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COAL COMMISSION REPORT ON HEALTH BENEFITS OF RETIRED COAL MINERS

HEARING

BEFORE THE

SUBCOMMITTEE ON
MEDICARE AND LONG-TERM CARE

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

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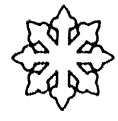

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COAL COMMISSION REPORT ON HEALTH BENEFITS OF RETIRED COAL MINERS

WEDNESDAY, SEPTEMBER 25, 1991

U.S. SENATE,
SUBCOMMITTEE ON MEDICARE AND LONG TERM CARE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 2:10 p.m., in room SD-215, Dirksen Senate Office Building, Hon. John D. Rockefeller IV (chairman of the subcommittee) presiding.

Also present: Senators Durenberger, Symms, and Grassley.

[The press release announcing the hearing follows:]

[Press Release No. H-41, Sept. 17, 1991]

RETIRED MINERS' HEALTH BENEFITS TO BE EXAMINED, FINANCE SUBCOMMITTEE WILL CONSIDER COAL COMMISSION REPORT

WASHINGTON, DC—Senator John D. Rockefeller IV, Chairman of the Finance Subcommittee on Medicare and Long-Term Care, announced Tuesday the Subcommittee will hold a hearing on health benefits of retired coal miners.

The hearing will be at *2 p.m. Wednesday, September 25, 1991* in Room SD-215 of the Dirksen Senate Office Building.

Rockefeller (D., West Virginia) said the hearing will focus on the Secretary of Labor's Coal Commission report, including its findings and recommendations on the financial condition of the 1950 and 1974 United Mine Workers of America Health and Retirement Funds, and on the current status of the funds.

Rockefeller said the financial condition of the health funds is of great importance to thousands of retirees and their families across the country who depend on them for health care. He said it is important for the Subcommittee to look at recent problems with the funds and possible solutions.

"We are talking about tens of thousands of elderly and often infirm people who long ago earned these benefits by fueling the fires of American industry in war and in peace," Rockefeller said. "The Coal Commission has made its recommendations and now it is time for all concerned to begin to work together to solve the problems."

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, A U.S. SENATOR FROM WEST VIRGINIA, CHAIRMAN, SUBCOMMITTEE ON MEDICARE AND LONG TERM CARE

Senator ROCKEFELLER. This hearing will come to order. This hearing is going to consider the recommendations of the Secretary of Labor's Coal Commission on ways to address the financial problems of the trust funds that provide health benefits for retired coal miners.

Before we get into a legal discussion or a technical discussion, I want to make it very clear that the principle at stake here is simple. It is about keeping commitments. We are talking about thousands of elderly retired miners who spent their lives laboring

to carve coal out of the earth to create energy and to create comfort for the rest of the Nation.

We are talking about widows. We are talking about their dependents. As the Secretary of Labor's Coal Commission said, we have thousands of people who are entitled to health benefits and the commitment to those beneficiaries must be honored. Everything else is about drafting details.

There is a second simple principle that I hope will guide us through this complex and potentially very volatile issue. This problem is going to be resolved and it is going to be a whole lot better for all concerned if it is resolved by building a consensus among reasonable people rather than through an adversarial approach.

But one thing I guarantee you, it is going to be resolved, however it has to be. This is an occasion that requires the best from all of us. The stakes are too high for anything else.

Over a generation ago, this issue was part of a dispute that paralyzed the coal industry and might, in fact, have paralyzed the country. It triggered an extraordinary government seizure, a seizure of the coal mines, and pulled President Truman himself into negotiations in the oval office.

That chain of events led to the establishment of the trust funds providing health benefits for retirees and to commitments to the retirees which were reinforced over the decades. As the Coal Commission report says, the health benefits were part of a deal that permitted mechanization of the mines.

Even though they knew mechanization would drastically reduce jobs the coal miners considered secure benefits to be worth it, and for a while the deal worked. The report of Admiral Boone regarding health conditions in the coal fields called those conditions a disgrace. But the new health program transformed those conditions into a model for the industrial world, an achievement of which all Americans can and should be proud.

Now, of course, we are at a point where financial difficulties have arisen in the UMWA health funds. It has been implied by some that we can no longer meet high standards, American standards, that we must turn back the clock. But that would return us to the old ways that were bad for the miners and bad for this country. Those that would undermine basic standards of decent health care invite a return to a very dark chapter in our labor relations in this country and will serve to further America's industrial decline.

This dispute, if not resolved, has every possibility of doing that. I believe that the vast majority of coal industry leaders reject an approach that would turn this clock back. Certainly the Secretary of Labor's Coal Commission rejected that approach. I commend the Commission for that and I commend the administration for launching the Coal Commission itself.

I understand that many who agree that there is a problem disagree over who should be responsible for solving it. I simply suggest to you that this problem affects the entire industry and in fact the entire country. There is an industry interest, there is a national interest in resolving this problem and I hope all concerned will be involved constructively.

We are talking about tens of thousands of elderly and often infirm people who long ago earned these benefits by firing the fur-

naces of American industry in war and in peace. The industry and national commitments to health care for these miners and their families must and will be kept.

The Coal Commission has made its recommendations and now it is incumbent on everyone to work together to solve these problems. I look forward to this hearing. I have for a long time, for several years. I am anxious to get at it and I am anxious for it to work. So is George Mitchell and so is Lloyd Bentsen.

They wrote me on November 20, 1989 when this bill, at that point not yet a bill, was before the Finance Committee and it had to be stripped out because of budget technicalities, they each signed a letter to me, George Mitchell and Lloyd Bentsen, saying that "We understand that the funds face serious financial difficulties. This is a matter of national importance and concern. Pensioners and their families across the country rely on the funds for health care and the funds are important to the stability of the coal industry."

They go on to say that "Because of the extraordinary importance of the stability of the health benefit funds for retired coal miners, we want you"—that is me—"to know that we are determined to see the issue addressed in the new session of Congress. We intend to work with you to address the issue, and we will find a legislative vehicle to bring the issue to the floor early in the new year."

So this we are going to do and this is a problem which will not remain unresolved.

I met just before two or three very wonderful people who I will now call forward as our first panel. I welcome to our hearing today Dixie Woolum of the town of Cinderella in my own State of West Virginia; and also Homer and Emily Eckley of Cadiz, Ohio.

These witnesses have an important story to tell us about their experience with health benefits for coal miners and their families which is the subject of our hearing. Dixie Woolum lives not far from a town called Matewan in West Virginia. A town whose name was chiseled into the history of the long fight of coal miners for justice. She lives even closer to the City of Williamson, a town which is known on the sign at its doors by the phrase "The Heart of the Billion Dollar Coal Field."

That motto is a good symbol of the riches for the coal industry and for all America brought out of the earth by people like Dixie's late husband, Jimmy Woolum and by Homer Eckley, with the support of their families. Don't you think for a moment that America could have the greatest coal industry in the world without the support of those families for the miners down below.

But all riches, and especially those symbolized by "Heart of the Billion Dollar Coal Field" have a price. The price of coal is back-breaking labor, under conditions in which few of us in this room would decide to work. The price is disease and danger, not infrequently accidents, sudden, violent injury and, yes, death.

They paid the price. Jimmy and Homer and their families and many thousands paid the price. They paid it because they come from an America that still exists in places like Cinderella and Cadiz—an America of hard work, of deeply held values, of faith and of trust, an America where people make promises to each other and an America that believes that promises should be kept.

The promise made was a great achievement. Even advances in technology could not remove the cloud of disease and the threat of accident and injury from coal mining. But a civilized nation through its government and the past statesmanship of industry and labor made promises to lessen the pain. They made commitments so that in return for sweat and blood of miners the pain and the price of the riches in places like the billion dollar coal field would be mitigated.

Now the pact that underlies this past achievement is in jeopardy. And Dixie Woolum and Homer and Emily Eckley have come to help tell America what is threatened, what our challenge is and why Congress must not fail to meet it. We are very grateful to all three of you for coming.

Ms. WOOLUM. Thank you.

Senator ROCKEFELLER. Ms. Woolum, would you be willing to begin?

STATEMENT OF DIXIE WOOLUM, CINDERELLA, WV

Ms. WOOLUM. Mr. Chairman and members of the Subcommittee, my name is Dixie Woolum and I am a coal miner's widow from Cinderella, West Virginia. Please listen to my story and do whatever you can to make sure that no other family has to go through what we have been through.

My husband, Jimmy, worked in the mines for the same coal company for 45 years. He died when he was sixty years old, three months after his last working day. He had pneumoconiosis, the last stage, and then it developed into cancer. Between that and cancer, that is what killed him.

He gave his life in the mines. I packed his dinner bucket and got him off to work every day for 45 years. Then to show me how much they cared Massey Coal Company took my insurance away in 1984. Finally after years without health benefits, the funds picked up my coverage.

I was born in a coal-company house. We raised our family in a company house and I remember when we got the UMWA funds. We went to the company doctors, and when the men were sick, they would give them a little bag of pills and send them back home. Before the funds, I had my first babies at home. Then after the funds, I had my three boys in the hospital.

After we got the funds Jimmy always said to me, "Dixie, if anything would ever happen to me, you and the kids will be taken care of." That is what they promised him and that is what we planned on and what we believed.

Then after Jimmy died the company took my insurance away from me when I really needed it, and it was a blow to me. It tore me to pieces and I did not even know what to do. I thought my world had come to an end. I still had our twelve year old daughter, Tammy, at home and I did any kind of work I could find to make it. I was sixty, but I cleaned house, I ironed, I scrubbed floors, anything I could do to make it.

Before Massey took my health card away, and before my husband passed away, Tammy had stomach problems. The first doctor could not find anything, but thanks to the health benefits we could

get Tammy a specialist. He found two cysts the size of grapefruits in her stomach, and they were about to burst.

She is fine now, but if Tammy had gotten sick a couple of years later, after Massey took my benefits, I could not have afforded medical care for her and then I do not know what would have happened.

My husband was a devoted man to his work. He worked in bad conditions, but he never missed a day. But when he came home he was so tired that he would sleep for two hours before he could eat. He gave his life in the mines so that I could have something, so Tammy could have something, too.

