

Coal Industry Retiree Health Benefit Act 1992

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Expected at 10:00 a.m. EDT
September 9, 1993

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STATEMENT OF
LESLIE B. SAMUELS
ASSISTANT SECRETARY (TAX POLICY)
DEPARTMENT OF THE TREASURY
BEFORE THE
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Committee:

I am pleased to be here today to present the views of the Administration on the Coal Industry Retiree Health Benefit Act ("the Coal Act"), which was enacted as part of the Energy Policy Act of 1992, P.L. 102-486. The Coal Act requires that the former employers of retired coal miners finance the health benefits that were previously negotiated for those miners and their beneficiaries by the United Mine Workers of America ("UMWA"). Concerns have been expressed about the equity of the Coal Act and, in particular, the so-called "reachback" financing method that is imposed by the statute. Because of those concerns, various proposals to modify the reachback method have come to the fore, including proposals to exempt certain categories of employers from the reachback or to provide other special tax relief.

As I will discuss more fully, the Administration does not support efforts to re-open the provisions of the Coal Act. The current law achieves the primary goal of ensuring adequate funding of retired miners' health benefits. We believe that the reachback financing method is a reasonable approach for allocating costs on the basis of employers' responsibility for their retirees.

Background

For background purposes, I would like to briefly describe the funding of miners' retiree health benefits prior to the Coal Act and the events that lead to its enactment.

Before the Coal Act, health benefits were provided for retired union miners and their beneficiaries either by the miner's individual employer or through one of two multiemployer

funds -- the 1950 UMWA Health Benefit Fund and the 1974 UMWA Health Benefit Fund. Contributions to both Funds were required of signatories to the national wage agreement negotiated between the UMWA and the Bituminous Coal Operators Association ("BCOA"). Employers that were not signatories to the national wage agreement also contributed to the Funds under separate wage agreements negotiated with the UMWA.

The 1950 Fund covered miners who had retired as of December 31, 1975, and their beneficiaries. Miners who retired after 1975 generally received health benefits under the single plan of their former employer. However, if the employer went out of business or left the coal industry, the employer's retirees and their beneficiaries were covered by the 1974 Fund. As a result, all of the retirees and their beneficiaries covered under the 1974 Fund were "orphans" for whom no contributions were being made by their former employers. About half of the retirees and their beneficiaries in the 1950 Fund were orphans.

Beginning in the late 1980's, the Funds began to experience serious financial difficulties. As of December 31, 1991, the combined deficit of the Funds reached \$105 million and was projected to grow to \$205 million by January 31, 1993. The deficit was precipitated by a number of factors, including medical inflation and the lack of any effective cost containment mechanisms under the Funds. Moreover, contribution base of the Funds was eroding. In the early 1980s, for example, approximately 2,000 employers contributed to the Funds. That number had fallen to about 300 in 1992.

Both the growing liabilities of the Funds and the declining number of employers bearing those liabilities engendered a series of lawsuits aimed at securing additional contributions to keep the Funds solvent. The more significant litigation involved the trustees' efforts to expand the group of employers currently contributing to the Funds by means of the "evergreen" clause. As argued by the trustees, the evergreen clause, which first appeared in the 1978 wage agreement, imposed a permanent obligation on all signatory employers to finance retiree health benefits, regardless whether the employer signed a future wage agreement. Thus, under the evergreen clause, the trustees could reach back to all post-1978 signatory employers for contributions.¹

In addition to the litigation, the growing liabilities of

¹ At the time of the passage of the 1992 Act, a D.C. federal district court had decided a case interpreting the evergreen provision as allowing a reachback to the post 1978 signatory employers. Subsequently, that decision was affirmed by the U.S. Court of Appeals for the D.C. circuit.

the Funds and the costs of continuing retiree health benefits became a central issue of the 1989 coal strike against Pittston Coal Company. As part of the compromise that helped settle the Pittston strike, then-Secretary of Labor Dole announced the establishment of a national Coal Commission to study the Funds. In its report, published in November of 1990, the Coal Commission agreed that the problems of the Funds could not be solved through private bargaining alone. In addition to managed care and other cost containment provisions that would reduce the rising costs of the Funds, the Coal Commission recommended establishing a statutory obligation to contribute to the Funds. Although the Coal Commission was divided as to how this obligation should be implemented, there was general agreement that it should cover all then-current signatory employers and some group of former signatory employers, as well.

In response to the Coal Commission report, legislation to address retired miners' health benefits was included in a larger tax bill that was passed by Congress in March of 1992 (H.R. 4210). However, that legislation was subsequently vetoed by President Bush.

Without a legislative solution, there were growing concerns about the continued viability of the Funds, especially given the prospect of prolonged litigation to enforce the evergreen clause or seek other increased contributions. In addition, speculation increased that the signatory employers would refuse to make any additional contributions to the Funds when the 1992 national wage agreement expired. For those who were concerned that the trustees would succeed in enforcing the evergreen clause, the possibility that the signatory employers would refuse to make future contributions was particularly troubling because it would have left the Funds without any source of contributions and unable to pay the retirees' benefits.

The Coal Act

In that context, the Coal Act imposed a statutory obligation on both the 1988 signatory employers and the former employers of retired miners to fund retiree health benefits under a new Combined Fund. The Combined Fund covers all retirees and beneficiaries that benefitted under both the 1950 and 1974 Funds. Under the current law reachback financing method, any employer that signed a wage agreement with the UMWA since 1950 and has retirees who benefit under the Funds could be obligated to pay premiums for the health benefits of the retirees and their beneficiaries who benefit under the Funds. In addition, employers are obligated to finance the health benefits of orphans in the Combined Fund whose former employers are no longer in business. Each employer's share of orphans is proportional to the number of the employer's retirees who benefit. The method of allocating individual retirees and their beneficiaries to

employers will be discussed in more detail by the Social Security Administration. However, in general, the allocation method is intended to ensure that costs are shared by all employers that signed at least one UMWA wage agreement which qualified their retirees for health benefits under the Funds.

The first premiums under the reachback financing method are scheduled to be assessed as of October 1, 1993. In the interim, the employers that were signatory to the then-current 1988 wage agreement have been required to pay off the deficit of the Funds and finance the current costs of the Combined Fund. In return for their deficit reduction contributions, those employers receive credits that may be applied against future liabilities for orphans. In addition, the Coal Act authorized an infusion of \$210 million to the Combined Fund from the excess assets of the UMWA 1950 pension plan. The transfers from the pension plan are required to be made in three annual installments, the first of which occurred in 1992. Beginning in 1995, when the pension plan transfers cease, annual installments of up to \$70 million will be made from interest on the Abandoned Mine Land Reclamation Fund ("AML") to cover the costs of orphans. This trust fund is financed by fees assessed on all coal mining companies.

Discussion

The primary policy goal of the Coal Act is to ensure that the benefits promised to current retired miners and their families continue to be paid without interruption. The Administration strongly supports this goal. In addition to our more specific concerns with re-opening current law, we would be particularly troubled by any amendments that could potentially weaken or undercut the contribution base from which retirees' benefits are funded.

Given the primary goal of protecting the retired miners and their families, the financing must ensure that there will be more than adequate funds to pay benefits into the future. Throughout the consideration of the Coal Act, there were two competing theories as to the best way to finance these benefits. Some argued that the retired miners' benefits should be viewed as a problem of the coal industry generally and, thus, funded through an industry-wide financing mechanism, such as a coal tax. In contrast, proponents of the competing approach, which was ultimately reflected in the Coal Act, argued that the retired miners' benefits should be viewed as the responsibility of a more limited group of coal company employers and, thus, should be borne by those employers whose retirees benefit under the Combined Fund. Both approaches are based in reasonable tax policies, but they produce quite different effects.

An industry-wide financing method, such as a coal tax, would

spread the cost among all current industry participants and allocate the burden to businesses that currently produce the greatest amount of coal, as opposed to the reachback method that shifts the burden generally to those businesses that are responsible for a larger number of retirees. This approach would favor companies that are no longer in the coal business but have coal miner retirees, and companies that are still in the coal business but have a large number of retired miners in comparison with their current coal mining operations. A coal tax generally has been viewed, however, as forcing western coal producers, where there is the greatest growth in coal production, to subsidize eastern coal producers, that employed a majority of the retirees being provided health benefits and whose share of current coal production has significantly diminished.² A production-based premium also would tax non-union coal companies to pay for benefits earned by unionized labor.

A more limited approach, as reflected in the reachback financing method, limits the payors to a pool of employers who are viewed as having greater responsibility for these retirees when compared to the industry as a whole. The crux of the argument against this approach is that the reachback method does not properly allocate costs in line with the employer's responsibility or, in the alternative, that the effects of allocating costs in this manner will be overly burdensome to particular categories of employers.

Some have argued that there should be no reach back to previous signatory employers and, instead, the law should have obligated the 1988 signatory companies to finance the Funds completely. Proponents of this alternative believe that the 1988 signatory employers should bear the costs of all of the retiree health benefits on the theory that these employers helped cause the financial crisis in the Funds. For example, they argue that the BCOA negotiated a change in the basis on which contributions were calculated from tons of coal produced to hours of labor, which significantly reduced contributions to the Funds. On the other hand, the 1988 signatory employers argue that they were being forced to pay for the health benefits of their competitors' retirees and thereby subsidizing those employers.

Others argue that the reachback should be limited only to

² In 1970, 69 percent of the total amount of coal mined in the United States was attributable to employers that were signatories to the national wage agreement with the UMW. In 1991, that figure had dropped to 29 percent. Productivity is also much higher for western mines, which produced approximately 12 tons of coal per hour of labor in 1991, compared with approximately 3 to 4 tons per hour of labor in Appalachian and midwestern mines.

post-1978 signatory employers. This type of limited reachback would be consistent with a contract law argument that only these employers are obligated to finance these benefits into the future because they signed an agreement with the evergreen clause. This approach, however, would potentially allow some employers whose retirees are benefitting to avoid financial responsibility and continue, albeit to a lesser extent, the situation in which some coal companies are forced to subsidize their competitors.

Other alternatives would exempt certain categories of employers from the pool of potential payors. Some companies have argued that they simply cannot afford these costs and that they will be forced out of business or into bankruptcy if they are required to pay. Similarly, companies that mine metallurgical coal, which is used to produce steel, argue that long-term, fixed-price contracts will make it difficult to recover the costs of retiree health premiums. Metallurgical coal companies, as well as other exporters, also argue that the highly competitive foreign coal markets will preclude them from recovering these costs. Other companies take the position that their nonconforming wage agreements with the UMWA should be honored and that current law unfairly allows the union to back out of prior deals.

Although proponents of each of these various exceptions and exemptions argue that they are necessary to achieve equity, the result of exempting any employer from paying a share of the costs under current law necessarily shifts a greater portion of the burden onto that employer's competitors. For example, an exemption or other special tax relief for companies that mine metallurgical coal would likely exempt companies that have a large number of retirees receiving benefits. Given the underlying policy of placing the responsibility on employers whose retirees benefit, then whether a company mines metallurgical coal or whether it sells coal in domestic versus foreign markets is not a relevant point for distinction.

Similarly, we are not swayed by the arguments of employers who allege that the reachback financing method inappropriately interferes with their prior contracts. Given that the Coal Act was necessitated by the failure of the bargaining process and the prior wage agreements to protect the retirees' health benefits, the terms of those contracts are not relevant.

Conclusion

In conclusion, the Administration believes that the the Coal Act is a reasonable solution to a difficult problem. Moreover, we do not believe that re-opening the legislation or modifying the reachback financing method will result in any better or more equitable sharing of the costs. Rather, our concern is that an

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exemption or special exception for certain categories of employers will result in a greater and disproportionate burden on those employers' competitors and ultimately less secure funding of the retired miners' benefits.

DRAFT

FOR RELEASE ON DELIVERY

STATEMENT ON

**HEALTH BENEFITS OF
RETIRED COAL MINERS**

By

**LAWRENCE H. THOMPSON
ACTING COMMISSIONER
OF SOCIAL SECURITY**

**BEFORE THE
WAYS AND MEANS COMMITTEE
HOUSE OF REPRESENTATIVES**

SEPTEMBER 9, 1993

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss the role of the Social Security Administration (SSA) in implementing the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act). I am also happy to say that we are making good progress and fully expect to meet the statutory due date for implementing our tasks under the Act. Let me begin by briefly reviewing the requirements of the law and the responsibilities which have been assigned to SSA. Then, I will discuss our progress in carrying out these responsibilities.

Requirements of the Law

Mr. Chairman, assisting in the administration of the Coal Industry Health Benefits (CIHB) program is an entirely new challenge for SSA. However, because SSA obtains and records information about the earnings of all workers covered by Social Security, our agency is uniquely able to assist in the work required of the Secretary of Health and Human Services under this legislation. I will describe this work in more detail later in my testimony.

Let me review briefly the requirements of the Coal Act concerning the health benefit fund for which SSA will be providing assistance. The Coal Act merges the 1950 and 1974 benefit plans of the United Mine Workers of America (UMWA) into a

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new "Combined Fund," administered by a board of trustees as a private tax-exempt employee benefit plan. This new Fund is designed to provide lifetime health benefits (and death benefits) for beneficiaries of the old plans--retired miners and their dependents or survivors. Benefits are financed from funds transferred from the old plans, as well as from premiums paid by coal operators.

Under the law, coal operators pay premiums for all beneficiaries who are determined to be their responsibility. They are also required to pay a pro rata share of the premium cost for beneficiaries for whom no assignment of responsibility can be made. The premiums are established by formulas in the law, and updated yearly for cost-of-living increases.

Although SSA has the earnings information which is necessary to help implement the CIME program, the Coal Act did not provide funding for us to do this work. Mr. Chairman, by law, SSA cannot use trust fund monies for work which is unrelated to the Social Security programs. For this reason, we requested and Congress provided a supplemental appropriation of \$10 million for FY 1993 to give SSA the necessary funding for this work.

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SSA Tasks

.. Mr. Chairman, this brings me to the specifics of SSA's responsibilities under the Coal Act. In essence, SSA has three tasks to perform to implement our part of the Coal Act:

- o To calculate the amount of the health benefit premium for each beneficiary;
- o To "assign" each beneficiary to the coal operator who will be responsible for the health (and death) benefit premiums for that miner, and notify the operator of that responsibility; and
- o To consider any requests by the coal operators for review of our assignment decisions.

Let me now briefly discuss each of these tasks, in turn.

Calculating the Premium

In simple terms, the law states that the health benefit premium amount is based on the average dollar amount of health benefits paid per person under the old plans for the plan year beginning July 1, 1991, updated to take account of the increase in the medical component of the Consumer Price Index (CPI). The

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law requires us to calculate the premium for each plan year beginning on or after February 1, 1993. (The first plan year begins on February 1, 1993 because that is the date the old plans were merged to create the Combined Fund; by law, the next plan year begins on October 1, 1993, and each succeeding October 1.)

The Coal Act is very specific as to how the premium is calculated. It requires that the premium calculation be based on information provided by the Combined Fund, namely: (1) the aggregate amount of payments from both the 1980 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for health benefits (less reimbursements but including administrative costs) for the plan year beginning July 1, 1991, for all individuals covered under the plan for that plan year, and (2) the number of individuals covered under the plans for that plan year. The aggregate cost divided by the number of individuals produces the average health benefit cost per individual.

Later this month, SSA's Office of the Actuary will complete the premium calculation for the plan years beginning February 1, 1993 and October 1, 1993 by updating the average health benefit cost per individual as calculated above with the medical ^{plan} component of the CPI. As required by law, we will ^{then} notify the Trustees of the Combined Fund of the premium amounts. ✓

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Assignment Procedures

Now let me briefly describe the procedure to assign responsibility for paying the premiums for each beneficiary to the appropriate coal operator. The Coal Act is very precise as to the way we assign miners to coal operators, and SSA has virtually no discretion as to how we apply the criteria. The assignment process is the largest and most complex of the tasks SSA is assigned.

As required by law, the Combined Fund has identified approximately 80,000 miners--both living and deceased-- who are covered by the Act, and a total of 120,000 beneficiaries, which includes miners and their dependents or survivors. Of the 80,000 miners, the Bituminous Coal Operators Association provided us a list of approximately 15,000 miners for whom certain of the large coal operators have voluntarily acknowledged premium responsibility. For these miners, we will simply send a confirming notice to the coal operator and to the Combined Fund.

The remaining 65,000 miners, however, must be assigned to a coal operator by SSA following detailed criteria defined in the law. In general, there are three factors that come into play in determining to which coal operator a miner is assigned--length of a miner's employment with a coal operator who was a signatory to a UMWA wage agreement (also called a signatory operator), recency

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of that employment, and the date the wage agreement was signed by the operator and the UMWA.

More specifically, the law states that a miner must be assigned to a coal operator according to the following order of priority:

- o To the last active signatory operator (or a "related person" (successor), if the operator is out of business) for whom the miner worked at least two years, provided that the operator signed a wage agreement with the UMWA that was effective in 1978 or later.
- o To the last active signatory operator (or its successor, if the operator is out of business) for whom the miner worked, regardless of length of employment, provided that the operator signed a UMWA wage agreement that was effective in 1978 or later.
- o To the active signatory operator of any agreement (or its successor) for whom the miner worked the longest under a UMWA agreement in the period prior to 1978.
- o In cases in which none of the above criteria are met, the miner is treated as "unassigned." This means that, because responsibility for the premium cannot be made to a

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particular signatory operator, the miner is assigned to a pool, for which each assigned operator pays a pro rata share of the premiums. The unassigned miner premium for each coal operator is calculated by determining the percentage of total assigned miners the operator is assigned; this percentage is then multiplied by the number of unassigned miners.

In order to make an assignment under these criteria, we must perform two separate operations: searching our earnings records to reconstruct a miner's individual employment history; and then matching that history against lists of signatory coal operators and successors who meet the above criteria and are still in business.

Once we have searched our earnings records to establish the miner's work history, we then use the criteria in the law to determine which coal operator is liable for the miner's health (and death) benefit premiums by matching the employment history with lists of signatory operators. These lists were developed by SBA using information which was provided to us by the Bituminous Coal Operators Association and the UMWA. We also used information from court cases and the industry reference, the "Keystone Coal Industry Manual."

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We also use the information we obtained to identify any company which is "related" to a signatory company which is no longer in business. Under the Coal Act, the "related" or "successor" company of a coal operator no longer in business is assigned responsibility for the miner's premium. Companies are related if they were members of a group of corporations under common control; members of a trade or business under common control with a signatory operator; members of a partnership or joint venture in the coal industry with the signatory operator (but not a limited partner); or a successor in interest to a related company.

