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## OPINION OF TRUSTEES

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### In Re

Complainants: Employees  
Respondent: Employer  
ROD Case No: 88-235 - August 22, 1990

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., Trustee; Thomas H. Saggau, Trustee.

Pursuant to Article IX of the United Mine Workers of America ("UMWA") 1950 Benefit Plan and Trust, and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute concerning the provision of health benefits coverage for Employees under the terms of the Employer Benefit Plan.

### Background Facts

The Complainants are classified Employees of the Respondent, a signatory Employer. The Complainants contend that the Respondent has failed to provide health benefits coverage at the level prescribed by the terms of the Employer Benefit Plan established pursuant to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1988. The Complainants have submitted copies of bills and notices from collection agencies of balances due for medical expenses incurred during their employment with the Respondent.

Information provided to the Funds indicates that the Respondent provided health benefits coverage for the Complainants through the New York Life Insurance Company from June 13, 1988 through June 14, 1989. Under this policy, benefit payments were subject to an annual deductible of \$100 and, thereafter, benefits were paid up to 80% of the covered expenses until a beneficiary reached the annual out-of-pocket limit of \$2000. One of the Complainants states that the Respondent agreed to pay or reimburse the Complainants for their out-of-pocket expenses under the 80/20 plan in excess of the 12-month maximum co-payment amount specified under the Employer Benefit Plan; however, the Complainant states that such payments have not been made. Since June 15, 1989, the Respondent has provided insurance coverage through Guardian Insurance Company. Under this policy, benefit payments are subject to a \$250 annual deductible, after which the insurance company pays 100% of covered charges. Coverage for vision care was not provided under either of the policies described above.

### Dispute

Is the Respondent responsible for the provision of health benefits coverage for the Complainants and their eligible dependents at the level prescribed by the Employer Benefit Plan?

Positions of the Parties

Position of the Complainant: The Respondent is responsible for payment of covered medical expenses incurred by the Complainants and their eligible dependents and for the provision of health benefits coverage for the Complainants and their eligible dependents at the level prescribed by the Employer Benefit Plan.

Position of the Respondent: The Respondent has not replied to repeated correspondence from Funds' staff requesting its position in this dispute.

Pertinent Provisions

Article XX Section (c)(3)(i) of the National Bituminous Coal Wage Agreement of 1988 provides in pertinent part:

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans.... The plans established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

Article I (1), (2) and (4) of the Employer Benefit Plan provide:

Article I - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (Employer's Name).

- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1988, as amended from time to time and any successor agreement.
- (4) "Employee" shall mean a person working in a classified job for the Employer, eligible to receive benefits hereunder.

Article II A. (1) and (4) of the Employer Benefit Plan provide:

#### Article II - Eligibility

The persons eligible to receive the health benefits pursuant to Article III are as follows:

##### A. Active Employees

Benefits under Article III shall be provided to any Employee who:

- (1) is actively at work\* for the Employer on the effective date of the Wage Agreement; or
- (4) a new Employee will be eligible for health benefits from the first day worked with the Employer.

Article III A. (8) and (9) (a) of the Employer Benefit Plan provide, in pertinent part:

#### Article III - Benefits

##### A. Health Benefits

##### (8) Co-Payments

Certain benefits provided in this Plan shall be subject to the co-payments set forth below and such co-payments shall be the responsibility of the Beneficiary....

Co-Payments for covered Health Benefits are established as follows:

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\*Actively at work includes an Employee of the Employer who was actively at work on January 31, 1988, and who returns to active work with the Employer two weeks after the effective date of the Wage Agreement.

Benefit

Co-Payment

(a) Physician services as an out-patient as set forth in Section A (2) and physician visits in connection with the benefits set forth in Section A(3), paragraph (c) but only for pre- and post-natal visits if the physician charges separately for such visits in addition to the charge for delivery, and paragraphs (g) through (m), paragraph (n) except inpatient surgery, paragraph (o) and Section A(7) paragraph (f).

Working Group -- \$7.50 per visit up to a maximum of \$150 per 12-month period(\*) per family.  
 Non-working Group -- \$5 per visit up to a maximum of \$100 per 12-month period(\*) per family.

(b) Prescription drugs and insulin, as set forth in Section A(4) and take-home drugs following hospital confinement as set forth in Section A(1)(a).

\$5 per prescription or refill up to a \$50 maximum per 12-month period(\*) per family.  
 Note: For purposes of this co-payment provision, a prescription or refill shall be deemed to be each 30 days (or fraction thereof) supply.

(9) Vision Care Program

(a) <u>Benefits</u>	Actual Charge Up to Maximum Amount	Frequency Limits
Vision Examination	\$20	Once every 24 months
Per Lens (Maximum =2)		Once every 24 months
- Single Vision	10	
- Bifocal	15	
- Trifocal	20	
- Lenticular	25	
- Contact	15	
Frames	14	Once every 24 months

\*The 12-month periods shall begin on the following dates: March 27, 1988; March 27, 1989; March 27, 1990 and March 27, 1991 and March 27, 1992.

Article III. A. (8) of the Employer Benefit Plan provides that certain benefits provided under the Plan shall be subject to co-payments of \$5.00 or \$7.50, and such co-payments shall be the responsibility of the beneficiary. The usual procedure for filing claims as contemplated under the terms of the Wage Agreement is one in which the beneficiary is expected to authorize the provider to bill the insurance carrier for services rendered and to pay only the co-payment charge set forth in Article III. A. (8), until the specified maximum yearly amount is reached. The procedure for filing claims and the method of payment established by the Respondent in this case is inconsistent with the claim procedure contemplated under the terms of the Wage Agreement and the Employer Benefit Plan.

Article XX Section (c)(3)(i) of the 1988 Wage Agreement requires each signatory Employer to establish and maintain an Employer Benefit Plan, implemented through an insurance carrier(s), to provide health and other non-pension benefits for its Employees. The Wage Agreement further stipulates that benefits provided by the Employer pursuant to such Plan shall be guaranteed during the term of the Agreement at levels set forth in such Plan. Thus, levels of benefits to be provided to Employees, Pensioners and their dependents and survivors which are established through collective bargaining may not be unilaterally changed. In addition, given the clear language of Article XX, an Employer cannot partially implement its plan through an insurance carrier and offer to pay a portion of the Plan benefits itself. The Trustees conclude that the Respondent's use of non-conforming health coverage plans and its offer to pay or reimburse Employees for certain out-of-pocket expenses are inconsistent with the express provisions of the Wage Agreement and the Employer Benefit Plan.

#### Opinion of the Trustees

The Respondent's health coverage plans are inconsistent with the express provisions of the 1988 Wage Agreement. The Respondent is responsible for providing health benefits coverage for the Complainants and their eligible dependents at the level specified in the Employer Benefit Plan and for payment of the Plan-covered medical expenses incurred by the Complainants and their eligible dependents.