SUPREME COURT OF THE UNITED STATES

No. 00–1045

TRW INC., PETITIONER *v.* ADELAIDE ANDREWS

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

[November 13, 2001]

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring in the judgment.

As the Court notes, *ante,* at 5, 6, the Court of Appeals based its decision on what it called the "general federal rule . . . that a federal statute of limitations begins to run when a party knows or has reason to know that she was injured," 225 F. 3d 1063, 1066 (CA9 2000). The Court declines to say whether that expression of the governing general rule is correct. See *ante,* at 6 ("To the extent such a presumption exists, a matter this case does not oblige us to decide . . ."). There is in my view little doubt that it is not, and our reluctance to say so today is inexplicable, given that we held, a mere four years ago, that a statute of limitations which says the period runs from "the date on which the cause of action arose," 29 U. S. C. §1451(f)(1) (1994 ed.), "incorporates *the standard rule* that the limitations period commences when the plaintiff has a complete and present cause of action," *Bay Area Laundry and Dry Cleaning Pension Trust Fund* v. *Ferbar Corp. of Cal.,* 522 U. S. 192, 201 (1997) (emphasis added and internal quotation marks omitted).[1]

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[1] This analysis does not, as the Court asserts, *ante*, at 14, n. 6, "ri[p] *Bay Area Laundry* . . . from its berth." The question presented on which certiorari was granted in the case was not, as the Court now recharacterizes it, the generalized inquiry "whether a statute of limita-

Bay Area Laundry quoted approvingly our statement in *Clark* v. *Iowa City*, 20 Wall. 583, 589 (1875), that "[a]ll statutes of limitation begin to run when the right of action is complete . . . ." This is unquestionably the traditional rule: absent other indication, a statute of limitations begins to run at the time the plaintiff "has the right to apply to the court for relief . . . ." 1 H. Wood, Limitation of Actions §122a, p. 684 (4th ed. 1916). "That a person entitled to an action has no knowledge of his right to sue, or of the facts out of which his right arises, does not postpone the period of limitation." 2 Wood, *supra,* §276c(1), at 1411.

The injury-discovery rule applied by the Court of Ap-

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tions could commence to run on one day while the right to sue ripened on a later day," *ibid.*, but rather (as set forth in somewhat abbreviated form in petitioner Bay Area Laundry's merits brief) the much more precise question, "When does the statute of limitations begin to run on an action under the Multiemployer Pension Plan Amendments Act, 29 U. S. C. §1381 et seq., to collect overdue employer withdrawal liability payments?" Brief for Petitioner in No. 96–370, O.T. 1997, p. i. (Framing of the question in respondent Ferbar Corporation's merits brief was virtually identical.) The Court's *Bay Area Laundry* opinion introduced its discussion of the merits as follows:

"[T]he Ninth Circuit's decision conflicts with an earlier decision of the District of Columbia Circuit [which] held that the statute of limitations . . . runs from the date the employer misses a scheduled payment, not from the date of complete withdrawal. . . . The Third and Seventh Circuits have also held that the statute of limitations runs from the failure to make a payment . . . . We granted certiorari . . . to resolve these conflicts." 522 U. S., at 200.

The Court's assertion that we did not answer the question presented, and did not resolve the conflicts—held only that the Ninth Circuit was wrong to say that the limitations period commenced before there was a right of action, and not that the other circuits were right to say that the period commenced upon the failure to make a payment—is as erroneous as it is implausible. *Bay Area Laundry* held that the cause of action arose when "the employer violated an obligation owed the plan," *id.*, at 202, *because* "the standard rule" is that the period begins to run when the plaintiff has a "complete and present cause of action," *id.*, at 201 (internal quotation marks omitted).

peals is bad wine of recent vintage. Other than our recognition of the historical exception for suits based on fraud, *e.g.*, *Bailey* v. *Glover,* 21 Wall. 342, 347–350 (1875), we have deviated from the traditional rule and imputed an injury-discovery rule to Congress on only one occasion. *Urie* v. *Thompson,* 337 U. S. 163, 169–171 (1949).[2] We did so there because we could not imagine that legislation as "humane" as the Federal Employers' Liability Act would bar recovery for latent medical injuries. *Id.,* at 170. We repeated this sentiment in *Rotella* v. *Wood,* 528 U. S. 549, 555 (2000), saying that the "cry for a discovery rule is loudest" in the context of medical-malpractice suits; and we repeat it again today with the assertion that the present case does *not* involve "an area of the law that cries out for application of a discovery rule," *ante,* at 7. These cries, however, are properly directed not to us, but to Congress, whose job it is to decide how "humane" legislation should be—or (to put the point less tendentiously) to strike the balance between remediation of all injuries and a policy of repose. See *Amy* v. *Watertown (No. 2),* 130 U. S. 320, 323–324 (1889) ("[T]he cases in which [the statute of limitations may be suspended by causes not mentioned in the statute itself] are very limited in character, and are to be admitted with great caution; otherwise the court would make the law instead of administering it").

Congress has been operating against the background rule recognized in *Bay Area Laundry* for a very long time.

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[2] As the Court accurately notes, *ante,* at 6–7, in one other case we simply observed (without endorsement) that several Courts of Appeals had substituted injury-discovery for the traditional rule in medical-malpractice actions under the Federal Tort Claims Act, see *United States* v. *Kubrick,* 444 U. S. 111, 120, and n. 7 (1979), and in two other cases observed (without endorsement) that lower federal courts "generally apply" an injury-discovery rule, see *Rotella* v. *Wood,* 528 U. S. 549, 555 (2000); *Klehr* v. *A. O. Smith Corp.,* 521 U. S. 179, 191 (1997).

When it has wanted us to apply a different rule, such as the injury-discovery rule, it has said so. See, *e.g.*, 18 U. S. C. §1030(g) (1994 ed., Supp. V).[3] See also, *e.g.*, 15 U. S. C. §77m (1994 ed., Supp. V);[4] 42 U. S. C. §9612(d)(2) (1994 ed.).[5] To apply a new background rule to previously enacted legislation would reverse prior congressional judgments; and to display uncertainty regarding the current background rule makes all unspecifying new legislation a roll of the dice. Today's opinion, in clarifying the meaning of 15 U. S. C. §1681p, casts the meaning of innumerable other limitation periods in doubt.

Because there is nothing in this statute to contradict the rule that a statute of limitations begins to run when the cause of action is complete, I concur in the judgment of the Court.

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[3] "No action may be brought under this subsection unless such action is begun within 2 years of the date of the act complained of or the date of the discovery of the damage."

[4] "No action shall be maintained to enforce any liability created under section 77k or 77*l*(a)(2) of this title unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 77*l*(a)(1) of this title, unless brought within one year after the violation upon which it is based."

[5] "No claim may be presented under this section . . . unless the claim is presented within 3 years after . . . [t]he date of the discovery of the loss and its connection with the release in question."