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

EASTERN ENTERPRISES *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY ET AL.

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

No. 97–42. Argued March 4, 1998– Decided June 25, 1998

In 1946, a historic labor agreement between coal operators and the United Mine Workers of America (UMWA) led to the creation of benefit funds that provided for the medical expenses of miners and their dependents, with the precise benefits determined by UMWA-appointed trustees. Those trusts served as the model for the United Mine Workers of America Welfare and Retirement Fund (1947 W&R Fund), which was established by the National Bituminous Coal Wage Agreement of 1947 (1947 NBCWA). The Fund used proceeds of a royalty on coal production to provide benefits to miners and their families, and trustees determined benefit levels and other matters. The 1950 NBCWA created a new fund (1950 W&R Fund), which used a fixed amount of royalties for benefits, gave trustees the authority to establish and adjust benefit levels so as to remain within the budgetary restraints, and did not guarantee lifetime health benefits for retirees and their dependents. The 1950 W&R Fund continued to operate with benefit levels subject to revision until the Employee Retirement Income Security Act of 1974 (ERISA) introduced specific funding and vesting requirements for pension plans. To comply with ERISA, the UMWA and the Bituminous Coal Operators' Association entered into the 1974 NBCWA, which created four new trusts. It was the first agreement to expressly reference health benefits for retirees, but it did not alter the employers' obligation to contribute a fixed amount of royalties. The new agreement did not extend the employers' liability beyond the term of the agreement. Miners who retired before 1976 were covered by the 1950 Benefit Plan and Trust (1950 Benefit Plan), and those retiring after 1975 were covered by the 1974 Benefit Plan and Trust (1974 Benefit Plan). The increase in benefits

and other factors— the decline in coal production, the retirement of a generation of miners, and rapid acceleration in health care costs— quickly caused financial problems for the 1950 and 1974 Benefit Plans. To ensure the Plans' solvency, the 1978 NBCWA obligated signatories to make sufficient contributions to maintain benefits as long as they were in the coal business. As the Plans continued to suffer financially, employers began to withdraw, leaving the remaining signatories to absorb the increasing cost of covering retirees left behind.

Ultimately, Congress passed the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act) to stabilize funding and provide for benefits to retirees by merging the 1950 and 1974 Benefit Plans into a new fund (Combined Fund) that provides substantially the same benefits as provided by the 1950 and 1974 Plans and is funded by premiums assessed against coal operators that signed any NBCWA or other agreement requiring contributions to the 1950 or 1974 Benefit Plans. Respondent, Commissioner of Social Security, assigns retirees to signatory coal operators according to the following allocation formula: first, to the most recent signatory to the 1978 or a subsequent NBCWA to employ the retiree in the coal industry for at least 2 years, 26 U. S. C. §9706(a)(1); second, to the most recent signatory to the 1978 or a subsequent NBCWA to employ the retiree in the coal industry, §9706(a)(2); and third, to the signatory operator that employed the retiree in the coal industry for the longest period of time prior to the effective date of the 1978 NBCWA, §9706(a)(3).

Petitioner Eastern Enterprises (Eastern) was a signatory to every NBCWA executed between 1947 and 1964. It is "in business" within the Coal Act's meaning, although it left the coal industry in 1965, after transferring its coal operations to a subsidiary (EACC) and ultimately selling its interest in EACC to respondent Peabody Holding Company, Inc. (Peabody). Under the Coal Act, the Commissioner assigned Eastern the obligation for Combined Fund premiums respecting over 1,000 retired miners who had worked for the company before 1966. Eastern sued the Commissioner and other respondents, claiming that the Coal Act violates substantive due process and constitutes a taking in violation of the Fifth Amendment. The District Court granted respondents summary judgment, and the First Circuit affirmed.

Held: The judgment is reversed, and the case is remanded.

