

11 USC § 507(a)(4)
workers comp insurance

In re Plaid Pantries Civ. No. 91-1158-FR
Case No. 389-31028-S11

12/6/91 Judge Frye reversed Judge Sullivan's oral ruling

The district court decided that workers' compensation insurance premiums are a contribution to an employee benefit plan and therefore entitled to priority under 11 USC §507(a)(4).

Judge Frye adopted the broad ERISA definition of an employee benefit plan found in 29 USC § 1002(1), which includes a plan providing "medical, surgical or hospital care or benefits or benefits in the event of sickness, accident, disability, death or unemployment." Judge Frye did not explain why she did not also adopt 29 USC § 1003(b)(3), which excludes plans from the provisions of ERISA that are maintained solely for the purpose of complying with applicable workmen's compensation laws (which was the basis for Judge Sullivan denying the priority).

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re:)	
)	
PLAID PANTRIES, INC., an)	Bankruptcy Case No.
Oregon corporation [successor)	389-31028-S11
by merger to Apollo Distribut-)	
ing Co.; J L & R Merchandising,)	Civil No. 91-1158-FR
Inc.; and Plaid Industries,)	
Inc., all Oregon corporations],)	O P I N I O N
)	
Debtor.)	

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1 FRYE, Judge:

2 The matter before the court is the appeal of Employers
3 Insurance of Wausau (Wausau) from a final order of the United
4 States Bankruptcy Court for the District of Oregon.

5 BACKGROUND

6 Wausau is an insurance company which provided workers'
7 compensation coverage to the debtor, Plaid Pantries, Inc.
8 (Plaid Pantries). Plaid Pantries failed to pay \$59,029.00 in
9 premiums to Wausau for the 180 days prior to filing a petition
10 in bankruptcy on March 19, 1989. Wausau sought priority for
11 these unpaid premiums contending they were contributions to an
12 employee benefit plan under 11 U.S.C. § 507(a)(4). On June
13 28, 1991, the United States Bankruptcy Court for the District
14 of Oregon entered a final order denying Wausau's claim for
15 priority.

16 The bankruptcy code provides a priority for "unsecured
17 claims for contributions to an employee benefit plan arising
18 from services rendered within 180 days before the date of the
19 filing of the petition." 11 U.S.C. § 507(a)(4). The sole
20 issue on appeal is whether the workers' compensation insurance
21 premiums paid by Plaid Pantries for its employees amount to
22 "contributions to an employee benefit plan" within the meaning
23 of 11 U.S.C. § 507(a)(4). If so, then the bankruptcy court
24 erred in denying Wausau's claim for priority.

25 APPLICABLE STANDARD

26 The district court acts as an appellate court with regard

1 to decisions of the bankruptcy court. The district court
2 reviews the bankruptcy court's findings of fact under the
3 clearly erroneous standard; conclusions of law are reviewed
4 de novo. Daniels-Head & Assocs. v. William M. Mercer, Inc.
5 (In re Daniels-Head & Assocs.), 819 F.2d 914, 918 (9th Cir.
6 1987).

7 ANALYSIS AND RULING

8 Section 507(a) of the bankruptcy code sets forth priori-
9 ties for a number of expenses and claims, including the prior-
10 ity claimed here:

11 (4) Fourth, allowed unsecured claims for con-
12 tributions to an employee benefit plan --

13 (A) arising from services rendered within
14 180 days before the date of the filing of the
15 petition or the date of the cessation of the
16 debtor's business, whichever occurs first; but
17 only

18 (B) for each such plan, to the extent
19 of --

20 (i) the number of employees covered
21 by each such plan multiplied by \$2,000;
22 less

23 (ii) the aggregate amount paid to
24 such employees under paragraph (3) of this
25 subsection, plus the aggregate amount paid
26 by the estate on behalf of such employees
to any other employee benefit plan.

11 U.S.C. § 507(a)(4) (emphasis added). Congress failed to
define the term "employee benefit plan" in the bankruptcy
code. The term, however, is defined in the Employee Retirement
Income Security Act of 1974 (ERISA). Under the defini-
tion set forth in ERISA, an "employee benefit plan" includes:

1 any plan, fund, or program which was heretofore
2 or is hereafter established or maintained by an
3 employer or by an employee organization, or by
4 both, to the extent that such plan, fund, or pro-
5 gram was established or is maintained for the pur-
6 pose of providing for its participants or their
7 beneficiaries, through the purchase of insurance
8 or otherwise, (A) medical, surgical, or hospital
9 care or benefits, or benefits in the event of sick-
10 ness, accident, disability, death or unemployment,
11 or vacation benefits, apprenticeship or other
12 training programs, or day care centers, scholar-
13 ship funds, or prepaid legal services, or (B) any
14 benefit described in section 186(c) of this title
15 (other than pensions on retirement or death, and
16 insurance to provide such pensions).

17 29 U.S.C. § 1002(1); see also 29 U.S.C. § 1002(3). At least
18 two courts which have considered this issue have found the
19 ERISA definition applicable to 11 U.S.C. § 507(a)(4).
20 Perlstein v. Rockwood Ins. Co. (In re AOV Indus.), 85 B.R.
21 183, 186 (Bankr. D.D.C. 1988) ("We consider the term 'employee
22 benefit plan' in 11 U.S.C. § 507(a)(4) to be consistent with
23 the same term as defined . . . by ERISA."); In re Saco Local
24 Dev. Corp., 23 B.R. 644 (Bankr. D. Me. 1982), aff'd, 711 F.2d
25 441 (1st Cir. 1983).

26 Plaid Pantries contends that the ERISA definition of an
"employee benefit plan" is not applicable to the bankruptcy
code. This contention is not persuasive, however. For exam-
ple, Plaid Pantries makes no suggestion to the court how the
term might otherwise be defined. Moreover, even the lone case
cited by Plaid Pantries which rejected the ERISA definition of
an "employee benefit plan" acknowledged that there were "com-
pelling policy reasons for finding that Congress intended the
ERISA definition to apply to section 507 of the Bankruptcy

1 Code." Official Labor Creditors Comm. v. Jet Florida Sys.,
2 Inc. (In re Jet Florida Sys., Inc.), 80 B.R. 544, 547 (S.D.
3 Fla. 1987).

4 This court agrees with those courts which have found
5 that Congress intended the term "employee benefit plan" in
6 11 U.S.C. § 507(a) to be defined as it is in ERISA. Since
7 Congress did not define the term in the bankruptcy code, it
8 is only logical to look to another statute where the term is
9 defined. Cf. Morissette v. United States, 342 U.S. 246, 263
10 (1952) ("[W]here Congress borrows terms of art in which are
11 accumulated the legal tradition and meaning of centuries
12 of practice, it presumably knows and adopts the cluster of
13 ideas that were attached to each borrowed word in the body
14 of learning from which it was taken and the meaning its use
15 will convey to the judicial mind unless otherwise instruc-
16 ted.").

17 Having found that the term "employee benefit plan" in
18 11 U.S.C. § 507(a) is to be defined as it is in ERISA, the
19 court concludes that the workers' compensation insurance
20 coverage provided by Plaid Pantries is a plan providing
21 "medical, surgical, or hospital care or benefits, or bene-
22 fits in the event of sickness, accident, disability, death
23 or unemployment." 29 U.S.C. § 1002(1). Accordingly, the
24 court finds that the claim of Wausau for priority under 11
25 U.S.C. § 507(a)(4) should have been granted.


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CONCLUSION

The decision of the United States Bankruptcy Court for the District of Oregon is reversed.

DATED this 6 day of December, 1991.


HELEN J. FRYE
United States District Judge

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