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3 LARRY MASSANARI, ACTING :

4 COMMISSIONER OF SOCIAL :

5 SECURITY, :

6 Petitioner :

7 v. : No. 00-1307

8 SIGMON COAL COMPANY, INC., :

9 ET AL. :

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11 Washington, D.C.

12 Wednesday, November 7, 2001

13 The above-entitled matter came on for oral  
14 argument before the Supreme Court of the United States at  
15 11:04 a.m.

16 APPEARANCES:

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19 behalf of the Petitioner.

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22 curiae.

23 JOHN R. WOODRUM, Washington, D.C.; on behalf of the  
24 Respondent.

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CHIEF JUSTICE REHNQUIST: We'll hear argument next in No. 00-1307, Larry Massanari, Acting Commissioner of Social Security v. the Sigmon Coal Company.

Mr. Wolfson.

ORAL ARGUMENT OF PAUL R.Q. WOLFSON

ON BEHALF OF THE PETITIONER

MR. WOLFSON: Mr. Chief Justice, and may it please the Court:

Congress enacted the Coal Act to prevent the collapse of a multi-employer, private health care system that had promised health care benefits to retired coal miners. Miners were in danger of losing their benefits as coal operators were selling their operations and dissolving and going out of business and shifting responsibility for their employees to other employers that were in the multi-employer health care system.

Congress enacted the Coal Act to stop this downward spiral. It wanted to ensure that a retired miner's benefits would be the responsibility of the operator that employed the miner, if possible, or if that operator was defunct, with one of that operator's related persons.

Section 9701(c)(2) of the Coal Act effectuates

1 this policy. That section sets forth the related persons  
2 who may be assigned responsibility for a miner's -- for an  
3 operator's employees. Under a straightforward reading of  
4 that statutory language in section 9701(c)(2), the  
5 commissioner may assign a miner to the direct successor in  
6 interest of a signatory operator.

7 QUESTION: Well --

8 QUESTION: Mr. Wolfson, even the dissenting  
9 judge in the court of appeals didn't buy that.

10 MR. WOLFSON: Well, it is true that he did not  
11 agree with us, Mr. Chief Justice, that the plain text of  
12 the statute did not support our reading, but I have to  
13 respectfully disagree with the dissenting judge because it  
14 is our position that it does.

15 QUESTION: Well, it depends on the meaning you  
16 give to the word described --

17 MR. WOLFSON: It depends on --

18 QUESTION: -- in section 9701(c)(2).

19 MR. WOLFSON: It depends on the meaning that you  
20 give to the word to describe. It also depends, Justice  
21 O'Connor, on the way one reads the subclauses of  
22 9701(c)(2).

23 Now, our -- now --

24 QUESTION: Well, you have to decide whether  
25 described in -- somehow includes a reference to as opposed

1 to a description of.

2 MR. WOLFSON: Well, there are two possible  
3 approaches to this question, Justice O'Connor. Certainly  
4 one meaning of describe is to set out or to refer to, and  
5 that is an established common usage of the meaning  
6 describe. It's a dictionary definition, and it's also  
7 true that the signatory operator is set out in and  
8 expressed in each of the subclauses (1), (2), and (3).  
9 But I would also submit -- and that is one theory under  
10 which we think that the plain text of the language  
11 supports our position.

12 I would also submit, however, that even if  
13 described has a more kind of -- a different sense,  
14 nonetheless, a signatory operator may be found within  
15 those -- those clauses (1), (2), and (3) because a  
16 signatory operator is, by definition --

17 QUESTION: Mr. Wolfson, can I interrupt you for  
18 a second on -- just on the word described? Does the word  
19 described have any meaning other than simply refer to --  
20 insofar as it refers to any of the -- any of the entities  
21 described in subparagraphs (i), (ii), and (iii)? Does it  
22 do anything other than, in fact, identify each?

23 MR. WOLFSON: It refers to -- well, it points  
24 back to --

25 QUESTION: And it doesn't give you a definition,

1 for example, of a controlled group. It doesn't describe  
2 what a controlled group is. It doesn't describe what a  
3 joint venture is. All it does is say there are those  
4 animals out there.

5 MR. WOLFSON: That is right. Now -- but --  
6 and --

7 QUESTION: So that the only meaning that can  
8 logically be given to the word described in the context of  
9 this statute is the one you give to it.

10 MR. WOLFSON: That is -- that is our position,  
11 Justice Stevens.

12 QUESTION: You think there's no -- no difference  
13 between a provision which says a member of the controlled  
14 group of corporations which includes the signatory  
15 operation, or a more detailed description, any other  
16 person who is identified as having a partnership interest  
17 or joint venture with a signatory operator, et cetera, et  
18 cetera. You want to equate with those descriptions the  
19 words signatory operator.

20 MR. WOLFSON: Justice Scalia --

21 QUESTION: In the prologue. A person shall be  
22 considered to be a related person to a signatory operator  
23 if that person is -- and then it goes (i), (ii), (iii).  
24 And you say signatory operator is one of the persons  
25 described in (A).

1                   QUESTION: I want to be very precise here  
2 because it's not necessary to refer to the prologue.  
3 After all, the -- the end, the flush paragraph says a  
4 related person shall also include a successor in interest  
5 of any person described in the clauses, not described in  
6 the prologue. So, our -- so, it's not necessary to go to  
7 the prologue. All that is necessary is to go to the  
8 clauses.

9                   And a signatory operator -- first of all, it is  
10 literally described and set forth in those clauses.

11                   Second, it is -- a signatory operator is a  
12 member of a family that includes a signatory operator. In  
13 that sense, even in a broader sense or a different sense  
14 of described, it is -- (A) is a member of the group that  
15 -- that includes (A), (B), and (C).

16                   Now, even if -- I think that I can concede that  
17 the contrary reading is a permissible one of the statute  
18 even if picking up the statute and -- and reading it for  
19 the first time without any reference to the context of the  
20 Coal Act. But --

21                   QUESTION: And it is -- as I understand it,  
22 there hasn't been any court that has accepted your reading  
23 so that courts, whether the person was writing in dissent  
24 or in the majority, have rejected your reading as an  
25 impermissible one. Am I right about that?

1 MR. WOLFSON: Well, they -- they, in the end,  
2 agreed with us that that -- Judge Murnaghan below and the  
3 D.C. Circuit in the R.G. Johnson case agreed with us in  
4 the end that the statute should be given this meaning  
5 because --

6 QUESTION: But not on the basis of what the text  
7 says. In both cases they said Congress could not have  
8 meant what they wrote, but as to the literal  
9 interpretation of the statute, they all agreed -- they all  
10 rejected the notion that Congress had, in fact, enumerated  
11 a successor of a signatory as -- within the -- the text of  
12 the statute.

13 MR. WOLFSON: That is correct.

14 Now, it's our position, though, we disagree with  
15 those holdings, and we -- and it's our position that it is  
16 at minimum a permissible reading of the statute.

17 QUESTION: Do you know any other statute that's  
18 ever been interpreted that way where it, you know,  
19 describes certain people --

20 MR. WOLFSON: Well --

21 QUESTION: -- in certain clauses in a later  
22 provision and says any person described in such and it  
23 includes a reference to signatory?