It is a blow in the face to think some day you have health coverage and the next you have nothing. I feel secure again because of the funds and I treasure those health benefits that Jimmy gave his life for. But it is not right that someone can take these benefits away from his family after he spent 45 years working for the coal industry.

I am not an educated person, but I do know what is right and what is wrong. I hope that through your work, this will not ever happen again to anyone else.

Thank you and God Bless You.

Senator ROCKEFELLER. Thank you very much, Ms. Woolum.

[The prepared statement of Ms. Woolum appears in the appendix.]

Senator ROCKEFELLER. Mr. Eckley or Mrs. Eckley, which one of you would like to begin? All right, Mr. Eckley.

STATEMENT OF HOMER ECKLEY, CADIZ, OH

Mr. ECKLEY. Mr. Chairman and members of the Subcommittee, my name is Homer Eckley. I am from Cadiz, Ohio. I grew up in a coal mining family, four generations of them. That was back when there was no benefits, nothing. I went into the Service and my dad went on strike, and when he came back they had benefits—pension and hospitalization. I went into the mine with the idea that when my time came, I could retire and have benefits, plus a pension.

I worked 33 years and produced a lot of coal for Y&O. I ran a shuttle car, a loading machine and a continuous miner. I was hurt twice—off once for 6 months with a fractured pelvis, another time 2 months with a broken leg.

I was laid off in 1980 and in 1984 I retired. I got my pension, it was $407 a month. Until 1988 I had health care. On January 31, 1988 Y&O cut off my health care because they thought I did not need it anymore. I was in the middle of radiation therapy with prostate cancer. After 33 years they threw me out. It took almost 2 years to get coverage back from the fund.

Now they tell me that my mine was sold to another company and they are complaining about paying these benefits. I disagree. The entire coal industry is part of the problem and the entire coal industry should be part of the solution. It is not fair that for the old folks who kept their side of the bargain to be put in the position that I faced in 1988. Someone has to pay for what was promised in the Whit House back in 1946 with John L. Lewis and Truman. Since it started as an industry-wide fund covering every-

body in the industry, it is only fair that the coal industry should be required to live up to its side of the bargain.

Thank you.

Senator ROCKEFELLER. Thank you, Mr. Eckley, very much.

[The prepared statement of Mr. Eckley appears in the appendix.]

Senator ROCKEFELLER. Mrs. Eckley, do you have a statement? Please.

STATEMENT OF EMILY ECKLEY, CADIZ, OH

Mrs. ECKLEY. Mr. Chairman and members of the Subcommittee, my name is Emily Eckley and I thank you for allowing us to be here.

The last few years have been rough. My husband worked for Y&O Coal for 33 years. He worked long and hard, knowing that our retirement years would be a little easier because we would have health insurance and a pension.

In September 1986 he was diagnosed as having cancer, but we did not have to worry about medical costs, so we thought, because he had his miner's health card. Four days after Christmas in 1987 we got a certified letter from Y&O Coal saying that as of January 31, 1988 we would no longer have our health care benefits. Now we had to worry about Homer's illness, about his treatments. And any of you who have been through this disease know that the cost is atrocious.

Hospital bills, doctor bills, drugs. We got to the place where we did not know where to turn. We went to the UMWA funds. They said we were not eligible, we would have to go to court. The doctor advised me that I should try and keep all stress and strain away from Homer because a healthy and good outlook was imperative for someone battling cancer. In doing so, I was under tremendous pressure.

My first concern was for his recovery. He needed to keep up his treatments which were very costly. He needed a special diet while he was taking the treatment and there were a lot of other costs associated with his medical care. All in all, we paid $3,400 out of our own pocket within probably a two-year period, which we did not have. That does not include the hospital bills. This was just for prescription drugs, equipment that he needed, transportation back and forth to the doctors and to the hospitals.

There were many times when I feared we would lose our home that we had worked for so many years to get. We had no luxuries. We had to cut back on everything.

What it came down to was I was on the phone most of the time, while trying to hold down a full-time job to support my family. I am the only one that was left.

"Doctor so-and-so, will you take $5 a month?" "Will you accept $5 a month, Mr. Druggist? That is all I have." I just hope and pray that no one has to go through what we went through.

Then in November of 1989 the UMWA funds so graciously came through for us and picked up our coverage. And I thank them very much for that.

We still have medical problems, but our financial nightmare is over. That is just exactly what it was, a nightmare. I am told the

funds had financial problems and that you folks are trying to help with that situation. For that, you have our thanks. We cannot go back into the mines or make some other deal for ourselves. We can only hope that someone can make the coal industry live up to its part of a long-standing agreement—that when you retire, you get a pension and health care or a health card.

As I said, Homer worked 33 years knowing that the light at the end of the tunnel would be his pension and medical benefits for his family.

Thank you for your help and God Bless You.

Senator ROCKEFELLER. Thank you, Mrs. Eckley.

[The prepared statement of Mrs. Eckley appears in the appendix.]

Senator ROCKEFELLER. I am not, in fact, going to ask you any questions. Senator Grassley, may want to and he may want to have a statement generally that he might care to make. But as far as I am concerned you have opened up this hearing with the kind of moral predicate that we need, and you have spoken for over 120,000 people, average age seventy-7 years old, in 48 States and the District of Columbia. So your coming here has done a lot and meant a lot. And I thank you very, very much.

Senator Grassley, do you have an opening statement or any comments or questions of the witnesses?

Senator GRASSLEY. I do not have questions for these witnesses, but I would like to make an opening statement.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA

Senator GRASSLEY. I want to say at the outset that I understand and I appreciate that the key problem we are meeting to discuss today is how the funding of health benefits of mine workers can be guaranteed. These people who worked all of their lives surely deserve some assurance that their health care needs will be met.

Of course, not being from a coal mining State I am still learning about this issue, Mr. Chairman, not yet sure in my own mind what the best way is to solve the problem that this hearing is about. I hope that this hearing will move us along towards a solution to the problem.

I do have a number of questions about assessments, suggested by the Coal Commission, on former signatories to the Bituminous Coal Operators Labor Agreement, or on the coal industry generally as a method of funding the health benefits of these workers.

Foremost among these concerns is whether the members of the Bituminous Coal Operators Association did not in some measure help to create this situation by reducing their contributions to these funds and whether the operators have done everything that they could to reduce health care costs through restructuring these plans and introducing cost containment measures as the Coal Commission recommended.

At the present time my inclination is to believe that the Congress should not rush forward on this issue. As I understand it, there are cases before the courts the resolution of which will have

implications for this matter. It may be that we should wait for them to act on the cases before them.

In any case, I am looking forward to learning more about this matter today, Mr. Chairman.

I also would like to submit a statement from Senator Hatch who cannot be here for inclusion in the record, Mr. Chairman.

Senator ROCKEFELLER. It will be done.

Senator Symms, we are glad that you are here and welcome any opening statement or questions that you might have.

OPENING STATEMENT OF HON. STEVE SYMMS, A U.S. SENATOR FROM IDAHO

Senator SYMMS. Thank you very much, Mr. Chairman. I would like to welcome all of the witnesses here today. I particularly want to thank you for taking the initiative to hold this hearing.

The issue before this committee may rank with Puerto Rican statehood as being the least popular issue with the committee. But I think it is an issue that needs to be aired and I compliment you for doing so. As a matter of pure politics I have the sensation I was looking back to the 1950s or the 1960s, back to the days of true raw political power where fortunes were won and lost in the back rooms of Congress and industry.

I do not think it should surprise anyone that the organizations involved are well used to power politics. I do not mean that, Mr. Chairman, in any negative way. But when you think of the businesses involved in the old days of power politics you might think of big coal companies battling smaller companies, or all the coal companies battling the unions, and the battlefields shifting from the halls of Congress to the hills of West Virginia to the popular press.

Unfortunately then as now, whenever these Goliaths of our economy start butting heads the real losers are the workers and the investors. So I am glad we have a panel of real people, I think it is the first panel, to remind us of this. I look forward to the next two panels also.

It is easy to lose sight of what is at issue when we only hear panel after panel of hired guns and experts. But this is not 1950, it is 1991. This kind of game will not work anymore. Nothing is going to happen in the back room this time.

I hope with the help of this hearing we can find out why the benefit funds are in trouble. I believe the facts point clearly to a culprit, but I am willing to be persuaded differently. If we find that the funds were intentionally underfunded we must in the first instance take those actions necessary to protect the funds so that they can continue to pay benefits.

But I think we should do more. If retired miners are threatened with the loss of benefits or a reduction of benefits because the funds were intentionally short-changed I think we will need to consider some kind of action to convince other companies that this sort of thing does not belong in a modern economy and we should not tolerate it.

I thank you very much, Mr. Chairman, for having this hearing and I thank those witnesses for their testimony.

Senator ROCKEFELLER. Thank you very much, Senator Symms.

I would also enter testimony from Robert C. Byrd of West Virginia.

I want to thank the three of you very, very much. I think the reason we do not have questions of you is that you spoke in such a way that your feelings are very strong and very, very clear. I thank you for coming. You may not know how much you have done. We have a lot of witnesses in Congress and as Senator Symms said, when you get real people it is good, and you have done well. Thank you very much.

Ms. WOOLUM. Thank you.

Mr. ECKLEY. Thank you.

Mrs. ECKLEY. Thank you.

Senator ROCKEFELLER. Of course, nothing will be implied that any other witnesses are not real people. [Laughter.]

Or perhaps if they are not they should declare themselves at the beginning.

Our next panel is of two, which became one. I will call forward Henry Perritt, Jr., who is Vice Chairman of the Coal Commission, a Professor of Law at Villanova University.

I was going to call forward Bill Usery, but Bill could not come and is incredibly unhappy about it. Bill Usery is one of the busier negotiators in the United States. He had told me when I spoke to him a week or so or more ago that he was involved in a negotiation the deadline of which is midnight tonight. I think that most of us in this room understand deadline negotiations and how difficult that is.

He says as an genuine sense of exasperation that he cannot be here and he is submitting written testimony. But believe me, he is very frustrated because he very much wants this process to work. So I submit his letter for the record.

[The prepared statement of Mr. Usery appears in the appendix.]

Senator ROCKEFELLER. Mr. Perritt, I certainly welcome you, sir.

