SUPREME COURT OF THE UNITED STATES

No. 00–1307

JO ANNE B. BARNHART, COMMISSIONER OF SOCIAL SECURITY, PETITIONER *v.* SIGMON COAL COMPANY, INC., ET AL.

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

[February 19, 2002]

JUSTICE STEVENS, with whom JUSTICE O'CONNOR and JUSTICE BREYER join, dissenting.

This case raises the question whether clear evidence of coherent congressional intent should inform the Court's construction of a statutory provision that seems, at first blush, to convey an incoherent message. Today a majority of the Court chooses to disregard that evidence and, instead, adheres to an interpretation of the statute that produces absurd results. Two Members of Congress—both sponsors of the legislation at issue—have explained that the statute does not mandate such results, and the agency charged with administering the statute agrees. As a partner of the other two branches of Government, we should heed their more reasonable interpretation of Congress' objectives.

The Coal Industry Retiree Health Benefit Act of 1992 (Coal Act or Act), 26 U. S. C. §9701 *et seq*. (1994 ed. and Supp. V), authorizes the Commissioner of Social Security (Commissioner) to assign responsibility for providing health care benefits for certain retired coal miners and their beneficiaries. It was enacted in response to the financial difficulties that had plagued the National Bituminous Coal Wage Agreements (NBCWAs), a multiemployer, private health care system, established by

representatives of the coal industry and the United Mine Workers Association (UMWA). See *Eastern Enterprises* v. *Apfel,* 524 U. S. 498, 511 (1998). The NBCWAs were part of an arrangement in which the UMWA accepted collective-bargaining agreements dictating wages, benefits, and other terms of employment in exchange for, *inter alia*, promises regarding the provision of lifetime health benefits for retired miners. After many of the coal operators who were signatories to the NBCWAs went out of business or withdrew from their coverage, the remaining signatories were forced to assume a share of the health care costs for those operators' employees.

Consequently, the remaining members had an even greater incentive to avoid their obligations under the agreements. *Ibid.* The ensuing downward spiral threatened the NBCWAs' ability to provide health benefits. In evaluating legislative solutions, Congress "was advised that more than 120,000 retirees might not receive 'the benefits they were promised' " during the collective-bargaining process. *Id.*, at 513 (quoting Coal Commission Report on Health Benefits of Retired Coal Miners: Hearing before the Subcommittee on Medicare and Long-Term Care of the Senate Committee on Finance, 102d Cong., 1st Sess., 45 (1991) (statement of Bituminous Coal Operator's Association Chairman Michael K. Reilly)). Congress' objective in passing the Coal Act was to "identify persons most responsible for plan liabilities" and to establish an order of priority to ensure the long-term viability of the fund. Energy Policy Act of 1992, Pub. L. 102–486, §19142, 106 Stat. 3037.

To accomplish that goal, the Act directs the Commissioner to assign primary responsibility to a "signatory operator" that formerly employed the particular miners and to persons "related" to that operator. The broad definition of the term "related person" includes three classes of entities associated with the signatory and a catchall

sentence stating that a "related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii)." [1] The question in this case is whether the Act permits the Commissioner to assign retirees to a successor of the signatory itself, or just successors of related persons of the signatory.

The Commissioner reads the statute broadly to include direct successors, whereas the Court has adopted a narrower reading that excludes them from responsibility. Because a signatory operator is not "described in" clause (i), (ii), or (iii), the Court concludes that a successor in interest to a signatory cannot be liable for the retirees of its predecessor under the catchall provision. Thus, the Court reads the Act to assign liability first to the signatory operator, assuming it is still in business, then to any related persons of that signatory, and if none exists or is still in business, to the successor in interest of a related person. Liability can never be assigned to a direct successor—the most logical recipient of liability, after the signatory itself.

Two examples illustrate the absurdity of the Court's

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[1] 26 U. S. C. §9701(c)(2)(A) (1994 ed.) provides: "A person shall be considered to be a related person to a signatory operator if that person is—

"(i) a member of the controlled group of corporations (within the meaning of [26 U. S. C. §]52(a)) which includes such signatory operator;

"(ii) a trade or business which is under common control (as determined under [26 U. S. C. §]52(b)) with such signatory operator; or

"(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

"A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).

reading. First, imagine that corporations "A" and "B" operate coal mines in Kentucky and Illinois, respectively. A and B are affiliated corporations; let us say they are members of the same controlled group of corporations. In 1974, each company became a signatory to one of the coal agreements. Subsequently, they both sell their assets to separate purchasers. Under the Court's reading of the Act, the purchaser of the Kentucky mines would be responsible for the health care costs of the Illinois miners and the purchaser of the Illinois mines would be assigned the retirees of the Kentucky company, but neither purchaser would be liable for its predecessor's retired employees.