24 MR. WOLFSON: Well, of course --

25 QUESTION: I would have thought there would be



1 something, you know, at least close to this. Do you have  
2 any --

3 MR. WOLFSON: Well --

4 QUESTION: What's the closest example you can  
5 think of?

6 MR. WOLFSON: Well, I don't know about describe.  
7 I do know about include certainly is not -- is not a word  
8 that is ordinarily meant to give an exclusionary reading;  
9 that is, it is -- it's not -- include is -- is a non-  
10 exhaustive list. So, by saying it is a member of the  
11 controlled group that includes a signatory operator, it  
12 doesn't necessarily mean -- it seems to me that the  
13 respondents would essentially say a member of the  
14 controlled group of corporation, which includes the  
15 signatory operator but not the signatory operator itself  
16 and --

17 QUESTION: I believe what we'd like is a -- an  
18 -- a canon, for example, that says something like it is  
19 permissible for a court to accept an absurdly literal  
20 meaning -- reading of a statute where necessary to avoid  
21 an absurd result.

22 MR. WOLFSON: Well, the -- the Court has done  
23 that. I mean --

24 QUESTION: Where? That's what we want. The  
25 example where it's done that.

1 MR. WOLFSON: Right. The Court has done that.  
2 The Court has done that. I think --

3 QUESTION: Heck, we've ignored the statute  
4 entirely to --

5 (Laughter.)

6 QUESTION: No, no.

7 MR. WOLFSON: The Court has done that.

8 QUESTION: -- seems like a better result --

9 MR. WOLFSON: Just -- just last term in a case  
10 called Cornell Johnson --

11 QUESTION: Did I write that?

12 (Laughter.)

13 MR. WOLFSON: -- Cornell Johnson v. United  
14 States, the Court was presented with two meanings of the  
15 word revoke. And -- and the Court -- and that was a  
16 criminal case where the rule of lenity operates, of  
17 course. And the Court said, well, one meaning of the word  
18 revoke, even though less common certainly and perhaps  
19 strained, was the only one that could really make any  
20 sense out of the statute and the other one --

21 QUESTION: Is that cited in your brief?

22 MR. WOLFSON: It is cited in the brief, Your  
23 Honor.

24 And it's -- and another case that comes to mind  
25 that's similar is Field v. Mans, and that is a also

1 relevant case because there the Court was faced with kind  
2 of a negative pregnant argument; that is, well, here's one  
3 language that appears in one part of the statute, but that  
4 language that we would hope for doesn't appear here. And  
5 the Court said --

6 QUESTION: I'm more likely to think that  
7 Congress meant what it says, and -- and I -- why do you  
8 assert that it is -- it is unbelievable that Congress  
9 would have meant what it said here?

10 It is certainly the case that the -- that the  
11 persons who would have been most affected by the  
12 interpretation of this language that you -- you -- that  
13 you propose would have been the very coal mine operators  
14 who were lobbying Congress to get this thing passed. It  
15 seems to me not at all inexplicable that they were willing  
16 to have successors in interest of other people down the  
17 line held liable so long as they themselves would not be  
18 regarded as the successor in interest to somebody who  
19 preceded them, you know, saddling them with liability. I  
20 don't find that a -- an unbelievable scenario at all. It  
21 seems to me a quite plausible one.

22 MR. WOLFSON: Well, several things.

23 QUESTION: It -- it may not be a good policy  
24 result.

25 MR. WOLFSON: Well, it's not just a -- a

1 question of not being a good policy result. It's also is  
2 this anything that Congress could have conceivably wanted  
3 to promote in the language of the act. And Congress was  
4 aware, to the contrary of -- of the premise of your  
5 question, that it was exactly the problem of selling coal  
6 operations and then the original coal operator  
7 disappearing and not being available --

8 QUESTION: And Congress had -- had addressed  
9 that problem, as I understand it, in just the way you feel  
10 we should address it in -- in some of the bills in  
11 predecessor sessions of -- of the Congress in which they  
12 specifically did include successors to the signatories.  
13 So that it seems, if -- if you want to look at the -- the  
14 broader record on what's believable and what isn't  
15 believable, at an earlier time, Congress tried, though it  
16 not -- or some people in Congress tried, though they  
17 didn't get their bills passed, to do just what you want us  
18 to say they did here. And yet, here they didn't.

19 Isn't that a fact? Isn't that contrast  
20 something that we should take into consideration in  
21 deciding what is credible or not?

22 MR. WOLFSON: Justice Souter, there's no  
23 evidence in the background to the adoption of the Coal Act  
24 that Congress ever deliberately left behind --

25 QUESTION: You mean this particular statute in

1 this session of Congress.

2 MR. WOLFSON: This particular statute that  
3 Congress ever deliberately left behind a provision for --

4 QUESTION: Sure. You're right.

5 MR. WOLFSON: Right. And -- and there were many  
6 contentious issues involved in the framing of the Coal  
7 Act. This was not one of them.

8 And the entire Coal Commission which was in  
9 considerable disagreement about what the Congress should  
10 do addressed the issue this way, and this unanimous on --  
11 on their part. The ability of an employer to renege on  
12 its commitments to its retirees and dump liability on the  
13 funds disrupts any effective long-range solution, and then  
14 there is some further language, and then it says, the  
15 commission believes that this situation is intolerable and  
16 must be stopped.

17 There is no disagreement on that as being the --  
18 the core problem or one of the core problems that led  
19 Congress to enact the Coal Act. And there's -- and  
20 there's simply no -- I would submit there's simply no  
21 reason to think that Congress would have deliberately  
22 chosen to say we are going to place liability on these  
23 what I would call the nephew corporations, that is, the  
24 successors in interest of the subsidiaries or the -- or  
25 the corporate brothers and sisters and not on the direct

1 successors who were the very people to whom the original  
2 coal operator had sold their operations.

3 QUESTION: I'll give you a very good reason -- a  
4 very good reason. It's the best we could do. They  
5 couldn't have gotten the legislation otherwise. Sure, I  
6 could design better legislation, but better designed  
7 legislation is useless if it is not enacted. And the  
8 scenario I -- I give you is -- is one in which the coal  
9 operators did not want themselves to be tagged as  
10 successor corporations to somebody who -- from whom they  
11 had previously bought the assets.

12 MR. WOLFSON: Well --

13 QUESTION: And they were the major players in --  
14 in this. Now --

15 MR. WOLFSON: Well, first of all, I mean, it's  
16 important to remember --

17 QUESTION: That's why Congress did it. It's the  
18 best they could do. It may not be the best statute in the  
19 world, but it's a statute. It -- it did some good anyway.

20 MR. WOLFSON: Well, first, it's important to  
21 remember that the coal operators were getting very  
22 significant relief from the Coal Act, which is to say that  
23 the -- the members of the Bituminous Coal -- Coal  
24 Operators Association who were at that time being forced  
25 to shoulder the costs of the -- of the -- the retirees of

1 the employers who had already gone out of business, they  
2 received a great deal of benefit from the Coal Act because  
3 -- because the Coal Act adopted the -- the approach of  
4 going back in time and reaching some of those people who  
5 had disappeared, and the problem was that they had  
6 disappeared and shifted -- disappeared and nobody had been  
7 there to -- to pick up the -- the cost. And that -- that  
8 was -- that was the very problem.

9 QUESTION: No. You may be right. I mean, I --  
10 you know, I can't prove my scenario. You can't prove your  
11 scenario. But it seems to me the burden is on the  
12 Government to give us a very good reason for ignoring what  
13 seems to me the -- the only reasonable reading of this  
14 language. And -- and your reason for ignoring it is it is  
15 inconceivable that this is what Congress could have  
16 intended, and I think it is entirely conceivable. I'm --  
17 I'm not sure that that's the answer.

