
OPINION OF TRUSTEES

In Re

Complainant: Pensioners and Surviving Spouses
Respondent: Employer
ROD Case No: CA-0132 – July 23, 2025

Trustees: Micheal Buckner, Michael O. McKown, Paul B. Piccolini, and Carlo Tarley

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits under the terms of the Coal Industry Retiree Health Benefit Act of 1992 (“Coal Act”) Employer Benefit Plan maintained pursuant to Section 9711 of the Internal Revenue Code.

Background Facts

The Respondent was a member of the Bituminous Coal Operators’ Association (“BCOA”) for more than 40 years. Through the BCOA, the Respondent entered into numerous wage agreements with the United Mine Workers of America (“UMWA”), including agreements in 1978, 1981, 1984, 1988, 1993, 1998, and 2002. Also through the BCOA, the Respondent negotiated and agreed to plan and trust documents for Coal Act beneficiaries, including a Trust Document for the UMWA 1992 Benefit Plan and a Model Coal Act Plan. After the expiration of the 2002 NBCWA, the Respondent withdrew from BCOA. Once BCOA and the UMWA negotiated and ratified the 2007 NBCWA, the Respondent agreed to be bound by its terms through a so-called “Me Too” agreement.

Although the Respondent has not signed a wage agreement since the “Me Too” agreement, the Respondent remains in business and continues to be covered by the Coal Act. Effective January 1, 2024, the Respondent made a change to its Coal Act Plan, and adopted the SilverScript drug formulary applicable to Medicare Part D. This was done without the consent of the UMWA. This formulary places additional hurdles for beneficiaries’ access to certain medications, and it results in the Respondent’s plan being constricted by Medicare rules and regulations. For example, the Respondent’s formulary requires prior authorization and has exceptions for a significantly greater number of drugs than under its prior formulary. These restrictions were not in effect as of January 1, 1992.

In February 2024, the Complainants filed the instant ROD. They allege that the Respondent is requiring them to use the SilverScript formulary applicable to Medicare Part D which is not consistent with the benefits required under the Coal Act, and that the Respondent did not obtain the necessary approval from the UMWA to use this formulary.

By letter dated March 25, 2024, the Respondent stated that its Coal Act Plan “does not include the ROD process” as “part of the appeal procedure for resolving disputes.” Additionally, the Respondent asserts that it is “not party to any contract or other arrangement with the UMWA which provided for arbitration or any dispute about [the] Coal Act Plan, or which assigns the Trustee any authority to adjudicate disputes.” The Respondent alleges that the “Trustees lack jurisdiction to entertain or decide ROD CA-0132.”

Dispute

Whether the Respondent is subject to the ROD process and whether the Respondent’s changes to its Coal Act Plan comply with the Coal Act requirement of providing health benefit coverage that is substantially the same as the coverage Respondent provided as of January 1, 1992?

Positions of the Parties

Position of the Complainants: The Complainants contend that the Respondent is subject to the ROD process and that the Respondent’s Coal Act Plan violates the Coal Act because the level of benefits does not comply with Section 9711(a) and (b)(2) of the Coal Act because 1) it is not substantially the same as the coverage Respondent provided as of January 1, 1992, and 2) it includes measures characterized by Respondent as managed care and cost containment that fail to meet the requirements of Coal Act Section 9711(d) because it was neither agreed-to by the UMWA nor does it comply with the requirements of Coal Act Section 9712(c). Specifically, the Respondent’s prescription drug program violates the Coal Act’s requirements by unilaterally implementing: (1) a mandatory formulary (SilverScript applicable to Medicare Part D) that requires prior authorization for certain medications and (2) has exceptions for a significantly greater number of drugs.

Position of the Respondent: The Respondent contends that it is not subject to the ROD process over its Benefit Plan for Coal Act Retirees. The Respondent has not submitted a position regarding the merits of its dispute with the Complainants.

