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OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-558 - August 26, 1992

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Elliot A. Segal, 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 benefits for hold harmless under the terms of the Employer Benefit Plan.

Background Facts

On August 30, 1990, surgery was performed on the Employee's son; the total charge for the surgery was \$3,800. The Employer paid the surgeon \$2,000, and denied the remaining \$1,800 as over the usual and customary allowance for that procedure. The Employee was notified by Explanation of Benefits on November 26, 1990 of the denial of the \$1,800.

On January 7, 1991 the surgeon billed the Employee for \$1,807.50, comprised of the \$1,800 denied by the Employer and a \$7.50 co-payment. The Employee did not respond to the physician's repeated billing attempts, nor did he bring the matter to the attention of his Employer's benefit office. On May 16, 1991 the surgeon's office wrote the Employee warning that the matter would be turned over to a law firm for collection. No response was received. The surgeon's office also tried to contact the Employee by phone on June 13 and June 18, 1991. Neither call was returned. During the call on June 18, the Employee's son told the surgeon's office to turn the bill over for collection. On July 18, 1991, the Employee submitted a cost containment form. The carrier then asked the surgeon to accept the \$2,000 as payment in full. On September 26, 1991 the surgeon indicated he still sought the \$1,800 balance. The carrier paid the \$1,800 on September 27, 1991.

On December 2, 1991 a writ of garnishment was entered against the Employee in the amount of \$696.39, representing attorney's fees, court costs and interest charges, as well as the \$7.50 co-payment, in connection with the recovery of the \$1,807.50 balance. The Employer garnished the \$693.69 from the Employee's subsequent paychecks.

The Employer states that its hold harmless procedures are well established and have been fully communicated to its Employees through memoranda posted at its mines and by other methods. The Employer has submitted a copy of a notice posted at the Employee's mine location.

### Dispute

Is the Employer required to reimburse the Employee for the amount paid under the writ of garnishment initiated by the provider, and incurred as a result of the provider's efforts to collect the outstanding balance of his bill?

### Positions of the Parties

Position of the Employee: The Employer should reimburse the Employee for the costs garnished, covering attorney's fees, court costs and interest. Also, the Employer should take steps to restore the credit rating of the Employee.

Position of the Employer: The Employer is not required to reimburse the Employee, or hold the Employee harmless in the matter of costs associated due the surgeon, because the Employee did not follow established procedures in notifying the Employer and signing a consent form in a timely manner, thus not allowing the Employer sufficient time to intervene on his behalf.

### Pertinent Provisions

Article III. A. (10)(b) of the Employer Benefit Plan states , in part:

(10) General Provisions

(b) Administration

The Plan Administrator is authorized to promulgate rules and regulations to implement and administer the Plan, and such rules and regulations shall be binding upon all persons dealing with the Beneficiaries claiming benefits under this Plan.

Article III. A. (10)(g) 3. of the Employer Benefit Plan states:

(g) Explanation of Benefits (EOB), Cost Containment and Hold Harmless

- (3) The Employer and the UMWA agree that excessive charges and escalating health costs are a joint problem requiring a mutual effort for solution. In any case in which a provider attempts to collect excessive charges or charges for services not medically necessary, as defined in the Plan, from a Beneficiary, the Plan Administrator or his agent shall, with the written consent of the Beneficiary, attempt to resolve the matter, either by negotiating a resolution or defending any legal action commenced by the

provider. Whether the Plan Administrator or his agent negotiates a resolution of a matter or defends a legal action on a Beneficiary's behalf, the Beneficiary shall not be responsible for any legal fees, settlements, judgments or other expenses in connection with the case, but may be liable for any services of the provider which are not provided under the Plan. The Plan Administrator or his agent shall have sole control over the conduct of the defense, including the determination of whether the claim should be settled or an adverse determination should be appealed.

Article III. A. (11)(a)(12) of the Employer Benefit Plan states:

(11) General Exclusions

(a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

12. Excessive charges.

Discussion

Under Article III. A. (11) (a) 12. of the Employer Benefit Plan, benefits are not provided for excessive charges. Article III. A. (10)(g) 3. of the Plan provides that the Plan Administrator shall, "with the written consent of the beneficiary," attempt to negotiate with or defend a beneficiary against providers who seek to collect excessive fees for their services. Whether the Employer negotiates a resolution or defends a legal action, the beneficiary is not responsible for any expenses in connection with the excessive fee claim. This is known as the Plan's "hold harmless" provision.

Article III. A. (10)(b) of the Plan provides that an Employer is authorized to promulgate rules and regulations necessary to the administration of the Plan. If reasonable and effectively communicated to the Employees, an Employer's rules, including any necessary to the hold harmless program, are binding on all persons dealing with the Beneficiaries under the Plan.

In this case, the Employer communicated to the Employee its hold harmless procedures by means of a posted memorandum. The memorandum states that once notified by an Explanation of Benefits that the Employer's insurance carrier is denying a charge because it is excessive or not medically necessary; the Employee must bring the EOB to the office that handles insurance. Then the Employee must submit a cost containment form to the carrier. The memo adds that correspondence the Employee receives should be sent to the carrier, and that while negotiations are under way with the provider, no payment of any kind should be made by the Employee. Lastly, the memo states, "failure to follow any step of the above procedure could result in an Employee not being held-harmless."

The dispute in this case arose because the Employee did not follow the required steps in a timely manner, thus impairing the Employer's ability to effectively negotiate a settlement. The

Employer's requirement that written consent be provided in a timely manner is reasonable because the Employer needs time to negotiate a resolution or prepare a defense in any legal action taken by the provider. The Employer may be prejudiced in his attempt at resolution because of the Employee's failure to return the consent form in a timely manner. (See RODS 88-452 and 88-505). In this case, the Employee waited eight months after receiving the denial and one month after the account was turned over to collection to sign the consent form. Additionally, the Employee never provided the original EOB or subsequent correspondence from the surgeon's office to the Employer as required. While the balance of the surgeon's fee may have been paid by the carrier, that action came too late to avoid collection and garnishment procedures, and these are charges that timely action by the Employee would have avoided.

Therefore, since the Employee failed to provide his written consent in a timely manner and to provide the other information required under the clearly communicated procedures established by the Employer, the Employer's refusal to hold the Employee harmless is justified in this instance. The Employer is not required to provide benefits for the costs associated with the writ of garnishment.

#### Opinion of the Trustees

Because the Employee did not follow the Employer's clearly established and communicated hold harmless procedures and provide a timely response, the Employer is not required to hold the Employee harmless in this instance. Therefore, the Employer is not required to provide benefits for the attorney's fees, the court costs and the interest charges associated with execution of the writ of garnishment.