110 F. 3d 150, reversed and remanded.

JUSTICE O'CONNOR, joined by THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE THOMAS, concluded:

1. The declaratory judgment and injunction petitioner seeks are an appropriate remedy for the taking alleged in this case, and it is

within the district courts' power to award such equitable relief. The Tucker Act may require that a just compensation claim under the Takings Clause be filed in the Court of Federal Claims, but petitioner does not seek compensation from the Government. In situations analogous the one here, this Court has assumed the lack of a compensatory remedy and has granted equitable relief for Takings Clause violations without discussing the Tucker Act's applicability. See, *e.g.*, *Babbitt* v. *Youpee*, 519 U. S. 234, 234–235. Pp. 17–20.

2. The Coal Act's allocation of liability to Eastern violates the Takings Clause. Pp. 20–35.

(a) Economic regulation such as the Coal Act may effect a taking. *United States* v. *Security Industrial Bank*, 459 U. S. 70, 78. The party challenging the government action bears a substantial burden, for not every destruction or injury to property by such action is a constitutional taking. A regulation's constitutionality is evaluated by examining the governmental action's "justice and fairness." See *Andrus* v. *Allard*, 444 U. S. 51, 65. Although that inquiry does not lend itself to any set formula, three factors traditionally have informed this Court's regulatory takings analysis: "the economic impact of the regulation, its interference with reasonable investment backed expectations, and the character of the governmental action." *Kaiser Aetna* v. *United States*, 444 U. S. 164, 175. Pp. 20–22.

(b) The analysis in this case is informed by previous decisions considering the constitutionality of somewhat similar legislative schemes: *Usery* v. *Turner Elkhorn Mining Co.*, 428 U. S. 1 (Black Lung Benefits Act of 1972); *Connolly* v. *Pension Benefit Guaranty Corporation*, 475 U. S. 211 (Multiemployer Pension Plan Amendments Act of 1980); and *Concrete Pipe & Products of Cal., Inc.* v. *Construction Laborers Pension Trust for Southern Cal.*, 508 U. S. 602 (same). Those opinions make clear that Congress has considerable leeway to fashion economic legislation, including the power to affect contractual commitments between private parties; and that it may impose retroactive liability to some degree, particularly where it is "confined to the short and limited periods required by the practicalities of producing national legislation," *Pension Benefit Guaranty Corporation* v. *R. A. Gray & Co.*, 467 U. S. 717, 731. The decisions, however, have left open the possibility that legislation might be unconstitutional if it imposes severe retroactive liability on a limited class of parties that could not have anticipated the liability, and if the extent of that liability is substantially disproportionate to the parties' experience. Pp. 22–27.

(c) The Coal Act's allocation scheme, as applied to Eastern, presents such a case, when the three traditional factors are considered. As to the economic impact, Eastern's Coal Act liability is substantial,

and the company is clearly deprived of the $50 to $100 million it must pay to the Combined Fund. An employer's statutory liability for multiemployer plan benefits should reflect some proportionality to its experience with the plan. *Concrete Pipe, supra,* at 645. Eastern contributed to the 1947 and 1950 W&R Funds, but ceased its coal mining operations in 1965 and neither participated in negotiations nor agreed to make contributions in connection with the Benefit Plans established under the 1974, 1978, or subsequent NBCWA's. It is the latter agreements, however, that first suggest an industry commitment to funding lifetime health benefits for retirees and their dependents. During the years that Eastern employed miners, such benefits were far less extensive than under the 1974 NBCWA, were unvested, and were fully subject to alteration or termination. To the extent that Eastern may be able to seek indemnification from EACC or Peabody under contractual arrangements that might insure Eastern against liabilities arising out of its former coal operations, that indemnity is neither enhanced nor supplanted by the Coal Act and does not affect the availability of the declaratory relief sought here. Respondents' argument that the Coal Act moderates and mitigates the economic impact by allocating some of Eastern's former employees to signatories of the 1978 NBCWA is unavailing. That Eastern is not forced to bear the burden of lifetime benefits for all of its former employees does not mean that its liability is not a significant economic burden.

