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OPINION OF TRUSTEES

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In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 81-499 - September 24, 1984

Board of Trustees: Harrison Combs, Chairman; John J. O'Connell, Trustee; Paul R. Dean, Trustee.

Pursuant to Article IX of the United Mine Workers of America 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. The dispute concerns provision of benefits coverage for a Pensioner by the Employer under the terms of the Employer's Benefit Klan. The Trustees hereby render their opinion on the matter.

Background Facts

The Complainant was employed at classified work by the Respondent from June 14, 1973, to October 31, 1983, when he sustained an on-the-job injury. He had worked more than 2,000 hours for the Respondent during the 24 consecutive calendar month period immediately prior to his date last worked. Subsequent to his date last worked the Complainant applied for, and was awarded, a regular service pension from the 1974 Pension Plan, effective February 1, 1984, and Social Security Disability Benefits under Title II, effective April 1, 1984.

The Respondent, C&B Coal Recovery, Inc., d/b/a C&8 Coal Company, Inc., notified the Funds that it ceased operating October 15, 1983. On October 16, 1983, Starfire Coal Bagging Corporation, d/b/a Starfire Mining Company, and also owned by the Respondent, began operating the mine. An audit by Funds' staff shows that all of the C&B Coal Company's employees were retained by the Starfire Mining Company. The audit report indicates that Starfire Mining Company did not sign the National Bituminous Coal Wage Agreement of 1981 and ceased operating in November 1983. It has also been established that Starfire Mining Company was a successor company to C&B Coal Recovery, Inc.

Funds' records show that the State Corporate Commission revoked the charters and dissolved C&B Coal Recovery, Inc., and Starfire Coal Bagging Corporation as corporations on June 1, 1983. Funds' records also show that the Respondent owns several other coal companies which,

along with C&B Coal Recovery, Inc. and Starfire Coal Bagging Corporation, appear to be sole proprietorships. The Funds has previously determined that the Respondent d/b/a C&B Coal Recovery, Inc. does not satisfy the "no longer in business" criteria in Article II.E.4. of the 1974 Benefit Plan. The Respondent has not provided benefits coverage for the Complainant after October 31, 1983.

### Dispute

Is the Respondent responsible for the provision of benefits coverage for the Complainant and his eligible dependents?

### Positions of the Parties

Position of Complainant's Representative: Who is responsible for the provision of benefits coverage for the complainant and his eligible dependents?

Position of the Respondent: The Respondent claims that it is financially unable to provide benefits coverage for the Complainant.

### Pertinent References

Article I, (1), (2), (4) and (5) of the Employer's Benefit Plan provide:

#### Article I: Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (coal company).
- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1981, 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.
- (5) "Pensioner" shall mean any person who is receiving a pension, other than (i) a deferred vested pension based on less than 20 years of credited service or, (ii) a pension based in whole or in part on years of service credited under the terms of Article II G of the 1974 Pension Plan, or any corresponding paragraph of any successor thereto, under the 1974 Pension Plan (or any successor thereto), whose last classified signatory

employment was with the Employer, subject to the provisions of Article II B of this Plan.

Article II. A. (1) and B (i) (a) of the Employer's Benefit Plan provide:

Article II - Eligibility

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;

B. Pensioners

Health benefits and life insurance under Article III hereof shall be provided to Pensioners as follows:

- (1) Any Pensioner who is not again employed in classified signatory employment subsequent to
  - (a) such Pensioner's Initial date of retirement under the 1974 Pension Plan,...

Article III D(1).(a) and (b) of the Employer's Benefit Plan provide:

Article III - Benefits

B. 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:

Number of Hours Worked for the Employer in the 24 Consecutive Calendar Month Period Immediately Prior to	Period of Coverage
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<u>the Employee's Date Last Worked</u>	<u>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

(b) Disability

Except as otherwise provided in Article II, section C, if an Employee ceases work because of disability, the Employee will be eligible to continue health, life and accidental death and dismemberment coverage while disabled for the greater of (i) the period of eligibility for Sickness and Accident benefits, or (ii) the period as set forth in the schedule in (a) above.

Discussion

The Funds determined on May 3, 1984 that although C&8 Coal Recovery, Inc. last operated October 15, 1983, it does not meet the "no longer in business" criteria of Article II E (4) of the 1974 Benefit Plan, because there is a reasonable expectation that the Respondent's operations will start up again and the Respondent is not financially unable to provide benefits coverage for its laid-off Employees and Pensioners.

The Respondent is therefore responsible for the provision of continuation of benefits coverage for the Complainant from November 1, 1983 through January 31, 1984, based on the Complainant's more than 2,000 hours worked, and, commencing February 1, 1984, as a 1974 Pension Plan Pensioner pursuant to Article XX of the National Bituminous Coal Wage Agreement of 1981.

Opinion of the Trustees

The trustees are of the opinion that the Respondent is responsible for the provision of benefits coverage for the Pensioner and his eligible dependents commencing November 1, 1983.