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## OPINION OF TRUSTEES

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### In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 81-537 - October 29, 1985

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William B. Jordan, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., 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 continuation of health benefits coverage for a laid-off Employee by the Employer under the terms of the Employer Benefit Plan.

### Background Facts

The Complainant was employed in classified work for the Respondent (Elkay Mining Company) from 1974 to June 1984, when he was laid off. He worked over 2000 hours in the 24 consecutive calendar month period immediately prior to his layoff. After his layoff, he went to work from July 10, 1984 to August 10, 1984 for Transervice Leasing Corporation. At that time, Elkay Mining Company and Transervice Leasing Corporation were separate corporations, both of which were wholly-owned subsidiaries (through several intervening corporations), of the Pittston Company. Transervice Leasing Corporation has since been sold. Transervice was a truck leasing and repair company which serviced various companies and mines owned by Pittston. Transervice and Elkay Mining operated in the Rum Creek, West Virginia area as do other Pittston companies including Buffalo Mining and Snap Creek. All but Buffalo Mining have Lyburn, West Virginia addresses.

The Complainant states that during his employment with Transervice, he visited the Respondent's office to discuss his health benefits coverage and was told by the secretary that he would be able to keep the same benefits coverage while he was working with Transervice. On September 20, 1984, however, the Complainant was notified that his health benefits had been terminated because he had accepted other employment and had failed to provide notice of that fact to the Respondent via certified mail as required under the terms of the Employer Benefit Plan.

The Complainant maintains that he never received a copy of the Employer Benefit Plan or any subsequent amendments to it during his employment with the Respondent and therefore had no knowledge that he had an obligation to notify the Respondent by certified mail of his acceptance and termination of employment with Transervice. Additionally, he states that Transervice was a wholly owned subsidiary of the parent company of the Respondent and that he was, therefore, not changing Employers.

The Respondent maintains that the Complainant's benefits coverage was appropriately terminated because he did not notify it by certified mail of his acceptance and/or termination of other employment within the requisite ten day period. In response to the Complainant's allegations that he never received copies of the Summary Plan Descriptions, the Employer refuted this claim by describing its method of distributing the Plan, providing copies of its Plan booklet, and demonstrating that another employee had exercised the benefits protection privilege when he was laid off in 1982.

Finally, the Respondent claims that it is not a subsidiary of the same parent company as Transervice and should not be construed as being a single entity.

#### Dispute

Is the Respondent responsible for provision of benefits coverage for the Complainant and his eligible dependents for the remainder of his original period of continuation of coverage?

#### Position of the Parties

Position of Complainant: The Respondent never provided the Complainant with a copy of the Employer Benefit Plan and should therefore be responsible for provision of the Complainant's health benefits coverage for the remainder of his continuation of coverage period. Additionally, the Complainant states that he did not change Employers because Elkay Mining and Transervice Leasing Corporation had the same parent company.

Position of the Respondent: All Employees receive copies of the Employer Benefit Plan. The Complainant failed to notify the Respondent of his acceptance and termination of employment with Transervice; therefore, the Respondent is not responsible for provision of the Complainant's health benefits coverage for the remainder of his continued benefits period. Additionally, the Respondent states that it and Transervice Leasing Corporation are separate corporations with no joint personnel functions and can in no way be considered a single Employer.

#### Pertinent Provisions

Article XX Section (c)(3)(i) of the 1981 National Bituminous Coal Wage Agreement provides:

Article XX - Health and Retirement Benefits Section (c) 1974 Plans and Trusts

(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....

Articles 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 [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.

Article II. A. 1. of the Employer Benefit Plan provides:

#### Article II - Eligibility

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

1. is actively at work\* for the Employer on the effective date of the Wage Agreement; or
2. is on layoff or disabled from the Employer and had continuing eligibility as of the effective date of the Wage Agreement Plan for coverage under the 1978 Employer's Benefit Plan ("prior Plan") as a laid off or disabled employee. Coverage for such laid-off or disabled Employees shall not continue beyond the date when they would no longer have been eligible for such coverage under the provisions of the prior Plan.