18 QUESTION: You have to be very careful about  
19 generalizing what is conceivable for Congress.

20 (Laughter.)

21 MR. WOLFSON: Mr. Chief Justice, if there had  
22 been some indication in the legislative background that  
23 this was a contentious issue and that there was attempt  
24 to, as the respondents have said, reclaim what was given  
25 away in the compromise, then -- then there might be some

1 substance at that point. But there -- but there isn't.

2 And --

3 QUESTION: Horse trading has got to be explicit.

4 MR. WOLFSON: Well, it's -- it's not that you  
5 have to be explicit. It's that one would certainly have  
6 thought this would have been an issue that had surfaced  
7 somewhere in -- in the background of the Coal Act, and it  
8 -- it hadn't in this sense. I mean, all of the Coal  
9 Commission was -- was on board on this particular issue  
10 which is the -- the problem was that coal operators had  
11 gone out of business and that the -- and that the chain of  
12 succession hadn't been there.

13 QUESTION: The oddity that you're relying on an  
14 illogic between the related people and their -- and their  
15 successors count and not the successors of the -- the  
16 operator -- we're told that there has not been, in the  
17 history of the operation of this act, any case where  
18 liability has been imposed on a successor of -- of a  
19 related entity.

20 MR. WOLFSON: That -- that's not right. I've  
21 checked that. It's not in the record in this case, but  
22 there have been instances in which Social Security has  
23 assigned liability to a successor of a related person.

24 QUESTION: But you would -- not in many cases.  
25 Would you agree to that?

16

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1 MR. WOLFSON: I can't -- I can't state how many  
2 because there are 16,000 assignments and they are not  
3 organized this way.

4 QUESTION: Well, my point is if this was a  
5 minimal likelihood, the other was a much more substantial  
6 risk for the coal companies. One could easily see that  
7 the coal companies want to protect themselves, and -- and  
8 the other didn't mean a whole lot to anybody. So, it  
9 stayed in.

10 MR. WOLFSON: Justice Ginsburg, I think that to  
11 adopt that view, one -- one would have to know for certain  
12 that related persons were necessarily not coal -- not also  
13 coal companies. But there are coal companies that are  
14 also related to other coal companies. There are -- I  
15 mean, that is a -- that is a -- a form of organization  
16 that exists in the coal industry, which is that coal  
17 companies are -- and -- and the Coal Commission documented  
18 this. That is, the coal -- the coal industry is  
19 characterized by interlocking networks of parents and  
20 subsidiaries and corporate brother and sister  
21 corporations, and they do that for some valid business  
22 reasons, to take advantage of limited liability laws, and  
23 other reasons as well involving closing -- the need to  
24 close coal mines and start up elsewhere.

25 But the -- the point is it's not necessarily the

1 case that the -- the successors of the related persons are  
2 not coal companies. There may be some that are not coal  
3 companies. Certainly they're not -- certainly if they're  
4 related persons, they will on some occasion include not  
5 coal companies -- other than coal companies, but they also  
6 will include coal companies.

7 And Congress was addressing the situation more  
8 generally, and given that -- given the fact that Congress  
9 knew that coal companies were organized in -- in  
10 interlocking corporate forms, I don't think I can agree  
11 that these other people, these successors of related  
12 companies, would have been strangers to the legislative  
13 process that Congress would have found it easy to pick on,  
14 which I have to say is -- I'm not aware that the Court has  
15 adopted a theory of statutory construction which is that  
16 the statute should be construed where -- you know, because  
17 one people were the ins and the other the outs. And the  
18 only reason that -- that we can make sense of the statute  
19 is that, you know, Congress decided that the outs were an  
20 easy target. I mean, that's -- that's --

21 QUESTION: But there's something else. If --  
22 once you concede that you -- on the text you lose, then if  
23 you would agree that it would be a much larger class to  
24 stick in -- that is, successors of the -- the signatories  
25 would be a much larger class than successors of related

1 companies -- if you -- if you agree with that, then for  
2 the Court to say we're going to cure this defect in the  
3 statute by including a large group because there's a  
4 smaller group that's there, usually when the Court is  
5 faced with that choice, it will say, well, then -- then  
6 the others, the small group, shouldn't have been included.

7 MR. WOLFSON: Well, first, I would not agree  
8 that we lose on the plain language of the statute. I  
9 think our reading is certainly a permissible one.

10 But to the contrary I would say Congress must  
11 have included what I will hypothesize is the small group  
12 for a legitimate policy reason, and it would be very odd  
13 that Congress would not also include the large group who  
14 are more -- more directly -- at least more directly  
15 related to the problem at hand.

16 I'd like to reserve the remainder of my time, if  
17 I may.

18 QUESTION: Very well, Mr. Wolfson.

19 Mr. Buscemi, we'll hear from you.

20 ORAL ARGUMENT OF PETER BUSCEMI

21 ON BEHALF OF THE UNITED MINE WORKERS OF AMERICA

22 COMBINED BENEFIT FUND, AS AMICUS CURIAE

23 MR. BUSCEMI: Thank you, Mr. Chief Justice, and  
24 may it please the Court:

25 There are several things that are not in dispute

19

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1 in this case, and I think it's worth reminding the Court  
2 of some of what they are.

3 First of all, Congress did not say that the  
4 successors of signatory operators are excluded from  
5 liability. Congress could have said that. It did not.

6 Secondly, Congress did seek to assign as many  
7 Combined Fund beneficiaries as possible to specific  
8 signatory operators, and to keep the unassigned  
9 beneficiaries to an absolute minimum.

10 Thirdly, as Mr. Wolfson said, the coal industry  
11 was characterized by shifting forms of corporate  
12 organization. This was one of the very problems that  
13 Congress was trying to address, that you had miner --  
14 mining companies selling assets, other mining companies  
15 coming in apparently indistinguishable to the outside  
16 observer. The mine looked the same. The people working  
17 there were the same. The equipment was the same. And  
18 yet, the company that did own the assets at one time  
19 sought to walk away, and the other -- and the company  
20 coming in said, well, I'm not responsible.

21 Fourthly, the statute includes very broad  
22 provisions defining related person, far broader than the  
23 ordinary circumstances in which parent and subsidiary  
24 liability for each other's debts or obligations would be  
25 found.

1           And finally, also undisputed is that it's not  
2 only that the successors in interest of related persons  
3 are liable for the Combined Fund obligations, but it's  
4 also that the successors in interest of the signatory  
5 operators themselves are liable for the individual  
6 employer plans, section 9711, which involved very  
7 substantial obligations, and for the '92 plan. All of  
8 that is undisputed.

9           QUESTION: How -- how do we know that?

10          MR. BUSCEMI: 9711(g)(1) explicitly says that  
11 successors in interest to signatory operators are liable  
12 for the individual employer plans and for the '92 plan.

13          QUESTION: I'm not sure that helps you.

14          QUESTION: Yes. Why doesn't it cut against you?

15          MR. BUSCEMI: Well, I -- well, I readily  
16 acknowledge that you can make both arguments, but I think  
17 the better argument is that it helps us because it adds to  
18 the incongruity that our opponents are trying to argue for  
19 here. It adds to the oddity of the result. It says that  
20 Congress wanted to make successors in interest of related  
21 persons liable for the Combined Fund. It wanted to make  
22 successors in interest to the signatory operators liable  
23 for the individual employer plan and for the '92 plan.  
24 And yet, Congress wanted to carve out a little segment  
25 there for signatory -- successors of signatory operators

1 and the Combined Fund.