Pertinent Provisions

Section 9711(a) of the Coal Act states in pertinent part:

The last signatory operator of any individual who, as of February 1, 1993, is receiving retiree health benefits from an individual employer plan maintained pursuant to a 1978 or subsequent coal wage agreement shall continue to provide health benefits coverage to such individual and the individual’s eligible beneficiaries **which is substantially the same as** (and subject to all the limitations of) **the coverage provided by such plan as of January 1, 1992.**

26 U.S.C. 9711(a) (emphasis added).

Section 9712(b)(2) of the Coal Act states in pertinent part:

Subject to the provisions of subsection (d), health benefits coverage is described in this paragraph if it is **substantially the same as** (and subject to all the limitations of) **the coverage provided by the individual employer plan as of January 1, 1992.**

26 U.S.C. § 9711(b)(2) (emphasis added).

Article XX(e)(6) of the National Bituminous Coal Wage Agreement of 1988, which was negotiated between the UMWA and the BCOA, agreed to by the Respondent, and in effect on January 1, 1992, states in pertinent part:

Disputes arising under this Agreement with regard to the Employer benefit plan . . . shall be resolved by the Trustees. The Trustees shall develop procedures for the resolution of such disputes. Decisions of the Trustees shall be final and binding on the parties. Such disputes shall not be processed under the provisions of Article XXIII (Settlement of Disputes). (Emphasis added).

Article III.A.(10)(b) and (g)(iii) of the 1988 Individual Employer Plan, which was negotiated between the UMWA and the BCOA pursuant to the 1988 NBCWA, agreed to by the Respondent, and in effect on January 1, 1992, states in pertinent part:

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. **The Trustees of the UMWA Health and Retirement Funds will resolve any disputes, including excessive fee disputes, to assure consistent application of the Plan provisions which are identical to the benefit provisions of the 1950 Benefit Plan and Trust.** (Emphasis added).

* * *

Disputes shall continue to be resolved in accordance with Article XX(e)(6) of the Wage Agreement.

Coal Act Section 9711(d) states:

The last signatory operator shall not be treated as failing to meet the requirements of subsection (a) or (b) if benefits are provided to eligible beneficiaries under

managed care and cost containment rules and procedures **described in section 9712(c) or agreed to by the last signatory operator and the United Mine Workers of America.**

26 U.S.C. § 9711(d) (emphasis added).

Coal Act Section 9712(c)(5) states in pertinent part:

Standards of quality. Any managed care system or cost containment adopted by the board of trustees of the 1992 UMWA Benefit Plan or **by a last signatory operator** may not be implemented unless it is approved by, and meets the standards of quality adopted by, a medical peer review panel, which has been established—

(A) by the settlors, or

(B) by the United Mine Workers of America and a last signatory operator or group of operators.

26 U.S.C. § 9712(c)(5) (emphasis added.)

Coal Act Section 9712(c)(4) states in pertinent part:

The board of trustees of the 1992 UMWA Benefit Plan shall permit any last signatory operator required to maintain an individual employer plan under section 9711 to utilize the managed care and cost containment rules and programs developed under this subsection if the operator elects to do so.

26 U.S.C. § 9712(c)(4).

Coal Act Section 9712(a)(1) states in pertinent part:

As soon as practicable after the enactment date, the settlors shall create a separate private plan which shall be known as the United Mine Workers of America 1992 Benefit Plan. . . . **The settlors shall be responsible for designing the structure, administration and terms of the UMWA 1992 Benefit Plan,** and for appointment and removal of the members of the board of trustees.

26 U.S.C. § 9712(a)(1) (emphasis added).

The UMWA 1992 Benefit Plan Agreement and Declaration of Trust, as amended and restated effective January 1, 2007 by the UMWA and BCOA as settlors of the 1992 Benefit Plan, states in pertinent part:

[T]he Trustees are empowered to do all acts which they deem necessary or proper and to exercise any and all powers of the Trustees under this instrument under such terms and conditions as they may deem to be for the best interest of the Trust. (Article V).