If a signatory operator is no longer in business, we must determine whether there is a company which, as of July 20, 1992, or, if earlier, as of the time immediately before the operator ceased to be in business, was "related" to the signatory operator. If so, the related company which is still in business becomes responsible for the beneficiary's premiums. In general, we did not make independent determinations regarding related companies, but relied on the industry sources I mentioned previously for this purpose.

Finally, let me describe SSA's third task under the Coal Act. The law provides for a special review process, under which an assigned operator may, within 10 days of receipt of the notice, request detailed information from us as to the work

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history of the miner and the basis for the assignment. The assigned operator then has 30 days from receipt of that additional information to request review of the assignment. The statute requires the operator to provide evidence constituting a prima facie case of error in order to have the assignment reviewed. We are currently developing the regulations on the handling of assigned operator reviews. We expect to complete the regulations soon.

Conclusion

In conclusion, I want to stress that SSA is working hard to fulfill its responsibilities under the Coal Act. I am pleased to report that SSA is making excellent progress with the assignment process. To date we have completed about 40 percent of the assignments. We fully expect that we will meet our statutory responsibility to calculate the amount of the health benefit premium due for each beneficiary and complete the assignment process by October 1, 1993.

DATE: August 25, 1993
TO: Kathi Way
FROM: Mike Schmidt
RE: Coal Industry Retiree Health Benefit Act of 1992

Recently, an issue has arisen regarding the Coal Industry Retiree Health Benefit Act of 1992 that requires our attention. The issue involves payment of health benefits to retired coal miners, as mandated by the 1992 Act, and the financial strain that this payment will place on a number of small companies. Apparently, there are members of Congress who are interested in amending the Act, and the House Committee on Ways and Means has announced a hearing on the Act for sometime in September. This memo will discuss the reason why this issue has suddenly come to our attention, give some background on what the Act does, and identify the important issues that we need to consider.

ACTION-FORCING EVENT

In a letter to OMB Director Panetta dated August 13, 1993, Senator Rockefeller requested that the Administration speak out in support of the Act and against any amendments suggested by critics of the law. He also requested that the Administration make its position in support of the Act clear at the Ways and Means hearing in September, citing the fact that the President expressed his support for the Act when campaigning in West Virginia and other coal states. At some point in the near future, OMB will be asking about our (DPC) position on this issue, so we need to start thinking about it now.

BACKGROUND ON THE ACT

On October 24, 1992, President Bush signed into law the Comprehensive National Energy Policy Act of 1992. Contained within it is the Coal Industry Retiree Health Benefit Act (the "Act"). The Act amends the Internal Revenue Code by adding provisions intended to secure retiree health benefits for hundreds of thousands of unionized coal miners and their dependents.

Why the Act Was Established: The Policy Perspective

The Act resulted from concern over the fiscal soundness of the United Mine Workers of America (UMWA) Benefit Plans of 1950 and 1974 -- two collectively bargained retiree health benefit plans created by UMWA and the Bituminous Coal Operators Association (BCOA). Two particular concerns were:

- The mounting deficits that were accumulating in the UMWA-BCOA Plans, and;

- The steady increase in the percentage of beneficiaries whose companies are out of business or no longer contribute to the UMWA-BCOA Plans, leaving fewer and fewer signatory coal companies to fund lifetime health benefits.

Why the Act Was Established: The Political Perspective

Political considerations weighed heavily in the drafting and eventual passage of the Act. According to OMB sources, three pressing political concerns drove the creation of the Act:

- First, election year considerations forced the Bush Administration to the table to negotiate this Act. More specifically, the Administration feared the UMWA threat of a coal strike in October, 1992, if the coal miner retiree health issue wasn't settled.
- Second, Senators Rockefeller, Byrd, and Ford refused to support passage of the Comprehensive National Energy Policy Act of 1992 (a bill that President Bush wanted passed before the November election) unless the Coal Industry Retiree Health Benefit Act was attached.
- Finally, the president of UMWA was up for reelection in 1992. Unlike most unions, retired UMWA members are eligible to vote in union elections (and UMWA retirees outnumber active members 2/1). Resolution of the miner retiree health issue was the overwhelming concern of UMWA retirees, and thus UMWA leadership became determined to force a solution, by striking if necessary.

These political considerations created an unusual alliance of Republicans and Democrats who pushed the Act through Congress.

How the Act Works

The Act mandates guaranteed lifetime health care for all current UMWA retirees in a two-step approach:

- First, health care benefits are assured for all of the approximately 120,000 beneficiaries of the existing UMWA-BCOA Plans by merging those two plans into a single new plan to be known as the United Mine Workers of America Combined Benefit Fund (the "Combined Fund"). The Combined Fund will be financed primarily by payments from current and past signatories to the UMWA-BCOA Plans (more on this in the next section).
- Second, those UMWA retirees who currently receive benefits directly from their employer rather than from the UMWA-BCOA plans are

also guaranteed lifetime health benefits. The Act accomplishes this by imposing a statutory obligation on coal industry employers to maintain single employer health plans for these retirees for as long as the company remains in business. To ensure that these individuals never suffer a loss of coverage, UMWA and BCOA are required to establish a new plan to provide benefits to any such retiree whose last employer goes out of business.

Who Pays

The Act designates employers who are current or former signatories to the UMWA-BCOA Plans as the primary funding sources for a new statutorily mandated but privately maintained benefit plan. The Act distinguishes between two broad categories of companies:

- **"Signatory Companies"** are those companies that are unambiguously obligated under current agreements with UMWA to provide retiree benefits. No new cost was imposed on these companies as a result of the Act.
- **"Reachback Companies"** are those companies that previously withdrew from participation in the UMWA-BCOA Plans and are under no contractual obligation to fund the UMWA-BCOA Plans.

The inclusion of these reachback companies has been a source of particular controversy -- the Act might, for example, reimpose the funding obligation on a company that was once a signatory to a UMWA wage agreement but subsequently sold its coal operations to a purchaser which fully assumed the seller's collective bargaining agreement obligations. Although this reachback company otherwise has no current connection to fund the UMWA-BCOA Plans, and may not have any current connection to the coal industry at all, it will nevertheless be required to fund benefits guaranteed by the Act if, under the Act's assignment provisions, it is determined to be responsible for a given retiree (more on this below). **Additionally, the financial obligations assigned to reachback companies under this Act will most likely cause a number of small companies to go bankrupt.**

The amount to be paid into the Combined Fund by assigned companies will be offset somewhat by transfer payments from two overfunded sources: the UMWA-BCOA 1950 Pension Plan (\$70 million); and the Abandon Mine Land Reclamation Fund (\$70 million). The first of these transfers has already taken place and covers the Combined Fund's first plan year, which ends September 30, 1993.

The Act's Assignment Provisions

The Secretary of Health and Human Services is directed by the Act to review the work records of all eligible beneficiaries and, no later than October 1, 1993, make assignments of retirees to signatory or reachback companies. These companies will be responsible for paying premiums on their behalf. HHS has assigned the Social Security Administration this task.

MAJOR ISSUES

There are a number of major issues surrounding the Act that must be taken into account:

- **The Social Security Administration (SSA) is way behind on the assignments of retirees to reachback companies and will not possibly be finished by the October deadline.** There are two reasons for SSAs delay: first, the original legislative deadline was unrealistic given the magnitude of the task, and; second, funding for SSA to begin work on this task was not released until July 1 of this year.
- **No one knows how the Combined Fund will be funded after September 30.** Given the fact that the SSA assignment process will not be finished by its October deadline, what will happen then? How will the plan be funded in its second year? Some of the potential reachback companies are calling for a moratorium of one year to allow a thorough reevaluation of the Act. According to OMB, Senator Rockefeller does not seem too concerned about the funding issue, so there is speculation that the fund is in better financial shape than originally assumed.
- **The Act is technically flawed.** The Senate was working with a fragile coalition and needed to reach agreement before the coalition burst apart. They passed the Act quickly and quietly, with no legislative history behind it, assuming that the House would straighten out the technical problems and build a legislative history. House members were furious at receiving the flawed measure, and passed the whole thing without making any changes.
- **Eventually, when the reachback assignments are made, some unknown number of companies will be bankrupted by the new costs that the Act imposes.** What should be done about them? There is also some concern about a "spiral effect" that may take place once the Act kicks in. The spiral effect theory assumes that once the reachback companies are assigned, some number of them will go out of business, thus reducing the total number of companies and

increasing the burden of costs on the remaining companies, which will cause still more companies to go bankrupt . . . etc. etc.

- **This issue is political dynamite.** Re-opening this legislation to amendment would run the risk of setting off a nasty political debate, both between Democrats and Republicans and within the Democratic Party itself (there is a big divide between Western and Eastern coal-producing states -- eastern states have the vast majority of UMWA retirees and produce most of the bituminous coal, western states feel that this is an eastern problem that shouldn't concern them).
- **Senator Rockefeller is adamantly opposed to amending the Act in any way.** Moreover, as his letter to Director Panetta makes clear, he expects the Administration to support his position.
- **Chairman Rostenkowski has announced a hearing on the Act to take place in September, but has not yet specified a date.** Given the packed legislative calendar this fall, there is some question as to whether or not this hearing will happen at all.
- **There is already a lawsuit going on in Federal Court challenging the constitutionality of the Act.** This litigation is expected to eventually reach the Supreme Court, and if the Act's opponents lose they will undoubtedly initiate litigation challenging the SSA's reachback assignment process.

FUTURE ACTION

Several OMB staffers who have been heavily involved with this Act since its inception are currently doing some "intelligence" work on the Hill to gauge the opinions of key Members on this issue as it currently stands. I will let you know as soon as I hear their report -- hopefully, we can avoid getting sucked into the middle of this issue.

JOHN D. ROCKEFELLER IV
WEST VIRGINIA

United States Senate

WASHINGTON, DC 20510

August 13, 1993

The Honorable Leon Panetta
Director
Office of Management and Budget
Old Executive Office Building
Washington, DC 20500

Dear Leon,

It was good to talk to you the other day. I am writing to confirm our telephone conversation regarding the law I authored to save health care benefits for some 200,000 retired coal miners and widows. The law was necessary because of a financial crisis in the program that arose because some coal companies failed to pay and others went out of business.

The House Committee on Ways and Means has announced a hearing on the law in September, although no date has yet been set. A few coal companies are still seeking to avoid requirements of the law and I expect these critics of the law to participate in the hearing.

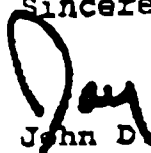
I am counting on the Administration to come out firmly supporting the law and opposing amendments suggested by the critics of the law and to make its position clear in the hearing. If the law is undermined, it would be tragic for the elderly beneficiaries. I also believe it would be disastrous for labor relations in the coalfields, making settlement of the current coal strike impossible. I and other members of Congress worked hard on this issue last year. During the campaign, President Clinton expressed his support when he campaigned in West Virginia and other coal states. It was a very contentious issue, but it was settled in a bipartisan fashion, and President Bush signed the law in the fall. It is in no one's interest to have the controversy revived.

The law is based on the conclusion of the Coal Commission appointed by former Secretary of Labor Elizabeth Dole that a legislative solution was necessary because "the retired miners are entitled to the health care benefits that were promised and guaranteed them and that such commitments must be

The Honorable Leon Panetta
August 13, 1993
Page 2

honored." I know that you understand the importance of the law to the retired miners and widows. I would appreciate hearing from you soon with respect to the Administration's support for the law.

Sincerely,



John D. Rockefeller IV

cc: The Honorable Lloyd Bentsen
The Honorable Robert B. Reich
The Honorable Donna Shalala
The Honorable Alice Rivlin

- Do we want to get actively involved?
- Moratorium without a solution?
- Politically, who's for 'agin' in Senate
- HHS holds the Key
- who is doing?

- talk to Bonnie Dean
- Talk to Ellen
- one - Arnold at HHS --
who at HHS is doing this

Mike -
For your
info + amusement

— John Monahan
HHS



Templeton Coal Company, Inc.

501 Merchants National Bank Building
Terre Haute, Indiana 47807-3293
(812) 232-7037

*Indyke
Salmonell
DPC*

August 4, 1993

Ms. Ellen Seidman
Special Assistant to the President for Economic Policy
National Economic Council
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

RE: Our Meeting of Friday, July 23

Dear Ms. Seidman:

Thanks so much for listening to the plight of former coal companies who have been entrapped in the over-reaching snare of the Rockefeller Bill. We found your response to be somewhat reassuring, even though we understand the political realities your administration faces.

In the meeting, you asked what specific legislative relief we were seeking. All four of our companies prefer to see all reach-back companies exempted from the Act. Templeton Coal Company is in a segment of companies whose liability is particularly unfair. We did not sign the 1978 "Evergreen Clause" that, some argue, may guarantee lifetime benefits to retired miners.

Therefore, we offer the following as possible solutions to this legislative problem...

1. It is our belief that any company who did not sign the "Evergreen Clause" should be exempt from the Act.
2. We also support the approach of a small coal producer exclusion. Such a provision should exclude companies who, on July 20, 1992, did not employ an excessive number of UMWA employees. The specific number UMWA employees is unimportant to us, but would be very important to other companies.
3. Companies not in the coal business, particularly since 1988, should not be required to assume Rockefeller Bill costs. These companies' competitors in their new line of business do not have to assume these costs, giving those competitors an unfair advantage.
4. We also would support the replacement of the reach-back companies

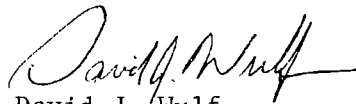
Ms. Ellen Seidman
August 4, 1993
Page 2

liability with funds from the Reclamation Fund.

I mentioned the possibility of an early demise for the ill planned Rockefeller arrangement because of a spiral effect. I was unable to describe what I had envisioned, but have given it considerable thought since. It would seem that when the invoices are sent out on October 1, 1993, or shortly thereafter, many companies will be forced out of business. This loss of funds will cause the premium to raise, forcing other companies out of business, which will raise the premiums, causing other companies to go out of business,... It is my opinion that the fund will implode.

Ms. Seidman it our hope, and the hope of the 650 employees families associated with Templeton Coal Company, that the Clinton Administration will be successful in brokering a fair solution to this ill advised bill. Let me know if I can offer any additional information that could be of help. You may contact our lawyer, Rosemary Collyer at Crowell & Moring at 624-2721, should you have any legal questions regarding our concerns.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "David J. Wulf". The signature is fluid and cursive, with a large, stylized initial "D".

David J. Wulf
Human Resource Manager

DJW/pac

Barnes & Tucker Company

120 North Center Street

P.O. Box 628

Ebensburg, Pennsylvania 15931

(814) 472-4470

July 27, 1993

Ms. Ellen Seidman
Special Assistant to the President
for Economic Policy
National Economic Counsel
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Ms. Seidman:

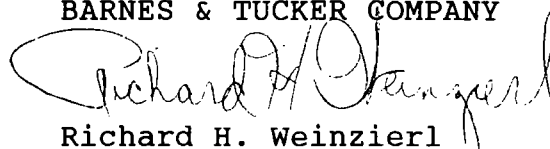
I would like to take this opportunity to thank you once again for taking the time to discuss the impact of the Coal Industry Retiree Health Benefit Act of 1992 on non-producing small former signatories. The law, as it is presently structured, will result in the bankruptcy of numerous small former signatories and will yield minimal (and a short-lived) revenues for the Funds. It amounts to the government confiscation of the assets of one group of private parties to satisfy the obligations of another group of private parties. Its implementation in October will cause widespread defaults of environmental and employee benefit obligations among small struggling former producers. The law was bad public policy when it was enacted in 1992 and must be amended.

I urge the administration to support changes in the Act which will eliminate or moderate the confiscatory nature of this law as it applies to small companies.

Again, we are appreciative of your taking the time out of your busy day to discuss our concerns.

Sincerely,

BARNES & TUCKER COMPANY

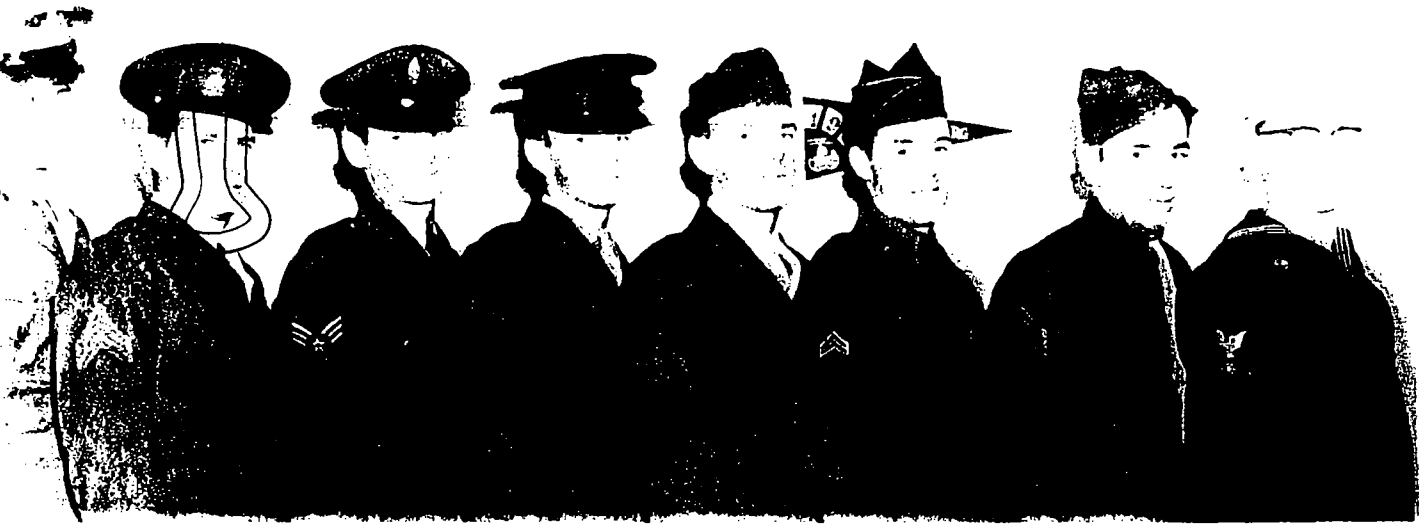

Richard H. Weinzierl
Vice President

RHW/ham

- Worth it for us to
get involved? ^{as} ^{little}

- Carol Lasco should
know

- at least call HHS
& check with them on progress



LANZENDORFER BROTHERS

Lanzendorfer Trucking Company

TWIN ROCKS, PENNSYLVANIA

March 11, 1993

OM3
The Honorable Dan Rostenkowski
United States House of Representatives
Washington, DC 20510

Dear Senator Rostenkowski:

Attached is a letter that we have sent to Congressman Murtha. We are from his district in Pennsylvania. We had hoped to receive some response from him but to date none is forthcoming.