2 QUESTION: But it's not a little segment because  
3 if your opponent is right, everybody would have a motive  
4 to sell out right away. So, it would seem to me the whole  
5 industry would get a benefit from -- from the other --  
6 from your opponent's reading of the statute.

7 MR. BUSCEMI: Well --

8 QUESTION: Everybody should have just sold out  
9 right away.

10 MR. BUSCEMI: Well, precisely, Your Honor. I  
11 mean, one of the things that I -- I'd like to point out is  
12 that one of the enormous anomalies of what our opponents  
13 are arguing and what the court of appeals has held here is  
14 that it essentially says that Congress deliberately put  
15 into the statute the seeds of the statute's demise.  
16 Congress created a situation in which anyone who was -- on  
17 whom liability was imposed under this statute could sell  
18 its asset to someone else, distribute the proceeds to its  
19 shareholders, dissolve the corporation, and the -- and the  
20 obligations would be terminated, and yet the operations of  
21 the coal mine would continue on as is.

22 QUESTION: Mr. Buscemi?

23 QUESTION: But the answer to that --

24 QUESTION: I don't follow that because isn't it  
25 just standard corporate law that if you sell out your

1 assets and then quit business and there are liabilities  
2 out there, that your shareholders will be stuck with that  
3 liability up to the amount that they gained from the asset  
4 sale? Isn't that just standard corporate law?

5 MR. BUSCEMI: Well, I suspect, Your Honor, that  
6 the argument would be made that that's also not in the  
7 statute and that, therefore, you can't import that into  
8 the statute. No one has denied -- when we've said that  
9 this is a potential result of the argument that's been  
10 made here, no one has said it is not because the  
11 shareholders would take on that liability.

12 QUESTION: But isn't that -- why would that  
13 State law be displaced? The standard provision for a  
14 company that sells its assets and then goes out of  
15 business, for there to be shareholder liability.

16 MR. BUSCEMI: Well, Your Honor, it may very well  
17 not be displaced. But I could respond to that with the  
18 argument that nor should the successorship preexisting law  
19 be displaced; that is, Congress acted against the  
20 background of preexisting law, both judicial  
21 interpretation of the statute and the normal rules of  
22 statutory construction written into title 1.

23 QUESTION: If it -- if it did that, it wouldn't  
24 have had to have the last -- the last clause of -- of  
25 section 9701(c)(2), which says a related person shall also

1 include a successor in interest. If it was appealing to  
2 the general rule that successors in interest are always  
3 covered, that would have been unnecessary, as well as the  
4 provision that you mentioned earlier where -- where they  
5 specifically said as to some matters -- as to some  
6 matters, the successors in interest of -- of the -- of the  
7 current coal companies would be -- would be covered.

8 MR. BUSCEMI: Well, you're absolutely right,  
9 Justice Scalia, but that doesn't mean that Congress,  
10 therefore, should be penalized for including some more  
11 specific provisions. There's nothing that -- if Congress  
12 wanted to jettison title 1 and the normal rule that a  
13 successor of a corporation is liable for that  
14 corporation's obligations, then Congress should have said  
15 so.

16 QUESTION: But that -- but that meaning would be  
17 -- make the successor equal to the -- the signatory  
18 corporation, and that's not what you're urging, and that's  
19 not what Mr. Wolfson suggested the statute means. You're  
20 saying that the -- that the successor has successor  
21 secondary liability. And then you're looking at the  
22 dictionary act. It says successors are the same. So, I  
23 don't think that that 101 -- section 1 works for you  
24 because it would mean it's -- the successor's liability is  
25 not a second category of liability, but it would be up

24

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1 there in the top tier with the signer itself.

2 MR. BUSCEMI: Your Honor, as a matter of  
3 discretion, the commissioner, in assigning the  
4 beneficiaries, could elect which of several possible  
5 assigned persons it was going to make the assignment to,  
6 and I think that's all the commissioner has done here.

7 The -- the fact of the matter is if -- if we  
8 want to do an absolute, literal reading of the language, I  
9 think that the signatory operators are included there. I  
10 think what the -- our opponents are doing is they're  
11 saying we want it one way because we want the natural  
12 reading, but we don't want the really absolutely literal  
13 reading. This Court said --

14 QUESTION: Well, that -- that also I don't  
15 understand because I'm not sure that the -- the -- when --  
16 when the title 1 defines successor, it is talking about  
17 the person who buys assets. I thought it was talking  
18 about and the business goes on. I thought that in the  
19 meaning of that section, it arises from a merger or an  
20 acquisition and not an asset sale where the company goes  
21 out of business.

22 MR. BUSCEMI: Well, that may be, and that's what  
23 our opponents argue, but that issue is not before the  
24 Court right now. That issue was not reached by the court  
25 of appeals. The issue before the Court is whether this

1 statute can be read to cover successors of signatory  
2 operators or successors in interest of signatory  
3 operators, however that may be defined.

4 And as I -- as I think the -- the Court has said  
5 in -- in other decisions, sometimes one needs to depart  
6 from the ordinary or most natural meaning in order to  
7 adopt a meaning that is consistent with the overall  
8 intention and policy of the statute, which is --

9 QUESTION: That's Holy Trinity, isn't it?

10 MR. BUSCEMI: Well, I think in Holy Trinity --

11 QUESTION: Do we not have to go that far?

12 MR. BUSCEMI: -- they were talking about the  
13 spirit of the statute, Your Honor. We weren't going that  
14 far.

15 QUESTION: Going back to your argument that the  
16 -- the other side's position is simply an -- an immediate  
17 inducement to sell, isn't one answer to that that if  
18 that's what the -- the signatory does, it's going to be  
19 the signatory's brother/sister corporations or parent  
20 corporations that are, in effect, going to -- probably  
21 going to be penalized, as it were, with liability? And  
22 isn't that the reason why the inducement that you refer to  
23 does not operate in such an automatic way?

24 MR. BUSCEMI: Well, not necessarily, Your Honor.  
25 It would depend on what the nature of the corporate family

1 is. Are there multiple corporations? Are there brother  
2 and sister --

3 QUESTION: Well, it would depend on how -- yes,  
4 it would depend on how control is exerted, but presumably  
5 in some of these relationships, there would be a  
6 sufficient degree of control to exert that would -- would  
7 prevent this untoward result.

8 MR. BUSCEMI: We're not saying it would happen  
9 in each and every case, Your Honor, but I think certainly  
10 you -- you would see a lot of smaller companies using a  
11 transaction like this in the future to escape this  
12 liability.

13 QUESTION: Does the act impose potential  
14 liability on related persons of successors in interest to  
15 signatory operators?

16 MR. BUSCEMI: Well, Your Honor, again, it  
17 doesn't specifically go down that line and I'm not aware  
18 of any case in which you've taken the -- the SSA has taken  
19 a successor to a related person and then --

20 QUESTION: Is that what Sigmon Coal is, one of  
21 the respondents here? A related person to a successor to  
22 a signatory?

23 MR. BUSCEMI: Yes. It's a related person to  
24 Jericol, which is the successor. Yes, Your Honor.

25 QUESTION: And you can't point to anything in

1 the act that would cover that.