Now, consider a slightly different scenario in which A still operates a coal mine, but B runs a dairy farm. They are still members of the same controlled group of corporations, however, only A is a signatory of the 1974 agreement. In this hypothetical, when A and B sell their assets, under the Court's reading of the statute, the purchaser of the dairy farm will be liable for the retired miners' benefits while the purchaser of the coal mine has no liability. If that result is not absurd, it is surely incoherent. Why would Congress order such an odd result?

The answer is simple—Congress did not intend this result. Commenting on the final text of the bill that was ultimately enacted, two of the Senators sponsoring the measure explained their understanding of the statutory text to their colleagues. Senator Rockefeller of West Virginia, who spoke "as the original author of this legislation," 138 Cong. Rec. 34034 (1992), unambiguously stated that the term "signatory operator" includes "a successor in interest of such operator." *Id.,* at 34033. And in a written explanation of the measure that he placed in the Congressional Record, Senator Wallop stated that the definition of the term "related person" was "intentionally very broad" and encompassed "successors to the collective bargaining

agreement obligations of a signatory operator."[2]

If we assume that Senators Rockefeller and Wallop correctly understood their work product, the provision is coherent. For it is obviously sensible to impose the cost of health care benefits on successors to signatory operators, and equally obvious that there is far less justification for imposing such liability on successors to related companies that are not engaged in coal mining. Moreover, assigning liability to direct successors is consistent with Congress'

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[2] It is of particular interest that he did not limit the scope of potential assignees to those in the three subparagraphs of §9701(c)(2)(A). He stated:

"[B]ecause of complex corporate structures which are often found in the coal industry, the number of entities made jointly and severally liable for a signatory operator's obligations under the definition of related persons is intentionally very broad.

"In this regard, the term 'related person' is defined broadly to include companies related to the signatory operator. The Conference Agreement makes each such related person fully responsible for the signatory operator's obligation to provide benefits under the Act should the signatory no longer be in business, or otherwise fail to fulfill its obligations under the Act. Thus, the statute provides that related persons—meaning (i) those within the controlled group of corporations including the signatory operator, using a 50% common ownership test, (ii) a trade or business under common control with a signatory operator, (iii) one with a partnership interest or joint venture with the signatory operator, or (iv) *in specific instances successors to the collective bargaining agreement obligations of a signatory operator—are equally obligated with the signatory operator to pay for continuing health care coverage*." 138 Cong. Rec. 34002 (1992) (emphasis added).

The meaning of Senator Wallop's reference to "specific instances" is not evident, but he surely did not mean "no instances" as the Court seems to assume. See *ante*, at 16, n. 13. Nor could the phrase "successors to the collective bargaining agreement obligations of a signatory operator" refer to the successors of persons described in clauses (i)–(iii), because members of the same controlled group of corporations, for example, do not assume each other's collective-bargaining agreement obligations. In specific instances, however, direct successors of signatory operators may assume those obligations. See *infra*, at 6.

explicit objective to "identify persons most responsible for plan liabilities." §19142(a)(2), 106 Stat. 3037.[3] As between the two, the successor to a signatory has more notice that it may be held responsible for its predecessor's liabilities than the successor of a related person of the signatory. In fact, successors to signatories of the 1974 NBCWA are specifically on notice because of a provision in that agreement which states: "[The] Employer promise[s] that its operations covered by this Agreement shall not be sold, conveyed, or otherwise transferred or assigned to any successor without first securing the agreement of the successor to assume the Employer's obligations under this Agreement." Article I, National Bituminous Coal Wage Agreement of 1974.