Carry
Matlack
Bryan
LeFridge
The Pennsylvania area that we are from has been dealt a tremendous financial blow since receiving the letters that have gone out from the UMWA Funds Office in Washington. Ours came on February 10, 1993 and we were stunned. Since then it has been complete chaos. Hiring expensive lawyers is above and beyond any budget that we could come up with. We have learned that many coal companies have been in Washington and there will soon be hearings. WE are hoping to come to these hearings and perhaps have our story told. When you can only earn \$25,000.00 per year and spend another 33,000.00 for Health Care for your employees there is no way you can add the retirees that the UMWA and the new Coal Industry Retiree Health Benefit Act demands we do.

We have had one session with a bankruptcy lawyer and it was overwhelming. We are proud people and have always paid our bills on time. To file for bankruptcy fills us with a sense of shame. WE know that one coal company has filed and three trucking companies have filed for bankruptcy, all since February 10, 1993. In the name of God can't somebody open this up again and draft a bill that would be fair and equitable to all concerned? We survived the Great Depression, the World War II and many severe recessions only to succumb to the Rockefeller Bill.

If you have any encouraging words we would be most appreciative. Please let us hear from you in either case, good news or bad news. Thank you for taking the time to read this letter and consider the many others like ourselves who find they are up against a powerful Union allied with the U.S. Government.

Sincerely

Dawn Lanzendorfer
Secretary Treasurer

(I have signed this on behalf
of my other seven brothers
in the letterhead.)

Executive Office of the President

Office of Management and Budget

July 19, 1993

MEMORANDUM FOR: ELLEN SEIDMAN
FROM: TOM ARTHUR,
HRD
SUBJECT: COAL MINE RETIREE HEALTH

Attached are copies of five documents to help you prepare for your meeting with Melissa Scanlon of Jones, Day, Reavis and Pogue. They are:

- (1) A BNA analysis of the enacted law that was published last December. This five-page plain language analysis is the best thing I have found for understanding the requirements of the law.
- (2) A May 14th OMB memorandum, with an attachment, from Steve Bandeian to Nancy-Ann Min about the law and its costs to companies. I helped Steve with this.

Note the statement that there are not yet any government estimates of company-by-company costs pending HHS assignments of liability for retirees to companies, which are due on September 30th. HHS just got legal authority to spend trust funds for this one-time duty. It will probably miss the September 30th deadline for completing the assignments.

Note also the memorandum's attachment that was included to give a sense of the magnitude of the costs that individual companies might have to bare. It's possible that Jones-Day will have done estimates of its own about company costs. If so, we would appreciate your sharing them with us.

- (3) A July 8th Rostenkowski press release announcing Ways and Means hearings on the enacted law in September.
- (4) A summary guide we did of where the state of play was before the bill debate began last year. We did this for our bosses to prepare them for the issue.

(5) A copy of a recent court decision upholding the constitutionality of the law. Several companies have challenged its constitutionality and, so far, have lost.

Last year, Jones-Day lobbied on behalf of North American Coal, a Dallas company, and other firms that claimed no responsibility for paying for United Mine Worker retiree health benefits (the "Private Benefits Alliance"). Larry Matlack believes it is possible that the firm's reputation in this matter may have attracted a broader clientele.

Larry apologizes for not getting you something before you left on Thursday, but he was short-staffed, and other ASAP demands took him away from this request. Larry also had to cancel his lunch with Jones-Day.



ANALYSIS OF COAL INDUSTRY RETIREE HEALTH BENEFIT ACT OF 1992

by John R. Woodrum and Kenneth G. Robbett
Smith, Heenan & Althen
Washington, D.C.

INTRODUCTION AND SUMMARY

On Oct. 24, 1992 President Bush signed into law the Comprehensive National Energy Policy Act of 1992 (PL 102-486), the most comprehensive energy legislation in over a decade (19 BPR 1901). Contained within it is the Coal Industry Retiree Health Benefit Act of 1992 (the "Act"), which amends the Internal Revenue Code¹ by adding provisions intended to secure retiree health benefits for hundreds of thousands of unionized coal miners and their dependents. The Act resulted from concern over the fiscal soundness of the UMWA 1950 and 1974 Benefit Plans (the "UMWA Plans")—collectively bargained retiree health benefit plans created by the United Mine Workers of America (the "UMWA") and the Bituminous Coal Operators Association (the "BCOA").² Although the Act affects only the coal industry, it may be a harbinger of how Congress will respond to heavy retiree health care costs in other politically important industries, such as steel and automobile manufacturing.

Congressional intervention in the UMWA Plans resulted from controversy over how mounting deficits in the Plans would be financed during the term of the current collective bargaining agreement and thereafter. Of particular concern has been the steady increase in the percentage of beneficiaries whose companies are out of business or no longer contribute to the UMWA Plans, leaving fewer and fewer signatory coal companies to fund lifetime health benefits.

A legislative solution to this problem has been sought since 1989.³ Most of the previous versions would have levied a tax against the entire coal industry to finance these collectively bargained benefits, which were to be administered through an open-ended government operated plan. The final version instead designates employers who are current or former signatories to wage agreements with UMWA as the primary funding source for new statutorily mandated but privately maintained benefit plans.⁴

The Act is distinguishable from previous congressional action in instances such as Black Lung legislation in the 1970s and the Multiemployer Pension Plan Amendments Act of 1998 (MPPAA). Whereas Black Lung is basically a workers' compensation arrangement applicable to a particular coal industry disability, the Act, in essence, converts a contractual promise into a statutory benefit. It requires those companies that employed the retirees and benefited from their services to assume responsibility for funding their health benefits, whether or not those companies have a current obligation to fund the collectively bargained plans.

Unlike MPPAA, which operates to protect pension benefits on a prospective basis when an employer withdraws from a multiemployer plan, the Act reimposes funding obligations upon companies who previously withdrew from participation in the UMWA Plans. The inclusion of these "reachback companies," i.e. former signatories who are

under no current obligation to fund the UMWA Plans, has been a source of particular controversy. The Act might, for example, reimpose the funding obligation on a company that was once a signatory to a UMWA wage agreement but subsequently sold its coal operations to a purchaser which fully assumed the seller's collective bargaining agreement obligations. Although this reachback company otherwise has no current obligation to fund the UMWA plans, and indeed has no current connection with the bituminous coal industry, it will nevertheless be required to fund benefits guaranteed by the Act if, under the Act's assignment provisions, it is determined to be responsible for a given retiree. In some cases, this obligation may be imposed upon companies that have not had bituminous coal operations in over 20 years.

The Act mandates guaranteed lifetime health care for all current UMWA retirees in a two step approach. First, health care benefits are assured for all of the approximately 120,000 beneficiaries of the existing UMWA benefit plans who actually were receiving benefits on July 20, 1992, by merging those plans into a single new plan to be known as the United Mine Workers of America Combined Benefit Fund (the "Combined Fund"). This merger will occur on Feb. 1, 1993, the date the current coal wage agreement expires. The Combined Fund will be financed primarily by payments from both current signatories to a UMWA wage agreement and reachback companies.⁵

Second, those UMWA retirees who currently receive benefits directly from their employer rather than from the UMWA Benefit Plans and miners who actually retire between July 21, 1992 and February 1, 1993, also are guaranteed lifetime health benefits.⁶ The Act accomplishes this by imposing a statutory obligation on coal industry employers to maintain single employer health plans for these retirees for so long as the company (or a related entity) remains in business. To ensure that these individuals never suffer a loss of coverage, the Act also requires the UMWA and the BCOA to establish a new plan to provide benefits to any such retiree whose last signatory operator (including related entities) either goes out of business or otherwise fails to provide benefits.

Current and future signatories are free to bargain with the UMWA with respect to the nature and duration of any retiree program for miners who retire after Feb. 1, 1993.⁷

BACKGROUND

The multiemployer plan approach to providing pension and health benefits to UMWA miners originated in 1946 in an agreement between the Secretary of the Interior and the UMWA during a period when President Truman had seized the coal mines.⁸ The multiemployer approach evolved through successive labor negotiations. As a result of a major restructuring of these programs in 1974, the UMWA 1950

and 1974 Benefit Plans were created and maintained thereafter pursuant to a series of collective bargaining agreements between the UMWA and the BCOA.¹ This restructuring of the original multiemployer plan actually yielded four different UMWA plans: the 1950 Pension Plan, the 1950 Benefit Plan, the 1974 Pension Plan, and the 1974 Benefit Plan. Each plan is funded through a separate trust.

The 1950 Pension Plan provides retirement benefits to miners who retired on or before Dec. 31, 1975 and their surviving spouses. The 1950 Benefit Plan generally provides health benefits to these same retirees and their eligible dependents. The 1974 Pension Plan provides pension benefits to eligible miners who retire after 1975 and it remains open to current and future retirees. Upon their retirement, miners covered by the 1974 Pension Plan receive health benefits during the term of the applicable wage agreement through single employer plans established by their respective employers. The 1974 Benefit Plan was created as a safety net to provide lifetime benefits to those retirees whose last employer goes out of business or ceases to be signatory to a bargaining agreement which requires that such benefits be provided. As a result of passage of the Act, the 1974 Benefit Plan is now closed as to new participants.

Several factors led to congressional action to secure funding of the benefits heretofore provided by the UMWA Benefit Plans. The 1950 and 1974 Benefit Plans are pay-as-you-go plans to which employers who are signatories to a coal wage agreement with the UMWA contribute on a per production hour basis. Because these plans are multiemployer plans, this contribution pays, in part, for the health benefits of retirees of companies that were previously signatory but either went out of business or did not enter into subsequent wage agreements. By some estimates, as much as 75 cents of every dollar contributed by a signatory coal company is spent on beneficiaries who last worked for a company that is out of business or no longer a contributor.² Additionally, the Plans for various reasons have been operating on a deficit basis since 1989 and are projected to have a combined deficit variously estimated at under \$85 million when the current agreement expires on Feb. 1, 1993.

The essential feature of the Act is to remove the UMWA Plans from the collective bargaining process and end the historical per hour-worked method of funding the UMWA Benefit Plans. Imposed in its stead is a direct per beneficiary premium on current and former UMWA signatories (including their related entities) for each beneficiary "assigned" to a company under the criteria set forth in the Act.

DETAILED ANALYSIS

I. The Combined Fund

a. Operation

The Act directs establishment of the UMWA Combined Benefit Fund no later than 60 days after the enactment date,³ with benefits to be paid beginning Feb. 1, 1993. Start-up costs for the Combined Fund will be borne by the 1950 and 1974 UMWA Benefit Plans. The Combined Fund's plan year will end Sept. 30 of each year.

The UMWA Plans will continue unchanged (i.e., the trustees will collect hourly contributions, assess contractual withdrawal liability and pay benefits) until Feb. 1, 1993, when the 1988 NBCWA expires. At that time they will be merged into the Combined Fund.

Unlike earlier bills which would have created a government agency to administer the benefits provided by the 1950

and 1974 Benefit Plans, the Combined Fund is to be a privately administered plan run by a seven member board of trustees. Of the seven trustees, BCOA will choose one, UMWA will choose two, and the three "reachback companies" who are assigned the greatest number of beneficiaries will choose one. These four trustees will then designate three additional trustees.

b. Benefits

Only those persons receiving benefits from the 1950 or 1974 Benefit Plans on July 20, 1992, are eligible to receive benefits from the Combined Fund.⁴ At least initially, the level of benefits provided by the Combined Fund will be substantially the same as those provided by the UMWA Plans as of Jan. 1, 1992. In the event that the money available to the trustees is insufficient to continue benefits at prior levels, the Act appears to permit the level of benefit coverage to be readjusted.⁵

Although benefit levels are preserved at the outset, the method of delivering those benefits will change dramatically. Whereas the UMWA Plans are basically fee-for-service plans providing full coverage with the health care provider of a beneficiary's choice, the trustees of the Combined Fund are directed to enroll beneficiaries in health care services plans that provide benefits on a prepaid risk basis. The trustees have flexibility in determining whether to provide these benefits directly from a plan maintained by the Combined Fund or through negotiating with health maintenance organizations, preferred provider organizations, or by making such other arrangements as is necessary to contain costs.⁶

Death benefits under the Combined Fund will be the same as those in effect under the UMWA Plans on July 20, 1992: a \$5,000 benefit upon the death of a married participant and \$4,000 upon the death of an unmarried participant.

c. Financing

Current and former NBCWA signatories who are assigned responsibility under the Act for specific beneficiaries will bear the bulk of the Fund's costs, although subsidies in the form of transfer payments from the overfunded UMWA 1950 Pension Plan and, beginning in 1995, from the Abandoned Mine Land Reclamation Fund will help defray the cost of beneficiaries who cannot be assigned to a "responsible operator." Coal companies that have never had a labor contract with the UMWA will have no responsibility for financing the Combined Fund. Indeed, even UMWA signatory operators will have no responsibility for financing the Fund if they are not assigned any beneficiaries pursuant to the Act's assignment rules.

The secretary of health and human services is directed to review the work records of all eligible beneficiaries and, no later than Oct. 1, 1993, make assignments of retirees (or their surviving spouses and dependents, if applicable) to current or former signatories who will be responsible for paying premiums on their behalf. An assigned operator may challenge the secretary's assignment, but must make the required premium payment while review is pending.

The assignments will be made according to the following priorities:

(1) a beneficiary will be assigned to the last 1978 or later signatory still in business who employed the miner for two years or more. If this signatory is out of business, the assignment will be made to any company that was related to the signatory on the earlier of the date the signatory went out of business or July 20, 1992.⁷

(ii) if no 1978 or later signatory (including related companies) that employed the miner for two years is still in business, the assignment will be made to the last 1978 or later signatory (including related companies) which employed the miner for any length of time.

(iii) if no such signatory can be located, then the individual will be assigned to the pre-1978 signatory (including related companies) which is still in business that employed the individual for the longest period of time.

(iv) if no signatory (or related company) that employed the miner is still in business the beneficiary will be placed in a pool of unassigned beneficiaries.

Each assigned operator will pay a premium consisting of three parts: a health premium for its assigned beneficiaries, an actuarially determined death benefit premium, and a premium to cover its pro rata share of the health benefits allocable to unassigned beneficiaries. Entities related to the assigned operator are jointly and severally liable for the assigned operator's payment obligations.

The assigned beneficiary health premium will not exceed a maximum amount to be determined each year. The Combined Fund's assigned beneficiary health premium will be determined by the HHS secretary and will equal the amount the UMWA Benefit Plans paid out on a per beneficiary basis for the 12 months ending June 30, 1992," increased by the percentage by which the medical component of the consumer price index for the calendar year in which the plan year begins exceeds the medical component for 1992.

Each year, assigned operators will pay a pro rata portion of the actuarially determined amount the Fund will need to cover death benefits during the plan year. The actual amount of the death benefit premium payable by each operator will be calculated on the basis of the number of beneficiaries assignable to each operator as of Oct. 1, 1993. Thus, an operator who on Oct. 1, 1993, has 10 percent of the assignable beneficiaries will pay 10 percent of the death benefits payable to all beneficiaries during the year.

Each assigned operator also will pay a premium to cover the health costs of unassigned beneficiaries. This amount will be calculated only after the transfer payments described below have been taken into account. As in the case of the death benefit premium, the actual amount of the unassigned beneficiary premium payable by each operator will be calculated on the basis of the number of beneficiaries assignable to each operator as of Oct. 1, 1993. Therefore an operator who on Oct. 1, 1993, is assigned 10 percent of all assignable beneficiaries will pay 10 percent of the total yearly premium cost allocable to all unassigned beneficiaries.

The same percentage used to calculate each assigned operator's pro rata share of the cost for unassigned beneficiaries and death benefits on Oct. 1, 1993, will be used in future years as well, subject to minor adjustments. Where the HHS secretary agrees that a particular assignment was erroneous, the applicable percentage will be recalculated. Also, if an assigned operator goes out of business at some point in the future, thereby decreasing the pool of assigned operators, the applicable percentage will be recalculated for all remaining assigned operators.

The amount to be paid into the Fund by assigned operators will be offset by transfer payments from two sources. The UMWA 1950 Pension Plan, which is overfunded, will transfer \$70 million to the Combined Fund on each of Feb. 1, 1993, Oct. 1, 1993, and Oct. 1, 1994. The Feb. 1, 1993, transfer payment will reduce each of the three component premiums (health, death, and unassigned beneficiary) payable in that initial plan year." The 1950 Pension Plan transfer payments made at the beginning of each of the two

subsequent plan years will be used only to reduce the amount that assigned operators would otherwise have had to pay as death benefit premiums and unassigned beneficiary premiums (i.e. this money cannot be used to offset the health premiums of assigned beneficiaries). Transfers from the 1950 Pension Plan may not be applied towards the deficit reduction payments required of the 1988 agreement operators. The Act also contains specific provisions to avoid any adverse tax consequences that would otherwise occur as a result of such a transfer by a qualified pension plan.

The Act extends to 2004 the program created by the Surface Mining Control and Reclamation Act, which requires operators to pay fees into the Abandoned Mine Land Reclamation Fund (the "AML Fund"). Commencing in 1995, the AML Fund will transfer up to \$70 million to the Combined Fund at the beginning of each plan year, the actual amount determined on the basis of the interest to be earned by the AML Fund in each year." The amount transferred may not exceed the total amount of unassigned beneficiary premiums for the year, however. Because the Combined Fund is a closed fund, at some point in the future the AML transfer payments likely will cover the health care cost of all unassigned beneficiaries, reflecting the overall decrease in the beneficiary population due to mortality.

During the Combined Fund's first plan year, an eight month period extending from Feb. 1, 1993, to Sept. 30, 1993, the benefits provided by the Fund will be paid for by the 1988 signatories and the \$70 million transfer payment from the 1950 Pension Plan. The 1988 signatories will cover the Combined Fund's costs during this period on a pro rata basis, based on their percentage of the total contributions made to the UMWA Benefit Plans during the term of the 1988 NBCWA. Thus, a company responsible for 10 percent of all payments made to the 1950 and 1974 Benefit Plans during the term of the 1988 NBCWA will be responsible for 10 percent of the Combined Fund's costs in the first plan year, following application of the \$70 million transfer payment. A 1988 agreement operator will receive credit towards its premium obligation in future years with respect to amounts it paid in the first plan year in excess of amounts that it would have had to pay for the actual number of beneficiaries ultimately assigned to it.