2 MR. BUSCEMI: Well, Your Honor, I -- I think  
3 that if -- if Jericol is liable, then Sigmon would be  
4 liable as a related person to Jericol. I don't understand  
5 our opponents to be challenging that. I think they're  
6 only challenging whether Jericol is liable.

7 Thank you, Your Honor.

8 QUESTION: Very well, Mr. Buscemi.

9 Mr. Woodrum.

10 ORAL ARGUMENT OF JOHN R. WOODRUM

11 ON BEHALF OF THE RESPONDENTS

12 MR. WOODRUM: Mr. Chief Justice, and may it  
13 please the Court:

14 Before the Eastern Enterprises case came to this  
15 Court in 1998, the lower courts were required to address  
16 the question presented by Eastern as to whether its  
17 retirees should be assigned to its successor. The  
18 commissioner responded in that case that the Coal Act did  
19 not provide for successor liability. The commissioner's  
20 argument is set forth at pages 1a through 8a of the  
21 appendix to the amicus brief filed by R.G. Johnson.

22 In that case -- or in that argument, the  
23 commissioner stated -- and I quote -- that Congress  
24 omitted successor companies from the Coal Act's assignment  
25 provision cannot be attributed to mere legislative

1     inadvertence or neglect. That particular sentence is at  
2     page 3a. And he further stated at that page, given that  
3     the Coal Act refers to successors in several other Coal  
4     Act sections, Congress' omission of successors from both  
5     the requirements of the assignment hierarchy and the  
6     definition of signatory operators was clearly intentional.

7             While it is the case that the Secretary was  
8     promoting at that time a policy of nevertheless assigning  
9     beneficiaries to successors where the operator was out of  
10    business and there were no related persons, that was never  
11    rooted in any notion that there was something in the  
12    definition of related person that made the successor a  
13    related person. It was simply a manifestation of the  
14    commissioner's assumption of what Congress would have  
15    wanted the commissioner to do.

16            QUESTION: What do you think the strongest  
17    policy reason would be for imposing liabilities on  
18    successors in interest to related parties but not on  
19    successors in interest to signatory operators?

20            MR. WOODRUM: I don't know that there is any  
21    policy reason for imposing them on --

22            QUESTION: Why would Congress make that choice?

23            MR. WOODRUM: I think Congress made that choice  
24    because, as Justice Scalia has -- has noted, this was a  
25    statute that came -- came together very quickly under

1 great pressure. It was worked out by a number of groups.  
2 They were facing a strike at the end of the year, and they  
3 had had a veto of the earlier statute by President Bush  
4 in, I believe it was, April -- March or April, and they  
5 were left with a short period of time to get it done, and  
6 they simply got it done. Those words appear there. What  
7 they mean is not before the Court. The words successor in  
8 interest of related persons.

9 QUESTION: So, if it's inadvertent -- if it's  
10 inadvertent, I think we should try, as hard as possible,  
11 to get the interpretation they would have wanted. You  
12 think it's just inadvertent.

13 MR. WOODRUM: I don't know, Justice Breyer --

14 QUESTION: What other possible explanation could  
15 there be?

16 MR. WOODRUM: Well --

17 QUESTION: It makes no sense. You agree to  
18 that.

19 MR. WOODRUM: It -- it --

20 QUESTION: And so, what possible explanation  
21 could there be other than a legislative mistake?

22 MR. WOODRUM: The -- the -- one possible reason  
23 why that is there is that it was never intended to have  
24 the broad meaning which the commissioner has given it,  
25 which is --

1                   QUESTION: I know, but I mean, why? What --  
2 what -- you said there is no reason that you can think of.  
3 I can think of none. Any policy it could serve to have  
4 the -- the nephews related but not the direct descendant  
5 makes no sense to me, and you can't make any sense out of  
6 it either, I -- I gather.

7                   Now, that being so, what -- why -- why was it  
8 written that way? And we can think of one answer. It was  
9 inadvertent. Is there any other possibility?

10                  MR. WOODRUM: The -- I don't know why it's  
11 there. We have no legislative history as to why that  
12 phrase was there.

13                  QUESTION: Well, we do have some legislative  
14 history.

15                  QUESTION: We're asking you to speculate. If  
16 there's no conceivable reason, I'm -- I'm inclined to say,  
17 yes, maybe -- you know, maybe it was a mistake --

18                  MR. WOODRUM: Well --

19                  QUESTION: -- and we should -- we should regard  
20 it as a scrivener's error. You -- you cannot conceive of  
21 any reason, is that what you're saying, why -- why that --  
22 why it came out that way?

23                  MR. WOODRUM: I think it came out that way  
24 because when you look at the parallelism of the earlier  
25 draft of the statute, there had been provisions that were

1 parallel. Although they referred to successor, there was  
2 a -- in the -- in the immediately earlier draft that's  
3 appended to -- again, to the R.G. Johnson amicus brief,  
4 there was a provision that did define a -- a signatory  
5 operator to include a successor, which is --

6 QUESTION: Which would make you think that this  
7 was intentional, but you -- you tell us --

8 MR. WOODRUM: Exactly.

9 QUESTION: You tell us you cannot conceive of  
10 any reason why somebody would do that intentionally.

11 MR. WOODRUM: To put in -- Justice Breyer's  
12 question was why might there be a reference to successor  
13 in interest of a related person and not such a reference  
14 to --

15 QUESTION: Right.

16 MR. WOODRUM: -- a successor in interest of the  
17 direct signatory. And that is because between the -- the  
18 couple of days between the draft that had successor  
19 liability for signatory operators and the enactment, the  
20 version that actually was hammered out and agreed to, the  
21 successor language was ripped out of the definition of  
22 successor -- of signatory operator. It seems clear there  
23 that there was a --

24 QUESTION: Well, was it ripped out or was it  
25 never put in?



1 MR. WOODRUM: Well, it was --

2 QUESTION: In this particular bill, it was never  
3 put in.

4 MR. WOODRUM: It was not put in.

5 QUESTION: All right.

6 MR. WOODRUM: It was the from the earlier draft.

7 QUESTION: Okay. So, they didn't have to do any  
8 ripping to the text with which they started here.

9 MR. WOODRUM: Not this text, that's correct.

10 QUESTION: Let me just go one step further than  
11 Justice Scalia's question and -- and ask you this. I -- I  
12 take it it's -- it's correct that at no time in this  
13 litigation has your side either represented to the court  
14 or tried to offer any evidence to any court that this was  
15 the result of a -- in effect, a deliberate political  
16 agreement. You know, we'll withdraw our opposition if  
17 you'll take that out kind of a agreement.

18 MR. WOODRUM: No. We've not taken the position  
19 that there was a -- a -- some sort of a tradeoff of taking  
20 it out of the one section and yet leaving it in the other.

21 QUESTION: Then that really does leave it as  
22 kind of unexplained inadvertence. I mean, that's the only  
23 way we can look at it, isn't it?

24 MR. WOODRUM: It would be -- if it's unexplained  
25 inadvertence, it would be in leaving in language that

1 speaks to successor in interest of the related person.

2 QUESTION: Oh, I see. It is a mistake, but you  
3 don't know which mistake it is, whether it is --

4 MR. WOODRUM: Well, no, I think --

5 QUESTION: -- it is failing to include the --  
6 the original owners or including the -- the later --

7 MR. WOODRUM: No. It -- it would seem clear --

8 QUESTION: So, maybe we should ignore the later  
9 language instead of ignoring this language. That's a real  
10 puzzlement which language we should ignore.

11 (Laughter.)