Not only is the direct successor put on notice, presumably it received a lower sale price in exchange for assuming the collective-bargaining agreement obligations of its predecessor. Consider the facts of this case. Respondent, Jericol Mining, Inc., purchased the coal mining assets of Shackleford, a signatory to the 1971 NBCWA. The sales contract provided that Jericol would assume responsibility for Shackleford's outstanding contracts, including its collective-bargaining agreement. App. 23, 26. The price Jericol paid for Shackleford's assets, therefore, must have reflected the fact that Jericol was taking on Shackleford's commitments to its retirees. By allowing Jericol to escape

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[3] Senator Wallop emphasized this point in clarifying why liability under §9701(c) is "intentionally very broad." 138 Cong. Rec., at 34002. As he explained: "The purpose of this provision is to insure that every reasonable effort is made to locate a responsible party to provide the benefits before the cost is passed to other signatory companies which have never had any connection to the individual . . . . Allocation of beneficiaries to an entity or business which continues in business is the basic statutory intent. Thus, the Conference Agreement's overriding purpose is to find and designate a specific obligor for as many beneficiaries in the Plans as possible." *Ibid.*

responsibility for its end of the bargain at this stage, the Court effectively grants it a windfall.

While the Court trumpets the clear language of the statute, the language here is not clear enough to require disregard of "clearly expressed legislative intention to the contrary," *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.,* 447 U. S. 102, 108 (1980), or to require us to accept "absurd results," *United States* v. *Turkette,* 452 U. S. 576, 580 (1981) (citing *Trans Alaska Pipeline Rate Cases*, 436 U. S. 631, 643 (1978)). See *infra*, at 8. Nevertheless, the Court accepts respondents' claim that, even if the statute produces odd results, this scheme is the product of a legislative compromise that we cannot override. The drafters, according to this theory, may have confronted significant opposition from successors of signatories who would have faced liability under alternative language. Or Congress may have been concerned that imposing liability on successors would create a disincentive for potential purchasers of coal companies' assets.

If the negotiations were as contentious as respondents imagine and if the Act excluded direct successors as the product of horsetrading, then one would expect a response to the statements of two Senators directly contradicting the terms of that legislative bargain. Surely those Senators who disagreed with Senators Rockefeller and Wallop would have said something to set the record straight. To the contrary, there is no evidence in the legislative history of such a compromise. Respondents and *amici* do not cite any evidence supporting this version of events, nor could respondents' counsel when asked specifically during oral argument. Tr. of Oral Arg. 33–35.

The total absence of any suggestion in the legislative history that the Senators had misdescribed the coverage of the Act is itself significant. See *Harrison* v. *PPG Industries, Inc.,* 446 U. S. 578, 602 (1980) (REHNQUIST, J., dissenting) ("In a case where the construction of legislative

language . . . makes so sweeping and so relatively unorthodox a change . . . , I think judges as well as detectives may take into consideration the fact that a watchdog did not bark in the night"); *Green* v. *Bock Laundry Machine Co.,* 490 U. S. 504, 527 (1989) (SCALIA, J., concurring in judgment) (when confronted with statutory language that produces an absurd result, it is appropriate "to observe that counsel have not provided, nor have we discovered, a shred of evidence that anyone has ever proposed or assumed such a bizarre disposition"). Absent some response indicating that the Senators mischaracterized the Act, we ought to construe the statute in light of its clear purpose and thereby avoid the absurd results that the majority countenances.

Indeed, the Court's cavalier treatment of the explanations of the statute provided to their colleagues by Senators Rockefeller and Wallop is disrespectful, not only to those Senators, but to the entire Senate as well. For, although the Court does not say so explicitly, it apparently assumes that the Senators were either dissembling or unable to understand the meaning of the bill that they were sponsoring. Neither assumption is tenable. Much more likely is the simple explanation that the Senators quite reasonably thought the term "signatory operator" included successors. This account is certainly consistent with Congress' instructions in the Dictionary Act, 1 U. S. C. §1, that a reference to a corporation may embrace its successors and assigns even if not expressly mentioned.

The Coal Act defines a "signatory operator" as "a person which is or was a signatory to a coal wage agreement." 26 U. S. C. §9701(c)(1) (1994 ed.). The term "person" is not defined, but according to the Dictionary Act it includes "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." 1 U. S. C. §1. And, we know from 1 U. S. C. §5 that "[t]he word 'company' or 'association', when used in

reference to a corporation, shall be deemed to embrace the words 'successors and assigns of such company or association', in like manner as if these last-named words, or words of similar import, were expressed." Therefore, reading the term "signatory operator" to encompass direct successors is compatible with the default rules that Congress provided for interpreting its statutes. Nor does the context indicate otherwise, because Congress clearly authorized the Commissioner to assign retirees to other successors, and extending liability to this category of successors is consistent with the purpose of the Act. Cf. *Rowland* v. *California Men's Colony, Unit II Men's Advisory Council,* 506 U. S. 194, 209–211 (1993) (recognizing that even when "contextual features" contradict the Dictionary Act reading, that interpretation may be appropriate if it would make little sense to adopt a more literal reading); *Wilson* v. *Omaha Tribe,* 442 U. S. 653, 666 (1979); *United States* v. *A & P Trucking Co.,* 358 U. S. 121, 123–124 (1958).