STATEMENT OF HENRY H. PERRITT, JR., VICE CHAIRMAN, COAL COMMISSION, PROFESSOR OF LAW, VILLANOVA UNIVERSITY, VILLANOVA, PA

Mr. PERRITT. Thank you, Mr. Chairman, Senator Grassley, Senator Symms. I appreciate the opportunity to be here today. I think the first order of business for me would be to ask that the report of the Coal Commission be included in the record.

Senator ROCKEFELLER. It will be done.

[The report appears in the appendix.]

Mr. PERRITT. Thank you, Mr. Chairman.

I appreciate, Mr. Chairman, your opening this hearing and I also appreciate the presence of Ms. Woolum and Mr. and Mrs. Eckley to remind us that this is not a problem simply of technical legal difficulties and technical accounting questions. It is a problem that has an important human dimension.

The Coal Commission, I think, was an unusual exercise in a couple of respects. First of all, it had to tackle an extremely difficult problem and come up with some useful recommendations in only 6 months.

Second, the Commission had 11 private citizens of considerable distinction in diverse fields. Those private citizens worked very hard. This was not a staff effort. We did not have a large staff. Almost no one missed a meeting. And as a result of the hard work of these 11 private citizens, the Coal Commission reached remarkable consensus on some 14 principles that are summarized in Appendix II of the Coal Commission's report.

The Commission was not able to reach complete consensus on some other issues, relating particularly to the particular means to finance the deficit in the funds or a system that might replace the funds.

What I would propose to do, Mr. Chairman, is to review some nine points that fairly, I think, represent the consensus of the Commission. Then on the financing question I will report my own perceptions of what a significant majority of the Commission would have preferred.

The first point is the "bottom line." The bottom line is that appropriate Government action to stabilize the financing of the retiree health care system in this industry, if it is done right, encourages private solutions to health care problems, honors commitments to retirees who worked hard to create economic prosperity for others, and encourages private sector innovation to ensure equitable access to high quality and cost effective health care at reasonable cost.

Government action is necessary—and every member of the Commission recognized this—because collective bargaining cannot solve this problem.

As you pointed out, Mr. Chairman, the origins of the health care system and the benefit funds are heavy with the imprint of the Government. Throughout the history of the funds and throughout the history of the health care system in this industry, the imprint of the Government and the law also has been heavy.

Collective bargaining has a limited scope under American labor law. Under current legal interpretations, trade unions enjoying majority support from active employees lack the legal capacity to represent retirees.

Under current legal interpretations collective bargaining agreements cannot obligate employers after the agreements expire. Even if it were desirable for the problem to be solved through the application of raw economic power—and it is not desirable that the problem be addressed in that way—Section 8(b)(4) and 8(e) of the National Labor Relations Act circumscribe the scope of raw economic power.

So it is not possible for private collective bargaining to solve this problem that involves benefits for orphans that are not presently associated with present employers.

The problem will not go away in the absence of some kind of effective action. It will only get worse. It is better to work out a comprehensive solution now within the framework suggested by the Coal Commission than to improvise later in a panic of a coal field conflict.

Senator ROCKEFELLER. Do not worry about this light.

Mr. PERRITT. Someone will pay for benefits in the end. One possibility is that the retirees themselves and their beneficiaries, their

widows and widowers, should pay for benefits. That is not feasible. These are not people of large resources. These are not people with large pensions.

There is an implicit assumption in much of the discussion about simply allowing existing labor law and existing collective bargaining to work that it is an okay solution for the contracts to cease providing for funding, for the funds to dry up, for the benefits to stop being paid. That is not an okay solution.

It is also not desirable for the general public to pay for benefits. It is better, in the view of the Commission and in my view, for the coal industry itself to fund the benefits.

The present crisis in the industry, which has a unique history, provides a unique opportunity as well as a unique problem. It provides a unique opportunity to develop private institutional arrangements for health care reform. This is the industry in which health maintenance organization concepts, group practice concepts, other kinds of health care solutions now perceived as innovative were invented. This is not an experience that should be discarded.

Among conceivable industry based financing solutions, a combination of past employer and industry-wide responsibility is most appropriate. Now, at this point the Commission did not reach consensus as to exactly how the financing should be arranged. There was a group that thought the best way to arrange for it was on an industry-wide basis; and there was a group that felt the best way to arrange for it was by reaching back and imposing financing responsibility on people who formerly had some connection with the fund.

I think it is appropriate to impose some residual and minimal mandatory financing responsibility industry-wide for two reasons. First, the mandatory premiums and any kind of mandatory financing responsibility are associated in large part with orphans who, by definition, are not associated with anybody still in the coal business, let alone anybody who is party to a collective bargaining agreement.

And second, as a practical matter, the boundary between past signatories and the rest of the industry is so indistinct as to be an inappropriate conceptual limitation on the financing structure. I am concerned, as were other members of the Commission, that we not come up with a solution that becomes little more than an engine for litigation and conflict over proving whether you were on one side of a line or another side.

Any solution must include a new institutional structure, different from the existing fund structure, to ensure equity in handling funds for benefits and for accommodating innovative health care arrangements. But these new entities, if they are created properly, need not create a new Government entitlement program.

The solution to coal industry health care, if we work at it, can create precedents for labor/management cooperation in controlling the costs of health care while improving quality and access. But it need not create precedents for financing in other parts of the economy, if it is appropriately tailored to the unique characteristics of this industry.

The recommendations of the Coal Commission necessarily and appropriately are not a detailed plan for solving this problem. They are rather a conceptual framework and a set of principles within

which one can think about the problem. It was the view of the Commission and it is my view today that the principles are the right place to start. The best way to start is with the analytical framework and the principles. All of the people—the United Mine Workers of America, other representatives of employees and retirees, members of the Bituminous Coal Operations Association, other people who are signatory to the basic coal agreement or who apply it, nonunion coal companies, past signatories—everyone should participate in working out an equitable solution to this important problem with its important human dimension.

Thank you, Mr. Chairman, for the opportunity to appear.

Senator ROCKEFELLER. Thank you very much, Mr. Perritt.

[The prepared statement of Mr. Perritt appears in the appendix.]

Senator ROCKEFELLER. Let me just ask to my colleagues if they have any questions that they would like to address to Mr. Perritt.

Senator Symms?

Senator SYMMS. Mr. Chairman, thank you.

Mr. Perritt, I understand that the difference between whether one company is awarded a coal contract or the other can get down to be as little as 25 cents a ton. Is that correct?

Mr. PERRITT. That is consistent with my understanding, Senator.

Senator SYMMS. Well, is it true that what BCOA is advocating would reduce this competition and impose financial obligation among the nonsignatory companies in order to help provide a competitive advantage for their own members or is that an overstatement?

Mr. PERRITT. Well, Senator, I do not know the motives of different people. Certainly there is a competitive effect in the product market of financing the health care payments. But the problem is that we have a group of retirees whom the courts have said were promised life time benefits and we have a financing structure for paying those benefits that is evaporating under the program.

As this financing structure diminishes and self-destructs, the pressures for the financing become more and more intense on the smaller and smaller number of companies. That certainly must have an impact on their pricing. It must create, I would think it necessarily creates, a competitive disadvantage for those people who are paying for benefits for someone else's retirees.

I have not heard anything that suggests to me that it is equitable for the diminishing number of people who continue to contribute, to pay for somebody else's retirees any more than it is equitable to have other people pay for their own retirees or for yet another set of people to pay a smaller amount for industry wide orphans.

Senator SYMMS. So you say you have not heard of that?

Mr. PERRITT. The argument to me is not compelling that it is equitable to impose the competitive disadvantage on the people who remain contributors.

Senator SYMMS. So is there an alternative that you would recommend?

Mr. PERRITT. Well, yes, Senator. The alternative that I think is fair is to identify the retirees as best as can be done with their former employers, impose financing obligations legally on those former employers and then, as to the residual group, the true orphans, impose that financing responsibility industry wide.

Senator SYMMS. Thank you, Mr. Chairman.

Thank you very much.

Mr. PERRITT. Thank you, Senator.

Senator ROCKEFELLER. Senator Grassley?

Senator GRASSLEY. I would like to describe a situation here and then ask you to comment.

The companies opposed to the reach back recommendations of the Coal Commission argue that the current deficit in the benefit funds was created by changes in the contribution levels of the Bituminous Coal Operators Association as part of the collective bargaining agreement with the UMW reached in 1988. More specifically, they state that the Bituminous Coal Association agreed to reduce the levels of the contributions to the funds and also eliminated contributions to the overfunded 1950 pension plan rather than shifting the excess to benefit plans.

They also argue that just as recently as February of this year 135 million of the 235 million in surplus pension funds was obligated for death benefits. They claim that not only did this deprive the health care fund of this money, but that it also relieved the current signatories of their obligation to themselves to pay these death benefits.

In view of the financial difficulties the association signatories say that they are having paying for these retiree health benefits, these transactions seem a bit strange. Now is that what has happened and can you comment on that?

Mr. PERRITT. Senator, I think the start in responding is to say that the Coal Commission did not concentrate on trying to look backward and fix blame. Rather, the Coal Commission sought within the time that was available to it to find out what the facts were in terms of benefit obligations and present and projected contribution levels and see what the range of solutions were to any problems that might be revealed.

It certainly is true that the contribution levels are not, and have not been for some time, sufficient fully to fund the stream of benefits that the courts have said are required. I am unable to attribute any particular motive to any party to the collective bargaining agreement.

As to the surplus in the pension fund, that was an important issue for the Commission. One of the things that concerned the Commission was, first of all, our understanding of the present state of law under the Employee Retirement Income Security Act. Under that Act it is not within the power of any of the participants or signatories to transfer a pension surplus to a benefit fund. That is one of the reasons for the recommendation that a transfer be authorized.

But further, there was the concern that the claim of the health care funds on the pension surplus was not necessarily beyond contravention. There were some claims, moral claims if you will, to other uses of that pension surplus. I think that was commented on in the Commission's report.

So I am unable to respond directly to your question: First of all, I do not know in any detail the facts of what happened in February of this year. Secondly, I would not be able to subscribe to the view

that all of the pension surplus, in some sense, belonged to the health care funds.

Senator GRASSLEY. Last question, Mr. Chairman.

Could you, Mr. Perritt, explain the evergreen clause of the wage agreement of the Bituminous Coal Association and explain its place in this issue? What is the status of the clause I guess would be my primary concern, whether it has been followed and if not, maybe then why not.