The deficit that remains in the UMWA Benefit Plans on Feb. 1, 1993, when they are merged into the Combined Fund, must be paid by the 1988 signatories. The deficit is to be reduced over a 20 month period. A 1988 signatory's deficit reduction payment shall be determined on a pro rata basis reflective of payments made to the UMWA Benefit Plans during the term of the 1988 NBCWA. As in the case of allocating the payment to be made by each 1988 signatory during the Combined Fund's first plan year, a company which, for example, was responsible for 10 percent of all payments to the UMWA plans during the term of the 1988 NBCWA will be responsible for 10 percent of the deficit reduction payments. Transfers from the 1950 Pension Plan and the AML Fund may not be used to pay off the deficits. However, the future payment of contributions owed to the UMWA Benefit Plans under current or prior labor agreements will result in a premium reduction for 1988 agreement operators' deficit reduction payments. Litigation involving claims for such payments, including the relatively well known "evergreen cases," is pending.

2. Health Care Guarantees to pre-October 1994 Retirees

The Act also imposes a statutory obligation on coal industry employers to continue to provide lifetime health benefits to current retirees who receive coverage under individual

employer plans. Those active miners who will be age and service eligible to retire by Feb. 1, 1993, also qualify for this guarantee, provided they in fact retire on or before Sept. 30, 1994. This guarantee is fulfilled by requiring the UMWA and the BCOA to establish and fund a new multiemployer plan for those retirees who subsequently lose coverage because their employer (and all related entities) go out of business.

a. Individual Employer Plans

Since 1978, NBCWA coal wage agreements have required signatory operators to provide health care benefits under individual employer plans to any employee who retired on or after Jan. 1, 1976. The Act requires every operator who provides retiree health care through its individual employer plan as of Feb. 1, 1993, to continue such benefits for life. All miners (and eligible dependents) retired by this date are covered, as are miners who were eligible to retire but who continue to work, provided they in fact retire by Sept. 30, 1994. Eligible beneficiaries shall receive these benefits from the last signatory company that the miner worked for, in most cases the company from which they already are receiving this coverage. In the event the retiree's employer should go out of business, all related companies are jointly and severally liable for the continuation of these guaranteed lifetime benefits.

Example 1: Employee A retired from Coal Company X in 1980. Pursuant to coal wage agreements X has entered into since 1978, X has provided retiree health coverage for A and A's dependents continuously since the beginning of A's retirement. Under the Act, X is statutorily obligated to continue this coverage for the rest of A's life (and for the life of A's spouse if she survives him). Such coverage is not subject to future collective bargaining between X and the UMWA.

Example 2: On Aug. 1, 1989, Employee B becomes eligible to retire from Coal Company X. B actually retires Oct. 1, 1994. Employee B is not guaranteed lifetime health coverage because although he was eligible to retire before expiration of the 1988 NBCWA, he did not retire by Sept. 30, 1994. His coverage will depend on what Company X and the UMWA agree to in their 1993 wage agreement.

Example 3: On Aug. 1, 1993, Employee C becomes eligible to retire from Coal Company X and actually retires on Sept. 1, 1994. Employee C is not entitled to guaranteed lifetime health coverage under the Act because, although he retired by Sept. 30, 1994, he was not eligible to retire until after the 1988 NBCWA expired on Feb. 1, 1993. His coverage will depend on what Company X and the UMWA agree to in their 1993 wage agreement.

The level and duration of retiree health care with respect to any miner who does not qualify for the lifetime guarantee under the Act will be subject to collective bargaining between the employer and the UMWA. In future collective bargaining agreements employers could, theoretically, bargain out of the obligation to provide health care benefits to miners not covered by the Act or bargain for changes in the existing retiree health care program.

b. The 1992 UMWA Benefit Plan

The Act directs the UMWA and the BCOA to establish a new plan which, like the current UMWA 1974 Benefit Plan, is a "safety net" plan. It is designed to cover those eligible retirees and their beneficiaries who do not qualify for

coverage from the Combined Fund. Thus, the 1992 Plan will cover all eligible miners who retire between July 21, 1992, and Sept. 30, 1994, whose last employer is out of business and who therefore would receive benefits from the UMWA 1974 Benefit Plan but for the fact that the Act cut off eligibility effective July 20, 1992. The 1992 Plan also will cover current retirees and eligible miners who retire prior to Oct. 1, 1994, who are covered under an individual employer plan, but who, for whatever reason, cease to receive such coverage from their employer. The 1992 Plan will have the right to pursue any employer (including related entities) for indemnification where the responsible employer abandons its obligation but has the financial ability to pay.

The trustees of the 1992 Plan are to be appointed by the UMWA and the BCOA. They are empowered to implement managed care programs and cost containment rules, but have less discretion and authority to deviate from the benefit structure and benefit levels in effect under the prior UMWA Benefit Plans than do the trustees of the Combined Fund, in that any such program or rule must be approved by a medical peer review panel.

The 1988 agreement operators will prefund the plan to ensure coverage for all beneficiaries whose last signatory employer goes out of business. The yearly amounts to be paid by each 1988 agreement operator shall be established on the basis of the number of eligible and potentially eligible beneficiaries attributable to each such signatory. In addition, each signatory is required to post a bond or acceptable surety sufficient to ensure that payments will be made to the 1992 Fund to cover their retirees in the event they go out of business.¹⁵

CONCLUSION

The Act, although accomplishing the primary legislative goal of guaranteeing the funding of health benefits of retired UMWA coal miners,¹⁶ raises a host of other issues in its application. Although the legislative history indicates that some of these issues were recognized prior to enactment, they were set aside in order to gain passage of the larger energy bill. Among the various issues over which members of the House and Senate expressed concern:

Foreign Competition. An export tax credit was not included in the Act, but has been suggested to offset any disadvantages the Act creates for those companies that sell in foreign markets in competition with foreign operators.¹⁷

Constitutionality. The legislative history raises a question as to whether the unassigned beneficiary premium would be vulnerable to challenge under the Taking and Due Process Clause of the Fifth Amendment.¹⁸

Fairness. Several members questioned the fairness of imposing a liability on reachback companies that these companies could not have anticipated. The fairness of assigning beneficiaries to the signatory they worked for last as opposed to the one they worked for longest also has been questioned.¹⁹

These and other issues were not addressed prior to enactment because of the rush to pass the energy legislation of which the Act is a part. It is likely, however, that revisions will be proposed in the future. Several members, particularly in the House, have indicated a desire to examine the Act closely early in the next Congress.

¹⁵The Act is now codified at sections 9701 through 9722 of the Internal Revenue Code. Citations to the provisions of the Act will be to the applicable Code section.

¹⁶Approximately 120,000 beneficiaries are covered under the UMWA Plans, which are Medicare supplemental plans.

Not all current UMWA retirees receive benefits from the UMWA plans, however. Other UMWA retirees and their dependents receive benefits from individual health plans maintained by their last employer.

Sen. Jay Rockefeller (D-WVa) has been the leading proponent of a legislative solution. On Nov. 19, 1991, he introduced S 1989, which provided for the establishment of the Coal Industry Retiree Health Benefits Corporation (18 BPR 2129). This government agency was to be administered by directors appointed by the secretary of labor and the benefits paid by it were to be financed by a tax levied against any entity engaged in the production of coal. This approach was added to HR 4210, the tax bill vetoed by President Bush on March 20, 1992 (19 BPR 491), and was the version initially attached by Rockefeller to the energy bill. The final version resulted from a compromise worked out among Sens. Rockefeller, Wendell Ford (D-Ky), and Malcolm Wallop (R-Wyo) when the energy bill was threatened with a presidential veto if the "coal tax" provision remained a part of the bill (19 BPR 1396).

Additional sources of funding are transfers from the overfunded UMWA 1950 Pension Plan and interest earned by the Abandoned Mine Land Reclamation Fund.

Current signatories have greater obligations under the Act than former signatories. See, e.g., I.R.C. §9704(i)(1)(B), which requires current signatories to pay off the deficit in the merged plans by Sept. 30, 1994. The term "current signatories" is not used in the Act. Its use herein is intended to have the same meaning as "1988 agreement operators" as defined in the Act and codified at I.R.C. §9701(c)(3).

Any miner who retires prior to Oct. 1, 1994, also qualifies for the statutory guarantee, provided that he was age and service eligible to retire on Feb. 1, 1993.

See, n.6, *supra*.

See generally, Woodrum and Rothman, *Proposals for Funding United Mine Workers of America Retiree Health Benefits: The Constitutional Dimensions*, 93 W.Va. Law Rev. 633, 638-45 (1991).

Unlike most industries, coal is characterized by a single labor agreement negotiated between the UMWA and the BCOA referred to as the National Bituminous Coal Wage Agreement (NBCWA). Although a small minority of signatory companies are BCOA members, they typically account for more than half of all UMWA production. Independents generally sign "me-too" agreements, which require their participation in the UMWA Funds. The current NBCWA was entered into in 1988 and expires Feb. 1, 1993. Many of the Act's provisions become effective on this date.

See, 138 Cong. Rec. S17607 (daily ed. Oct. 8, 1992) (Conference Report).

The enactment date is Oct. 24, 1992.

The delivery of retiree health care benefits to UMWA retirees not eligible for the Combined Fund is discussed at Section 2, *infra*.

I.R.C. §9703(b)(1) directs that "coverage under the managed care system shall to the maximum extent feasible be substantially the same as coverage provided under" the 1950 and 1974 Benefit Plans (emphasis added). The feasibility of providing the same coverage would be subject to the

maximum premium limitation in I.R.C. §9704(b), discussed in Section 1.c, *infra*.

138 Cong. Rec. S17634 (daily ed. Oct. 8, 1992) (statement of Rockefeller).

The determination of whether an entity is related to a signatory is made under a broad definition of "related person," which is more inclusive than the typical controlled group rules generally applicable in benefits law. An entity is related to a signatory if it is a member of a controlled group of corporations with the signatory operator within the meaning of I.R.C. §52(a), is a trade or business under common control with the signatory within the meaning of I.R.C. §52(b), or is an entity that enters into a general partnership or joint venture with the signatory in a business in the coal industry which employs any eligible beneficiaries. The determination of related person status is made on the earlier of the date the signatory went out of business or July 20, 1992, and the term includes any successor in interest. I.R.C. §9701(c)(2). The Act does not define "successor in interest."

This amount should be about \$2,200 per beneficiary.

Premiums in the initial plan year are to be paid by 1988 signatories only. They will be used to fund the operation of the Combined Fund through Oct. 1, 1993, at which time the HHS secretary will make specific beneficiary assignments to each "responsible operator." A 1988 agreement operator will receive a credit in subsequent plan years for payments made in the initial plan year in excess of the amount it would have had to pay for the beneficiaries ultimately assigned to it.

Historically, the annual interest earned by the AML Fund is below \$70 million. If the AML Fund earns less than \$70 million in interest in any given year, it will transfer additional amounts sufficient to make up for the shortfall, but the total amount transferred to make up for shortfalls may not exceed the total amount of interest earned by the AML Fund for the three years commencing Oct. 1, 1992. In theory, the transfer could exceed \$70 million in a given year if interest rates were to increase beyond historic levels, but experience suggests that annual interest earned on the AML Fund will never exceed \$70 million during any period relevant to the Combined Fund.

These prefunding and bond requirements do not apply to reachback companies. However, they will be required to reimburse the 1992 Fund with respect to any person actually receiving benefits from the Plan who last worked for them.

138 Cong. Rec. S17633 (daily ed. Oct. 8, 1992) (statement of Rockefeller).

138 Cong. Rec. S17636, S17626 (daily ed. Oct. 8, 1992) (statements of Sens. John Warner (R-Va), Joe Lieberman (D-Conn)); 138 Cong. Rec. H11408, H11444 (daily ed. Oct. 5, 1992) (statements of Reps. Dan Rostenkowski (D-Ill), Norman Sisisky (D-Va)).

138 Cong. Rec. S17637 (daily ed. Oct. 8, 1992) (statement of Warner).

138 Cong. Rec. H11408, H11412, H11443, H11448 (daily ed. Oct. 5, 1992) (statements of Reps. Rostenkowski, J.J. Pickle (D-Texas), Pat Williams (D-Mont), and Byron Dorgan (D-ND)).



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 14, 1993

MEMORANDUM FOR NANCY-ANN MIN

FROM: Steve Bandeian 

SUBJECT: Estimated Costs for Companies for Retiree Health Insurance
Under the Comprehensive National Energy Policy Act of 1992

This memo is in response to your request for information on the costs to individual companies for health insurance for retired coal miners as required by the 1992 Energy Policy Act. In preparing this memo, I consulted with Tom Arthur of the Labor Branch.

Background

Under the 1992 Act, there are two broad categories of companies –

- "Signatory" Companies – are those companies unambiguously obligated under current agreements with United Mine Workers to provide retiree benefits. No new cost was imposed on these companies as a result of the Act.
- "Reach Back" Companies – are those companies for which contractual obligations are uncertain, but which are obligated by the 1992 Act to provide benefits for retirees. Some reach back companies are still active in coal mining; others are not.

Generally the signatory companies are satisfied with the 1992 legislation because the legislation spread retiree costs between signatory and reach back companies. Conversely, reach back companies are more likely to push for legislative change.

Sources and Methods

There is no definitive analysis of company-by-company costs. This will have to await assignment of liability for specific retirees to specific companies, a process that will not be completed by the Department of Health and Human Services until later this year.

I have, however, prepared an estimate of costs by company based on materials prepared last year by a lobbying group, the Private Benefits Alliance (PBA). At this point, this is the best information available, but its reliability is uncertain. *The analysis is useful for one purpose only – it gives a sense of the magnitude of the costs that might be born by individual companies.*

The PBA data assigns retirees on a company-by-company basis to reach back companies and signatory companies. An estimated 1994 cost of \$2500 per retiree is assumed, based on actual 1992 costs. A net present value of \$30,000 is assumed for all future health care costs per retiree. (This figure is based on a number of assumptions regarding the life expectancy of retirees, their future health care costs, and the discount rate.)

The PBA data includes only 60,000 retirees or only about a half of the total number retirees (125,000) estimated to be eligible under the Act. So, the number of retirees and costs are underestimated by 50%. Given other uncertainties, it is likely that individual companies may face liabilities substantially even higher liabilities, e.g. 3 to 4 times the amounts estimated.

Results

Costs for reach back companies and for signatory companies are presented separately in the attachment. Given the uncertainties noted in the preceding section, it seems that individual reach back companies may face 1994 costs as high as \$12 to \$36 million with estimated net present value for future liabilities as high as \$145 to \$435 million.

Next Steps

Because of the obvious political sensitivity of the matter involved, I did not make any telephone calls to try to gather additional information. I could make discrete inquiries if appropriate, or leave the matter where it stands.

cc:

Barbara Selfridge
Larry Matlack
Tom Arthur

	State	Retirees Covered	Estimated 1994	Estimated Net
		under 1992 Act	Cost	Present Value fo
			(in millions of \$)	Total Cost
				(in millions of \$)
REACH-BACK COMPANIES - USING & TRANSPORTING COAL				
LTV CORP	TX	4,850	12.13	145.50
UNION PACIFIC COAL CO	NV	167	0.42	5.01
CHATTANOOGA COKE & CHEMICALS	TN	126	0.32	3.78
WEST PENN POWER	PA	123	0.31	3.69
BURLINGTON NORTHERN	TX	93	0.23	2.79
INLAND STEEL INDUSTRIES	HI	67	0.17	2.01
LOUISVILLE G&E CO	KY	48	0.12	1.44
NORFOLK & WESTERN RAILWAY CO	VA	30	0.08	0.90
PENNSYLVANIA ELECTRIC CO	PA	3	0.01	0.09
TOTAL		5,507	13.77	165.21
REACH-BACK COMPANIES - MINING & SELLING COAL				
NORTH AMERICAN COAL CORP	TX	1,495	3.74	44.85
MASSEY COAL MINING CO	VA	1,323	3.31	39.69
SHENANDOAH MINERALS		1,167	2.92	35.01
BERWIND CORP	PA	900	2.25	27.00
BLUE DIAMOND COAL CO	TN	861	2.15	25.83
HAWLEY COAL MNG CORP	NY	466	1.17	13.98
ADVENTURE RESOURCES		416	1.04	12.48
UNITED POCAHONTAS COAL CO		370	0.93	11.10
COSTAIN	IL	307	0.77	9.21
MEARS ENTERPRISES		297	0.74	8.91
CANTERBERRY COAL CO	PA	291	0.73	8.73
PICKLANDS MATHER CO		243	0.61	7.29
PITTSBURGH & SHAWMUT		189	0.47	5.67
PERRY & HYLTON INC	WV	189	0.47	5.67
ANDALEX RESOURCES	KY	165	0.41	4.95
ANKER ENERGY	WV	160	0.40	4.80
IMPERIAL COLLIERY CO	VA	122	0.31	3.66
HAMPDEN COAL CO	WV	110	0.28	3.30
SOUTH EAST COAL CO	KY	89	0.22	2.67
CHAFIN ENERGY & DEVELOPMENT		79	0.20	2.37
READING & BATES CORP	TX	77	0.19	2.31
FIVE J ENERGY INC		70	0.18	2.10
GREAT WESTERN RESOURCES	TX	62	0.16	1.86
COAL ARBED INC	MD	51	0.13	1.53
UNITED COAL COMPANY (1-5)	VA	47	0.12	1.41
R B MINING CO		42	0.11	1.26
NORTH CAMBRIA FUEL CO	PA	39	0.10	1.17
MULLINS ENTERPRISES INC OF VA		38	0.10	1.14
NERCO	OR	37	0.09	1.11
FETTEROLF GROUP INC	PA	35	0.09	1.05
GRACE ENERGY	TX	29	0.07	0.87
ALOE COAL CO	PA	15	0.04	0.45
USIBELLI COAL MINE INC		13	0.03	0.39
C & K COAL CO	PA	12	0.03	0.36
K & J COAL		10	0.03	0.30
FIRST BIG MOUNTAIN MINING CO		3	0.01	0.09
TOTAL		9,819	24.55	294.57
REACH-BACK COMPANIES - STILL IN OTHER BUSINESSES				
ALCO STANDARD	PA	1,321	3.30	39.63
PANHANDLE EASTERN CO		862	2.16	25.86
ALLIED CHEMICAL CORP	MD	796	1.99	23.88
UNION CARBIDE CORP	CT	514	1.29	15.42
C F & I STEEL CORP		440	1.10	13.20
MAXUS ENERGY	TX	388	0.97	11.64
ASARCO	NY	190	0.48	5.70
LONE STAR STEEL CO	TX	92	0.23	2.76
MERMON HOLDINGS INC	IL	68	0.17	2.04
PERINI CORP	MA	61	0.15	1.83
PITTSBURGH PLATE GLASS CO		8	0.02	0.24
SOHIO PETROLEUM CO		7	0.02	0.21
MCNALLY PITTSBURGH INC		7	0.02	0.21
TOTAL		4,754	11.89	142.62
TOTAL REACH-BACK COMPANIES		20,080	50.20	602.40