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\*"Actively at work" includes an Employee of the Employer who was actively at work on March 26, 1981, and who returns to active work with the Employer within two weeks after the effective date of the Wage Agreement.

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

Article III - Benefits

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

(f) Other Employment

Notwithstanding the foregoing, in the event an Employee accepts employment during a period of continued coverage under paragraph (a), health, life and accidental death and dismemberment insurance coverage will terminate as of the date of such employment. If, however, such employment subsequently terminates prior to the date the Employee's coverage under paragraph (a) otherwise terminates, such Employee's health, life and accidental death and dismemberment insurance coverage will be reinstated following the later of (i) termination of such employment or (ii) any continued health coverage resulting therefrom, and will continue to the date such coverage under paragraph (a) would have otherwise terminated. It is the obligation of the Employee to notify the Employer within 10 days by certified mail of both the acceptance and termination of such employment; failure to provide such notice will result in permanent termination

of coverage. Nothing in this paragraph shall extend coverage beyond the date determined pursuant to paragraph (a).

### Discussion

The Complainant held a classified position with the Respondent from 1974 to June 1984, when he was laid off. He worked over 2000 hours in the 24 consecutive calendar month period immediately prior to his layoff and therefore was entitled to the balance of the month plus 12 months of continued coverage, as provided in Article III. D 1 (a) of the Employer Benefit Plan. In accepting other employment subsequent to layoff, Employees are obligated under Article III. D 1 (f) to notify the Employer within 10 days by certified mail of both the acceptance and termination of such employment. Failure to provide such notice results in permanent termination of coverage.

While on layoff from Elkay, the Complainant voluntarily accepted employment with Transervice apparently with the knowledge that it was a separate entity, as evidenced by his inquiry regarding the effect of such other employment on his benefits coverage provided by Elkay.

In claiming a continuing right to benefits coverage beyond the date on which he accepted other employment, however, the Complainant contends that because Transervice and the Respondent were both owned by the same parent corporation, they should be treated as the same Employer for purposes of continuing benefits coverage. In response to the Complainant's statement, Funds staff investigated the interrelationship of the companies under Pittston's control. The investigation disclosed that Transervice and Elkay were distantly related and operated close to each other and to other Pittston companies which operated in the Rum Creek area, including several in Lyburn. However, there is no evidence to suggest that the employees of Transervice were subject to control, supervision or discipline by Elkay management. Furthermore, each corporation had a separate corporate structure. Consequently, there appears to be no factual basis on which to conclude that an alter-ego, joint employer or common-law employer relationship existed between these corporations with respect to the Complainant.

Under Article XX Section (c)(3)(i) of the 1981 Coal Wage Agreement, each signatory Employer is required to establish and maintain an Employer Benefit Plan for its Employees. The fact that several Pittston companies joined together to have the same insurer does not affect that obligation nor does the fact that Pittston is the parent company that ultimately controls both Transervice and Elkay. Likewise, under Article II D 1 (f) of the Employer Plan, a laid-off Employee is obligated to notify his last Employer of other employment.

In the alternative, the Complainant claims that he is entitled to benefits coverage beyond the date he became employed by another Employer because he never received a copy of the 1981 Employer Benefit Plan which described the benefit protection provisions contained for the first time in Article III D (1)(f) of that Plan and thereby was effectively precluded from exercising his rights. The Respondent contends, however, that booklets were distributed to each of its Employees.

Therefore, the Trustees conclude, as they have in ROD cases 81-276 and 81-387 (enclosed herein), that because the Complainant failed to provide the notice by certified mail required under Article III D (1)(f), the Respondent is not responsible for providing benefits coverage for the Complainant beyond that which has already been provided.

Opinion of Trustees

The Respondent is not responsible for additional health benefits coverage for the Complainant.