

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

AMERICAN MANUFACTURERS MUTUAL INSURANCE CO. ET AL. v. SULLIVAN ET AL.

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

No. 97–2000. Argued January 19, 1999— Decided March 3, 1999

Under Pennsylvania’s Workers’ Compensation Act, once an employer becomes liable for an employee’s work-related injury— because liability either is not contested or is no longer at issue— the employer or its insurer must pay for all “reasonable” and “necessary” medical treatment. To assure that only medical expenses meeting these criteria are paid, and in an attempt to control costs, Pennsylvania has amended its workers’ compensation system to provide that a self-insured employer or private insurer (collectively insurer) may withhold payment for disputed treatment pending an independent “utilization review,” as to which, among other things, the insurer files a one-page request for review with the State Workers’ Compensation Bureau (Bureau), the Bureau forwards the request to a “utilization review organization” (URO) of private health care providers, and the URO determines whether the treatment is reasonable or necessary. Respondents, employees and employee representatives, filed this suit under 42 U. S. C. §1983 against various Pennsylvania officials, a self-insured public school district, and a number of private workers’ compensation insurers, alleging, *inter alia*, that in withholding benefits without predeprivation notice and an opportunity to be heard, the state and private defendants, acting “under color of state law,” deprived respondents of property in violation of due process. The District Court dismissed the private insurers from the suit on the ground that they are not “state actors,” and later dismissed the state officials and school district on the ground that the Act does not violate due process. The Third Circuit disagreed on both issues, holding, among other rulings, that a private insurer’s decision to suspend payment under the Act constitutes state action. The court also noted the par-

Syllabus

ties' assumption that employees have a protected property interest in workers' compensation medical benefits, and held that due process requires that payment of medical bills not be withheld until employees have had an opportunity to submit their view in writing to the URO as to the reasonableness and necessity of the disputed treatment.

Held:

1. A private insurer's decision to withhold payment and seek utilization review of the reasonableness and necessity of particular medical treatments is not fairly attributable to the State so as to subject the insurer to the Fourteenth Amendment's constraints. State action requires *both* an alleged constitutional deprivation caused by acts taken pursuant to state law *and* that the allegedly unconstitutional conduct be fairly attributable to the State. *E.g.*, *Lugar, v. Edmondson Oil Co.*, 457 U. S. 922, 937. Here, while it may fairly be said that the first requirement is satisfied, respondents have failed to satisfy the second. The mere fact that a private business is subject to extensive state regulation does not by itself convert its action into that of the State. See, *e.g.*, *Blum v. Yaretsky*, 457 U. S. 991, 1004. The private insurers cannot be held to constitutional standards unless there is a sufficiently close nexus between the State and the challenged action so that the latter may be fairly treated as that of the State itself. *Ibid.* Whether such a nexus exists, depends on, among other things, whether the State has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State. *E.g.*, *ibid.* That the statutory scheme previously prohibited insurers from withholding payment for disputed medical services and no longer does so merely shows that the State, in administering a many-faceted remedial system, has shifted one facet from favoring the employees to favoring the employer. This sort of decision occurs regularly in the legislative process and cannot be said to "encourage" or "authorize" the insurer's actions. Also rejected is respondents' assertion that the challenged decisions are state action because insurers must obtain "authorization" or "permission" from the Bureau before withholding payment. The Bureau's participation is limited to requiring submission of a form and related functions, which cannot render it responsible for the insurers' actions. See *id.*, at 1007. Respondents' twofold argument that state action is present because the State has delegated to insurers powers traditionally reserved to itself also lacks merit. First, the contention as to delegation of the provision of state-mandated "public benefits" fails because nothing in Pennsylvania's constitution or statutory scheme obligates the State to provide either medical treatment or workers' compensation benefits to injured workers. See, *e.g.*, *Jackson v. Metropolitan*

Syllabus

Edison Co., 419 U. S. 345, 352; *West v. Atkins*, 487 U. S. 42, 54–56, distinguished. Second, their argument as to delegation of the governmental decision to suspend payment for disputed medical treatment is supported by neither historical practice nor the state statutory scheme. That Pennsylvania originally recognized an insurer’s traditionally private prerogative to withhold payment, then restricted it, and now (in one limited respect) has restored it, cannot constitute the delegation of an exclusive public function. See *Flagg Bros., Inc. v. Brooks*, 436 U. S. 149, 162, n. 12. Finally, respondents misplace their reliance on a “joint participation” theory of state action. Privately owned enterprises providing services that the State would not necessarily provide, even though they are extensively regulated, do not fall within the ambit of that theory. *E.g.*, *Blum, supra*, at 1011; *Burton v. Wilmington Parking Authority*, 365 U. S. 715, and *Lugar, supra*, distinguished. Pp. 7–17.

2. The Pennsylvania regime does not deprive disabled employees of “property” within the meaning of the Due Process Clause of the Fourteenth Amendment. Only after finding deprivation of a protected property interest does this Court look to see if the State’s procedures comport with due process. *Mathews v. Eldridge*, 424 U. S. 319, 332. Here, respondents contend that state law confers upon them such a protected interest in workers’ compensation medical benefits. However, under Pennsylvania law, an employee is not entitled to payment for *all* medical treatment once the employer’s initial liability is established, as respondents’ argument assumes. Instead, the law expressly limits an employee’s entitlement to “reasonable” and “necessary” medical treatment, and requires that disputes over the reasonableness and necessity of particular treatment be resolved *before* an employer’s obligation to pay— and an employee’s entitlement to benefits— arise. Thus, for an employee’s property interest in the payment of medical benefits to attach under state law, the employee must clear two hurdles: He must prove (1) that an employer is liable for a work-related injury, and (2) that the particular medical treatment at issue is reasonable and necessary. While respondents have cleared the first hurdle, they have yet to satisfy the second. Consequently, they do not have the property interest they claim. *Goldberg v. Kelly*, 397 U. S. 254, 261–263, and *Mathews, supra*, at 332, distinguished. Pp. 17–20.

139 F. 3d 158, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, Parts I and II of which were joined by O’CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, and BREYER, JJ., and Part III of which was joined by O’CONNOR, KENNEDY, THOMAS, and GINSBURG, JJ. GINSBURG, J., filed an opinion

Syllabus

concurring in part and concurring in the judgment. BREYER, J., filed an opinion concurring in part and concurring in the judgment, in which SOUTER, J., joined. STEVENS, J., filed an opinion concurring in part and dissenting in part.