		State Retirees Covered under 1992 Act	Estimated 1994 Cost	Estimated Net Present Value fo Total Cost
			(in millions of \$)	(in millions of \$)
ACTIVE SIGNATORIES-BCOA MEMBER COMPANIES				
CONSOLIDATION COAL CO		6,940	17.35	208.20
ISLAND CREEK COAL CO	KY	5,077	12.69	152.31
PEABODY COAL CO	KY	4,661	11.65	139.83
WESTMORELAND COAL CO	PA	2,136	5.34	64.08
ZEIGLER COAL CO	IL	1,276	3.19	38.28
ROCHESTER & PITTSBURGH COAL CO	PA	1,276	3.19	38.28
FREEMAN UNITED COAL MINING CO	IL	913	2.28	27.39
AMAX COAL COMPANY	IN	610	1.53	18.30
NATIONAL STEEL COPORATION	PA	581	1.45	17.43
OGLEBAY NORTON CO	OH	354	0.89	10.62
AMERICAN ELECTIC POWER GROUP	OH	336	0.84	10.08
INSPIRATION COAL CO	TN	331	0.83	9.93
PENNSYLVANIA POWER & LIGHT	PA	180	0.45	5.40
ASHLAND COAL CO	WV	83	0.21	2.49
MONTEREY COAL CO		3	0.01	0.09
TOTAL		24,757	61.89	742.71
OTHER ACTIVE SIGNATORIES				
UNITED STATES STEEL MINING CO		4,920	12.30	147.60
PITTSO CO		3,861	9.65	115.83
BETHLEHEM STEEL	PA	3,142	7.86	94.26
DRUMMOND COAL CO	AL	1,040	2.60	31.20
ARCH MINERAL	MO	728	1.82	21.84
VALLEY CAMP COAL	PA	593	1.48	17.79
CARBON INDUSTRIES	WV	524	1.31	15.72
DUQUESNE LIGHT CO	PA	218	0.55	6.54
PITTSBURG & MIDWAY COAL MING	CO	182	0.46	5.46
JIM WALTER RESOURCES		175	0.44	5.25
POWELLTON CO INC		123	0.31	3.69
WHEELING-PITTSBURGH STEEL CORP	WV	102	0.26	3.06
LECKIE SMOKELESS COAL CO		94	0.24	2.82
STELCO COAL CO	CT	48	0.12	1.44
CYPRUS MINERALS		45	0.11	1.35
BOICH MINING CO		44	0.11	1.32
UNITED STATES FUEL CO	UT	44	0.11	1.32
CLEMENS COAL CO	KS	34	0.09	1.02
PENN ALLEGH COAL CO INC		18	0.05	0.54
IMPERIAL PACIFIC	WV	15	0.04	0.45
OHIO VALLEY COAL CO	OH	2	0.01	0.06
PACIFICORP	OR	2	0.01	0.06
TOTAL		15,954	39.89	478.62
TOTAL ACTIVE SIGNATORIES		40,711	101.78	1221.33

FOR IMMEDIATE RELEASE
THURSDAY, JULY 8, 1993

PRESS RELEASE #7
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-1721

**THE HONORABLE DAN ROSTENKOWSKI (D., ILL.), CHAIRMAN,
COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES,
ANNOUNCES A PUBLIC HEARING ON PROVISIONS RELATING TO
THE HEALTH BENEFITS OF RETIRED COAL MINERS**

The Honorable Dan Rostenkowski (D., Ill.), Chairman, Committee on Ways and Means, U.S. House of Representatives, today announced that the Committee will hold a public hearing on provisions relating to the health benefits of retired coal miners. The hearing will be held in September. The specific date will be announced in a subsequent press release.

BACKGROUND

Congress adopted provisions relating to the health benefits of certain retired coal miners as part of the Energy Policy Act of 1992 (P.L. 102-486) (the "Act") (section 19143 of the Act). In general, section 19143 of the Act establishes rules for the financing and provision of health benefits to retired mine workers who were members of the United Mine Workers of America and their families. These provisions originated in the Senate version of the bill; the House bill contained no comparable provisions.

At the time of the adoption of the conference report on the Act, Chairman Rostenkowski stated that, because of the concerns expressed by the House conferees about the financing mechanism used to provide these health benefits, and the unwillingness of the Senate conferees to negotiate solutions to a myriad of problems with this mechanism which were brought to the attention of the conferees, the Committee on Ways and Means would review these provisions this year [138 Cong. Rec. H11405-06 (daily ed., October 5, 1992)].

This hearing is intended to afford interested members of the public the opportunity, prior to the commencement of collection of premiums on October 1, 1993, to comment on the provisions enacted last year. In addition, the Committee anticipates testimony from a number of invited witnesses with expertise on these issues.

The Committee is also interested in testimony on the following specific proposals relating to these provisions:

(1) a proposal to exempt so-called "reachback" companies and companies which export coal from liability under the provisions of the Act;

(2) a proposal to exempt small coal producers from premiums payable under the Act; and

(2) a proposal to provide a business tax credit to companies that mine metallurgical coal and are required under the Act to contribute to the United Mine Workers of America Combined Benefit Fund, as provided in H.R. 1443, introduced by Mr. Boucher, Mr. Payne of Virginia, Mrs. Kennelly, et al.).

(MORE)

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD:

Individuals and organizations interested in presenting oral testimony before the Committee on any issue specifically described herein must submit their requests to be heard by telephone to Harriett Lawler, Diane Kirkland or Karen Ponzurick [(202) 225-1721] no later than Monday, August 16, 1993, to be followed by a formal written request to Janice Mays, Chief Counsel and Staff Director, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The Committee staff will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Committee [(202) 225-1721].

Persons and organizations having a common position are urged to make every effort to designate one spokesperson to represent them in order for the Committee to hear as many points of view as possible. Time for oral presentations will be strictly limited with the understanding that a more detailed statement may be included in the printed record of the hearing (see formatting requirements below). This process will afford more time for members to question witnesses. In addition, witnesses may be grouped as panelists with strict time limitations for each panelist.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, all witnesses scheduled to appear before the Committee are required to submit 200 copies of their prepared statements to the Committee office, room 1102 Longworth House Office Building, at least 24 hours in advance of their scheduled appearance. Failure to comply with this requirement may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Persons submitting written statements for the printed record of the hearing should submit at least six (6) copies by the close of business on the day of hearing to Janice Mays, Chief Counsel and Staff Director, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public, they may provide 100 additional copies for this purpose to the Committee office, room 1102 Longworth House Office Building, before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

COAL INDUSTRY RETIREE HEALTH

BACKGROUND

The Health Plans

o There are two retiree health care plans financed by the Bituminous Coal Operators Association (BCOA) pursuant to a collective bargaining agreement with the United Mine Workers of America (UMWA).

- The 1959 Fund is a closed fund covering about 101,000 retirees and their dependents. More than half are from companies no longer in existence ("true orphans") or whose employer is still in business but no longer making contributions to the Fund ("reachback orphans").

- The 1974 Fund covers some 16,000 reachback orphan retirees and their dependents.

- Both funds are insolvent, but are operating with a court-imposed interim infusion of BCOA funds (explained below).

o The current financial crisis arose because:

- Employers have withdrawn from the BCOA or gone out of business leaving their retirees in the plan.

- The plans provide almost first dollar medical coverage, and there has been little attempt to manage costs.

- Contributions have been reduced. The plans had no deficit before 1987. In the 1988 agreement, the BCOA and UMWA switched the contribution base from tons mined to hours worked.

- This change reduced BCOA contributions substantially because productivity has increased: tonnage has increased while hours worked have dropped.

- The per hour rate was set too low to meet expenses.

o Eighty-three percent of the plans' beneficiaries are Medicare eligible.

- For these people, the plans operate as Medicare wraparound coverage.

Key Interest Groups

o The BCOA is a group of coal-producing companies organized for the purpose of negotiating a contract with the UMWA -- the National Bituminous Coal Wage Agreement (NBCWA).

- They are concentrated in states east of the Mississippi.
 - They mine bituminous coal. (The other two major types of coal are subbituminous and lignite, virtually nonexistent in eastern States.)
 - They include small and large companies, many of which are owned by very large parent corporations -- e.g. AMAX, DuPont, and Exxon.
- o UMWA active and retiree membership, like BCOA, is concentrated in the East. Coal mine employment has dropped dramatically from almost 500,000 in 1950 to about 130,000 for the past few years.
- o The BCOA and UMWA are united in wanting a bailout that shifts costs to their competitors (or to the Federal government).
- They advocate an industrywide coal tax.
 - They argue that collective bargaining cannot solve the problem. The government should be involved in the solution because the first health and pension plans were established when the United States took over and operated the coal mines in 1946.
- o Retiree health benefits is one of the UMWA's most important issues. If not resolved, it could lead to an ugly strike in February 1993, when the current NBCWA expires, or even sooner if a wildcat strike occurs.
- The UMWA has been building up its strike fund which, at about \$100 million, is now at its highest level in three years.
 - UMWA retirees vote for union president; Richard Trumpka is running for reelection this fall. There are about as many retirees as active UMWA workers.
- o The BCOA has been forced, through an interim ruling by the D.C. District Court, to increase contributions to the health funds to meet current costs.
- There is litigation pending in the D.C. Circuit by the Funds' trustees to enforce increased contributions by the BCOA to meet current costs (per the agreement's language). An interim decision by a U.S. District Court in Virginia forced the BCOA to double its contribution rates to meet expenses. This decision's disposition will depend on the outcome of the D.C. Court review.
- Originally scheduled for resolution June 22nd, the D.C Circuit case will be delayed until late September.
 - Press reports have the chief BCOA negotiator (who is president and CEO of CONSOL, the nation's second largest coal company) stating that it is not far fetched to consider that BCOA might dissolve if Congress can't be

convinced to bail out the funds. Some members may decide to bolt, possibly as early as September if current contribution rates are raised again.

— Despite these threats it is not clear that that BCOA companies can bolt or, more importantly, that they can divest themselves of the responsibility of providing benefits. It does suggest (as the press reports do) there could be significant labor strife in February when the NBCWA expires.

o The two major opponents of an industrywide bailout are represented by the Private Benefits Alliance (PBA) and the Collective Bargaining Alliance (CBA).

- The PBA is an ad hoc group of some 170 coal companies that never have been signatories to the NBCWA.

— These companies are located around the country, not only West of the Mississippi River as might be expected. Several large companies that operate in Kentucky, Pennsylvania, and Virginia [Kerr-McGee and MAPCO (both Oklahoma based), Sun Coal, Quaker] are included in their membership.

— They also are non-union. They see the tax as supporting promises to which they were never a party and as subsidizing their unionized competitors.

- The CBA is comprised of companies that were signatories to previous NBCWA agreements but withdrew. In most cases this was due to a business change (North American Coal) or a change in collective bargaining arrangements (Pittston).

— These companies do not want to be subject to a "reachback" assessment. BCOA/UMWA wants to assess a fee on all companies that signed the 1978 (or later) NBCWA, are not now signatories, and are not paying for their "orphan" retirees.

— Some argue that they negotiated their way out of the plans and contributed to them at the time they left. Now they'd be assessed again.

— CBA companies include A.T. Massey, Pittston, Anker Energy, and North American Coal (no longer in the coal business),

- In response to bailout proponents' argument that the Federal government should intervene because the health plan was set up when the coal mines were run by the government, they point out that the health plan authorized at that time was funded by voluntary wage deductions from working miners. Therefore, the government did not promise any medical benefits or provide any funding.

THE CONTEXT FOR CONGRESSIONAL ACTION

o In 1990, Labor Secretary Dole set up the Coal Commission as a way to resolve the bitter ten-month Pittston coal strike. Retiree health benefits was the issue holding up ratification of a collective bargaining agreement; establishing the Coal Commission was the compromise that broke the impasse.

- The Commission agreed on several points (all discussed below): 1) transferring surplus assets from the 1950 pension trust to defray the current deficit (legislation required), 2) a reachback to past signatories to the agreement, 3) imposing prospective withdrawal liability and, 4) instituting cost containment and managed care.

- The Commission members could not reach a consensus on whether an industrywide tax should be imposed to finance the cost of supporting orphans' benefits.

- This split in general foreshadows the current general approaches to financing -- an industrywide bailout versus a reliance on the current (and sometime former) signatories to pay for orphans.

o Action is concentrated in the Senate now because the energy bill passed by the House does not contain a coal retiree health provision.

o The situation is constantly changing.

- The authors of the bills advanced to date all have indicated that their bills are subject to change, and the major alternatives to them being developed are not yet completed. Therefore, the following section provides information on key Senators' interests, and the next section provides substantive information relevant to the debate.

KEY SENATE ACTORS

o Rockefeller is the chief proponent of a BCOA/UMWA bailout.

- His current bill, included in the Senate energy package that will go to the floor, is a placeholder. It taxes Eastern mines far more heavily than Western mines. Rockefeller is actively working on a compromise with Senator Ford.

- Byrd, Specter, and Reigle made statements in support of Rockefeller when his original bill (S. 1989) was introduced in November. Other co-sponsors are Wofford, Simon, and Dixon.

o Ford represents an unusual Eastern coal-mining state.

- Mining in Kentucky, unlike most other Eastern states, is not now highly unionized (only a third as much of the mining workforce as in other Eastern mining states in

general) so that a tax that affects Eastern mines more heavily than Western mines is disadvantageous to coal mined in his state. Ford is up for reelection.

o Boren is opposed to a bailout and has introduced his own bill (S. 2550), which imposes no requirements on non-signatories to the current NBCWA.

- Co-sponsors are Dole, Simpson, Wallop, and Nickles. Symms also has expressed reservations about Rockefeller's bailout.

o Wallop opposes a bailout on principle, because it likely would hurt Wyoming (the largest coal-producing state in the U.S.), and because he doesn't want the UMWA to be able to use generous health benefits supported by a Federally-imposed tax as an organizing tool.

ELEMENTS OF A SOLUTION AND THEIR PROPONENTS

Excess Assets in the 1950 Pension Plan

o This closed pension plan is overfunded by about \$180 million.

- All parties to this retiree health benefits issue, including the Administration, agree that transferring excess assets to the health trusts to defray their deficits is acceptable and that legislation is required to do so.

- Excess assets were greater until 1991 when the BCOA and UMWA agreed to shift death benefits from the health plans to the pension plans and pay a one-time lump-sum benefit to pensioners and widows. These changes were made after the Coal Commission reported.

- The lump sum payment reduced balances by \$42 million. The death benefit had an actuarial cost of \$87 million.

Coal Taxes

o Industrywide solution bills to date tax both domestic and imported coal.

o Domestic taxes could be based on tonnage or on hours worked.

- Hours worked is more favorable to Western mines. They are more efficient than Eastern mines and tend to be surface mines rather than underground mines characteristic of the East.

- Rockefeller has used both in his bills -- hours worked as a concession to gain votes on the version in the energy bill. Ford favors tonnage.

o Domestic rates could vary by geographic region.

- To get any compromise, advocates probably will tax Eastern coal at higher rates than Western coal.
- o Domestic rates and/or the application of a tax could vary by type of coal.
 - Bituminous coal is certain to be taxed (99 percent of eastern coal production is bituminous; 90 percent of all bituminous coal is mined in the eastern states.)
 - Lignite and subbituminous coal may not be taxed or may be taxed at lower rates than bituminous coal. (100 percent of Texas and 81 percent of the remainder of western production is in lignite or subbituminous coal.)
- o Imported coal is likely to be taxed on a tonnage basis.
 - Advocates of a import tax may face GATT problems.

Reachback

- o A key BCOA/UMWA complaint is over those employers who have withdrawn and ceased contributing to the funds on behalf of their retirees and their dependents.
 - A legislated "reachback" would require that most signatories to the 1978 (or later) NBCWA pay a per capita fee.
 - Rockefeller's energy bill proposal includes a per capita reachback assessment of \$1,215 in 1992, rising to \$3,497 in 1997 and thereafter.
- o There also are court cases testing the reachback issue.
 - An "evergreen" clause in the NBCWA requires all signatories to the 1978 (or later) agreement to continue to make contributions at the rates specified in the 1978 agreement.
 - The D.C. Court has ruled that some former signatories must make these retroactive contributions for their retirees. The ruling is under appeal.
 - A legislated reachback would moot these cases.
 - Boren would let them play out, a position supported by the Administration.
- o The CBA firmly opposes a reachback arguing that they have paid already. The PBA takes no position on reachback, but believes that CBA members should pay into the funds before their members do.

Guarantees

- o The "guarantee" clause first included in the 1978 NBCWA deals with how much signatories must pay during the term of an agreement.
 - The guarantee clause provides that the signatory contribution rate may be increased to meet costs incurred for promised benefits.
 - This clause is being tested in court, where the BCOA is arguing the language does not require current signatories to bear the burden of paying for orphan retirees. Rulings to date have required signatories to increase contributions to meet current expenses.
 - The ruling also imposed some cost controls (e.g., generic drugs, limiting payments to Medicare levels), which already may have reduced expenses by \$50 million.
- o Rockefeller would override this case (and the "evergreen" cases) substituting federal intervention before the questions are fully tested in court.
- o Boren includes a "guarantee" provision requiring current signatories to establish a contribution rate that would continue benefits but at the same time reduce the funds' current deficit to zero in five years and ensure that the funds did not go into deficit again.

Withdrawal Liability

- o A Boren proposal that adds teeth to a concept added to the NBCWA in 1988. It would impose an actuarially determined fee on those companies that withdrew from the plan after 1988. The current NBCWA does not base liability on actuarial costs.
 - The Boren proposal applies to all signatories to the 1988 and later agreements and is part of a solution to keep the current problem from occurring in the future by imposing withdrawal liability on those who withdraw completely or partially under later agreements.

Abandoned Mine Land (AML) Reclamation Fund

- o Authorized in 1977, the AML fund's primary purpose is to provide grants to states for mine and mine land reclamation programs. The fund is financed by a tiered coal tonnage tax. The charge is highest for surface mines (35 cents per ton), most of which are West of the Mississippi. Underground mines (most in Appalachia) are charged 15 cents a ton.
 - Receipts run about \$250 million a year; appropriations out of the fund are about \$190 million a year. Because of slow start-up in the program and limited ability by states to use the monies now, the fund has been growing even though there is a large

inventory of unreclaimed mines and mine land. The FY 1991 end of year unappropriated balance was \$575 million.

