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## OPINION OF TRUSTEES

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### In Re

Complainants: Laid-off Employees  
Respondent: Employer  
ROD Case No: 88-344 - March 12, 1991

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 under the terms of the Employer Benefit Plan.

### Background Facts

The Respondent began operations on May 4, 1989, and it is signatory to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1988. The Complainants were employed in classified positions by the Respondent until April 27, 1990, when they were laid off and the Respondent closed the mine. The Complainants contend that the Respondent failed to provide health benefits coverage as required by the terms of the Wage Agreement.

From May 1989 through February 1990, the Respondent provided coverage through Blue Cross and Blue Shield of West Virginia. Some of the medical bills that the Complainants incurred during this period have not been paid due to the insolvency of the Insurance carrier. According to the Complainants, the Respondent has refused to pay these bills because it claims that the Insurance carrier is responsible for payment.

During March 1990, the Respondent did not provide health benefits coverage through a private insurance carrier. The Complainants have unpaid medical bills that they incurred during this period.

Effective April 1, 1990, the Respondent provided coverage under a plan implemented through The Travelers Insurance Company. Benefit payments under that plan are subject to a \$300 deductible per family and, thereafter, benefits are paid up to 80% of the cost of services. The Complainants are responsible for the remaining 20% of covered expenses until the maximum yearly out-of-pocket amount of \$1,500 per family is reached. Other benefits provided under the

Travelers plan are inconsistent with those required under Article III of the Employer Benefit Plan. Also, the Travelers plan does not include vision care coverage.

The Respondent promised to pay the Complainants' outstanding medical bills incurred in March 1990 and to 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 Complainants state that the Respondent has not paid the Complainants' bills nor reimbursed the Complainants for their medical expenses.

### Dispute

Whether the Respondent is responsible for payment of the Complainants' unpaid medical bills due to the insolvency of Blue Cross and Blue Shield of West Virginia and for the period of noncoverage. Also, whether the Respondent is responsible for the provision of health benefits coverage for the Complainants and their eligible dependents at the level prescribed by the Employer Benefit Plan during their period of employment and while laid off.

### Positions of the Parties

Position of the Complainants: The Respondent is required to provide health benefits coverage for the Complainants and their eligible dependents at the level prescribed by the Employer Benefit Plan and to pay the covered medical expenses incurred by the Complainants and their eligible dependents during their employment and during their individual periods of eligibility as laid-off Employees.

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 meaning 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. (4) of the Employer Benefit Plan provides:

Article II - Eligibility

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

A. Active Employees

- (4) A new Employee will be eligible for health benefits from the first day worked with the Employer.

Article III A. (8) and (9) 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:

Benefit Co-Payment

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

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

(9) Vision Care Program

<u>(a) Benefits</u>	<u>Actual Charge Up To Maximum Amount</u>	<u>Frequency Limits</u>
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

Article III D. (1)(a) of the Employer Benefit Plan provides:

D. General Provisions

(1) Continuation of Coverage

(a) Layoff

If an Employee ceases work because of layoff, continuation of health, life and accidental death and dismemberment insurance coverage is as follows:

<u>Number of Hours Worked for the Employer in the 24 Consecutive Calendar Month Period Immediately Prior to the Employee's Date Last Worked</u>	<u>Period of Coverage Continuation from the Date Last Worked</u>
2,000 or more hours	Balance of month plus 12 months
500 or more but less than 2,000 hours	Balance of month plus 6 months
Less than 500 hours	30 days

Discussion

Article XX Section (c)(3)(i) of the 1988 Wage Agreement requires a signatory Employer to establish and maintain an Employer Benefit Plan to provide health and other non-pension benefits for its Employees. The Wage Agreement stipulates that benefits provided by the Employer pursuant to such Plan shall be guaranteed during the term of the Agreement by that Employer at levels set forth in such Plan.

Article II A. of the Employer Benefit Plan provides health benefits coverage for active Employees working in classified jobs for a signatory Employer. The Respondent implemented its Employer Benefit Plan from May 1989 through February 1990 through an insurance carrier that

subsequently became insolvent. Implementation of a plan through a carrier, in and of itself, does not relieve the Respondent of its primary obligation to provide benefits pursuant to the Wage Agreement. Inasmuch as the Complainants were eligible for health benefits coverage from the Respondent as active Employees during the period from May 1989 through February 1990, the Respondent is responsible for payment of the covered medical expenses incurred by the Complainants and their eligible dependents during this period, consistent with the terms of the Employer Benefit Plan. Under Article II A., the Respondent also is responsible for the Complainant's covered medical expenses for March 1990, when insurance coverage was not provided.

The Respondent has provided coverage for the Complainants under an 80/20 plan implemented through The Travelers Insurance Company since April 1, 1990. Article III A. of the Employer Benefit Plan specifies the benefits, including vision care coverage, which are to be provided under the Employer Benefit Plan. Article III A. (8) of the Employer Benefit Plan specifies the co-payments which are the responsibility of the beneficiary for medical services and prescriptions. Levels of benefits to be provided to Employees, Pensioners and their dependents and survivors are established through collective bargaining and may not be unilaterally changed by an Employer. In addition, in ROD 88-235 (copy enclosed herein) the Trustees have previously addressed the issue of whether an Employer can partially implement its plan through an insurance carrier and offer to pay or reimburse its Employees for their out-of-pocket expenses in excess of the applicable co-payment amounts. In that opinion, the Trustees concluded that such practice is inconsistent with the express provisions of the Wage Agreement and the Employer Benefit Plan. Accordingly, the Respondent's use of a non-conforming health coverage plan 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. 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 during their employment.

Article III D. (1)(a) provides continued benefits coverage for laid-off Employees based on the number of hours worked for the Employer during the 24-month period prior to the date last worked. To the extent the Complainants' claims include medical bills for covered services that they incurred after they were laid-off by the Respondent, the Respondent is responsible for the payment of such bills and for providing continued benefits coverage for the Complainants at the level specified in the Employer Benefit Plan during their individual periods of eligibility for coverage as laid-off Employees.

#### Opinion of the Trustees

The Respondent is responsible for providing health benefits coverage for the Complainants at the level specified in the Employer Benefit Plan established pursuant to the Wage Agreement, and for payment of the Plan-covered medical expenses incurred by the Complainants and their

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eligible dependents during their active employment and during their periods of eligibility for health benefits coverage as laid-off Employees.