12 MR. WOODRUM: The -- the problem is that -- and  
13 that's why the courts tend to enforce the plain language  
14 of the statute as written is because we don't know what  
15 happens in those discussions, in those negotiations that  
16 lead to the enactment.

17 QUESTION: You're -- you're not saying, are you,  
18 that you know for a fact that there was not this -- this  
19 kind of motive, to simply save the liability of the  
20 initial coal owners? You -- you don't know for a fact  
21 that that was not why it was eliminated, do you?

22 MR. WOODRUM: There is nothing in the record  
23 that speaks to it one way or the other.

24 QUESTION: Well, that isn't quite true. I know  
25 Justice Scalia won't look to this part of the record, but

1 there is legislative history that to me strongly suggests  
2 there was no such political deal. You have Senators  
3 Wallop and Senator Rockefeller get up and they say this  
4 does cover the successor in interest. In my experience,  
5 whenever one Senator says such a thing and that's actually  
6 a contested issue, the other side gets a different Senator  
7 to get up and say the opposite. So -- so, I would say  
8 that it's very contrary to any situation of which I'm  
9 aware in which there was a real political fight.

10 MR. WOODRUM: Well, let me explain each of those  
11 -- those two comments.

12 First of all, Senator Rockefeller put some  
13 comments into the record on many different points, and so  
14 far there have been three circuit courts that have  
15 declined to attribute or -- or to give plain language the  
16 meaning that -- that Senator Rockefeller said it should  
17 have on three other issues, in addition to this particular  
18 issue. Those cases are noted in -- in our brief.

19 Secondly, as far as Senator Wallop's comment is  
20 concerned, it appears that it was simply added in as a  
21 technical explanation. I don't think that --

22 QUESTION: I agree. I'm just saying that the  
23 fact that they're there is evidence that what you're  
24 saying is completely true, that this was not a deal. If  
25 that's evidence of that, I'm not saying how strong it is

1           But my -- my -- what I'd actually like to ask  
2 you is, if in fact it's inadvertent or we don't know, then  
3 why don't we just do this? It says the term signatory  
4 operator means a person who is a signatory operator. The  
5 first sentence of the U.S. Code, just after it defines  
6 lunatic and idiot --

7           (Laughter.)

8           QUESTION: -- says that the word person includes  
9 corporations. Then section 5 says the word company -- and  
10 it includes corporations, companies, associations. The  
11 word company or association, when used in reference to a  
12 corporation shall be deemed to embrace the word successors  
13 and assigns as if the words successors and assigns, or  
14 words of similar import, were expressed. And it tells us  
15 to read statutes that way unless the context indicates  
16 otherwise.

17           Very well. What in here indicates otherwise?  
18 Isn't that the issue? The issue is not the meaning of the  
19 -- of whether 1, 2, and 3 include assigns. The issue is  
20 whether 1, 2, and 3 preclude the ordinary meaning in the  
21 preceding sentence of person to include the successors of  
22 a corporation.

23           MR. WOODRUM: Justice Breyer, the -- the title 1  
24 dictionary act by its terms is to be applied when there is  
25 no evidence --

1 QUESTION: That's right.

2 MR. WOODRUM: -- in the statute.

3 QUESTION: That's exactly --

4 MR. WOODRUM: We have ample evidence in this  
5 statute that Congress specifically considered both  
6 questions of successor and successors in interest because  
7 those terms are used throughout the statute. For example,  
8 at section 9711(g), the term, last signatory operator, is  
9 defined to include successor in interest. And the  
10 interesting thing about --

11 QUESTION: But what you're doing right this  
12 minute, you see, which is fine, which I'll let you do and  
13 I'd like you to do, but note that what you're doing is not  
14 addressing, as I think you're quite right, whether you can  
15 shoehorn successors into paragraphs 1, 2, and 3, which is  
16 pretty tough to do. Rather, you're addressing a different  
17 question of whether the context shows that the ordinary  
18 dictionary act definition should not apply to a preceding  
19 sentence. Now, noting that that's what you're doing, I'd  
20 be happy to have you do it.

21 QUESTION: May I --

22 QUESTION: He's doing that because you asked him  
23 the question.

24 (Laughter.)

25 QUESTION: I mean, don't -- don't blame it on

1 him.

2 QUESTION: May I follow up on that --

3 QUESTION: Why don't we give him a chance to  
4 answer?

5 QUESTION: -- by asking of my role in saying  
6 that the dictionary act -- the use of the word successor  
7 in the dictionary act is not the use of the word -- if  
8 Justice Breyer was right that successor means successor,  
9 but I thought successor, in the meaning of the dictionary  
10 act, was not the kind of successor that we're dealing with  
11 here -- that is, an asset sale -- but was the successor  
12 corporation when two corporations merge, when one  
13 corporation acquires another. And if that's so, then the  
14 dictionary act would not touch at all the asset sale  
15 successor.

16 MR. WOODRUM: Exactly, Judge Ginsburg, and  
17 that's the --

18 QUESTION: Why is that? Because what the --  
19 what it says is, literally, pretend that the word  
20 successor appears in the statute that you're reading.  
21 Okay, I'll pretend it. So, I now read the word signatory  
22 operator means a company and its successors. What in  
23 there says that I can't read this as applying to an asset  
24 sale as well as any other kind of transfer?

25 MR. WOODRUM: Again, the dictionary act is of

1 general background and relevance to the Court to provide  
2 assistance where Congress hasn't spoken to the issue. But  
3 going back, at my peril, to section 9711(g), which does  
4 have the words you're looking for or I should say that the  
5 commissioner is looking for in section 9701(c)(2), the  
6 interesting thing about section 9711(g), it applies to  
7 different but brother plans, shall we say, or comparable  
8 plans that were also part of this legislation. And  
9 section 9711(g) says, for purposes of these plans, it  
10 shall -- the last signatory operator shall include a  
11 successor in interest.

12 QUESTION: May I just --

13 MR. WOODRUM: And that's the only rule. It  
14 says, rules for purposes of these plans, and that is the  
15 -- the words that go to successor in interest and a  
16 subpart that goes to post-enactment successors is the only  
17 special rule there, which has to carry the implication --

18 QUESTION: Let me just --

19 MR. WOODRUM: -- that there was some certainty  
20 to not having that term appear in section 9701(c)(2).

21 QUESTION: May I just clarify one point in  
22 response to your answer to Justice Ginsburg? You do  
23 agree, do you not, that even though this sale was an asset  
24 sale, that we are dealing with a successor in interest of  
25 a signatory here, within the meaning of 9701(c)?

1 MR. WOODRUM: As the commissioner has defined  
2 it, that issue as to whether --

3 QUESTION: So, the term successor, at least in  
4 this statute, includes a purchaser at an asset sale as  
5 well as a purchaser of stock.

6 MR. WOODRUM: No, Your Honor, it doesn't  
7 necessarily include that. That's the way the commissioner  
8 -- that's the position the commissioner has taken.

9 QUESTION: But haven't you conceded that you are  
10 a -- your client is a successor in interest of a signatory  
11 operator?

12 MR. WOODRUM: As -- as the commissioner has --

13 QUESTION: I didn't think you challenged that.

14 MR. WOODRUM: Well, the issue is not before the  
15 Court. That issue is reserved below. If the -- if the  
16 Court concludes that a successor in interest to a  
17 signatory operator is covered, then we would be remanded  
18 back to determine whether we, as an asset purchaser, are  
19 in fact a successor in interest as that term is used.