- Beginning in FY 1992, an estimated \$40 million in annual interest will be earned on the unappropriated balance and credited to the fund; the use of the interest is not specified in law. Wallop's staff have expressed an interest in diverting it in FY 1993-95, but this would be a PAYGO cost.
- The AML's unappropriated balance also has been viewed as a deficit offset, and even Senator Byrd has not been able to increase AML appropriations in the recent past.
- The AML authorization expires September 30, 1995.
 - The House energy bill included a provision to transfer \$50 million a year in FY 1996 and thereafter from the AML to the health care funds to meet costs and reduce the funds' deficits.
 - It was strongly opposed by Interior as an inappropriate redirection of taxes needed for mine reclamation. In addition, the AML was established with the understanding that all coal-producing states eventually would get back what what they put into the fund.
 - The transfer also would be another form of western subsidy for eastern coal and a bad precedent for other uses of the AML fund.
 - The transfer was dropped from the bill in House Rules. It is not in the Senate bill.

Health Plan Cost Containment

- o Both Rockefeller and Boren include "mandated managed care" language in their bills.
- o However, the Rockefeller bill also provides that benefits cannot be reduced below current levels, thereby precluding cost containment options that have proven effective, such as cost-sharing.
- o Boren, in contrast, guarantees funding for benefits but does not lock in the current benefit package.

AO 450 (Rev. 5/85) Judgment in a Civil Case •

FILED

JUN 15 1993

United States District Court
SOUTHERN DISTRICT OF OHIO
KENNETH J. MURPHY, Clerk
COLUMBUS, OHIO

Barrick Gold Exploration Inc., et al.

JUDGMENT IN A CIVIL CASE

V.

Marty D. Hudson, et al.

CASE NUMBER: C-2-93-104

- ☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- ☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the motion for preliminary injunction is DENIED. This action is DISMISSED. JUDGMENT is entered in favor of the defendants. The costs of this action are assessed against the plaintiffs.

June 15, 1993

Date

KENNETH J. MURPHY

Clerk

Beverly J. Reel
(By) Deputy Clerk

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FILED

JUN 15 1993

KENNETH J. MURPHY, Clerk
COLUMBUS, OHIOIN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISIONBarrick Gold Exploration,
Inc., et al.,

Plaintiffs,

vs.

Case No. C2-93-0104
JUDGE GRAHAM

Marty D. Hudson, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Plaintiffs Barrick Gold Exploration, Inc. ("Barrick"), Gateway Coal Company, ("Gateway"), Maxus Energy Corporation ("Maxus"), and Creighton Hills Coal Co. Inc. ("Creighton") challenge the constitutionality of the Coal Industry Retiree Health Benefit Act of 1992, Pub. L. No. 102-486, §9701 et seq., 106 Stat. 2776, 3036-3056 ("the Act"), codified at 26 U.S.C. §9701 et seq., which was passed on October 24, 1992 as part of the Energy Policy Act of 1992. Barrick, Gateway and Creighton have ceased their coal mining operations but are subject to liability under the Act. Maxus is liable under the Act by virtue of Gateway's status as its subsidiary. Defendants are the trustees of two employee welfare benefit plans established pursuant to the Act. These plans are the intended recipients of payments plaintiffs are required to make under the Act. Plaintiffs request a declaratory judgment to the effect that the Act is unconstitutional as applied to them, and ask the Court to preliminarily and permanently enjoin the defendants from enforcing the Act against them.

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Subsequent to the filing of the complaint, the United States of America sought leave to intervene pursuant to 28 U.S.C. §2403. Leave to intervene was granted on March 26, 1993. The Court conducted an oral hearing on plaintiffs' motion for a preliminary injunction on March 26, 1993. On April 21, 1993, the Court issued an order in which it proposed to consolidate the hearing on the motion for a preliminary injunction with the trial on the merits, and offered the parties the opportunity to present additional evidence. Supplemental stipulations were filed on May 11, 1993. No other evidence being offered, the Court will view the record as complete.

Since at least 1950, the National Bituminous Coal Wage Agreements ("NBCWAs") between the United Mine Workers of America ("UMWA") and the Bituminous Coal Operators Association, Inc. ("BCOA"), a multi-employer association of coal producers, have contained provisions for health care benefits for active and retired coal miners. Coal producers who were not members of the BCOA, like the present plaintiffs, have bound themselves to identical terms by signing so-called "me too" agreements. All producers who were parties to such agreements were required to make contributions to one or more UMWA trust funds in order to fund the pension and health benefits promised to the miners under the agreements. From 1950 to 1974, health and pension benefits were provided through a single fund. In 1974, in

response to the Employee Retirement Income Security Act of 1974 ("ERISA"), the fund was divided into four separate trusts, two for pensions and two for health benefits. The two health benefit trusts were the United Mine Workers of America 1950 Benefit Plan ("1950 Plan") and the United Mine Workers of America 1974 Benefit Plan ("1974 Plan"). The 1950 Plan provided coverage for miners who retired before December 6, 1974 or who retired between December 6, 1974 and January 1, 1976 and elected to be covered by the 1950 Plan. The 1974 Plan provided coverage for miners who retired after January 1, 1976 or who retired between December 6, 1974 and January 1, 1976 and elected to be covered by the 1974 Plan.

During the decade of the 1970's, a combination of demographic and economic factors adversely impacted the UMWA health benefit plans. These factors included a significant reduction in the amount of coal produced under the NBCWA's, the retirement of a whole generation of miners and the rapid escalation of the cost of medical care. These problems led to the restructuring of the 1974 Plan in 1978. Under the 1978 NBCWA, each employer was given the responsibility for providing health benefits under the 1974 Plan for its own post-1974 retirees through individual employer plans established and financed by the employer. Each signatory was also obligated to make contributions to the 1974 Plan to finance benefits for post-1974 retirees whose last employer had gone out of

business. The 1950 Plan continued to provide coverage for miners who retired prior to the implementation of the 1974 Plan. All signatory operators agreed to continue to fund both the 1950 and 1974 Plans and to establish individual plans as required by the 1978 agreement. The structure of the 1978 NBCWA was maintained, with minor changes, in all subsequent NBCWA's, including the 1988 NBCWA.

In the 1980's, the problems which plagued the Plans became more severe. As each successive NBCWA expired, numerous employers left the coal business. Some employers successfully contended in the courts that their obligation to provide health benefits ceased with the expiration of the last NBCWA they signed, and that the 1974 Plan became responsible for their retirees' medical benefits. See e.g., In Re Chateaugay Corp., 945 F.2d 1205 (2d Cir. 1991), cert. denied, 112 S. Ct. 1167 (1992); District 29, United Mine Workers v. Royal Coal Co., 768 F.2d 588 (4th Cir. 1985); United Mine Workers Int'l Union v. Nobel, 720 F. Supp. 1169 (W.D. Pa. 1989) aff'd without op., 902 F.2d 1158 (3rd Cir. 1990), cert. denied, 111 S. Ct. 1102 (1991). The responsibility for an increasing number of "orphan" retirees fell on a dwindling number of NBCWA operators. Meanwhile the cost of health care continued to escalate. By the late 1980's, these problems resulted in the inability of the 1950 and 1974 Plans to continue to provide

health care benefits to UMWA retirees. This precipitated labor disputes and unrest in the nation's coal fields.

When collective bargaining failed to resolve an eleven month strike by the UMWA against the Pittston Coal Company, the Secretary of Labor intervened and facilitated a settlement which included provisions for the creation of the Secretary's Advisory Commission on United Mine Workers of America Retiree Health Benefits (the "Commission") which was authorized to analyze the retiree health care crisis. The Commission submitted its findings and recommendations to the Secretary in November, 1990. See "Coal Commission Report: a Report to the Secretary of Labor and the American People" (Nov. 1990), Ex: A to Defendants' Memorandum Contra Plaintiffs' Motion For Preliminary Injunction, Doc. 11 (hereinafter "Report"). The Commission concluded that delivering and financing health care in the coal industry would require

the imposition of a statutory obligation to contribute on current and past signatories, mechanisms to prevent future dumping of retiree health care obligations, authority to utilize excess pension assets and the implementation of state-of-the-art managed care and cost containment techniques.

Report at 60. Following the Report, Congress undertook its own study of the subject, and after two years of deliberations passed the Act. In so doing, Congress found:

(1) the production, transportation, and use of coal substantially affects interstate and foreign commerce and the national public interest; and

(2) in order to secure the stability of interstate commerce, it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

Act, §19142(a)(1), (2), 106 Stat. at 3037. Congress further stated that the policy of the Act is:

(1) to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry;

(2) to allow for sufficient operating assets for such plans; and

(3) to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.

Act, §19142(b)(1)-(3), 106 Stat. at 3037.

The Act implements three methods of providing health care benefits to retirees beginning February 1, 1993. First, the Act provides for the merger of the 1950 Plan and the 1974 Plan into a fund known as the UMWA Combined Benefit Fund (the "Combined Fund"). 29 U.S.C. §9702. The class of beneficiaries entitled to receive benefits from this fund is limited to retirees who, as of July 20, 1992, were actually receiving benefits from the 1950 Plan or the 1974 Plan. 26 U.S.C. §9703(f).

All 1988 agreement operators are required to make contributions to the Combined Fund during the first eight

months, commencing February 1, 1993, in an amount sufficient to pay benefits and administrative costs incurred by the Combined Fund during those eight months. 26 U.S.C. §9704(i)(1)(A). The amount of this contribution is reduced by the transfer of seventy million dollars from the 1950 Pension Plan pursuant to 26 U.S.C. §9705(a). All 1988 agreement operators are also obligated to make contributions to the Combined Fund from February 1, 1993 to September 30, 1994 in an amount sufficient to pay expenses of the 1950 Plan and the 1974 Plan which had accrued and remained unpaid by February 1, 1993, reduced by the assets of the Plans as of that date. 26 U.S.C. §9704(i)(1)(B). An additional obligation to pay annual premiums to the Combined Fund is imposed upon "assigned operators," that is, those operators who are assigned beneficiaries by the Secretary of HHS based upon the employment history of the retiree in relation to that operator pursuant to 26 U.S.C. §9706.

The second provision for benefits is found in 26 U.S.C. §9711. Under that section, last signatory operators who are required under the 1979 or a subsequent NBCWA to provide benefits under an individual employer plan must now continue to provide such coverage to certain retirees. A "last signatory operator" is the signatory operator which is the most recent coal industry employer of a retiree. 26 U.S.C. §9701(c)(4). The class of eligible beneficiaries included within the scope

of §9711 are: 1) retirees who, as of February 1, 1993, are receiving health benefits under the terms of an individual employer plan; and 2) individuals who have met the age and service requirements for eligibility for benefits under an individual plan as of February 1, 1993 and who retire on or before September 30, 1994. 26 U.S.C. §9711(a), (b).

Third, the Act establishes a new plan known as the 1992 UMWA Benefit Plan (the "1992 Plan"). The eligible beneficiaries under the 1992 Plan are: 1) those persons who, based on age and service as of February 1, 1993, would otherwise have been eligible for benefits from the 1950 Plan or the 1974 Plan were it not for the merger and July 20, 1992 cut-off date implemented by the Act; and 2) any person with respect to whom coverage under an individual employer plan is required pursuant to §9711 but is not provided by a last signatory employer or a related person. 26 U.S.C. §9712(b)(2). The class of beneficiaries is further limited to individuals who retire on or before September 30, 1994. Id. The Act requires that all 1988 last signatory operators pay an annual prefunding premium to the 1992 Plan based upon the number of beneficiaries or potential beneficiaries attributable to the operator. 26 U.S.C. §9712(d)(1)(A). All 1988 last signatory operators are required to provide security in an amount equal to a portion of the projected future cost of providing benefits to beneficiaries or potentially eligible

beneficiaries attributable to the operator. Finally, any last signatory operator is obligated to pay a monthly per beneficiary premium if a beneficiary attributable to it is currently receiving benefits from the 1992 Plan.

The Act does not address the provision of benefits to individuals who meet age and service requirements after February 1, 1993 or who retire after September 30, 1994. The treatment of noncovered employees is left to future NBCWA's or congressional action. 26 U.S.C. §9711(e).

Barrick, Gateway and Creighton operated mines under the 1988 and prior NBCWAs. Under the terms of those agreements, they contributed to the 1950 and 1974 Plans, even though they had no retired employees who were then entitled to receive benefits from those Plans. They also maintained individual employer plans which provided health care benefits to their active employees and any post-1974 retirees. Barrick, Gateway and Creighton have now permanently ceased covered operations and are not signatories to the current NBCWA. They expected that their obligation to provide health benefits for their retirees would end on February 1, 1993, when the 1988 NBCWA expired, and that their retirees would then be covered under the 1974 Plan. Each has paid or expects to pay contractual withdrawal liability payments to the 1950 and 1974 Plans as withdrawing employers pursuant to the terms of the 1988 NBCWA.

Plaintiffs claim that the Act, as applied to them, violates the Due Process Clause of the Fifth Amendment and the Taking Clause of the Fifth Amendment.

The standards for judging plaintiffs' due process claims are well settled. The Supreme Court stated in Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 15 (1976):

It is by now well established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way. See, e.g., Ferguson v. Skrupa, 372 U.S. 726 (1963); Williamson v. Lee Optical Co., 348 U.S. 483, 487-488 (1955). 428 U.S., at 15.

Congress has wide latitude in making choices regarding economic legislation, and courts have reviewed economic legislation with great deference to the legislature's policies. Ferguson v. Skrupa, 372 U.S. 726, 730 (1963). Legislation takes property without due process of law only if it is arbitrary, discriminatory or demonstrably irrelevant to the policy the legislature is free to adopt. Nebbia v. New York, 291 U.S. 501, 539 (1934). The statute will stand if a rational relationship exists between it and a legitimate governmental objective. Id. at 537; Tenoco Oil Co. v. Department of Consumer Affairs, 876 F.2d 1013, 1021 (1st Cir. 1989) (legislation is reviewed to determine whether, in light of all the relevant surrounding circumstances, any reasonably

conceivable set of facts could establish a rational relationship between the legislative act and the government's legitimate ends).

Legislation which has some retroactive effect does not for that reason alone violate the Due Process Clause. As the Court noted in Usery, 428 U.S. at 16:

[O]ur cases are clear that legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations. See Fleming v. Rhodes, 331 U.S. 100 (1947); Carpenter v. Wabash R. Co., 309 U.S. 23 (1940); Norman v. Baltimore & Ohio R. Co., 294 U.S. 240 (1935); Home Bldg. & Loan Assn. v. Blaisdell, 290 U.S. 398 (1934); Louisville & Nashville R. Co. v. Mottley, 219 U.S. 467 (1911). This is true even though the effect of the legislation is to impose a new duty or liability based on past acts. See Lichter v. United States, 334 U.S. 742 (1948); Welch v. Henry, 305 U.S. 134 (1938); Funkhouser v. Preston Co., 290 U.S. 163 (1933).

The Supreme Court later commented in Pension Benefit Guaranty Corp. v. R. A. Gray & Co., 469 U.S. 717, 729 (1984):

[T]he strong deference accorded legislation in the field of national economic policy is no less applicable when that legislation is applied retroactively. Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches.

Plaintiffs claim that the Act is arbitrary and irrational as applied to them for the following reasons: (1) they are required to contribute to the Combined Fund, even though no beneficiaries of that Fund were employed by them; (2) they are denied a refund of their contributions to the Combined Fund;

and (3) they are required to continue individual plan benefits for their own retirees notwithstanding the fact that their contractual liability to do so ended upon the expiration of the 1988 NBCWA and they made substantial payments to the 1950 Plan and the 1974 Plan for contractual withdrawal liability. The Court will examine each claim under the standards enunciated above.

Plaintiffs first argue that the contributions to the Combined Fund required under 26 U.S.C. §9704(i)(1)(A) and (B) constitutes an irrational liability as to them because they have no employees who are beneficiaries or potential beneficiaries of the Combined Fund. Although plaintiffs have no employees who are beneficiaries of the Combined Fund, they agreed, as signatories to the 1988 NBCWA and previous NBCWA's, to make contributions to the 1950 and 1974 Plans, even though they had no employees who were receiving benefits from those Plans. Plaintiffs participated in and benefitted from a contractual system which promised benefits to the beneficiaries of the 1950 and 1974 Plans, which under the Act have been merged into the Combined Fund. Plaintiffs voluntarily participated in this system, which for decades had promised retired coal miners and their dependents lifetime health care benefits. See Report at 1; District 29, United Mine Workers v. United Mine Workers 1974 Benefit Plan & Trust, 826 F.2d 280, 283 (4th Cir. 1987), Nobel, 720 F. Supp. at 1178. In order to

obtain the benefit of union labor under the NBCWA's, plaintiffs undertook responsibilities not only for their own retirees but for others.

Under 26 U.S.C. §9704(i)(1)(A), plaintiffs are required to make contributions to the Combined Fund to cover benefits and administrative costs incurred by the Combined Fund during the first eight months. This payment is analogous to the withdrawal liability imposed by the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), Pub. L. 96-364, 94 Stat. 1208, which required an employer who withdraws from a multiemployer pension plan to pay a share of the plan's unfunded vested benefits. The Supreme Court upheld the constitutionality of the MPPAA, holding that the withdrawal liability provisions did not violate the Due Process Clause. Pension Benefit Guaranty Corp., 467 U.S. at 728-734.

The Supreme Court recently addressed the MPPAA in Concrete Pipe of California v. Laborers Pension Trust, 1993 U.S. LEXIS 4053 (June 14, 1993). The Supreme Court held that the withdrawal liability imposed by the MPPAA did not violate due process as applied to an employer who had no employees who were vested in the pension plan at the time of the employer's withdrawal. The Court noted that due to the nature of multiemployer plans, an employer's contributions are never used solely for the benefits of its own employees, and that an employer often agrees to participate in a multiemployer plan in

the hope that this will cost the employer less in the long run than it would to create a single-employer plan, while at the same time accepting the risk that none of its employees will vest prior to the employer's withdrawal from the plan. Id. at 4066-4067.

In Spring Branch Mining Co. v. UMWA 1950 Pension Trust & 1950 Pension Plan, 691 F. Supp. 973 (S.D. W.Va. 1987), aff'd, 854 F.2d 37 (4th Cir. 1988), the court addressed the argument that the withdrawal liability imposed by the MPPAA violated the due process rights of operators who had no employees who were beneficiaries of the 1950 Pension Plan. The court noted the fact that the 1950 Pension Plan was funded through the contributions of all signatory operators, and that many of the beneficiaries were never employed by the companies bearing the funding burden. Id. at 986. The court concluded that in light of the nature of the 1950 Pension Plan, its history of instability, and the fact that the companies were obligated under the collective bargaining agreement to contribute to that plan, the MPPAA was a rational means to insure full funding of vested benefits and to discourage withdrawals by contributors, and was not irrational as applied to the plaintiff operators. Id. at 986-987.

