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## OPINION OF TRUSTEES

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### In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 84-632 - July 27, 1988

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 level of health benefits coverage for a Pensioner under the terms of the Employer Benefit Plan.

### Background Facts

The Complainant is a Pensioner whose last classified signatory employment in the coal industry was with the Respondent. The Complainant states that the Respondent provided health benefits coverage through Mountain Trails until June 30, 1987, when coverage was terminated. On September 21, 1987, the Respondent began providing coverage for the Complainant and his spouse through separate insurance carriers: Golden Rule Insurance Company and Continental General Insurance Company, respectively. The representative for the Respondent submitted a copy of a letter from its insurance agent indicating that the policies are in effect.

The Complainant has submitted copies of the insurance policies. The Complainant's policy is a Medicare Supplement Policy under which benefits for certain physician charges, private-duty nurse charges and prescription drug charges not covered by Medicare are subject to a \$50 deductible and, thereafter, are paid up to 80% of the remainder in a calendar year. His spouse's policy indicates that benefit payments are subject to a \$250 deductible and, thereafter, are paid up to 80% of the first \$4,000 of covered expenses per calendar year. In addition, several types of health benefits that are required under Article III of the Employer Benefit Plan, including vision care, are not covered in the policies submitted by the Complainant. The Complainant contends that the Benefit Plans implemented by the Respondent do not provide health benefits coverage at the level prescribed by the terms of the Employer Benefit Plan.

Dispute

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

Positions of the Parties

Position of the Complainant: The Respondent is responsible for the provision of health benefits coverage for the Complainant and his eligible dependents at the level prescribed by the Employer Benefit Plan.

Position of the Respondent: The Respondent has failed to provide a statement of its position in this dispute. The Respondent has submitted copies of letters to the Respondent from its insurance agent describing the coverage provided to the Complainant and indicating that he is unable to obtain any other policies on the Complainant and his spouse.

Pertinent Provisions

Article XX Section (c)(3)(i) of the National Bituminous Coal Wage Agreement of 1984 provides in pertinent part:

(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.

Article I (1), (2) and (5) 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 1984, as amended from time to time and any successor agreement.

- (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 B. (1) and D. (1) of the Employer Benefit Plan provide:

#### Article II - Eligibility

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

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, and
  - (b) October 1, 1984, shall be eligible for coverage as a Pensioner under, and subject to all other provisions of this Plan. Notwithstanding (i) and (ii) of the definition of Pensioner in Article 1(5) of this Plan, any such Pensioner who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, shall be eligible for such benefits, subject to all other provisions of this Plan.

D. Eligible Dependents

Health benefits under Article III shall be provided to the following members of the family of any Employee, Pensioner, or disabled Employee receiving health benefits pursuant to paragraphs A, B, or C of this Article II:

- (1) A spouse who is living with or being supported by an eligible Employee or Pensioner.

Article III A. (8) of the Employer Benefit Plan provides 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. The Plan Administrator shall implement such procedures as deemed appropriate to achieve the intent of these co-payments.

Co-payments for Health Benefits are established as follows:

<u>Benefit</u>	<u>Co-Payment</u>
(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 a 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.
If an employee is covered under an employee Plan (established pursuant to the NBCWA of 1978) by more than one signatory	

employer during a 12-month

period(\*), the total co-payments made by the employee during such period shall be counted toward the 12-month(\*) maximum.

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\*The 12-month periods shall begin on the following dates: March 27, 1984; March 27, 1985; March 27, 1986 and March 27, 1987.

### Discussion

Article XX Section (c)(3)(i) of the 1984 Wage Agreement requires each signatory Employer to establish and maintain an Employer Benefit Plan to provide health and other non-pension benefits to its Pensioners whose last signatory classified employment was with such Employer. 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. Inasmuch as the Complainant is a 1974 Pension Plan Pensioner whose last signatory classified employment was with the Respondent, the Respondent is responsible for providing health benefits coverage for the Complainant and his eligible dependents.

Article III. A. of the Employer Benefit Plan specifies the services, including vision care services, which are to be covered 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. The Respondent's use of non-conforming health coverage plans is inconsistent with the provisions of the 1984 Wage Agreement and the Employer Benefit Plan. The Respondent is responsible for providing health benefits coverage for the Complainant and his eligible dependents at the level specified in the Employer Benefit Plan.

### Opinion of the Trustees

The Respondent's health coverage plans are inconsistent with the express provisions of the 1984 Wage Agreement. The Respondent is responsible for providing health benefits coverage for the Complainant and his eligible dependents at the level specified in the Employer Benefit Plan.