20 QUESTION: But there are -- there are statutes  
21 that define successor in interest to include a kind of an  
22 asset sale. You -- successor in interest can mean  
23 different things in different statutes.

24 MR. WOODRUM: Exactly, Judge Ginsburg, and  
25 that's why it would be remanded for further



1 determinations, although the Williams Mountain court, the  
2 D.C. -- the District of Columbia Circuit several months  
3 ago in the case of Williams Mountain did define that term  
4 to -- they didn't give it a specific definition, but they  
5 said it's somewhere between a tax code successor and the  
6 Black's Law Dictionary common law successor, which does  
7 not include asset purchasers.

8 QUESTION: But, Mr. Woodrum, it seems to me you  
9 cannot fairly have it both ways. You can either concede  
10 that a successor within the meaning of this act includes  
11 an asset purchaser and then make the argument that using  
12 the dictionary act wouldn't -- wouldn't produce a sensible  
13 statute anyway because, under the dictionary act,  
14 successor would not normally be interpreted to include an  
15 asset purchaser.

16 Now, you can make that argument if you concede  
17 that under this legislation, successor does include an  
18 asset purchaser. But -- but if you are not willing to  
19 concede that point, then it seems to me you have to  
20 abandon the argument that the dictionary act makes no  
21 sense here. It may well make sense if you accept your  
22 definition of successor.

23 MR. WOODRUM: We would not rely on the  
24 dictionary act as having any relevance on remand. The  
25 dictionary act has no applicability to the statute because

1 the statute itself deals with successor liability and  
2 successor in interest liability. This is not a concept  
3 that Congress did not have in mind and -- and therefore  
4 left to the dictionary act --

5 QUESTION: Except that it deals with successor  
6 liability in a way that you've been unable to explain  
7 makes any sense whatsoever, that there's no reason to  
8 impose successor liability on the successor of a related  
9 person, while not imposing it on a successor of a  
10 signatory.

11 MR. WOODRUM: It -- the statute does not impose  
12 liability on successors.

13 QUESTION: Successors of related persons.

14 MR. WOODRUM: No, sir. It -- it speaks to  
15 successors in interest, which is where some of the  
16 difficulty in this case arises because the commissioner  
17 has just lumped the two together as though they are the  
18 same. So, when we look at the language of the statute,  
19 even under the -- the reading that the -- that the  
20 commissioner has attempted to expand to --

21 QUESTION: You're suggesting there's a  
22 difference between successor in interest and successor.

23 MR. WOODRUM: Yes, I believe there is a  
24 difference.

25 QUESTION: And what is the difference?

1           MR. WOODRUM: Well, typically if you look at the  
2 Black's Law Dictionary or the common law application of  
3 successor in interest, it is statutory succession, merger,  
4 name change successors, and so forth. And in fact, at one  
5 point in time, the commissioner even had adopted that  
6 definition.

7           QUESTION: I see, but granting that -- assume it  
8 only refers to a limited class. It still -- you still  
9 have failed to explain whatever that class of successor in  
10 interest includes, why should it apply to successors of  
11 related persons and not apply to successors of  
12 signatories. I don't think you've given us a reason for  
13 that.

14           MR. WOODRUM: Well, it -- it really -- I don't  
15 know the reason for that. Congress wrote the act that  
16 way. That's the way it came out. It doesn't cause any  
17 loss of benefits. It doesn't provide any harm, and  
18 whatever the result of that is, it wouldn't be -- even if  
19 there were some oddity about it, it wouldn't serve as a  
20 basis to, if you will, bootstrap liability onto, as one of  
21 the Justices indicated before -- I believe it was Justice  
22 Ginsburg -- that the majority, if not the entirety, of the  
23 operators that are actually affected by this. There --  
24 other than the -- the notation this morning by the  
25 Solicitor General, there -- we weren't aware that the

1 commissioner had ever made an assignment of liability.

2 QUESTION: But you're not contesting that that  
3 statement in -- in your brief was inaccurate.

4 QUESTION: But that merely emphasizes -- that  
5 merely emphasizes the incongruity of the statute. If  
6 there -- it didn't serve a function there, why would they  
7 take the trouble to put it in and not put it in for  
8 signatories? It just -- it just doesn't make any sense at  
9 all. In fact, it -- it's worse. It's perverse if your  
10 view is correct.

11 MR. WOODRUM: I don't think so, with all due  
12 respect, because what -- what happened or what is a  
13 plausible scenario is that we have 50 years of  
14 retroactivity in commercial transactions that have  
15 occurred in the coal industry. Nobody has disputed that  
16 this is a manner of doing business in the coal business,  
17 to buy and sell assets. So, the focus was to avoid the  
18 possibility by putting language in the definition of  
19 signatory operator that might enable -- might inject  
20 confusion or interpretation by -- by the commissioner, by  
21 the Combined Fund, or even by the courts, that that  
22 signatory operator meant anything other than the entity  
23 that signed the agreement. And by taking -- by ensuring  
24 that there is nothing in this act that opens that up, then  
25 there -- it is clear that what liability has been imposed

1 goes on the signatory operators and the other operators  
2 aren't going -- such as Jericol in this case, aren't going  
3 to be held responsible for beneficiaries they never  
4 employed based on transactions that happened 20 or 30  
5 years ago, which were very common.

6 QUESTION: But if I understand the definition of  
7 related persons, it could cover people not even in the  
8 coal business at all and their successors in interest.

9 MR. WOODRUM: It does, but the thing about that  
10 definition is and the reason it has some logic to  
11 expanding liability is it does encompass entities that  
12 have an economic connection with the employer.

13 QUESTION: I do -- I do have one question on --  
14 on the basic statutory point, the shoehorning question of  
15 whether or not Shackleford is -- is described in the  
16 statute. Was Shackleford a member of the -- of a  
17 controlled group of corporations?

18 MR. WOODRUM: No, it was not. It was a family-  
19 owned company. It had no related persons.

20 QUESTION: So, then Roman I would not apply.

21 MR. WOODRUM: That's correct. There are --

22 QUESTION: Because it seemed to me if  
23 Shackleford had been a member of a controlled group of  
24 corporations, then it might have been included in the  
25 controlled group and then it might have been described.

1                   MR. WOODRUM: Which is the problem with the  
2 commissioner's linguistic gymnastics in trying to say that  
3 the -- the commissioner's definition in that case would  
4 basically mean that there's always a control group because  
5 one is always related to himself. So, we always have a  
6 group of one. But -- but linguistically that can't really  
7 be the case.

8                   QUESTION: But if it had been a member of a  
9 controlled group, not a group of one, that argument would  
10 have been slightly more plausible, it seems to me.

11                  MR. WOODRUM: I don't think it would be any more  
12 plausible --

13                  QUESTION: You would still be -- you would still  
14 be related to yourself.

15                  MR. WOODRUM: Exactly. You'd still -- and the  
16 interesting thing about that argument, not to -- not to  
17 belabor it, but under that argument, you would always make  
18 an assignment -- the commissioner would always make an  
19 assignment to a successor who never employed the  
20 individuals even though the act's assignment criteria at  
21 9706 says you make assignments to employers under certain  
22 -- employers that employed or signatory operators that  
23 employed the miners in the coal industry. Under that  
24 interpretation, you would first go to a successor, even  
25 though there may be other employers out there who --

1 QUESTION: But --

2 MR. WOODRUM: -- who actually employed the  
3 miner.

4 QUESTION: When I talk about Shackelford, I mean  
5 the first Shackelford. Shackelford, the seller, was never  
6 a member of a controlled group.