Mr. PERRITT. Senator, I can answer your question in a general way. But the evergreen clause and the guarantee clause are very complicated as legal matters. The more detail I get into the greater the likelihood I would get it wrong in some important way.

As the Commission received information about these two clauses—the evergreen and the guarantee clause—and as the Commission received information about the litigation, the guarantee clause obligated certain signatories to the basic coal agreement to make up deficits in the funding. The evergreen clause obligated a different group of past signatories to the basic coal agreement or people who applied the basic coal agreement through so-called "me-too" clauses. The evergreen clause obligated them to continue to contribute even though a collective bargaining agreement which these past signatories had signed had expired.

Both of those clauses are in litigation in several different courts. None of the lawsuits have been finally resolved. There have been a variety of interlocutory orders issued. The perception of the Commission (one that I share) is that these lawsuits could be resolved in a way that would significantly increase the flow of contributions into the funds.

By the same token, they could be resolved in a way that would focus even more sharply the financing responsibility on people who happen at any point in time to be signatories to a collective agreement.

Senator GRASSLEY. It is the Commission's view, though, that this does obligate payment into the funds by the signatories?

Mr. PERRITT. Well, Senator, I do not think I fairly can say that the Commission took a position on the pending litigation. We did not do that. I think it would be inappropriate for me to do that today.

Senator GRASSLEY. But is that not very basic to the problems we are dealing with? I mean if the payment is being made then the problem is less serious.

Mr. PERRITT. Well I cannot disagree with that, Senator. If the courts decide that people are obligated to make contributions that they are not now making, the problem is less serious.

Senator SYMMS. Mr. Chairman, could I ask a question right along with what Senator Grassley did there?

Senator ROCKEFELLER. Go ahead.

Senator SYMMS. I know this is kind of complicated and I do not want to belabor the point. Maybe it is just complicated to me and not everyone else. But you talk about this reach back and with relation to Senator Grassley's question, did what I interpret you to say mean if you go back to find these employees, former retirees now, and match them up with their former employers or the signatories or whoever it was they worked for that there is not an estab-

lished legal basis now for doing that or are you just saying it is a moral thing?

Do you get the drift of my question?

Mr. PERRITT. Well, at least until this litigation on the evergreen and guarantee clauses is resolved, particularly on the evergreen clauses, I think there is not a clear legal basis for reaching all of the people that arguably might have some financing obligation.

The other point that I wanted to make, Senator, is that even if one were to write new legislation imposing an obligation to contribute in an effort to stabilize this health care system, it is not at all a trivial matter to decide who today has an obligation with respect to people who worked in the industry sometime in the past.

Because, based on everything that the Commission learned about the practices in the industry, this is an industry in which it is common to have a variety of business association forms with respect to operations to a particular physical mine, and for those forms of business association to change over time. This is so whether it be joint ventures, whether it be subsidiaries that are here today and gone tomorrow, whether it be subsidiaries that are thinly capitalized and turn out to be undercapitalized and so they are gone.

Then there are a variety of arguments about whether people that had a partnership stake or owned shares in one of these joint ventures or subsidiaries have an obligation. That is an extremely difficult matter to sort out. That is what led what I believe to have been a majority of the members of the Commission, including me, to conclude that the most straightforward way to deal with this problem is first, to reduce the orphan financing responsibility as small as you could by associating retirees as much as you could with operators who are still around and have the capacity to contribute. Once you do that you have a residual orphan population. You just spread that financing responsibility as broadly as it could be spread through the industry, which would have the effect of neutralizing any competitive adversity resulting from paying for these orphans' benefits.

Senator ROCKEFELLER. Senator Durenberger?

Senator DURENBERGER. Mr. Chairman, I have a statement that I would appreciate being made a part of the record.

Senator ROCKEFELLER. It will be done.

Senator DURENBERGER. I will make a brief oral statement. I do not have any coal mines in my State, to the best of my knowledge, so Mr. Chairman, while you come at this issue at two levels, I come at it at one. I think the closest I have gotten to coal mines is marrying a girl from St. Clairsville, Ohio many, many years ago. That gets pretty close.

While you are dealing with this issue at the level of who pays, which is what a lot of these questions are, I am still dealing at the level of who receives, how much and so forth. The thing which we have mined in Minnesota for a substantial period of time is iron. I will never forget the night about 5 or 6 years ago that I went out and faced a capacity crowd at the American Legion hall in Silver Bay after Reserve Mining and its two owners declared bankruptcy. Every family was crowded into that place.

I remember what bothered me most about it. It struck me that the active employees of the mining companies would not budge in any way from first-dollar coverage, fully paid health benefits in order to help save the retirees and the retirees suffered for it. I will never forget that.

What I would like to say to you is this is not just a mining problem. It is a problem commonly experienced by a minority of employees in this country. I believe it is probably be the most serious health care financing problem that we face.

You just told me things about Harry Truman and John L. Lewis, which if I knew before I had forgotten it. But the problem is bigger than that. It is a whole bunch of promises made to a whole lot of people back in the 1940s and 1950s when the cost consequences of those problems were totally unknown. Now that we see them they are so much bigger than we think they ought to be.

You have the problem of who pays in this particular case and I will do my best to help you resolve that. But the larger issue for some of the basic industries all across America is are we or are we not going to make some adjustments in those 40 or 50 year old promises so that the people that got promised can have and their children and their grandchild can also have.

That is really a major challenge that faces us. Are we going to have the explicit promise or are you going to have the basic promise, but maybe adjust it in some way. That is a big problem that will bring a lot of us without coal mines and without coal miners to the same table with the Chairman of this Subcommittee to once and for all try to resolve this problem.

Mr. PERRITT. Senator Durenberger, could I respond briefly to that?

Senator DURENBERGER. Please.

Mr. PERRITT. The Commission recognized immediately after it was established that there are two halves to the problem in the industry. There is the financing question, but there is also the other half, which has to do with the level of benefits and how the benefits are delivered.

We worked as hard, maybe harder, on that side as on the financing side in terms of trying to forge consensus within the Commission. The reason that I say to you today that this is a special opportunity, the frame work presented by the Commission is a special opportunity, is that we forged some new ground on the benefits side.

The cost containment and managed care recommendations that are summarized at page 69 of the Commission's report have not received nearly enough notice in what debate there has been about the Commission report. This is an instance in which there has been substantial creativity and flexibility shown with respect to the benefit side. This kind of creativity and flexibility has been hard to come by when we talk about, as you say, 40 year old plans and institutional responsibilities and trade unions.

I would submit, Senator, that almost every major ingredient that health care reformers talk about as being important are in that part of the Commission's recommendations. They do represent, so far as I know, uniform consensus across the Commission as to what

out to be done on the benefit side. That is why this is a special opportunity to move forward with that.

Senator ROCKEFELLER. Mr. Perritt, when the Coal Commission was established Secretary Elizabeth Dole said, "During the negotiations of the Pittston UMWA labor dispute, it became clear to all parties involved that the issue of health care benefits for retirees affects the entire industry." She went on to say, "Although the Pittston dispute was successfully negotiated, a comprehensive industry-wide solution is desperately needed."

Would you agree with and explain that?

Mr. PERRITT. Senator, I absolutely agree with that characterization. I think what Secretary Dole was talking about was the fact that the origins of the problem and the scope of the claim to benefits is substantially broader than the remaining people who are making contributions.

We have a structure, a financing structure, that is imploding. The Pittston strike was a symptom of that, of the kind of pressure that increasingly is being felt by the people who are still in and making these payments on behalf of people that never worked for them.

That is why one has to have a solution that is broader than the membership of the collective bargaining group at any particular point in time.

Senator ROCKEFELLER. Which is my next question. Yourself, you are a specialist in labor law. I do not really know anybody, I think, in this country who has done more in terms of collective bargaining negotiations than Bill Usery. When he indicates in the Coal Commission report that this problem cannot be solved by collective bargaining, could you explain what he and you mean by that?

Mr. PERRITT. Yes, Senator. First, I would like to reemphasize my pleasure and the feeling of privilege and honor to have been associated with Bill Usery on this occasion as well as on some earlier occasions. I think he really is a great national resource in terms of his knowledge and skills on the institutions of collective bargaining.

The reason this problem cannot be solved through collective bargaining is that collective bargaining depends on contracts to impose obligations. The obligations cannot be any broader than the contract. So if we start right now with 30 percent—well, I do not know about right now, but when the Commission concluded its business—roughly 30 percent of coal production in the country was covered by the collective bargaining agreements—30 percent.

So for starters you only have contractual power with respect to 30 percent of the industry and you cannot reach beyond where the contract reaches. That is point number one.

Point number two is, unions, under the National Labor Relations Act, do not have representation rights with respect to retiree health care. As I understand labor law, it is not permissible for a union to make it a mandatory subject of bargaining to insist on retiree health care in all circumstances. That is an important limitation.

Third, the scope of economic conflict is circumscribed for unions.

So almost everywhere you look, labor law's capacity to reach broadly with respect to what is a broad problem is absent.

Senator ROCKEFELLER. I thank you for that. There are sort of a couple of questions sort of wrapped into one. We are going to hear fairly shortly the viewpoint of some of the former union companies that no longer have an obligation, that they feel they do not have any obligation to the health funds. Why do you disagree? What did the Coal Commission mean when it said that the "dumping" of retirees on the fund is "intolerable"? And why did the Coal Commission say that Congress should codify the evergreen clause?

Mr. PERRITT. I do not necessarily disagree with the proposition that, if you look at the contractual obligations of a particular company, it may be legal in that narrow sense for the company to stop contributing or to cancel the plan or otherwise not undertake any further responsibility with respect to health care. That is permissible under ERISA. It is permissible under Section 301 of the Labor Management Relations Act and under the National Labor Relations Act.

The difficulty is you cannot fix the problem if you do not go any further than that. Because if that is your bottom line then everybody can walk away from this problem and then we are left with 134,000 retirees that are entitled to health care as the courts have said but we do not have anybody to pay for it.

So it is really a practical problem that takes you beyond the narrow characterization of obligations under a particular collective bargaining agreement or some power that is left alive under ERISA.