For similar reasons, the Coal Act substantially interferes with Eastern's reasonable investment-backed expectations. It operates retroactively, reaching back 30 to 50 years to impose liability based on Eastern's activities between 1946 and 1965. Retroactive legislation is generally disfavored. It presents problems of unfairness because it can deprive citizens of legitimate expectations and upset settled transactions. *General Motors Corp.* v. *Romein,* 503 U. S. 181, 191. The distance into the past that the Coal Act reaches back to impose liability on Eastern and the magnitude of that liability raise substantial fairness questions. The pre-1974 NBCWA's do not demonstrate that there was an implicit industrywide agreement to fund lifetime health benefits at the time that Eastern was involved in the coal industry. The 1947 and 1950 W&R Funds, in which Eastern participated, operated on a pay-as-you-go basis and the classes of beneficiaries were subject to the trustees' discretion. Not until 1974, when ERISA forced revisions to the 1950 W&R Fund and when Eastern was no longer in the industry, could lifetime medical benefits have been viewed as promised. Thus, the Coal Act's scheme for allocating Combined Fund premiums is not calibrated either to Eastern's past actions or to any agreement by the company. Nor would the

Federal Government's pattern of involvement in the coal industry have given Eastern sufficient notice that lifetime health benefits might be guaranteed to retirees several decades later. Eastern's liability for such benefits also differs from coal operators' responsibility under the Black Lung Benefits Act of 1972, which spread the cost of employment-related disabilities to those who profited from the fruits of the employees' labor, *Turner Elkhorn, supra,* at 18. Finally, the nature of the governmental action in this case is quite unusual in that Congress' solution to the grave funding problem that it identified singles out certain employers to bear a substantial burden, based on the employers' conduct far in the past, and unrelated to any commitment that the employers made or to any injury they caused. Pp. 27–35.

JUSTICE KENNEDY concluded that application of the Coal Act to Eastern would violate the proper bounds of settled due process principles. Although the Court has been hesitant to subject economic legislation to due process scrutiny as a general matter, this country's law has harbored a singular distrust of retroactive statutes, and that distrust is reflected in this Court's due process jurisprudence. For example, in *Usery* v. *Turner Elkhorn Mining Co.,* 428 U. S. 1, 15, the Court held that due process requires an inquiry into whether a legislature acted in an arbitrary and irrational way when enacting a retroactive law. This formulation has been repeated in numerous recent cases, *e.g., United States* v. *Carlton,* 512 U. S. 26, 31, which reflect the recognition that retroactive lawmaking is a particular concern because of the legislative temptation to use it as a means of retribution against unpopular groups or individuals, *Landgraf* v. *USI Film Products,* 511 U. S. 244, 266. Because change in the legal consequences of transactions long closed can destroy the reasonable certainty and security which are the very objects of property ownership, due process protection for property must be understood to incorporate the settled tradition against retroactive laws of great severity. The instant case presents one of those rare instances where the legislature has exceeded the limits imposed by due process. The Coal Act's remedy bears no legitimate relation to the interest which the Government asserts supports the statute. The degree of retroactive effect, which is a significant determinant in a statute's constitutionality, *e.g., United States* v. *Carlton, supra,* at 32, is of unprecedented scope here, since the Coal Act created liability for events occurring 35 years ago. While the Court has upheld the imposition of liability on former employers based on past employment relationships when the remedial statutes were designed to impose an actual, measurable business cost which the employer had been able to avoid in the past, *e.g., Turner Elkhorn, supra,* at 19, the Coal Act does not serve this

purpose. The beneficiaries' expectation of lifetime benefits was created by promises and agreements made long after Eastern left the coal business, and Eastern was not responsible for the perilous condition of the 1950 and 1974 Plans which jeopardized the benefits. Pp. 9–13.

O'CONNOR, J., announced the judgment of the Court and delivered an opinion, in which REHNQUIST, C. J., and SCALIA and THOMAS, JJ., joined. THOMAS, J., filed a concurring opinion. KENNEDY, J., filed an opinion concurring in the judgment and dissenting in part. STEVENS, J., filed a dissenting opinion, in which SOUTER, GINSBURG, and BREYER, JJ., joined. BREYER, J., filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG, JJ., joined.