A similar situation exists in regard to plaintiffs here. Plaintiffs were obligated under the NBCWA to contribute to the 1950 and 1974 Plans even though they have no employees who are

beneficiaries or potential beneficiaries under those Plans. Thus, plaintiffs do have some prior connection to the payment of benefits to participants in the predecessors of the Combined Fund. The first-year cost provision is a rational means of assuring the adequate funding of benefits under the Combined Fund. This obligation extends only to the first eight months of the operation of the Combined Fund, and the burden imposed by this provision was reduced by the transfer of seventy million dollars from the 1950 Pension Trust. This provision is not irrational as applied to plaintiffs.

The same must be said of the contributions required under 26 U.S.C. §9704(i)(1)(B). That section requires 1988 signatory operators to make payments for a period of twenty months to the Combined Fund to cover the unpaid liabilities of the 1950 and 1974 Plans which accrued prior to February 1, 1993. Plaintiffs were signatories to the 1988 NBCWA, which expired on February 1, 1993. Plaintiffs were contractually obligated to make payments to the 1950 and 1974 Plan during that period. The effect of §9704(i)(1)(B) is to hold the 1988 operators liable for the deficits in those Plans which accrued prior to the expiration of the 1988 NBCWA and which were not adequately satisfied by the contributions made by the operators. It is rational and reasonable for Congress to hold the 1988 operators, including plaintiffs, responsible for these

inadequately funded obligations which stem from a period when plaintiffs were signatories to the NBCWA and were contractually obligated to contribute toward these obligations.

Plaintiffs next argue that the Act violates their due process rights by failing to provide them with a refund of the first year cost contributions required under §9704(i)(1)(A), while assigned operators receive a credit for those contributions. The court will assume for purposes of this argument that plaintiffs will not be assigned beneficiaries under 26 U.S.C. §9706. Under 26 U.S.C. §9704(a), operators who are assigned beneficiaries must pay annual per beneficiary premiums to the Combined Fund. The amount of the premium is calculated to produce sufficient funds to cover the payment of health benefits and administrative costs attributable to the operator's assigned beneficiaries. 26 U.S.C. §9704(b). This premium must be paid for the plan year beginning February 1, 1993 (a period of eight months) and each successive plan year. See 26 U.S.C. §§9702(c), 9704(a). Under 26 U.S.C. §9704(i)(1)(D)(i), the premium of an assigned operator under §9704(a) for the plan year beginning on February 1, 1993 is reduced by the amount of the first year cost contribution paid by that operator under §9704(i)(1)(A).

Congress realized that the process of assigning beneficiaries would take time, and wanted to insure that the Combined Fund was adequately funded during the period in which

assigned operators were being identified. Congress chose to impose liability for the first eight months of the Fund's operations equally upon all 1988 signatories. The payment of the annual premium for the first year was postponed until October 1, 1993 to allow time for the assignment of beneficiaries. 26 U.S.C. §9704(g)(1). This first year annual premium covers the same expenses which are covered by the first year costs contribution, and would represent a double payment for the same costs. Thus, Congress allowed a credit toward the first annual premium for assigned operators to prevent this double liability. While operators who are assigned a large number of beneficiaries might be responsible for a large annual premium and therefore ultimately pay more than other 1988 operators toward the first year costs of the Combined Fund, no assigned operator will pay less than an unassigned operator, since an assigned operator is still liable for the full amount of the first year contribution under §9704(i)(1)(A) even though that contribution may completely offset the additional liability for the first annual premium. Plaintiffs, as unassigned operators, are not liable for the first annual premium against which a credit for first-year cost payments is allowed. The failure to provide a refund of first year costs to plaintiffs does not result in them being held liable for more than assigned operators.

Plaintiffs argue that the Act's failure to grant them refunds of their contractual withdrawal liability payments is arbitrary and irrational. Plaintiffs indicate that they have paid or will pay withdrawal liability payments to the 1950 and 1974 Plans. They anticipated prior to the Act that their liability for providing health benefits would terminate upon the expiration of the 1988 NBCWA, at which point their employees would have been covered by the 1974 Plan.

The Act now requires them to some extent to continue to cover their employees under their individual plans and it provides no refund or credit for their contractual withdrawal liability payments. Specifically, the Act requires plaintiffs to continue individual plan coverage to employees who were receiving benefits under an individual plan as of February 1, 1993, or who have met the age and service requirements for benefits as of February 1, 1993, and have retired on or before September 30, 1994. The Act, as discussed above, also requires first year costs and deficit reduction contributions to the Combined Fund.

Plaintiffs contractually agreed to be bound by the withdrawal liability provisions when they signed the 1988 NBCWA. The purpose of the contractual withdrawal liability provision was to deter withdrawals and to make employers liable at least to some degree for damages caused by their withdrawal from the Plans. The contractual withdrawal liability imposed

by the 1988 NBCWA represented only five years of contributions to the Plans, not the actual cost of funding lifetime health benefits for a withdrawing employer's retirees. See National Bituminous Coal Wage Agreement of 1988, Art. XX, Sec. (1)(3), Ex. B to Complaint. Indeed, a comparison of the cost of maintaining individual employer plans against the amount of the plaintiffs' withdrawal liability indicates that the withdrawal liability payments have no relation to the cost of providing lifetime retirement health benefits. Id. at 19.

Congress rationally found that the practice of operators withdrawing from the industry or otherwise terminating their obligation under the NBCWA, resulting in the transfer of their employees to the 1974 Plan, substantially contributed to the underfunding problems experienced by that Plan. These problems were not adequately addressed by the contractual withdrawal liability payments required under the NBCWA. To some extent, plaintiffs did receive the benefits of the contractual withdrawal provision and will continue to do so under the Act. Plaintiffs ceased making contributions to the 1950 and 1974 Plans when they ceased mining operations. Although the Act does require some contributions to the Combined Fund, it does so for a limited period. Plaintiffs are required to maintain individual plans for some employees, but not for employees who meet age and service requirements after February 1, 1993 or who

retire after September 24, 1994. Congress did not act irrationally in preserving the withdrawal liability provision in the NBCWA or in failing to provide for a refund of withdrawal liability payments.

Plaintiffs argue in general that the Act violates due process principles because it results in an unreasonable allocation of responsibility and constitutes an arbitrary and irrational imposition of liability. Plaintiffs claim that the Act is retroactive and for that reason is subject to closer scrutiny under the Due Process Clause. The Act was passed on October 24, 1992 and became effective on February 1, 1993. The plaintiffs were signatories of the 1988 NBCWA which expired on February 1, 1993. The Act requires plaintiffs to continue to provide benefits which they were obligated to provide under the 1988 NBCWA and it requires them to make contributions to the successor to the 1950 and 1974 Plans to which they were required to contribute to under the 1988 NBCWA. A statute such as the Act which essentially preserves or extends existing contractual obligations is not retroactive.

Even if the Act is considered retroactive, its retroactive effects are justified by a rational legislative purpose, to wit, to impose the cost of retirees' medical care on those who promised it. Insofar as retroactivity is concerned, this case is not markedly different from the congressional decision to

impose liability on coal mine operators for the consequences of black lung disease. In upholding that legislation, the Supreme Court held:

[T]he imposition of liability for the effects of disabilities bred in the past is justified as a rational measure to spread the costs of the employees' disabilities to those who have profited from the fruits of their labor.

Usery, 428 U.S. at 18. This Court can discern no rational difference between disabilities "bred in the past" arising from conditions of employment and legitimate expectations bred in the past arising from promises of employers. The Court notes that past promises of retirement benefits formed the rationale for the MPPAA, which passed constitutional muster in both its prospective and retroactive applications. See Pension Benefit Guaranty Corp., 467 U.S. at 728-734.

The Act is not irrational in terms of the liabilities imposed upon plaintiffs. While plaintiffs' view that they have no liability to fund health benefits after the expiration of the 1988 NBCWA has some support, a case recently decided by the District of Columbia Circuit Court of Appeals raises new issues concerning the existence of continuing liability. In UMWA 1974 Pension v. Pittston Co., 984 F.2d 469 (D.C.Cir. 1993), the court upheld the trial court's interpretation of the so-called "evergreen clause" included in the trust agreements and incorporated by reference into the NBCWA. The clause was

construed as imposing a perpetual obligation on the part of the operators to contribute to the 1950 Pension Plan even after the NBCWA has expired and the operator is no longer a signatory to the current NBCWA. Id. at 473-475. A similar "evergreen clause" is found in the 1950 Plan and in Article XII of the 1974 Plan. It could be argued that plaintiffs would have been required under this clause to continue to contribute to the 1950 and 1974 Plans and to maintain their individual plans, as required under Article XX, Sections (b) and (c) of the 1988 NBCWA, even after the expiration of the 1988 NBCWA. The Act itself does not preclude enforcement of these "evergreen clauses" as they relate to claims in existence as of February 1, 1993. See 26 U.S.C. §9708.

Even disregarding any possibility of continuing contractual liability, the Act as applied to plaintiffs does not violate due process. Plaintiffs were signatories to a series of collective bargaining agreements which promised lifetime health benefits to miners. The limited contributions for first year costs are a rational means of assuring the smooth transformation of the 1950 and 1974 Plans into the Combined Fund. This obligation was tempered by the transfer of funds from the 1950 Pension Plan. It is also rational to require plaintiffs to make contributions to meet the unpaid deficits of the 1950 and 1974 plans, to which they were required to

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contribute under the 1988 NBCWA, those deficits having accrued prior to the expiration of the collective bargaining agreement.

Congress further acted rationally in assigning to plaintiffs the responsibility for funding benefits for their own employees under their individual plans. Plaintiffs were obligated under the 1988 NBCWA to provide individual plan benefits to their own employees. Under §9711, plaintiffs are obligated to provide individual plan benefits only to those beneficiaries to which plaintiffs stand in the relationship of last signatory employer. Thus, this is not a situation where plaintiffs are required to provide benefits for nonemployees. This obligation was substantially tempered by limiting this responsibility to cases involving employees who had already retired and were receiving benefits as of the expiration of the 1988 NBCWA, or who had met the age and service requirements as of that time and retired within twenty months thereafter.

Under §9712, plaintiffs are required to pay annual prefunding premiums to the 1992 Plan based upon the number of beneficiaries or potential beneficiaries which are attributable to them as last signatory operators. Plaintiffs are also required to post security toward the payment of benefits for potentially eligible beneficiaries. Any last employer of a beneficiary who is actually receiving benefits under the 1992

Plan is further obligated to pay monthly per beneficiary premiums.

The provisions concerning the 1992 Plan are perhaps the most troublesome in terms of a due process analysis. Where an operator does not actually have any employee-beneficiaries who are receiving benefits under the 1992 Plan, its payments to the 1992 Plan are in the nature of an insurance premium against the possibility that the operator will later go out of business and cease to provide benefits to its employees. Where an operator fully complies with its obligation to provide coverage to beneficiaries under its individual plan, so that it never has any employees who become beneficiaries under the 1992 Plan, then the annual premium paid by that operator is used exclusively to fund benefits for the employees of other operators. If, however, an operator and any related person go out of business and no entity remains to fund individual benefits, the eligible employees of that operator then receive benefits from the 1992 Plan. Unfortunately, it is impossible for the court to look into the future to see what, if any, value in the form of employee benefits any one operator will ultimately receive from these annual premiums.

Plaintiffs are also obligated to provide security in the form of a bond, letter of credit, or cash escrow, in an amount equal to "a portion" of the projected future cost to the 1992 Plan of providing benefits to the beneficiaries or potential

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beneficiaries to which plaintiffs stand in the relation of last signatory operator. Presumably, the percentage of this "portion" is a matter for the trustees of the 1992 Plan to decide. If, for example, an operator were required to post 99% of the projected cost of benefits as security, it would appear to result in the imposition of double liability to require that operator to pay an annual prefunding premium as well. However, the amount which plaintiffs will be required to post as security is not in evidence.

The court notes that last signatory operators, including pre-1988 last signatory operators, are required to contribute monthly premiums to the 1992 Plan where employees attributable to them are receiving benefits under the Plan. However, in light of the fact that beneficiaries become eligible for benefits under the 1991 Plan because they would otherwise have received benefits under the 1974 Plan or because their employer is not meeting its obligation to provide benefits under an individual plan for whatever reason, such as bankruptcy or going out of business, the court would anticipate that the monthly premiums might be hard to collect, and that the bulk of the funding for the 1992 Plan will come from the annual prefunding premiums paid by operators who are still in business.

The court concludes that the 1992 Plan does not violate plaintiffs' due process rights. It was not irrational for

Congress to require what in essence are insurance payments against the possibility of plaintiffs' going out of business in the future and relegating its employees to the 1992 Plan. The beneficiaries and potential beneficiaries of the Plan are plaintiffs' own employees and employees of other operators who, but for the Act, would have been entitled to receive benefits under the 1974 Plan, to which plaintiffs had a duty to contribute under the 1988 NBCWA. The class of eligible beneficiaries of the 1992 Plan includes only individuals who had met age and service requirements prior to the expiration of the 1988 NBCWA, and who retire prior to September 30, 1994. The annual prefunding payment is calculated based upon the number of beneficiaries and potential beneficiaries who were last employed by plaintiffs. Presumably the amount of these premiums will decrease as the number of potential beneficiaries is reduced by death or by the subsequent employment of the beneficiary by some other operator in the coal industry. Further, it is not unreasonable to require plaintiffs to provide some surety toward the satisfaction of their obligation to provide lifetime health benefits.

The Due Process Clause does not require that Congress legislate with exact precision in the economic realm. The requisites of due process are met when Congress devises a scheme that rationally spreads the cost of solving a problem among those responsible for creating it. The liabilities

imposed upon plaintiffs are rationally related to plaintiffs' roles as employers and signatories of the 1988 NBCWA, and are reasonably structured to spread the cost of benefits. Whether a "broader cost spreading scheme would have been wiser or more practical under the circumstances is not a question of constitutional dimension." Usury, 428 U.S. at 19. The Act as applied to plaintiffs does not violate the Due Process Clause.

Plaintiffs also challenge the Act on the grounds that it appropriates their private property for public use without compensation in violation of the Taking Clause of the Fifth Amendment. The Supreme Court has adopted a case-by-case approach to claims advanced under the Taking Clause, and the Court has identified certain factors as being of particular significance in the analysis. These are:

1. The economic impact of the regulation on the claimant;
2. The extent to which the regulation has interfered with distinct investment backed expectations; and
3. The character of the governmental action.

Penn Central Transportation Co. v. New York City, 438 U.S. 104, 124 (1978).

The Court addressed a Taking Clause argument in Connolly v. Pension Benefit Guarantee Corp., 475 U.S. 211 (1986), which involved a challenge to the MPPAA withdrawal liability provisions. The court noted that "it cannot be said that the Taking Clause is violated whenever legislation requires one

person to use his or her assets for the benefit of another." Id. at 223. The Court went on to note that legislation adjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations, even though the legislation in effect imposes a new liability based on past acts. Id. The Supreme Court again applied the three factors identified above in the MPPAA context in Concrete Pipe, 1992 U.S. LEXIS at 4075-4082 and concluded that the MPPAA withdrawal liability did not constitute a taking in that case.

Under the benefit-funding provisions of the Act, the government does not take property for its own use, but rather "adjusts the benefits and burdens of economic life to promote the common good." Connolly, 475 U.S. at 225. Thus, the character of these provisions suggests that the Act's provisions do not constitute a taking mandating government compensation. Plaintiffs note that under 26 U.S.C. §9707, the Secretary of the Treasury may impose a penalty for the failure on the part of an assigned operator to pay the premiums to the Combined Fund under §9707. Plaintiffs argue that this government involvement indicates a taking by the government. This penalty is in the nature of a tax. Under 26 U.S.C. §9707(f), the penalty is to be treated in the same manner as the tax imposed under 26 U.S.C. §4980B, which penalizes the failure of an employer to provide health insurance continuation coverage. The tax provisions in §4980B have been viewed as one

method of enforcing the substantive obligation to provide continuation coverage. See Johnson v. Reserve Life Ins. Co., 765 F. Supp. 1478 (C.D. Calif. 1991). Congress likewise sought to ensure compliance with the provisions of §9704(a) by providing for a tax as a penalty for failure to pay premiums. However, the court concludes that this in itself is not sufficient to convert the other provisions of the Act, which require that premiums or contributions be paid by the operators to the various health benefit plans, into a taking by the government. The court further notes that since plaintiffs maintain that they will not be "assigned operators" so as to be liable for the payment of premiums under §9704, the penalty provided by §9707 would not apply to them and would never constitute a taking as to them.

Although the economic impact of the Act on the plaintiffs is no doubt significant, it is not severe when viewed in the total context of plaintiffs' past involvement in the coal industry. The nonrefundable interim contributions plaintiffs are required to make to the Combined Fund are as follows: Barrick, \$3,457.44; Gateway, \$141,959.65; Creighton, \$6,590.60. While none of the plaintiffs have employees who will receive benefits from the Combined Fund, as noted earlier each of these plaintiffs assumed a degree of responsibility to the beneficiaries of the Combined Fund when, over a period ranging between eight and ten years, they participated in

guaranteeing lifetime retirement health benefits to all coal miners who provided labor under the NBCWAs. Compare Spring Branch Mining Co., 691 F. Supp. at 982 (withdrawal liability under MPPAA did not violate the Taking Clause where operators contributed to the 1950 Pension Plan as required by the NBCWA even though they had no employees who were beneficiaries of the Plan). While they were operating, the contributions of Barrick and Gateway to the predecessors of the Combined Fund exceeded \$5,000,000 each, whereas Creighton's contributions while operating under the 1988 NBCWA totalled almost \$100,000. Although the plaintiffs are required to make an interim contribution to the Combined Fund, they are excused from further contributions to the Combined Fund even though a good case could be made for requiring them to pay a share of the liability for beneficiaries who cannot be assigned to a specific employer. Furthermore, under §9704(1)(1)(A), the amount of this contribution is reduced by funds transferred from the 1950 UMWA Pension Plan. Under these circumstances, the Court cannot characterize the economic impact of the contributions to the Combined Fund as severe.

