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## OPINION OF TRUSTEES

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### In Re

Complainant: UMWA, International Union  
Respondent: Employer  
ROD Case No: 02-033 – January 30, 2007

Trustees: Micheal W. Buckner, A. Frank Dunham, Michael H. Holland, and  
Elliot A. Segal.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits under the terms of the Employer Benefit Plan.

### Background Facts

Pursuant to the terms of the National Bituminous Coal Wage Agreement of 2002, Employers provide comprehensive health benefits, including prescription drug and vision care, to eligible coal mining industry Employees and Pensioners and their eligible Dependents. In 2003, Congress enacted the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (“MMA”). Under the MMA, plan sponsors who provide prescription drug coverage to their Medicare-eligible beneficiaries are eligible to receive a retiree drug subsidy from Medicare if, beginning January 1, 2006, the coverage offered is “creditable coverage,” i.e., actuarially equivalent, to the standard prescription drug benefit offered by Medicare under Medicare Part D. The MMA does not, however, require an employer-sponsored plan that provides prescription drug coverage to its Medicare-eligible beneficiaries to continue to do so. Under Medicare Part D, individuals who are eligible for Medicare Part A and Part B and who do not have the option of creditable coverage from a retiree drug plan which qualifies for the Retiree Drug Subsidy, may choose a prescription drug plan provided through a private company.

In general, Medicare Part D requires payment of a monthly premium, a deductible, coinsurance and other graduated payments, coverage of at least two drugs in every drug category, and that certain drugs be excluded from the list of covered drugs provided under the Part D standard plan. An individual receiving Medicare Part D drug coverage may request that the plan grant him or her an “exception,” under which the plan agrees to pay for a drug not otherwise covered by the plan, or appeal the plan’s denial decision. An individual may also enroll in a Medicare Part D prescription drug plan that offers coverage in addition to the standard coverage, generally for a higher premium than the premium for standard Medicare Part D prescription drug coverage. Depending on the prescription drug plan selected, the actuarial value of such plan may be less than the actuarial value of the prescription drug benefit offered under the Employer Benefit Plan, the Medicare Part D prescription drug plan may cover fewer drugs than those covered under the Employer Benefit Plan and an individual will have out-of-pocket expenses greater than those required under the Employer Benefit Plan.

By letter dated December 8, 2005, the Respondent notified the Complainants that beginning January 1, 2006, Medicare prescription drug (Medicare Part D) coverage would be available and that Medicare-eligible participants are required to enroll in a Medicare Part D Plan effective January 1, 2006. The Respondent further informed the Complainants that "In order to continue your medical prescription coverage with our company, you and all your Medicare eligible dependents must enroll in Medicare Part D."

According to one of the Complainants, he and his spouse enrolled in Medicare Part D effective January 1, 2006, and their premium payments for Medicare Part D are deducted from their monthly Social Security payment.

### Dispute

Under the terms of the Employer Benefit Plan are Medicare eligible beneficiaries required to enroll in Medicare Part D?

### Positions of the Parties

Position of the Complainant: The Respondent's unilaterally imposed requirement that Medicare-eligible beneficiaries enroll in Medicare Part D is a violation of the National Bituminous Coal Wage Agreement and the Employer Plan Document for many reasons, including but not limited to the following: 1) There is no authority for the Employer's threat to terminate health care for beneficiaries who do not enroll in Part D; 2) The Part D premium represents a prohibited additional cost; 3) Beneficiaries will be required to pay prohibited up-front costs for Part D copayments and deductibles; 4) Information regarding Part D has been poorly communicated by the employer, making it unreasonable with the likely result that beneficiaries will lose coverage; 5) The manner in which the employer's formulary program will coordinate with the Part D provider's formulary program will impose prohibited additional costs on beneficiaries; and 6) The number of pharmacies that will be able to provide both the Part D benefit and the employer's prescription drug benefit will be too small to satisfy the PPL rules.

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

### Pertinent Provisions

Article III. A. (10)(d) of the Employer Benefit Plan provides:

### ARTICLE III BENEFITS

#### A. Health Benefits

(10) General Provisions

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(d) Medicare

1. For Pensioners, and surviving spouses, the benefits provided under the Plan will not be paid to a Beneficiary otherwise eligible if such Beneficiary is eligible for Hospital Insurance coverage (Part A) of Medicare where a premium is not required and/or Medical Insurance coverage (Part B) of Medicare unless such Beneficiary is enrolled for each part of Medicare for which such Beneficiary is eligible. Any such Beneficiary who is enrolled in a Medicare program shall receive the benefits provided under the Plan only to the extent such benefits are not provided for under Medicare.

2. For Employees age eligible for Medicare the benefits provided under the Plan will be paid to a Beneficiary unless the company is furnished written notice of electing coverage under Medicare rather than coverage under the Plan. Alternatively, the participant may elect to enroll for Medicare as secondary payer.

The Plan Administrator shall give written notification of the obligation to enroll with respect to 1. above and of the options to enroll with respect to 2. above. For active Employees such notice shall be given prior to their Medicare-eligibility birthdays, but subsequent to their immediately preceding birthdays. Said notice shall explain the limited annual enrollment period and the effect of failing to enroll if retirement should occur prior to the next enrollment period. Failure to provide such notification shall not remove any obligation to enroll.

Article III. A. (11) (a) 3. of the Employer Benefit Plan states:

ARTICLE III BENEFITS

A. Health Benefits

(11) General Exclusions

- (a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

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3. Services furnished by any governmental agency, including benefits provided under Medicaid, Federal Medicare and Federal and State Black Lung Legislation for which a Beneficiary is eligible or upon proper application would be eligible.

#### Discussion

The issue of enrollment in Medicare Part D has been addressed in RODs 02-029, 02-030, 02-031, CA-076, CA-077, CA-078, and CA-079. In those cases, an arbitrator determined that “The Employers’ requirement that their beneficiaries enroll, at the beneficiaries’ own cost, in Medicare Part D is a violation of the Employer Benefit Plan and the National Bituminous Coal Wage Agreement [of 2002].”

#### Opinion of the Trustees

The Employers’ requirement that their beneficiaries enroll, at the beneficiaries’ own cost, in Medicare Part D is a violation of the Employer Benefit Plan and the National Bituminous Coal Wage Agreement of 2002.