Now with respect to codification of the evergreen clause I think what was meant by that was not that one would take the particular language of some version of a collective bargaining agreement and just put it in a statute and enact the statute. Rather, the key concept is that people have a continued obligation to finance the health care benefits that are vested in that company's retirees. That concept needs to be codified if one is going to solve this problem.

Senator ROCKEFELLER. And as for the dumping of retirees on the funds as being intolerable?

Mr. PERRITT. The Commission regularly heard evidence of companies that had in some knowing way walked away from further financing, further contributions on behalf of those companies own retirees. The term that was regularly used for that was "dumping."

By calling that intolerable I think the Commission meant to say that that is not a practice that can be tolerated and still solve the problem.

Senator ROCKEFELLER. A couple more questions wrapped into one. What would be the consequences of nonaction by Congress and the White House if we together do not resolve this problem? You said, Dr. Perritt, that in your remarks in the Coal Commission Report that it is conceivable that without action there could be what you would call a cataclysmic breakup of multi-employer bargaining in 1992.

Can you explain what you mean by that? And also, when Elizabeth Dole created the Commission she said, "A long-term resolution is needed to avoid a potentially serious crisis in the coal industry." Would you agree with her on that?

Mr. PERRITT. Senator, I would agree with her characterization. What I meant by cataclysmic break up is that the pressures on companies who still contribute and who are still part of the collective bargaining structure is stronger and stronger to withdraw, if they can. This is so because the obligation to contribute imposes a competitive disadvantage on those companies.

So in a bottom line economic sense it is at least in the short run interest of all of the contributors to get out of it if they can. As people get out, that intensifies the pressure all the more on the people that stay in. So the result of that process is that you completely destroy the multi-employer bargaining structure and in the process you destroy any prospect, private or governmentally imposed, for financing these health care benefits.

Now that is cataclysmic in two senses. It is cataclysmic because it leaves these more than 100,000 retirees who have been promised health care benefits without any way to pay for those promised benefits. In my view that is a cataclysm.

Secondly, the likelihood is great that it would produce economic conflict, because this particular issue has produced economic conflict in the coal fields in the past. And the experience with the conflict in the coal fields has been that it is very difficult to control. It is difficult for the Union to control. It is difficult for public authorities to control.

It is far better to try to solve problems like this when you still have a starting place institutionally in terms of some structures that you can work with, than to wait until all that has fallen away.

It is also far better to solve the problem when you can consider solutions, when you can get people involved, all the different parties involved, than when you are trying to solve it in the panic of trying to put some sort of strike to rest.

Senator ROCKEFELLER. Let me just say to Senator Durenberger and to others in the hearing room that ordinarily we move along fairly quickly in Finance Committee hearings. This is not such a hearing and we will take our time.

You also say in the Commission report that the courts have undermined the present private arrangements. What do you mean by that? How do you explain it? What is the impact of it? Does all this indicate that we really cannot rely on the courts to resolve this problem?

Mr. PERRITT. Senator, the comment that the courts have undermined the present arrangement is a characterization of a practical conclusion. No one means to suggest that a particular Judge has not done his or her job properly in deciding a case on its merits.

The problem is this: You have one set of court decisions that say that these retirees are entitled to life time benefits. So you have a legal obligation that the benefits have to flow out of the system. You have another set of court decisions that seem to say that not everyone that was thought to have an obligation to contribute is obligated to contribute.

So you have one set that says you have to pay a bunch of money out, but another set of decisions that says you cannot get money in. That kind of asymmetry in the benefits and the contributions creates the problem.

In our view, you cannot solve it through piecemeal litigation and court decisions. When you do it that way the parties and the Judge are obligated to look at individual discrete collective bargaining agreements without concerning themselves particularly with the big picture and the fact that there is this large number of retirees, including a substantial number of orphans who cannot be associated with a particular company.

It is not within the institutional capacity of litigants and Judges to solve this kind of broad industry-wide problem.

Senator ROCKEFELLER. Thank you, sir.

You also make several points about why an industry-wide program is needed. Let me ask you a few questions about that. What do you mean in your particular Commission statement that "It is difficult to know whose hands are clean"? What are your arguments about the competitive problems in a more limited program?

Critics of the industry wide approach say that the Commission proposal seeks to shift burdens to nonunion companies and is therefore anti-competitive. What is your response to these?

Mr. PERRITT. Well, it seems to me that if you have a limited contribution obligation industry imposed wide that that prima facie levels the playing field as opposed to being anti-competitive. It seems to me that there is also a competitive effect to forcing—never mind forcing—in allowing a situation to continue in which a smaller and smaller number of companies have responsibility to finance benefits for retirees that never worked for them.

The problem as it presents itself to us is one of how we alleviate the competitive pressures that result from this diminishing contribution base and spread the burden more broadly with respect to people who by definition cannot be associated with any present coal operator.

The difficulty in creating a solution only through what came to be called colloquially the "reach back approach" is that you have to define the boundary between people that had some involvement and people that did not. That is very hard to do.

You can pick some date. You can say that as of 1988 or 1978 everybody that was a signatory at that point in time is going to now and forever hereafter be the contributors, but there is an arbitrariness associated with picking such a date. And there are arguments that some other date would be better.

Once you pick a date there also are abundant arguments about whether someone is a member of that class or not. Suppose you have a joint venture with two partners—and most of the arrangements are much more complicated than that—the joint venture very easily could be the legal employing entity and have been the signatory to the collective agreement, not the partners but the joint venture as an entity.

The joint venture is gone. Did the partners have an obligation? Well, I expect that the partners would marshall some arguments that they ought not to be obligated under a reach back arrangement. The more complicated the capital structures get, the greater the likelihood that there would be unpredictable and protracted and expensive litigation over every effort to get somebody else to contribute. It is just not clear to me and it was not clear to a majority of the Commission that that is an appropriate way to go

about stabilizing this financing base. It would be much better to have a simpler approach to a problem that by definition cannot be associated with particular operators. It is simpler and better just to spread the pain thinly and widely.

Senator ROCKEFELLER. Let me try and get through a couple questions. I will ask quickly and you try to answer as quickly as you can.

Mr. PERRITT. I will, Senator.

Senator ROCKEFELLER. I am trying to build a record here.

Why cannot health care needs be met through single employer plans? Why is it necessary to have a multi-employer or a centralized structure?

Mr. PERRITT. In the coal industry there is considerable volatility in who the operators are. Single employer plans by definition go away when the employing entity goes out of business. So if you try to do it through single employer plans you have a situation in which there are going to be people who are deprived of their promised benefits.

So you have multi-employer benefit plans as a kind of insurance scheme against that. On the benefit side it is desirable to have a strong, central entity because that is the way you make managed care and cost containment work. You have enough bargaining power with the health care providers.

Senator ROCKEFELLER. All right.

Dr. Perritt, thank you.

Mr. PERRITT. Thank you, Senator.

Senator ROCKEFELLER. I really appreciate your work on the Commission.

Mr. PERRITT. Thank you for the opportunity, Senator.

Senator ROCKEFELLER. Thank you very much.

Our next panel will consist of Mr. Richard Holsten, who is a member of the Coal Commission, former president and chairman of the Pittsburgh and Midway Coal Mining Co., Mr. Scott Kiscaden, who is vice president of the Quaker Coal Co. from Kentucky, who is accompanied by Seth Schwartz; and Mr. Herbert R. Northrup, professor emeritus, The Wharton School, University of Pennsylvania, who is accompanied by Willis Goldsmith.

Gentlemen, I am delighted that you are here. Mr. Holsten, we will begin with you, sir.

STATEMENT OF RICHARD M. HOLSTEN, MEMBER, COAL COMMISSION, FORMER PRESIDENT AND CHAIRMAN, THE PITTSBURG & MIDWAY COAL MINING CO., ENGLEWOOD, CO

Mr. HOLSTEN. Senator Rockefeller, gentlemen.

First, let me express my appreciation for the opportunity to be with you and to present my views on the critical issue of retiree health care. I think you will see as I go along that while I have agreement with many, many of the points that Mr. Perritt made, there are also some significant disagreements that I will voice from his opinions.

I am Dick Holsten and as a career coal man now retired, and as one of the two coal operators on the Dole Commission, I am acutely aware of the serious financial bind that the funds are in.

Unfortunately, the simple solution proposed by Mr. Perritt of merely taxing the rest of the industry is not only grossly inequitable but worse yet it is woefully deficient in that it merely attempts to ease the painful affects of the Fund's problems without addressing in any meaningful fashion their basic underlying causes. To me this is the proverbial bandaid treatment when radical surgery is indicated.

As discussed in the Dole Commission's report the problems being experienced by the funds are twofold. First is the continuing escalation of retiree health care costs, and secondly, the declining contribution base from signatory operators to fund their contractual obligations to provide life time health care.

Together these have fed on each other to create a financial spiral of geometric proportion. Yet Mr. Perrit's proposal, while paying lip service to the need for cost containment measures, makes no real attempt to eliminate the deficits but merely transfers the funding shortfall to others via reach back and an industry wide tax.

The net result of this would be a gross market subsidy of UMWA coal by its direct competitors and this would be highly unsound public policy. Moreover, the deficits are not the problem, merely the result. The problem is the combination of excessive cost and underfunding and any meaningful long-term solution must include basic cost reduction commitments by the principals together with an actuarially sound funding base.

The Fund's problems have evolved over time through the normal collective bargaining process. Over the years this has created, as you have correctly pointed out, both an excellent retiree health care system but also an economic albatross. The solution lies in that same process making prudent and necessary corrections to the National Agreement.

Items for such collective bargaining could include better cost controls and cost containment measures, the adoption of cost sharing, prudent revisions in benefit coverage, a re-definition and re-enrollment of beneficiaries and any and all other means of reducing the cost of providing the guaranteed health care.

At the same time the two parties must also agree upon a realistic funding base which is a feature that is notably absent in the present contract and is a major contributor to the funds deficits.

At the same time there is a legitimate role for Congress in supporting these joint efforts in areas beyond the scope of normal collective bargaining. Legislation should be enacted to allow the use of the surplus pension assets, as earlier mentioned, to reduce, if no longer fully eliminate, the health care deficits.

There might also be as a compromise some form of very limited reassignment of certain beneficiaries now in the Funds back to their last employer. After such reassignment those still remaining in the Funds would be the true orphans and their health care should remain as it always has been, the financial responsibility of those signatory operators who are contractually obligated to provide life time health care to the retirees.