7 MR. WOODRUM: That's correct.

8 QUESTION: Because if it had been, I think the  
9 commissioner would have had a better argument, and it  
10 would have still the problem of being related to yourself.  
11 I understand.

12 MR. WOODRUM: We would still have all the  
13 linguistic problems with -- with describing --

14 QUESTION: Well, I don't think all because it is  
15 -- the word there is include in 1. And so, that -- you're  
16 describing somebody who's included within a controlling  
17 group. But if it's not applicable, then I don't need to  
18 -- I don't think we need to pursue it.

19 MR. WOODRUM: Well, it's not applicable here. I  
20 -- I think that we'd still have a problem with -- the  
21 basic problem that some of these clauses, for example,  
22 refer to limited partners. They're included. Yet, it's  
23 quite clear that they're not to have liability. So, the  
24 fact that they're named or mentioned would still lead you  
25 to an unworkability with that kind of definition. And it

1 also ignores the -- the prior draft of the legislation  
2 which had those very words in -- in the draft, and they  
3 didn't appear in the enacted version, as well as the  
4 inconsistency with the 9711 language, which does include  
5 that language.

6 QUESTION: I know you've discounted the  
7 significance of the legislative history, the Senator's  
8 comment and so forth. If there had been a committee  
9 report, which clearly stated that the drafters of the  
10 committee report thought that they picked up successors to  
11 the signatory, would you say that statute should control  
12 or the committee report should control?

13 MR. WOODRUM: The -- the jurisprudence of this  
14 Court is that the language of the statute controls when  
15 it's clear.

16 QUESTION: Even if it's perfectly clear Congress  
17 intended otherwise.

18 MR. WOODRUM: Yes. Unless -- if there were a --  
19 some kind of a -- a very unusual situation, a question of  
20 a scrivener's error or something, then -- then perhaps it  
21 would -- it would be relevant. But, of course, there were  
22 no reports at all on --

23 QUESTION: I guess the answer is that the only  
24 way it can be perfectly clear that Congress intended  
25 otherwise is for both houses of Congress, not a single



1 committee of one Congress, to have enacted the provision.

2 MR. WOODRUM: Exactly.

3 QUESTION: That would make it perfectly clear  
4 that both houses intended otherwise.

5 QUESTION: It would make it perfectly clear to  
6 Justice Scalia.

7 (Laughter.)

8 MR. WOODRUM: It -- it makes -- it makes for a  
9 -- a rational jurisprudence when one tends to enforce the  
10 -- the language that's actually in the statute.

11 And let me point out that what we're talking  
12 about here is retroactive liability. This liability is  
13 grounded in transactions that occurred decades before  
14 enactment of this act.

15 QUESTION: That's what makes it so anomalous to  
16 impose successor liability on successors of related  
17 persons who don't have anything to do with the coal  
18 industry. That's what -- the troubling thing to me is the  
19 extent of the -- the successor liability that is included  
20 within the statute, and then it does not include people  
21 who are still in the coal business.

22 MR. WOODRUM: But if -- but if that question  
23 comes to the Court, the Court will have to deal with that  
24 question as to whether that is liability that may be  
25 enforced and imposed on such distantly related entities

1 for historic transactions under the same criteria that the  
2 Court used, for example, in the Eastern Enterprises case.

3 QUESTION: Of course, these people were distant  
4 not only from the transactions in question but also from  
5 the negotiations that produced the statute.

6 MR. WOODRUM: Exactly.

7 QUESTION: And -- and that may well be the  
8 explanation of why they got stuck.

9 MR. WOODRUM: Yes, if they weren't there to  
10 represent their interests, then -- and they likely weren't  
11 since, I don't think, anybody that is that distant --  
12 distantly related would have even been aware that there  
13 was a problem in funding benefits.

14 But to -- to reflect back on the question of  
15 sort of the clear language and this Court's view of how  
16 clear Congress must be in enacting these statutes, as the  
17 Court said in *Lansgraf*, since the early days of this  
18 Court, we have declined to give retro effect --  
19 retroactive effect to statutes burdening private rights  
20 unless Congress made clear its intent. Requiring clear  
21 intent assures that Congress itself has affirmatively  
22 considered the potential unfairness of retroactive  
23 application and determined that it is an acceptable price  
24 to pay for the countervailing benefits.

25 And this -- this liability is all retroactive,

1 and we should be looking for a very clear expression of  
2 congressional intent to assign it to successors or  
3 successor in interest before the commissioner may, in  
4 effect, impose large, what are now administrative  
5 obligations --

6 QUESTION: But, of course, here there's no doubt  
7 about the fact that whoever is covered -- it was intended  
8 to be -- the statute was intended to have retroactive  
9 effect.

10 MR. WOODRUM: Yes.

11 QUESTION: Which is, of course, what Lansgraf  
12 was --

13 MR. WOODRUM: It is -- it is retroactive to  
14 everyone that is covered.

15 The final point is that if this language is  
16 enforced as written, the benefits are going to be provided  
17 to the Shackleford beneficiaries on a pro rata basis by  
18 all the operators who are assigned liability, including  
19 Jericol, to the extent it otherwise has valid liability  
20 for people that it did employ. And Congress specifically  
21 made available the interest from the Abandoned Mine Land  
22 Trust Fund to subsidize that liability, and to date all of  
23 that liability that -- for the orphan beneficiaries who  
24 have no -- have no employer or related person still in  
25 business has been funded by the interest that's been made

1 available. And there has been no premium assessed on the  
2 other operators to pay for the unassigned beneficiaries or  
3 these orphan beneficiaries' health care. So, Congress not  
4 only made clear in the way it laid out who's to receive  
5 the liability, but it also provided sources of funding and  
6 guarantees so that those miners, those retirees who have  
7 no last employer still in business will receive their  
8 benefits --

9 QUESTION: And you say that funding has been  
10 adequate thus far.

11 MR. WOODRUM: Yes, Your Honor. That -- there  
12 has never been a call on the assigned operators to pay any  
13 pro rata premium towards the payment of unassigned  
14 beneficiaries' health care.

15 Further questions? I'll --

16 QUESTION: Thank you, Mr. Woodrum.

17 Mr. Wolfson, you have half a minute remaining.  
18 Don't use it all in one --

19 REBUTTAL ARGUMENT OF PAUL R.Q. WOLFSON

20 ON BEHALF OF THE PETITIONER

21 MR. WOLFSON: Thank you, Mr. Chief Justice.

22 Very briefly. The purpose of section 9701(c)(2)  
23 was to reach the signatory operators and the broad group  
24 of persons that were related to them by successorship and  
25 by the related concept. And it did that specifically

1 because Congress did not want to go to the Abandoned Mine  
2 Fund or to a pro rata exaction on the other signatory  
3 operators unless that was necessary as a last resort.

4 Mr. Woodrum said there's no harm caused by  
5 affirming the Fourth Circuit. But that -- even if nobody  
6 loses their benefits tomorrow, as a result of affirming,  
7 Congress did view that as a less desirable alternative.

8 QUESTION: Thank you, Mr. Wolfson.

9 MR. WOODRUM: Thank you.

10 CHIEF JUSTICE REHNQUIST: The case is submitted.

11 (Whereupon, at 12:02 p.m., the case in the  
12 above-entitled matter was submitted.)

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