The Trustees are authorized to and shall make final resolution of disputes concerning benefits under the Employer-provided benefit plans described in Section 9711 of the Internal Revenue Code. The Trustees are authorized to use Trust resources for purposes of resolving such disputes. (Article VIII) (emphasis added).

Article III.A.(10)(b) of the Model Coal Act Plan, as amended and restated effective January 1, 2007 by the UMWA and BCOA as settlors of the 1992 Benefit Plan, states:

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. **The Trustees of the UMWA 1992 Benefit Plan will resolve any disputes, including excessive fee disputes, to assure consistent application of the Plan provisions which are identical to the benefit provisions of the 1992 Benefit Plan.** (Emphasis added).

Additional provisions from the Model Coal Act Plan, as negotiated and agreed to by the UMWA and BCOA are set forth below:

Article III provides that:

The benefits described in this Article are subject to any requirements implemented pursuant to Article IV. Covered services that are medically necessary will continue to be provided, and accordingly, while benefit payments may be subject to managed care and cost containment rules, this paragraph shall not be construed to detract from plan coverage or eligibility as described in this Article III.

Article IV Managed Care, Cost Containment of the Model Coal Act Plan states:

- A. The Employer may adopt Participating Provider Lists (PPL's) of physicians, hospitals, pharmacies, and other providers, provided that any such PPL has been approved for adoption under the Employer's benefit plan maintained pursuant to Article XX(c)(3)(i) of the National Bituminous Coal Wage Agreement of 1993 ("1993 NBCWA"). **The Employer may also implement a formulary for prescription drugs;** implement a mail-order procedure for

prescription drugs, including appropriate limits on quantity and periodic physician review; and subject the prescription drug program to a rigorous review of appropriate use. (Emphasis added.)

- B. In addition, the Employer may implement certain other managed care and cost containment rules, which may apply to benefits provided both by PPL providers and by non-PPL sources, **but which (except for the co-payments specifically provided for in the Plan) will not result in a reduction of benefits or additional costs for covered services provided under the Plan.** (Emphasis added).

Discussion

1. Whether the Respondent is subject to the ROD process.

The first issue is whether the Respondent is subject to the ROD process. The Respondent argues that the Trustees do not have jurisdiction to decide this dispute because the Coal Act does not assign authority to resolve disputes to the Trustees. Further, the Respondent asserts that they currently are not a party to any contract or other agreement which assigns the Trustees authority to resolve disputes and that its Coal Act Plan does not include the ROD process. As discussed below, it is our opinion that the Respondent remains subject to the ROD process pursuant to Sections 9711 and 9712 of the Coal Act and the governing plan and trust documents for the UMWA 1992 Benefit Plan that were established by the settlors of the 1992 Benefit Plan and agreed to by the Respondent.

The Respondent does not appear to challenge the existence or validity of the ROD process in general, or the Trustees' jurisdiction to decide disputes over whether employers covered by the Coal Act are providing uniform levels of benefits for Coal Act beneficiaries in individual employer benefit plans, because Respondent has participated in the ROD process regarding many such disputes in the past without objection. Indeed, the Respondent participated in the following Coal Act RODs decided between 1995 and 2010 without objecting to the Trustees' jurisdiction to decide those disputes: CA-0011, CA-0031, CA-0038, CA-0049, CA-0056, CA-0060, CA-0066, CA-0067, and CA-0095. However, the Respondent challenged the Trustees' decision in ROD CA-0066 in federal court – a case that it lost.¹ Nevertheless, to address Respondent's contention that

¹ In CA-0066, the Respondent unilaterally implemented a mail order pharmacy program for certain drugs. The UMWA filed a ROD, contending the mail order pharmacy program violated the Coal Act. The ROD decision of the Trustees held that the program was "inconsistent with the prescription drug coverage and cost containment provisions of the Coal Act Plan." The Respondent then filed a suit in federal court asking to vacate the Trustees' ROD decision.