The Act requires each plaintiff to continue its individual employer plan for its own retirees who meet the age and service requirements by February 1, 1993 and who retire by September 30, 1994. As of the time of the hearing on the motion for preliminary injunction, the monthly cost of doing so for each

plaintiff was as follows: Barrick, \$63,835.38; Gateway, \$117,616.00; and Creighton, \$454.67. Plaintiffs argue that this obligation is unreasonable in light of their obligation to pay contractual withdrawal liability under the 1988 NBCWA. However, plaintiffs promised each of their employees that they would have lifetime retirement medical benefits and presumably the monthly premiums they are now paying for such coverage is the fair and reasonable cost of performing that promise. Plaintiffs hoped to be able to transfer their retirees into the 1974 Plan in return for the following withdrawal liability payments to the 1974 Plan: Barrick, \$126,309.34; Gateway, \$600,000.00; Creighton, \$15,772.77. When those amounts are compared to the monthly cost of providing coverage for their employees, the total inadequacy of the withdrawal liability payments becomes apparent. Plaintiffs do retain the benefit of being excused from paying annual premiums to the Combined Fund, and they are not liable for individual plan benefits for employees who retire after September 30, 1994. The Court cannot say that the economic impact of the failure to refund or credit plaintiffs' withdrawal liability is, in the total context, severe.

Under §9712(d)(1)(A), the plaintiffs are required to pay an annual prefunding premium to the 1992 Plan in the following amounts: Barrick, \$4,756.00; Gateway, \$29,520.00; and Creighton, \$82.00. Presumably this represents the reasonable

cost of a plan which will ensure benefits for all retirees, including plaintiffs' retirees, who are now covered under individual employer plans, if their employer defaults. The amount of the premium, which is based solely on the number of beneficiaries or potentially eligible beneficiaries attributable to plaintiffs, should decrease over time as the number of potentially eligible beneficiaries decreases. This is just another component of the cost of performing the promise of lifetime health benefits to retirees which plaintiffs made to their employees. Viewed in that context, the Court cannot say that the economic impact on the plaintiffs is severe.

The liabilities imposed by the Act cannot be said to be out of proportion to plaintiffs' experience with the benefit plans and the NBCWA. Connolly, 475 U.S. at 226. Further, the mere diminution in the value of property, however serious, which results from the liability imposed by the Act is insufficient to demonstrate a taking. See Concrete Pipe, 1993 U.S. LEXIS at 4079.

The Act clearly interferes with the plaintiffs' expectations regarding their obligation to pay for their retirees' health benefits. Although they had promised lifetime health benefits for their retirees, they expected to discharge that obligation by assigning them to the 1974 Plan after they ceased their coal mining operations. However, in light of the problems which had afflicted the UMWA health benefit trusts for

two decades, the extensive and long-term government regulation of the coal industry, Congress's involvement in solving the crisis in funding retirement pensions when it enacted ERISA and the MPPAA and the fact that the Act was contemplated and discussed for two years prior to its passage, plaintiffs should have anticipated that Congress might enact legislation which would require them to shoulder all or part of the cost of fulfilling the promise of lifetime retirement health benefits for UMWA workers. Investment expectations which ignored this possibility would not be realistic and the Court concludes that the Act does not interfere with realistic investment backed expectations.

The Act does not violate the Taking Clause. Further, the Act as applied to plaintiffs does not violate the Due Process Clause. Plaintiffs' request for an injunction enjoining enforcement of the Act against them is denied. The clerk is directed to enter judgment for the defendants.

It is so ORDERED.



JAMES D. GRAHAM
United States District Judge

DATE: June 15, 1993

THE WHITE HOUSE
WASHINGTON

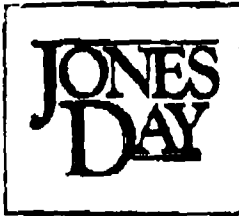
7/8/93

Ellen -

Sylvia Matthews informed me
that this is one of your
issues. Carol Rasco Pietrucci we
phoned offer Ms. Scanlon a
meeting soon.

Rosalyn Kelly
for CH Rasco

hang, no look
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2) A comprehensive background
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I look forward to hearing
from your staff - Melissa

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**1 COAL INDUSTRY RETIREE HEALTH BENEFIT ACT OF 1992:
NEED FOR A ONE-YEAR MORATORIUM ON "REACHBACK COMPANY"
PREMIUM OBLIGATIONS**

Congress enacted the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act") to create a new scheme to fund the insolvent United Mineworkers of America ("UMWA") retiree health benefit plans. One of the critical components in the scheme is the so-called "reachback" -- a mechanism requiring companies that had previously signed any National Bituminous Coal Wage Agreement to make payments into a new retiree benefits fund. Under the Coal Act, the Department of Health and Human Services ("HHS") must complete its study of mineworker histories and assign retired miners to their former employers by October of 1993. As a result of the HHS analysis, enormous new premium obligations will be imposed on former signatory companies and, unfortunately, the unintended effect of the Coal Act will be to force many companies into bankruptcy. By imposing a one-year moratorium on reachback company premium obligations, Congress can prevent such a course of action and allow for a full examination of the unintended, yet substantial inequities associated with the Coal Act.

The Coal Act Resulted In Bad Tax Policy

The reachback provision of the Coal Act imposes enormous and unanticipated retiree health costs on a group of companies, many of which will be bankrupt as soon as the liability under the Act is payable in October of 1993. This liability has been imposed despite the fact that these companies already honored all commitments to which they had agreed under the contracts that were negotiated between coal companies and their miners. Numerous lawmakers recognize that the Coal Act resulted in bad tax policy. House Ways and Means Committee Chairman Dan Rostenkowski (D-IL) has publicly stated his discomfort with the reachback provision and intends to hold hearings at the earliest possible date to determine if the provision should be amended.

The Proposed Solution

Under the proposed moratorium, the payment of premiums due to begin in October of 1993 would be postponed twelve months to October of 1994. In addition to the transfer of \$70 million from the 1950 UMWA Pension Plan, due under the Coal Act in October of this year, an additional \$50 million would be accelerated from the scheduled third Pension Plan transfer (of \$70 million) due in fiscal year 1995. These funds will cover the projected 12 month liability for all reachback companies. Should Congress decide not to change the Coal Act's funding mechanism by October 1, 1994, the trustees of the health benefit fund would immediately notify and assess every reachback company the total liability accruing from the period of February 1, 1993 to October 1, 1994, and would include repayment of the interim \$50 million.

A Moratorium Will Save Companies From Bankruptcy and Allow for Full Consideration of Coal Act's Inequities

Enactment of a moratorium will give lawmakers the time to analyze information to be obtained from hearings on a soon-to-be-released Congressional Research Service study on the reachback funding mechanism. These hearings will also provide a forum for consideration of concerns raised by lawmakers in a letter to House Ways and Means Committee Chairman Rostenkowski earlier this year. Imposing a moratorium would also provide HHS with sufficient time and resources to conduct a more thorough analysis of mineworker histories to ensure a proper assignment of beneficiaries. Finally, and most important, a moratorium would save many companies from imminent bankruptcy and thus save jobs in regions already hard-hit by unemployment.

Miners and Mining Companies Would Not Be Disadvantaged by a Moratorium

Retired miners' benefits will not be jeopardized by enacting a one-year moratorium. Accelerating the additional \$50 million from the scheduled fiscal year 1995 Pension Plan transfer will ensure that sufficient funds exist to maintain health benefits for miners. Such a transfer will also ensure that parties currently paying premiums on an interim basis will not be disadvantaged while lawmakers take additional time to assess the problems with the Coal Act.

THE COAL INDUSTRY RETIREE HEALTH BENEFIT ACT OF 1992

The Wrong Solution to a Private Industry Problem

The super reachback provision of The Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act") unfairly imposes enormous expenses on a group of mostly small companies (the "Reachback Companies") despite the fact that these companies (1) fulfilled their contractual obligations to pay retiree benefits, and (2) are no longer signatories to the binding agreements between coal companies and miners. While the Act is well-intentioned, Congress set a dangerous precedent by interjecting itself into a private-party dispute and imposing obligations on companies that were not involved with the bargaining agreements which were restructured by the Act.

Background on Retiree Health Benefit Obligations

- In 1950, the coal industry formed the Bituminous Coal Operators Association ("BCOA") to negotiate multi-employer agreements (National Bituminous Coal Wage Agreements or "NBCWAs") with the United Mine Workers of America ("UMWA"). Two retiree health benefit trust funds were established by these agreements (the "Benefit Funds"). These Benefit Funds were supported by NBCWA signatory company contributions and overseen by an independent board, the trustees for the UMWA Health and Retirement Funds. Until passage of the Coal Act last year, the obligation to make payments for the health benefits of retired UMWA miners arose only from the voluntary decisions of employers to enter into successive collective bargaining agreements which carried forward the benefit obligation.
- The successive NBCWAs have always obligated signatory companies to fund health care coverage for retired miners other than their own, but only while these companies were signatory to the contractual agreements.
- Over the years, as the coal industry consolidated, the number of BCOA signatories to the NBCWAs has dropped to the current 15. However, the companies still mining bituminous coal have grown much larger and the tonnage produced has remained constant. As contemplated by the rules of a multi-employer plan, as coal companies went out of business, their retired miners either remained or became covered by the 1950 and 1974 Funds. These funds remained supported by contributions from the NBCWA signatory companies which explicitly agreed to make the payments under the collective bargaining agreement.

Decreased Benefit Funds Contributions

- The 1988 NBCWA drastically changed the Benefit Funds contribution formula from one based on a combination of tons produced and hours worked, to one based exclusively on hours worked. This change caused contributions to the Benefit Plans and the 1950 Pension Plan to drop approximately 60 percent from \$640.3 million in 1987 to \$255.5 million in 1989. Moreover, contributions to the overfunded 1950 Pension Plan were simply eliminated instead of being shifted to the Benefit Plans. The negotiated change in the contribution base yielded current BCOA members \$136 million in reduced contributions in 1989 alone. In return, the UMWA received assurances from the BCOA that they would abide by the guarantee clause requiring the current signatories to "guarantee" payment of the retirees' benefits.
- The Benefit Plans became insolvent almost immediately under the 1988 NBCWA. The current BCOA companies refused to honor their obligations under the guarantee clause of the 1988 NBCWA. The Benefit Plan's trustees threatened to cut off benefits and certain beneficiaries sued to require the BCOA to fulfill its contractual obligation. A United States District Court in Virginia agreed with the beneficiaries and ordered the BCOA to increase its contribution rate to \$3.67 per man hour worked. The increased contributions were still less than the BCOA companies were contributing to the Benefit Plans and Pension Plans before the 1988 wage agreement.

Existing Safeguards for Retiree Health Benefits

- Under the 1988 NBCWA negotiated between the BCOA and the UMWA, the BCOA signatories guaranteed health benefits and pensions to coal miners and their dependents for the duration of the agreement, just as reachback companies (and other signatories) had obligated themselves to provide such benefits for the duration of previous multi-employer agreements to which they had signed.
- In addition to the contractual guaranty of benefits, the 1988 NBCWA imposed a withdrawal liability to protect the interests of the beneficiaries when signatory companies go out of business.
- The United States District Court for the District of Columbia recently concluded that some companies which have left the BCOA are still liable under the so-called "evergreen clause" if they are mining bituminous coal ("evergreen

companies"). With the collection of this windfall from certain former signatory companies, additional funds will be applied to substantially reduce the current BCOA companies' obligations to eliminate any outstanding deficit accrued at the time of the merger of the Benefit Funds.

The Legislated Solution

- Despite the aforementioned safeguards, Congress passed the Coal Act which abrogated the former and existing wage agreements and created a new liability for a large group of companies which are no longer signatories of a NBCWA. A corresponding reduction resulted in the liability of the current BCOA companies. The Coal Act requires companies that had previously signed any NBCWA to make payments into a new retiree benefits fund. Regardless of which NBCWA a particular company last signed (it has been decades since some companies last signed an NBCWA), the Coal Act requires that company to contribute at rates sufficient to support the level of benefits that the BCOA and UMWA bargained for in the 1988 NBCWA.

Imposing Liabilities on Reachback Companies Was a Mistaken Approach

- The reachback companies met all their obligations to their former employees under the multi-employer system which was specifically considered in the bargaining for the NBCWAs. These companies did not "dump" their employees, contrary to some assertions made during last year's debate on the Coal Act. The reachback liabilities should not be confused with the so-called evergreen liabilities which the courts have determined must be fulfilled by certain companies under contractual obligations to fund retiree health benefits.
- The liability imposed on a number of reachback companies far exceeds the profits of and value in many of these companies' original coal mining operations. As an example, one company's anticipated liability of \$110 million after tax is approximately 2.5 times the company's consolidated net worth and more than 50 times greater than the average annual profits made by all of the company's relevant bituminous coal mines during the entire 20 year period from 1960 to 1980. It is estimated that another reachback company will be bankrupt within 18 to 24 months, forcing it to default on many other obligations it presently fulfills to coal industry participants, including 400 workers' compensation and black lung claims. At least eleven other reachback companies, most of which are small operations, may be forced into bankruptcy

because they simply do not have the wherewithal to satisfy the liabilities imposed upon them by the Coal Act.

- A recently released study by the firm Dewey Ballantine estimates that the Coal Act will provide signatories to the 1988 NBCWA with a health care cost savings windfall of \$111 to \$158 million in 1992 alone.

Interference by Congress With Private Transactions is Unwise

- When Congress bails out a privately bargained benefit, it sets an extremely bad precedent for other industries. In effect Congress is condoning and encouraging others to seek a similar bail-out of their benefit plans.

Congress Should Amend the Act to Prevent a Gross Miscarriage of Justice

The Coal Act's problems are not about whether the retired bituminous coal miners will receive their bargained-for benefits. It is about who is required to pay for those benefits. Congress should develop a new solution in the following manner:

- The reachback provisions should be eliminated from the legislation. These companies simply should not be made a part of any public solution to this problem.
- Should Congress conclude that the retiree miners' health care costs and the existence of orphan miners is a public problem, and that the BCOA and evergreen companies should not have to bear all of the costs of their contracts, then Congress should approve one of the several realistic funding sources, presently under consideration, for as much of these costs as it deems appropriate.

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**CONTRARY TO BCOA ALLEGATIONS, THE REACHBACK
COMPANIES DID NOT DUMP THEIR OWN RETIREES**

The BCOA has repeatedly alleged that all reachback companies dumped their own retirees on the Funds - which created the so-called "crisis". This false allegation became the rationale for saddling all former signatories - going back as far as 1950 - with the so-called "reachback" assessment. This was a mistaken approach because:

1. Until passage of the Coal Act last year, the obligation to make payments for the health benefits of retired UMWA miners arose only from the voluntary decisions of employers to enter into successive collective bargaining agreements which carried forward the benefit obligation. In 1950, the coal industry formed the Bituminous Coal Operators Association (BCOA) to negotiate multi-employer agreements (National Bituminous Coal Wage Agreements of ("NBCWs") with the United Mine Workers of America ("UMWA"). Two retiree health benefit trust funds were established by these agreements (the "Benefit Funds") and these Funds were supported by NBCWA signatory company contributions.
2. In accordance with the rules of multi-employer plan, as coal production from BCOA companies went up or went down, their contributions to the funds went up or down as well. If their production declined by half, their contributions also were reduced by half. However, no one is suggesting that these companies "dumped" half of their retirees or employees on to the fund because that is how a multi-employer plan works. Also, it was contemplated by the multi-employer plans that as coal companies went out of business of mining bituminous coal, their contributions to the funds went to zero as well, as their retired miners would be covered by the 1950 and 1974 Funds. These funds remained supported by contributions from the NBCWA signatory companies which explicitly agreed to make the payments under the collective bargaining agreement. Over the years, as the coal industry consolidated, the number of BCOA signatories to the NBCWAs dropped to the current 15, while the total BCOA coal production remained fairly constant. This trend continues as smaller, unprofitable companies are being taken over by the far bigger and very profitable BCOA members (e.g., Peabody, Consolidation, etc.) (If the BCOA signatories had been required to make payments based on all of their bituminous coal production -- including their double-

- 2 -

breasted operations, more monies would have been generated for the Funds than ever before.)

3. The reachback companies met all their obligations to their former employees under the multi-employer system which was specifically considered in the bargaining for the NBCWAs. Contrary to some assertions made during last year's debate on the Coal Act, these companies did "not" dump their employees. The reachback liabilities should not be confused with the so-called evergreen liabilities which the courts have determined must be fulfilled by certain companies still mining bituminous coal and where they are still under contractual obligations to fund UMWA retiree health benefits.

Rostenkowski - what's he doing, where's
he going

Walsh/Simpson - no industry side fax

Larry Motluck

- Split between Western & Eastern Coal States
- Moratorium
- Some kind of tax?
- Not sure how many ^{companies} affected
- passed quickly - last minute
- contractual promise into statutory law
- ^{HTS} Not gonna make the Oct 1 deadline
- Bankrupt companies - - spiral effect
- Sept 30, 1993 - Transfer course ends -- assessments to companies begin.

July 16 - paper draft
- leaked out - no state agreement

July 26 - Gov counter proposal

- working draft

↳ Draft 2 - now being done

- still not close on key issues

- Tulsa

- Albuquer

- assess process

- able to continue?

- Barbara
- intent not spelled out in leg history
 - SSA doing the assignment - way behind - no funding until Oct/11 this yr
 - exempting the flashbacks?

Rosenfeld / Byrd / Ford

Wallace signed off on policy

no tax

- litigation on coast. - North Am Coal
- Pickie interested - 2008
- flashback

Bellaine & Shalaby

- President? - courts will determine

push wanted energy bill
for 100% renewable
for 100% renewable

- Coal Strike Avoid in election year Bush
- Pres UMWTA reelection - big issue - degrade
 - ↳ unholy alliance
 - ↳ Technically Flawed Law - everyone knows it
 - ↳ Re-opening issue = Big ol' Can-o-warms
- Political Dynamite -- don't want to drive in unless absolutely necessary

Want energy bill

Litigation will go up to sup. ct on Constitut.
of Act, then will focus on
SSA Assignment process

- SSA way behind schedule - totally unrealistic
schedule to begin with

- In Intym, what happens? Sept 30
deadline for SSA Assignments will never be
met - How will plan be funded?
More transfer payments? Fund in
better shape than 1st thought?

- Rusty hearings -- no date in sept set
- Pickle interested because lots of
reachback companies in Texas -- will
his ^{sub} committee on oversight take hearing?

- Leg schedule packed this Fall - when would
action on this happen, if ever?

- Bill has no Leg. History -- Senate passed
flawed Act thinking that House would
straighten out ~~the~~ technical problems &
build Leg history -- House v'd at
whole thing & pass as-is.

- No stomach for Tax of any Kind.