This is a legal issue as much as a moral one. However, given the elimination of the fund's deficits through asset transfer, given the cost reductions that are available through the collective bargaining process, given the limited reassignment of certain beneficiaries

along with the aging of the beneficiary population, and the prospective stabilization of the support base already contained in the 1988 National Agreement, the cost to a signatory operator for orphan health care, given all these potentials, should and could be reduced to manageable levels.

In conclusion, Mr. Chairman, failure of the two principals to correct the economic distress created over the years by their National Agreements, looking instead to Congress for a bailout, is a denial of their fundamental responsibilities. This is neither in their own best interests nor that of the coal industry as a whole, nor that of the public at large.

The problems being experienced today by the two Funds are correctable by the parties who created them and therein lies the long-term solution. Congress's role should be to encourage this, to send them back to the bargaining table, and then to help out in the areas of asset transfer and possibly some limited reassignment of funding responsibilities.

Again, I want to express my appreciation for the opportunity to be with you, and to thank you on behalf of myself and my fellow Commissioners for your continuing interest in trying to resolve the very serious financial bind in which the two funds have been placed.

Thank you, sir.

Senator ROCKEFELLER. Thank you, Mr. Holsten.

[The prepared statement of Mr. Holsten appears in the appendix.]

Senator ROCKEFELLER. Although this is not usually the way it works on the committee, usually when it said somebody is accompanied by, the person who is accompanying does not get to talk, but I understand Seth Schwartz, that you would like to and I invite you to, testifying on behalf of the Private Benefits Alliance. So if you can take the microphone.

Mr. KISCADEN. Do you want to change the order, because I am with Private Benefits as well?

Senator ROCKEFELLER. Then we have a misprint here. Then you should go ahead.

Mr. KISCADEN. All right.

STATEMENT OF SCOTT KISCADEN, VICE PRESIDENT, QUAKER COAL CO., PRESTONSBURG, KY, ACCOMPANIED BY SETH SCHWARTZ

Mr. Kiscaden. My name is Scott Kiscaden. I represent the Private Benefits Alliance. As we have just figured out Seth is here to help represent me. The Private Benefits Alliance is composed of approximately 150 companies from all segments of the coal industry. Its individual members have never been signatory to UMWA, BCOA agreements, although several members do have collective bargaining agreements with other unions.

The issue before this committee is not whether these UMWA retirees will lose their benefits but who will pay for them. I address today the ill conceived suggestion of certain commissioners that Congress should tax companies not contractually obligated to pay

for UMWA retiree health care in order to relieve the BCOA from its obligations.

The PBA (Private Benefits Alliance) opposes imposition of any industry wide tax. That is the responsibility of the signatory companies and none other, and is a matter to be resolved through private collective bargaining.

Actually, the large and profitable companies which make up the BCOA can easily pay the amount necessary to fund these plans. Still, those companies and the UMWA are petitioning Congress to pass legislation which transfers to their competitors the cost of benefits that they alone promised in collective bargaining.

The proponents say the parties can no longer resolve these problems involving UMW plans in collective bargaining. They ignore the fact that for over 40 years they have collectively bargained similar and more difficult situations. In fact, they have actually restructured these plans on several occasions.

In 1984 and 1988 national bargaining, the BCOA declined to confront the potentially sensitive issue of the escalating health care costs, agreeing to continue virtually unchanged perhaps the most expensive retiree health care plan in American. The fact that these parties would like to avoid bargaining about this issue in 1993 hardly justifies taxing the balance of the industry.

Today I comment on only two of the many flaws in the Coal Commission report. First, it assumes that there is a financial crisis with respect to providing UMWA retiree health care where no crisis exists. The report simply ignores the fact that signatory companies have contractually agreed to guarantee benefits until at least 1993.

Second, it fails to take into account the fact that those companies which are legally obligated to bargain with the UMWA about funding UMWA plans after 1993 can afford to continue these benefits. Mr. Schwartz will go into the economic data to support these facts.

I also want to emphasize that the report does not recommend a tax. In fact, several of the Commissioners on the Commission did not support this idea. Moreover, the Department of Labor has never endorsed the idea of a tax. In fact, shortly after receiving the report the Secretary of Labor said that a case for a tax had not been made.

No matter how you coat it, the BCOA is hiding behind the retirees for a self-serving profit motive. Their motive is to push their costs off onto their competitors and thereby enhance their competitive position. Legislation, which would short-circuit the collective bargaining process and is calculated to benefit one group in an industry at the expense of all others is not legislation in the public interest.

I will turn it over to Seth now.

[The prepared statement of Mr. Kiscaden appears in the appendix.]

Senator ROCKEFELLER. And you represent also the same organization, do you not, Mr. Schwartz?

Mr. SCHWARTZ. Yes, sir.

Senator ROCKEFELLER. Okay. You may proceed.

STATEMENT OF SETH SCHWARTZ, ENERGY VENTURES ANALYSIS, ARLINGTON, VA ON BEHALF OF THE PRIVATE BENEFITS ALLIANCE

Mr. SCHWARTZ. Mr. Chairman, my name is Seth Schwartz. I am a coal industry analyst and I am here to testify about the economic issues that form the basis of the Coal Commission report.

Senator ROCKEFELLER. Could you pull the microphone a little bit closer? Thank you.

Mr. SCHWARTZ. You have heard testimony that the benefit funds face a financial crisis. The economic facts tell a different story. The benefit funds were financially healthy from their inception until 1988. What went wrong in 1988?

The funding problem in 1988 was caused by the new National Labor Agreement, wherein the BCOA companies and the union changed the funding mechanism from tons produced to hours worked and also set the new contribution rates too low to adequately fund the costs.

This created an immediate funding deficit. The BCOA companies then refused to increase contribution rates to the necessary level until ordered to do so by the courts. The existing deficit is only due to the inadequate contribution rates that created a two-year funding shortfall.

You have heard testimony that the funding problem is the result of declining union coal production with many companies ceasing signatory production. The facts tell a different story. Union coal production in 1990 was 325 million tons, its highest level since 1984. .

You have also heard testimony that the BCOA companies cannot afford to make the payments required through 1993 by their contractual obligation. The facts tell a different story.

In the 1988 contract the BCOA companies reduced their contributions to the benefit and pension funds by about $200 million per year or about $1 billion over the five year life of the contract. This amount dwarfs the $90 million accumulated deficit in the benefit funds. The BCOA companies are financially capable of making the payments needed to fund the benefit plans.

The three companies on the BCOA negotiating committee that wrote the 1988 UMWA contract are the three largest U.S. coal companies—Peabody Coal, Consolidation Coal, and AMAX Coal. Together, these three companies alone had 1989 sales of $4.2 billion and pre-tax profit of $568 million. The profits of these three companies alone were more than ten times the annual funding shortfall in 1989.

Mr. Chairman, the Coal Commission report stated that the signatory companies are unwilling to pay the cost of the funds, not that they are unable to.

Thank you.

Senator ROCKEFELLER. Let me just interrupt for a second. Your solution is that the three can afford to pay for it, therefore they should pay for it and that is the way you would resolve the problems of 132,000?

Mr. SCHWARTZ. Not just the three, Mr. Chairman. What I am saying is that the only reason there is a deficit is all of the BCOA

companies led by the three largest companies wrote a contract that created the deficit that had not existed prior to that date. They have the financial capability to adequately fund the plans. And, in fact, in the last contract year did adequately fund the plans since the court ordered them to increase contributions.

I think the evidence speaks for itself. The BCOA companies have funded the plans and can fund the plans.

Senator ROCKEFELLER. In your judgment then they should handle the problem entirely themselves and the folks that you represent have no responsibility whatsoever?

Mr. SCHWARTZ. I hesitate about saying the folks I represent. I am hired by them to do an economic analysis, not to present any type of legislative position. But I do believe the PBA position is that no legislation is needed because the companies, in fact, can adequately fund the funds or change the funds in collective bargaining if they choose to. But I do not personally have a position regarding that.

Senator ROCKEFELLER. If we could go then to Mr. Northrup.

STATEMENT OF HERBERT R. NORTHRUP, PROFESSOR EMERITUS, THE WHARTON SCHOOL, UNIVERSITY OF PENNSYLVANIA, PHILADELPHIA, PA, ACCOMPANIED BY WILLIS GOLDSMITH

Mr. NORTHRUP. Thank you, Mr. Chairman and Senator Symms. I am Herbert R. Northrup, Professor Emeritus at the Wharton School, University of Pennsylvania. Before my retirement in 1988 I was a professor there for 27 years and also director, Industrial Research Unit, and chairman of Labor Relations Council. I did my undergraduate work at Duke and my graduate work at Harvard. I have been practicing, administering and studying in collective bargaining, equal employment, and related fields for about 50 years.

I appear here on behalf of the Collective Bargaining Alliance, the purpose and membership of which is fully explained in my written testimony.

Joining me is Willis Goldsmith, a partner specializing in labor law with the firm, Jones, Day, Reavis & Pogue.

Let me emphasize, Mr. Chairman, at the outset that the quarrel of the Alliance companies is not with the retirees nor for the most part with the UMW. Rather the concern is with the three largest coal companies which dominate the BCOA, as they have for many years, and particularly the two largest—Peabody and Consolidation—which are heavily foreign owned.

These companies are attempting to pass their costs for health and pension benefits to their competitors after putting through a change in the method of calculating payments to the trust that substantially reduce the costs to the largest companies and increase the costs for the smaller ones. Such conduct is a basic cause of the decline in membership in the BCOA from over 150 members to about 15 today.

Also noteworthy is the fact that each of the three large companies have major nonunion subsidiaries while most Alliance members who remain in the coal business bargain on an individual basis with the UMW.

The rationale for the impending bill, the draft of which I would like to add to my submission, is an alleged financial crisis in the Trusts.

If such a crisis exists it is primarily because the three largest BCOA member companies greatly reduced their payments to the trusts by changing the basis of contributions from tons produced to hours worked. I am very surprised that no one representing the Trusts is here to provide a definitive statement as to whether in fact a crisis exists, if so how big it is, and why it exists.