At no point during the CA-0066 ROD process or the subsequent litigation did the Respondent

the Trustees lack jurisdiction to decide this dispute, we begin with an overview of the Trustees' authority to decide Coal Act disputes such as this one.

The ROD process currently in effect to resolve Coal Act disputes is substantially the same as the ROD process in effect before the Coal Act. Before the Coal Act, the Respondent's individual employer plan was established under the National Bituminous Coal Wage Agreement ("NBCWA") of 1988, to which Respondent was signatory. Article XX(e)(6) of the 1988 NBCWA, which continued in effect through January 1, 1992, included the ROD process and stated in relevant part: "Disputes arising under this Agreement with regard to the Employer benefit plan . . . shall be resolved by the Trustees. . . . Decisions of the Trustees shall be final and binding on the parties." That same requirement was also incorporated into the 1988 Employer Plan Document, which stated in relevant part: "The Trustees of the UMWA Health and Retirement Funds will resolve any disputes, including excessive fee disputes, to assure consistent application of the Plan provisions which are identical to the benefit provisions of the 1950 Benefit Plan and Trust. . . . Disputes shall continue to be resolved in accordance with Article XX(e)(6) of the Wage Agreement." 1988 Employer Plan, Article III.A.(10)(b), (g)(iii). Not only was the Respondent a member of BCOA when these provisions were negotiated and agreed to, the Respondent was actively involved in the negotiations and agreed to the 1988 NBCWA and the provisions set forth above.

The ROD process to resolve Coal Act disputes was established nearly 30 years ago by the settlors of the 1992 Benefit Plan, the UMWA and BCOA, pursuant to the authority granted to the settlors under Sections 9711 and 9712 of the Coal Act. Section 9711(a) of the Coal Act mandates that health benefits coverage provided under an individual employer plan (which includes the plan of Respondent that is at issue in this dispute) must be "substantially the same as . . . the coverage provided by such plan as of January 1, 1992." In addition, Section 9712(a)(1) of the Coal Act states that "The settlors shall be responsible for designing the structure, administration and terms of the 1992 UMWA Benefit Plan"

The settlors determined (1) that the ROD process was an integral part of the pre-Coal Act individual employer plans that the Act requires employers to continue providing under their post-Coal Act individual employer plans, and (2) that the ROD process is integral to the structure, administration, and terms of the 1992 UMWA Benefit Plan. Accordingly, acting pursuant to their statutory authorities, the settlors created two important documents — a 1992 Plan Agreement and Declaration of Trust ("1992 Trust Agreement") and a Model Coal Act Plan — both of which establish the ROD process to resolve Coal Act disputes:

assert that the Trustees lacked jurisdiction to review the dispute. To the contrary, Respondent's legal arguments focused on the standard of review applicable to the Trustees' decision. The court held that the Trustees' CA-0066 ROD decision was binding on the Respondent, and ultimately, the Respondent complied with it.

- The 1992 Trust Agreement specifically authorizes the Trustees of the 1992 Plan to resolve disputes regarding health benefits coverage provided to Coal Act beneficiaries under individual employer benefit plans. Article VIII of the 1992 Trust Agreement states in relevant part, “The Trustees are authorized to and shall make final resolution of disputes concerning benefits under the Employer-provided benefit plans described in Section 9711 of the Internal Revenue Code. The Trustees are authorized to use Trust resources for purposes of resolving such disputes.”
- Similarly, the Model Coal Act Plan, which sets forth the specific benefits that are required to be included in individual employer plans established under the Coal Act, includes the ROD process to resolve coverage disputes. Article III.A.(10)(b), (g)(iii) of the Model Coal Act Plan states in relevant part that “The Trustees of the UMW 1992 Benefit Plan will resolve any disputes, including excessive fee disputes, to assure consistent application of the Plan provisions which are identical to the benefit provisions of the 1992 Benefit Plan. . . . Disputes shall be resolved in accordance with (10)(b).” This language is substantially the same as that used in the 1988 Individual Employer Plan.