Three additional considerations support reading the Act to cover direct successors. First, this reading was consistently endorsed by the several Commissioners responsible for the administration of the Act, notwithstanding a change in control of the Executive Branch.[4] We have

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[4]Although the Social Security Administration has interpreted the meaning of "successor" differently over time (*i.e.*, taking different positions as to whether an asset purchaser qualifies as a successor), it has consistently taken the position that a direct successor can be assigned responsibility for a signatory's employees. See Provisions Relating to the Health Benefits of Retired Coal Miners: Hearing before the House Committee on Ways and Means, 103d Cong., 1st Sess., 24–25 (1993) (statement of then-Acting Commissioner Lawrence H. Thompson) (explaining that miners can be assigned to "the last active signatory operator (or its successor, if the operator is out of business) for whom the miner worked"); Letter to SSA Southeastern Program Service Center (Aug. 8, 1994), App. 110–111 ("[S]uccessors or successors in

previously attached significance to the fact that after "a new administration took office" an agency concluded that a statutory "term should be given the same definition" as before. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837, 857–858 (1984).

Second, it is consistent with the Court's treatment of successorship issues in other labor cases, in which we have required successors to bargain with a union certified under a predecessor, see *Fall River Dyeing & Finishing Corp.* v. *NLRB,* 482 U. S. 27, 41 (1987), to assume liability for reinstatement and backpay as a result of a predecessor's unfair labor practice, see *Golden State Bottling Co.* v. *NLRB,* 414 U. S. 168, 181–185 (1973), and to arbitrate disputes as provided in a predecessor's collective-bargaining agreement. See *John Wiley & Sons, Inc.* v. *Livingston,* 376 U. S. 543, 548 (1964).

Finally, we should avoid adopting an interpretation of the statute that recreates the same difficulties that beset the NBCWAs and that Congress explicitly sought to avoid. The immediate consequence of the Court's reading is that 86 retired miners will now be unassigned; therefore, their health care expenses will be borne by the remaining signatory operators and their related persons. Assuming there are other retired miners in the same category, today's decision will result in more "orphaned" miners who will draw from the combined fund. To the extent that the cost for their health benefits will be passed along to the other signatory operators, the Court's holding creates an added incentive for the remaining signatories to avoid their obligations under the agreements. The result is effectively

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interest are treated for assignment purposes as if there had been no change of ownership"); Supplemental Coal Act Review Instructions No. 4 (July 1995), App. to Pet. for Cert. 86a ("[T]he Coal Act does permit assignments to 'successors' and 'successors-in-interest' to *defunct* (inactive) signatory operators").

the same downward spiral that doomed the NBCWAs.[5] *Eastern*, 524 U. S., at 511.

In my judgment the holding in this case is the product of a misguided approach to issues of statutory construction. The text of the statute provides us with evidence that is usually sufficient to disclose the intent of the enacting Congress, but that is not always the case. There are occasions when an exclusive focus on text seems to convey an incoherent message, but other reliable evidence clarifies the statute and avoids the apparent incoherence. In such a case—and this is one—we should never permit a narrow focus on text to obscure a commonsense appraisal of that additional evidence.

I respectfully dissent.

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[5] For the first three years of the Act, the health care costs for orphaned miners are shared among the signatories. Starting in the fourth year, payment is deducted first from interest earned on the Department of Interior's Abandoned Mine Reclamation Fund (AML), 26 U. S. C. §9705(b) (1994 ed.). If those funds are exhausted or unavailable, then the costs are shared by the remaining signatories. While the availability of the interest transfers may delay another financial crisis, it should be noted that the AML funds are earmarked for other purposes. See 30 U. S. C. §1232(g) (1994 ed.); CRS Report, Coal Industry: Use of Abandoned Mine Reclamation Fund Monies for UMWA "Orphan Retiree" Health Benefits, 138 Cong. Rec. 34004, 34006 (1992) ("First priority goes to mining abandonments that could present imminent danger to public health and safety. . . . Any remaining AML funds are designated to eliminate environmental hazards"). Moreover, given the high cost of health care for retired miners, and the likely diminution of the fund's interest earning capacity, see *id.*, at 34006–34007, the interest may not last for long.