The proposed tax and "reachback" funding schemes involve much more than special legislation for several large companies in the mining industry. Such a law would be a unwise precedent for every industry and company which has a rich benefit plan to ask Congress to transfer the costs to the tax roles or to its competitors. It would mark a radical change in national labor policy from free collective bargaining to massive government intervention.

By leaving benefit plans open-ended, it would invite considerable inflationary pressures that would hurt the industry's competitive position, both nationally and internationally, resulting in loss of jobs.

I would make the following additional points:

(1) As noted, the proposal before you marks a radical departure from national labor policy and the principles of the National Labor Relations Act, by a substitution of government intervention for free collective bargaining. The legislation proposed would impose conditions on employers and employees in excess of what they agreed and beyond the terms of their agreements. It also would nullify collective bargaining agreements now in effect.

(2) The reachback scheme would shift labor costs of two large European conglomerates, who could well afford to meet their obligations, from themselves to their smaller, domestically-owned competitors.

(3) The proposal would leave open-ended one of the richest health and welfare plans in the country and invite further enrichment since, despite a veneer of independence, the new structure would be controlled by BCOA and the UMW.

(4) There may well not be a crisis. BCOA companies, particularly the largest three, have the money to pay for any shortfalls which are the result of their own policies and bargaining. BCOA companies guaranteed in bargaining to pay the retirees' benefits for the life of the agreement.

(5) To say that this issue cannot be solved by collective bargaining is astonishing, especially coming from a former Secretary of Labor. If there is a shortfall it was caused by bad bargaining which reduced the contributions of the largest companies. The parties have a duty to work it out. If there is a strike we must bear in mind that only one-third of coal production is represented by BCOA, and therefore, it will not seriously harm the national economy.

(6) Besides being a dangerous precedent for labor relations, this proposed legislation would be an equally undesirable one for the current Congressional health care debate by endorsing one of the most extravagant and expensive health care programs in industry

and by mandating its industry-wide coverage regardless of the wishes of the majority in the industry.

(7) One must therefore conclude that a proposal to bail out several of the largest coal companies at the expense of the rest of the industry is an unfair, anti-competitive and very unwise and expensive precedent for public policy. The issue is not whether UMW retirees should receive health care benefits. They should receive everything to which they are entitled by the collective bargaining agreement.

It is unconscionable that the BCOA and others are creating a fear atmosphere on this subject. Retirees should be assured that their benefits can be provided pursuant to the existing BCOA-UMWA agreement now and in the future given the will of these parties to reach a bargained result.

Thank you, Mr. Chairman. I now ask that my colleague say just a few words, Mr. Goldsmith.

Senator ROCKEFELLER. All right.

[The prepared statement of Mr. Northrup appears in the appendix.]

STATEMENT OF WILLIS GOLDSMITH OF JONES, DAY, REAVIS & POGUE, WASHINGTON, DC, ON BEHALF OF THE COLLECTIVE BARGAINING ALLIANCE

Mr. GOLDSMITH. Thank you, Mr. Chairman, Senator Symms. My name is Willis Goldsmith. I am a partner at Jones, Day, Reavis & Pogue in Washington. I have been practicing in the labor law field for 20 years, representing management.

Senator ROCKEFELLER. Had you requested to testify? We have no written testimony that I am aware of from you.

Mr. GOLDSMITH. Yes. No written statement was presented but there had been a request and I had been granted one minute of Dr. Northrup's time.

Senator ROCKEFELLER. Okay. Then please proceed.

Mr. GOLDSMITH. Thank you.

My first involvement with litigation over the question of who pays for retiree benefits for mine workers came about in 1981. So this is not a new problem. This is a problem that the parties to the National Bituminous Coal Wage Agreements have known about for many, many years and as we can see have done absolutely nothing to correct.

I would like to take just a moment to outline for the Subcommittee the issues in the current guarantee clause and evergreen litigation. Doing so will, I believe, highlight not only the BCOA's true motivation in supporting the sort of legislation proposed by the Coal Commission, but also underscore the fact that such legislation is totally unnecessary.

The guarantee clause that has been referred to by many here this afternoon has appeared in every National Bituminous Coal Wage Agreement since 1978 and is one of the very rare clauses in any collective bargaining agreement that in my judgment is completely free of any ambiguity.

What it says, and I am quoting now the relevant portions, is that "The employers hereby agree to fully guarantee the pension and

health benefits provided by the 1950 pension fund, the 1950 benefit fund, the 1974 pension fund, the 1974 benefit fund, and all other benefit plans described in the agreement."

The clause goes on to say that "in order to fully fund these guaranteed benefits the BCOA may increase the rate of contributions." These contributions the clause later says "shall be made by all employers signatory hereto during the term of this agreement." The current agreement expires in 1993. It seems as plain as can be that that obligation on the part of BCOA members carries through until the expiration of the agreement, at a minimum.

Now under this collectively bargained for clause the BCOA member companies have the right, indeed I think it is clear they have the obligation, to fully fund all of the benefit plans the BCOA and the UMWA have established and maintained.

You opened up the hearing this afternoon, Senator Rockefeller, with a reference to commitment and I certainly agree with that. The BCOA members, however, simply do not want to live up to their commitment. That is what the guarantee clause litigation is all about. Perhaps not surprisingly the BCOA members would prefer to have Congress shift their contractual obligations to others.

The evergreen clause litigation has been brought by the trustees of the funds. The litigation involves the question of whether former signatories to the NBCWA, signatories who exercised their lawful right to withdraw from the BCOA, nevertheless can be required to continue to make contributions to the BCOA, UMWA benefit funds, presumably for as long as the BCOA and the UMWA choose to have such funds.

The basis for the trustee's claim in this litigation is language in the trust agreements, which the trustees claim supercedes the language of the collective bargaining agreement.

Now whatever the merits of the position of the trustees in that litigation, the fact is that there is ongoing litigation. Although the companies that I represented are no longer involved in the evergreen clause cases. I am told that the United States District Court in Washington will hear argument in several of the cases tomorrow. At a minimum, it seems to me that consideration of any legislation to address the problems that have been spoken to here this afternoon should await the outcome of that litigation.

Thank you.

Senator ROCKEFELLER. Thank you very much.

Senator Symms, do you have some questions?

Senator SYMMS. Thank you very much, Mr. Chairman. I would like to thank all of you for your testimony. I guess my first question is, from hearing your testimony, Mr. Northrup, talking about the profits from the signators. You know, I was told there was some crisis here, and I guess what I am getting at is, how much is the proposed shortfall? Maybe you or Mr. Schwartz would each comment. What is the shortfall estimation?

Mr. NORTHRUP. Well, it is very difficult to answer that question because the trustees have not submitted the information. I do not think that in the period up to last May when the courts forced the BCOA companies to increase their contributions that it ended up

having a short fall. Now what has happened after May I do not know. But perhaps Mr. Schwartz can answer more precisely.

Our problem is the lack of data from the Trusts and their absence here today.

Mr. SCHWARTZ. Mr. Symms, if I may?

Senator SYMMS. Sure.

Mr. SCHWARTZ. At the end of the fund's fiscal year in 1988 there was no deficit. There was $4 million surplus. Two years later, at the end of the fiscal year 1990 there was approximately a $109 million deficit that had been built up only over the the first 2 years of the new contract. The funds have not released the data for their fiscal year ended 1991, although it has been completed as of last year.

However, in a speech given by Mr. Trumka recently he identified the deficit as being $91 million.

Senator SYMMS. Well now if there is a deficit, where is the money coming from to pay the benefits?

Mr. SCHWARTZ. The deficit is an accumulated deficit. The money to pay the benefits comes from ongoing contributions to the plans. The accumulated deficit is simply met by short term borrowings by the funds. But on an ongoing basis it appears from the data available that there was no deficit in the last fiscal year because the companies increased their contribution rates as ordered to do so by the courts. But we haven't been given all of that information.

The past deficit was reduced but not yet made up. But it still appears to be approximately $91 million left over from the 2-year short fall.

Senator SYMMS. Now I want to go back. So you are talking $91 million in short fall.

How much did you say, Mr. Northrup, there was in profits of the signators?

Mr. NORTHRUP. I did not give you an exact figure.

Senator SYMMS. I thought you said $1 billion, $800 million or something, or did I mishear that?

Mr. SCHWARTZ. I may have been the one that spoke about the profits. The three largest companies who represent approximately two-thirds of the BCOA tonnage in 1989, the last year we had data for all three, earned $568 million. That is Consolidation Coal, Peabody Coal, and AMAX Coal.

Senator SYMMS. Now is that profits?

Mr. SCHWARTZ. That is pre-tax operating income. Yes, that is profit before income taxes. Their revenues were $4.2 billion of revenues.

Senator SYMMS. I guess I am still trying to find out where the crisis is. Let me go back to my first question that I asked the previous witness about the 25 cents a ton and competitiveness. What does this do to the people who are not signatories and who do not feel they are obligated for this? What happens if they have to pay the extra money to being competitive with the other companies?

Mr. NORTHRUP. It certainly adds to their labor costs. You should bear in mind that these companies that are still operating and who are not signatory are not necessarily abandoning health and welfare or pension plans. They have their own plans for their employ-

ees. Many of them are not as expensive as the BCOA-UMW plan, but they are certainly within the main stream.

Senator SYMMS. Was this BCOA-UMW plan a fully funded health care plan that is very expensive? Is that a part of the problem? I think, Mr. Holsten, did you comment on that?

Mr. HOLSTEN. I would not characterize it as very extensive.

Senator SYMMS. Expensive.

Mr. HOLSTEN. Expensive. It is a very good plan. Senator Rockefeller mentioned that. It is expensive. And there is a competitive impact if the full expenses have to be borne by signatory companies versus the nonsignatory companies or there would be a competitive impact if part of the funding responsibility were shifted to the other side.

Senator SYMMS. Did one of you mention about the impact of change from tonnage to an hourly contribution in 1988? Did you mention that, Mr. Schwartz?

Mr. SCHWARTZ. Yes, I did, sir.

Senator SYMMS. Would you explain that in a little more detail to me? What was the impact of that?

Mr. SCHWARTZ. Well there were two things that happened. In the conversion from tonnage based to hours based contribution they set the initial contribution rates too low and, therefore, there was an immediate deficit. The other part of that conversion that was a problem is the industry has been in a 12-year period of improving productivity, that is labor productivity by the workers.