As a member of BCOA, the Respondent was instrumental in negotiating these governing plan and trust documents that specifically include the ROD process. As noted above, the Respondent agreed to both documents, participated in at least nine Coal Act RODs, and, until 2024, never challenged the authority of the Trustees to decide Coal Act disputes under the ROD process that Respondent was instrumental in creating.

Respondent has provided no authority supporting its position that its unilateral decision to cease participating in the ROD process in 2024, effectively and validly repudiates or terminates the Respondent’s long-established obligation to participate in the ROD process. Neither the Complainants nor their representatives have agreed to excuse Respondent from participating in the ROD process, and the Respondent’s Coal Act obligations foreclose the Respondent’s unilateral attempt to repudiate or terminate its agreement to resolve Coal Act disputes through the ROD process. Section 9711 of the Coal Act requires that the Respondent maintain an individual employer plan with coverage that is “substantially the same as” the coverage that the Respondent maintained as of January 1, 1992. Section 9711 further requires Respondent to provide such coverage for as long as Respondent “remains in business.” Respondent clearly remains in business and cannot unilaterally escape its continuing statutory obligations under the Coal Act.

Resolving Coal Act disputes through the ROD process is both (1) an element of the pre-Coal Act individual employer plans that the Coal Act requires the Respondent to include in its individual employer plan, and (2) inextricably intertwined with the health benefits coverage that the Act requires the Respondent to provide through its individual employer plan.

The Respondent’s retiree plan coverage in effect in 1992 included participation in the ROD process, in order to assure consistent interpretation and provision of benefits to eligible

beneficiaries. For the Respondent to maintain a plan that provides “substantially the same as” prior coverage, participation in the ROD process must continue. The Respondent’s attempt to be the arbiter of disputes is contrary to the authority granted to the settlors under Coal Act Section 9712(a)(1) with respect to “designing the structure, administration and terms of the 1992 UMWA Benefit Plan . . . ,” and the Section 9711 enforcement authority that is explicit in Section 9721 of the statute.

The ROD process is a benefit to Coal Act beneficiaries. It provides a streamlined and cost-effective means of resolving disputes about the appropriateness of the coverage of a particular individual employer plan. The ROD process is an important part of health benefit coverage under the Coal Act. The ROD process determines the specific level of coverage that must be provided by employers when they have disputes concerning the level of benefits that must be provided to Coal Act beneficiaries. The ROD process also is critical in ensuring that each individual employer plan complies with the Coal Act and provides a uniform level of coverage. That is precisely what is at issue in this case. The ROD process will determine whether Respondent’s proposed changes to its prescription drug coverage are in compliance with the Coal Act.

Under the Coal Act, the Complainants are vested with statutory rights to receive a certain level of healthcare benefits under the Respondent’s individual employer plan — a coverage that must be provided by Respondent so long as it remains in business. The Complainants’ statutory rights under the Coal Act are not limited by contract and continue for their lifetimes. Similarly, the Respondent’s obligation to comply with the Coal Act and its governing plan and trust documents are continuing and not limited by contract. We are aware of no authority by which the Respondent can unilaterally repudiate or terminate its obligation to participate in the ROD process to resolve disputes over the Complainants’ vested rights, particularly when the Respondent is simultaneously making changes that arguably are inconsistent with the Complainants’ vested rights.

The Respondent’s obligations under the Coal Act are ongoing. The Respondent’s obligation to participate in the ROD process to resolve disputes like this dispute is ongoing. And the Complainants’ rights to lifetime healthcare benefits are ongoing. The Trustees have jurisdiction to resolve this dispute.

