due, and it has no obligation to accelerate on default. The employer and the plan are thus in the same position as parties to an ordinary installment transaction, and there is no reason to apply a different limitations rule. Accordingly, the Fund may not recover Ferbar's first, time-barred payment, but its action to recover the subsequent installments may proceed. Pp. 15–17.

73 F. 3d 971, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.