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OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-027 - September 25, 1988

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 for a Pensioner under the terms of the Employer Benefit Plan.

Background Facts

The Complainant was injured on September 8, 1981 while working in a classified position for the Respondent and as a result of his injury was unable to return to work. The Complainant applied for disability pension benefits under the UMWA 1974 Pension Plan in September 1984 and was awarded a 1974 Pension Plan Minimum Disability pension retroactive to October 1, 1981. The Complainant was advised to contact his last signatory employer, the Respondent, regarding his eligibility for health benefits coverage. The Complainant states that he has been without coverage since the Respondent terminated his health benefits coverage in September 1982.

The Respondent, Marcus Coal Company, was signatory to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1981. Marcus Coal Company was also signatory to the 1984 Wage Agreement. Information available to the Funds indicates that Marcus Coal Company idled its operations in February 1987. On February 6, 1987, Beech Hollow Coal Company signed the 1984 Wage Agreement and a Memorandum of Understanding with the UMWA indicating that Beech Hollow Coal Company assumed "all obligations and responsibilities of Marcus Coal Company" as its successor. According to information provided to the Funds, however, Beech Hollow Coal Company never began operations.

In April 1987, Marcus Coal Company was sold to new owners and the company resumed operations. Marcus Coal Company under its present ownership became signatory to the 1984 Wage Agreement on April 20, 1987 and to the 1988 Wage Agreement on July 11, 1988. Marcus Coal Company ceased operations on March 22, 1990. The Funds has determined that the company is no longer in business, and the Complainant has been advised that the Funds will

provide health benefits coverage for him and his eligible dependents under the UMWA 1974 Benefit Plan and Trust, effective March 23, 1990.

### Dispute

Whether the Respondent is responsible for providing health benefits coverage for the Complainant as a Pensioner beyond September 1982?

### Positions of the Parties

Position of the Complainant: The Respondent is responsible for providing health benefits coverage for the Complainant as a Pensioner.

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 Agreements of 1981, 1984 and 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.

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 1981 [1984] [1988], 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 & 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) of the Employer Benefit Plan provides:

#### 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) June 7, 1981 [October 1, 1984] [February 1, 1988], 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 I(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.

#### Discussion

Article XX (c)(3)(i) of the 1981, 1984 and 1988 Wage Agreements requires a signatory Employer to establish and maintain an Employer Benefit Plan to provide health and other non-pension benefits for its Pensioners whose last signatory classified employment was with such Employer. Article II B. of the Employer Benefit Plan establishes that an individual who is eligible for pension benefits under the 1974 Pension Plan is eligible for health benefits coverage under the Employer Benefit Plan, with certain exceptions not relevant here. Inasmuch as the Complainant was awarded a UMWA 1974 Pension Plan Minimum Disability pension, he is eligible for health benefits coverage under the Employer Benefit Plan established by his last signatory Employer.

As the Complainant's last signatory employer, Marcus Coal Company is obligated to provide the Complainant with benefits coverage as a Pensioner. Although Beech Hollow Coal Company signed the 1984 Wage Agreement indicating it was a successor to Marcus Coal Company and executed a Memorandum of Understanding expressly agreeing to assume the company's obligations and responsibilities, Beech Hollow Coal Company never began operations. Instead, Marcus Coal Company was sold to new owners in April 1987 and Marcus resumed operations as a signatory to the 1984 Wage Agreement. Therefore, the Memorandum of Understanding signed by Beech Hollow Coal Company does not relieve Marcus Coal Company of its obligation to provide benefits under the terms of the Wage Agreement and the Employer Benefit Plan.

Moreover, the sale of Marcus Coal Company to new owners in April 1987 did not absolve the company of its collectively-bargained obligation to provide health benefits coverage to its Pensioners. A change in the identity of owners does not affect corporate existence nor the corporation's debts, obligations or liabilities. Accordingly, Marcus Coal Company remains liable to provide the health benefits coverage required by the Wage Agreement, consistent with the terms of Article II B. of the Employer Benefit Plan.

#### Opinion of the Trustees

The Respondent is responsible for providing health benefits coverage for the Complainant and his eligible dependents beyond September 1982, consistent with the terms of the Wage Agreement and Article II B. of the Employer Benefit Plan.