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## OPINION OF TRUSTEES

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### In Re

Complainant: Laid-off Employee  
Respondent: Employer  
ROD Case No: 88-278 - July 5, 1990

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 under the terms of the Employer Benefit Plan.

### Background Facts

The Complainant worked in a classified position for the Respondent from July 25, 1988 until he was laid off in March 1989. Funds' records indicate that the Complainant worked more than 500 hours but less than 2,000 hours for the Respondent during that period. The Complainant was recalled to work by the Respondent on May 30, 1989 and worked until the middle of February 1990, when he was laid off again. Funds' records indicate the Complainant worked more than 2,000 hours for the Respondent during the 24-month period prior to February 1990. The Complainant states that he returned to work for the Respondent around March 19, 1990, and he was laid off again on March 29, 1990. According to Funds' records, the Complainant worked more than 2,000 hours for the Respondent during the 24-month period prior to March 29, 1990.

The Complainant has submitted copies of unpaid medical bills which he states were incurred during his eligibility for coverage from the Respondent. The Complainant states that the Respondent often changed insurance carriers and that there were lapses in his health benefits coverage. The Complainant also contends that the benefit plans implemented by the Respondent have not provided health benefits coverage at the level prescribed by the terms of the Employer Benefit Plan. The Respondent has provided coverage for the Complainant and his dependents under a plan implemented through The Travelers Insurance Company since February 1, 1990. The Complainant has submitted a copy of the Summary Plan Description which indicates that benefit payments are subject to a \$500 deductible for each of the first three family members enrolled and, thereafter, benefits are paid up to 80% of the cost of service. The beneficiary is responsible for the remaining 20% of covered expenses until the maximum yearly out-of-pocket amount of \$2,000 per individual or \$5,000 per family is reached. In addition, there is no provision for vision care coverage.

The Respondent states that the Complainant's health benefits coverage was never terminated, and it continues to provide health benefits coverage for the Complainant as required by the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1988.

### Dispute

Whether the Respondent is responsible for payment of the Complainant's outstanding medical bills and 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 Complainants: The Respondent is responsible for payment of the Complainant's outstanding medical bills and for the provision of health benefits coverage at the level prescribed by the terms of the Employer Benefit Plan.

Position of the Respondent: The Complainant's health benefits coverage was never terminated, and the Respondent is providing the level of coverage required under the 1988 Wage Agreement.

### Pertinent Provisions

Article XX Section (c)(3)(i) of the National Bituminous Coal Wage Agreement of 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 (4) 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 1988, 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. (4) of the Employer Benefit Plan provides:

Article II - Eligibility

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

A. Active Employees

- (4) A new Employee will be eligible for health benefits from the first day worked with the Employer.

Article III A. (8) and (9) of the Employer Benefit Plan provide 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 covered 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.

\*The 12-month periods shall begin on the following dates: March 27, 1988; March 27, 1989; March 27, 1990; March 27, 1991 and March 27, 1992.

(b) Prescription drugs and insulin, as set forth in Section A(4) and take-home drugs following 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.

(9) Vision Care Program

(a) Benefits	Actual Charge Up To Maximum Amount	Frequency Limits
Vision Examination	\$20	Once every 24 months
Per Lens (Maximum = 2)		Once every 24 months
- Single Vision	10	
- Bifocal	15	
- Trifocal	20	
- Lenticular	25	
- Contact	15	

Frames 14          Once every 24 months

Article III D. (1) (a) 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

#### Discussion

Article XX Section (c)(3)(i) of the 1988 Wage Agreement requires a signatory Employer to establish and maintain an Employer Benefit Plan to provide health and other non-pension benefits for its Employees. 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.

Article II A. (4) of the Employer Benefit Plan provides health benefits coverage for an active Employee from the first day worked. Article III D. (1) (a) provides continued benefits coverage for a laid-off Employee based on the number of hours worked for the Employer during the 24-month period immediately prior to his last date worked. Inasmuch as the Complainant was actively employed by the Respondent from July 25, 1988 until March 1989, when he was laid off; from May 30, 1989 until mid-February 1990, when he was laid off again; and from March 17, 1990 until his most recent layoff on March 29, 1990, the Respondent is responsible for providing health benefits coverage for the Complainant during his employment and during his periods of eligibility as a laid-off Employee, consistent with the terms of Article III D. of the Employer Benefit Plan.

Article III. A. of the Employer Benefit Plan specifies the benefits, including vision care coverage, which are to be provided 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 a non-conforming health coverage plan is inconsistent with the provisions of the 1988 Wage Agreement and the Employer Benefit Plan. The Respondent is responsible for providing health benefits coverage

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for the Complainant and his eligible dependents at the level specified in the Employer Benefit Plan.

Opinion of the Trustees

The Respondent is responsible for the provision of the Complainant's health benefits coverage at the level specified in the Wage Agreement and the Employer Benefit Plan. The Respondent is responsible for payment of the covered medical expenses incurred by the Complainant and his eligible dependents during his active employment and during his periods of eligibility for health benefits coverage as a laid-off Employee, as determined under the terms of Article III. D. (1) (a) of the Plan.