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SUPREME COURT OF THE UNITED STATES

Syllabus

CONCRETE PIPE & PRODUCTS OF CALIFORNIA, INC. v. CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA

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

No. 91-904. Argued December 1, 1992—Decided June 14, 1993

The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) amended the Employee Retirement Income Security Act of 1974 (ERISA) to provide that in certain circumstances an employer withdrawing from a multiemployer plan incurs as "withdrawal liability" a share of the plan's unfunded vested benefits, 29 U. S. C. §§1381, 1391. Withdrawal liability is assessed by means of a notification by the "plan sponsor" and a demand for payment. §1399(b). An unresolved dispute is referred to arbitration, where (1) the sponsor's factual determinations are "presumed correct" unless a contesting party "shows by a preponderance of the evidence that the determination was unreasonable or clearly erroneous," §1401(a)(3)(A); and (2) the sponsor's actuary's calculation of a plan's unfunded vested benefits is presumed correct unless a contesting party "shows by a preponderance of the evidence" that, *inter alia*, "the actuarial assumptions and methods" used in a calculation "were, in the aggregate, unreasonable," §1401(a)(3)(B). Petitioner Concrete Pipe is an employer charged with withdrawal liability by the trustees of respondent, a multiemployer pension plan (Plan). After losing in arbitration, Concrete Pipe filed an action to set aside or modify the arbitrator's decision and raised a constitutional challenge to the MPPAA, but the court granted the Plan's motion to confirm the award. The Court of Appeals affirmed.

Held:

1. The MPPAA does not unconstitutionally deny Concrete Pipe an impartial adjudicator by placing the determination of withdrawal liability in the plan sponsor, here the trustees, subject to §1401's presumptions. Pp. 12-33.

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(a) Even assuming that the possibility of trustee bias toward imposing the greatest possible withdrawal liability would suffice to bar the trustees from serving as adjudicators of Concrete Pipe's withdrawal liability because of their fiduciary obligations to beneficiaries of the Plan, the Due Process Clause is not violated here because the first adjudication in this case was the arbitration proceeding, not the trustees' initial liability determination. The trustees' statutory notification and demand obligations are taken in an enforcement capacity. Pp. 12-16.

(b) Nor did the arbitrator's adjudication deny Concrete Pipe its right to procedural due process. While the §1401(a)(3)(A) presumption shifts the burden of persuasion to the employer, the statute is incoherent with respect to the degree of certainty required to overturn a plan sponsor's factual determination. In light of the assumed bias, deference to a plan sponsor's determination would raise a substantial due process question. The uncertainty raised by this incoherent statute is resolved by applying the canon requiring that an ambiguous statute be construed to avoid serious constitutional problems unless such construction is plainly contrary to Congress's intent. Thus, the presumption is construed to place the burden on the employer to disprove an alleged fact by a preponderance permitting independent review by the arbitrator of the trustees' factual determinations. The approach taken by the arbitrator and courts below in this case is not inconsistent with this Court's interpretation of the first presumption. Pp. 17-29.

(c) The §1401(a)(3)(B) presumption also raises no procedural due process issue. The assumptions and methods used in calculating withdrawal liability are selected in the first instance not by the trustees, but by the plan actuary, §1393(c), who is a trained professional subject to regulatory standards. The technical nature of the assumptions and methods, and the necessity for applying the same ones in several contexts, limit an actuary's opportunity to act unfairly toward a withdrawing employer. Moreover, since §1401(a)(3)(B) speaks not about the reasonableness of the trustees' conclusions of historical fact, but about the aggregate reasonableness of the actuary's assumptions and methods in calculating the dollar liability figure, an employer's burden to overcome the presumption is simply to show that an apparently unbiased professional, whose obligations tend to moderate any claimed inclination to come down hard on withdrawing employers, has based a calculation on a combination of methods and assumptions that falls outside the range of reasonable actuarial practice. Pp. 29-33.

2. The MPPAA, as applied, does not deny substantive due process in violation of the Fifth Amendment. The imposition of

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withdrawal liability is clearly rational here because Concrete Pipe's liability is based on a proportion of its contributions during its participation in the Plan. Pp. 33-39.

3. The MPPAA, as applied, did not take Concrete Pipe's property without just compensation. The application of a regulatory statute that is otherwise within Congress's powers may not be defeated by private contractual provisions, such as those protecting Concrete Pipe from liability beyond what was specified in its collective-bargaining and trust agreements. See *Connolly v. Pension Benefit Guaranty Corporation*, 475 U. S. 211, 223-224. Examining Concrete Pipe's relationship with the Plan in light of the three factors the Court has said have particular significance for takings claims confirms this. First, the Government did not physically invade or permanently appropriate Concrete Pipe's assets for its own use. Second, Concrete Pipe has failed to show that having to pay out an estimated 46% of shareholder equity is an economic impact out of proportion to its experience with the Plan, since diminution in a property's value, however serious, is insufficient to demonstrate a taking. See, e.g., *Euclid v. Ambler Realty Co.*, 272 U. S. 365, 384. Third, the conditions on its contractual promises did not give Concrete Pipe a reasonable expectation that it would not be faced with liability for promised benefits. At the time it began making payments to the Plan, pension plans had long been subject to federal regulation. Indeed, withdrawing employers already faced contingent liability under ERISA, and Concrete Pipe's reliance on ERISA's original limitation of contingent withdrawal liability to 30% of net worth is misplaced, there being no reasonable basis to expect that the legislative ceiling would never be lifted, see *Usery v. Turner Elkhorn Mining Co.*, 428 U. S. 1, 16. Pp. 39-45.

936 F. 2d 576, affirmed.

SOUTER, J., delivered the opinion of the Court, which was unanimous except insofar as O'CONNOR, J., did not join the sentence to which n. 29 is attached, SCALIA, J., did not join Part III-B-1-b, and THOMAS, J., did not join Part III-B-1. O'CONNOR, J., filed a concurring opinion. THOMAS, J., filed an opinion concurring in part and concurring in the judgment.