2. Whether the Respondent is violating Section 9711(a) and (b)(2) of the Coal Act.

The second issue is whether the changes in Respondent’s prescription drug coverage for Coal Act Retirees, effective January 1, 2024, are in compliance with the Coal Act requirement of providing health benefit coverage that is substantially the same as the coverage provided as of January 1, 1992. The Coal Act requires the Respondent to provide health benefit coverage to Coal Act eligible retirees that “is substantially the same as (and subject to all the limitations of) the coverage provided by [Respondent’s individual employer plan] as of January 1, 1992.” *See* 26 U.S.C. § 9711(a), (b)(2). The changes Respondent has made violate Section 9711(a) and (b)(2) in two ways: first, by purporting to withdraw from the ROD process (as discussed in part 1 above)

and second, by implementing a formulary that is more restrictive and harmful to beneficiaries, than the coverage provided by the Plan as of January 1, 1992 and was not agreed to by the UMW (as discussed below).

The Respondent's plan's formulary requires prior authorization for prescription drugs and has exceptions for a significantly greater number of drugs. These changes significantly restrict access to prescription drugs. Such access limitations do not provide substantially the same coverage.

Additionally, the unilateral changes made by Respondent to its prescription drug program cannot be separately justified as "managed care and cost containment," as those terms are used in Coal Act Section 9711(d). That provision allows employers to implement certain programs intended to reduce costs, provided that they are adopted by agreement with the UMW or are adopted under managed care and cost containment rules and procedures described in section 9712(c) of the Coal Act. The UMW did not, however, agree to the changes to Respondent's prescription drug program.

In addition, Respondent's prescription drug program was not adopted under the cost containment and managed care rules and procedures described in section 9712(c) of the Coal Act. Section 9712(c) of the Coal Act authorizes employers to develop managed care and cost containment rules that preserve freedom of choice, provided that the program is approved by a medical peer review panel that has been established by the settlors of the 1992 Plan (*i.e.*, the UMW and BCOA) or by the UMW and the last signatory operator. In this case, Respondent's prescription drug program does not preserve freedom of choice and was not approved by a medical review panel established by the settlors or by agreement with the UMW.

Coal Act Section 9712(c)(4) and Article III.A(10)(g)(2) of the Model Coal Act Plan allow operators to "piggyback" on managed care programs that have been adopted by the 1992 Plan. Respondent's formulary, however, was neither adopted by the 1992 Plan nor does it "piggyback" on any managed care program of the 1992 Plan. The Respondent's formulary includes more exclusions and drugs that require prior authorization, and it does not include specific drugs that otherwise remain covered under the 1992 Plan's formulary (for example, Novalog and Lezemir).

Finally, this case is not the first dispute under the Coal Act involving an employer that has unilaterally adopted a prescription drug program that is more restrictive than the coverage required under the Coal Act. In ROD CA-056, for example, an arbitrator decided that an Employer did not have the authority to implement a program that applies a surcharge if a beneficiary buys a non-formulary brand name drug when no generic equivalent is available. The arbitrator determined that "The Employer's imposition of a mandatory formulary drug program is inconsistent with the prescription drug coverage and cost containment provision of the Employer Benefit Plan, and therefore is not within the Employer's authority to implement under the Coal Act and the Coal Act Employer Benefit Plan." Further, in ROD CA-072, the Trustees decided that the imposition of a mandatory formulary program is inconsistent with the prescription drug coverage and cost

containment provision of the Model Coal Act Plan and the Respondent was required to reimburse the Complainant for the non-formulary brand name drugs purchased.

In sum, the Respondent's plan is inconsistent with the mandates of the Coal Act and the Model Coal Act Plan. Its formulary was not approved by the UMWA prior to adoption and the Respondent's formulary does not "piggyback" the 1992 Plan's formulary, as mandated by both the Coal Act and the Model Coal Act Plan.

Opinion of the Trustees

The Respondent is subject to the Trustees' ROD jurisdiction over disputes arising under the Respondent's Coal Act Plan. The Respondent's changes to its prescription drug plan do not meet the requirements of the Coal Act. Respondent's unilateral implementation of a drug formulary without first obtaining approval by the UMWA or following the procedures set forth in the Coal Act are inconsistent with the managed care and cost containment provisions of the Coal Act and Model Coal Act Plan. The Respondent is required to administer its plan consistent with the requirements of the Coal Act, the Model Coal Act Plan, and the Trustees' opinion herein.