Therefore, although the coal production has stayed the same by the Union miners, the number of miners employed has declined. When you base the contribution rates on the hours worked you had a decline in contributions because of increasing productivity. Those two factors together, the low initial funding level in the 1988 agreement, plus the conversion in the face of rising productivity, is what undermined the contribution base of the funds.

Senator SYMMS. The PBA testified that the bargaining resulted in a serious reduction in the amount of excess pension assets which had been tapped by the Coal Commission. Now I think Senator Rockefeller introduced the bill 1708 supported by the BCOA and UMW. The idea of that, if I understood it correctly, and please correct me if I am wrong, was to be used to reduce the deficit; is that correct? And if so, what happened to that deal?

Mr. Schwartz, if you could?

Mr. SCHWARTZ. I cannot tell you completely about the legislation. That is really not my area. Although I do understand there was legislation introduced to use the excess pension assets. I can give you some numbers on the size of those pension assets though and what happened.

As of the end of the fiscal year-1990 and the funds, the excess pension assets were approximately $237 million. In the 1991 National Agreement Reopener——

Senator SYMMS. In other words, there were excess funds, more than enough to pay all the projected benefits for retirees?

Mr. SCHWARTZ. That is correct. For pensions.

Senator SYMMS. For pensions, not for health benefits?

Mr. SCHWARTZ. That is correct.

You see, the pension plan is prefunded, the benefit plan is pay-as-you-go. That is one of the key differences. Now the prefunded pension assets were about $237 million.

In the recent union contract, however, the union and the companies agreed to tap that money in two ways. One is, rather than give the employees, the mine workers, a raise in 1991, instead they granted a special one-time payment to all of the retirees, spouses and dependents in the 1950 fund. That payment, although we have not got the precise data, I estimate took about $34 million of that surplus.

In addition, the companies in the union agreed to transfer the obligation to provide death benefits to miners' families of miners who die from the benefit plans and from direct payments by the companies to the 1950 fund. I have estimated, and again we do not have the fund's actuarial statements, but I have estimated that that transfer was about another $107 million of actuarial liability that was moved from the company's costs and the benefit fund's costs into the pension plan's costs.

As a result, given those two changes, that would have reduced the excess pension assets from about $237 million down to about $96 million as a result of the new contract.

Senator SYMMS. Well now I asked a question earlier and I do not know whether I heard an answer back here from any of you and maybe you would want to comment on it, about the competitive situation.

If, in fact, the request is to have people other than signators pay this fund, what does this do to the competitive question between those big companies that are the signators and the other companies that are not?

Mr. KISCADEN. I can answer that. Currently the coal business is going through some relatively rough times and it is extremely competitive. It is not uncommon to lose business by pennies. So even if we were talking about a nickel tax that could make the difference between getting a piece of business and losing a piece of business.

Many of the business opportunities sitting out on the horizon right now are five to ten year deals and you lose them over a nickel, and there is not another opportunity out there for ten years. So it is a very, very difficult and competitive situation.

On the export market it is very similar and you have added costs which you have to consider of transportation to the coast as well as ocean freight. We are responsible for all those facets of the business. So every nickel counts. I have lost business and I have gotten business on pennies. So any impact there would definitely be felt.

The other thing you have to recognize is that even if a tax were passed and call it a nickel or a dime, that is a nickel or a dime spread out throughout the entire industry and a lot of folks will say that is not very much money. But if you look at how it reduces the cost to a BCOA company, it may cost me a dime, but it may lower their cost $1. So the net effect is going to be I am 90 cents out and that is a tremendous difference.

Senator SYMMS. Why is that a 90 cents difference? Say that again.

Mr. KISCADEN. Well if you tax the entire industry you are spreading that throughout the entire industry. But a very small segment of the industry is who is going to get benefit from it.

Senator SYMMS. I see.

Mr. KISCADEN. The BCOA company will get the benefit; I will not.

Senator SYMMS. Well, go back to this other question about the tonnage versus vis-a-vis the hourly rate. Are you saying here that if the companies that were the signators paid this based on tonnage there would not be a problem?

Mr. SCHWARTZ. That is correct. If they had paid in the tonnage rate specified in the contract under what is called the procured and acquired clause, which is for people who buy coal rather than produce coal, and they pay on a tonnage basis, had they paid at the tonnage rates, there would never have been a deficit, not from the beginning of the 1988 contract.

Mr. NORTHRUP. I agree with that.

Senator SYMMS. Mr. Northrup, do you want to comment on that?

Mr. NORTHRUP. What Mr. Schwartz said is absolutely correct. The change came when contributions were paid on the basis of hours worked instead of tonnage. The very productive, larger companies gained tremendously as a result. But the net amount going into the Fund went down considerably and as a result the deficit started. This was almost a considered deficit-creating action.

Senator SYMMS. Thank you very much, Mr. Chairman.

Senator ROCKEFELLER. Thank you very much, Senator Symms.

Mr. Holsten, do you support enactment by Congress of a statutory reach back that would require former union companies to pay for their retirees in the 1950 fund?

Mr. HOLSTEN. What I would suggest is somewhat of a compromise between reach back and no reach back. It would be that—And this is as much a legal question as it is a moral one. I will try to address it from what I see as a moral standpoint. That if I, as a coal operator signatory to a UMW agreement in the past that contained a guarantee of health care language somewhere in it, and one of my employees retired under that agreement knowing that I was a signatory and a party to it, and that he was to be guaranteed life time health care, and at a later point I no longer was a contributor to the funds, I was out of the union, I could in my own mind see the case being built that I have a moral responsibility to pick up the cost of that employee's health care.

That is what I would recommend, that type of an approach. However, if one of my employees retired when no such contract was in effect or if I did not have a contract, then it would not be my responsibility; it would be the responsibility of the Funds. I think, carrying that through, it would be the fiscal responsibility of the signatory operators to take care of the orphans.

Senator ROCKEFELLER. Thank you, sir.

Mr. HOLSTEN. Thank you.

Senator ROCKEFELLER. Mr. Kiscaden—and Mr. Schwartz, if you want to join in this—both of you and the BCOA seem to disagree on some statistical issues. Your data are in the record on this and the BCOA's data is also there. A couple of questions.

What is your position on the responsibility of the former union companies?

Mr. KISCADEN. Could you define former union? Do you mean no longer signatory?

Senator ROCKEFELLER. However you choose.

Mr. KISCADEN. Basically, PBA's position is that this is a private collective bargaining issue and it should be handled in collective bargaining.

Senator ROCKEFELLER. All right.

Is it in your opinion advantageous to your companies if your competitors have to pay for the dumped retirees and the orphans and you do not have that expense?

Mr. KISCADEN. I feel like in a competitive world I have to compete with my neighbor and I have to take care of my own obligations and he has to take care of his. If he makes obligations that make him noncompetitive he should have to live with them.

Senator ROCKEFELLER. But you would basically agree with my question then?

Mr. KISCADEN. Yes.

Senator ROCKEFELLER. Your answer would be yes.

Given a yes answer, what would you feel are the likely consequences for the future of the contribution base for the funds, given your answer?

Mr. KISCADEN. Are you asking me to predict the future of the current BCOA companies?

Senator ROCKEFELLER. As best as you can or choose to.

Mr. KISCADEN. Seeing how it is a competitive world, I hope they all go out of business. But I do not think that is going to happen. They are very strong, very well financed. They have tremendous assets. I think they are going to be here and they are going to be my competitors for many years to come.

Senator ROCKEFELLER. Okay.

Do your member companies have, well, they have retiree health benefit programs, do they not?

Mr. KISCADEN. Yes.

Senator ROCKEFELLER. Do they differ in any way as between the retiree programs associated with the United Mine Workers?

Mr. KISCADEN. I cannot comment on all the various plans that would be associated with the PBA companies because they are so numerous. I could comment on mine. They differ in that they are not as expensive to maintain and they do not provide the same level of benefits in terms of beneficiaries.

Senator ROCKEFELLER. In what ways that you are aware of?

Mr. KISCADEN. My beneficiary base would be much smaller. My plan I would provide benefits to the person who is retired, but not his dependents.

Senator ROCKEFELLER. Would there be any other difference other than the worker as opposed to the family of the worker? Any other differences that you know of between your plan the UMW's?

Mr. KISCADEN. In some cases there is a contributory payment with the employee being up 20 percent of the cost.

Senator ROCKEFELLER. In some cases or in all cases or what?

Mr. KISCADEN. We have different operating agreements in different areas.

Senator ROCKEFELLER. Mr. Northrup, you referred to the pension programs, I'm sorry, the benefit programs as being extravagant. Could you describe what you mean by that?

Mr. NORTHRUP. Yes.

Senator ROCKEFELLER. What would be extravagant?

Mr. NORTHRUP. First-dollar coverage for one thing and lack of co-insurance. It is almost a truism, Senator, in health care costs that you have to get the patient on your side if you are going to control costs, and that it is very difficult to get the patient interested in controlling costs unless the patient has to pay a deductible and then some of the major medical parts, at least some co-insurance.

Typical plans may be first $25 or $50 on certain things except accidents. Then an 80/20 arrangement when you go past a certain amount up to a million or two million dollars in coverage.

Senator ROCKEFELLER. In terms of what is covered, other than first-dollar coverage as a whole?

Mr. NORTHRUP. Yes.

Senator ROCKEFELLER. Are you aware of some of the differences?

Mr. NORTHRUP. Well, there are tremendous variations on that. Companies today are having a great deal of problems with psychiatric care, for example, and are trying to cut back on that type of coverage.

Senator ROCKEFELLER. I think I missed that.

Mr. NORTHRUP. I say companies are having a great deal of financial trouble if they have given psychiatric care coverage and they are trying to cut back on those types of provisions. But the extent of their success or the extent of the existence of such coverage is tremendously varied. I do not think I could honestly give you a detailed analysis this afternoon because even if one looks at statistics and studies it depends on who is covered, what industry, and so forth.

Senator ROCKEFELLER. I understand.

Mr. Kiscaden, would you make available for the committee's records some sample benefit programs of some of the representative companies that your organization represents?

Mr. KISCADEN. Yes, I think we could do that.

Senator ROCKEFELLER. I would appreciate that.

Mr. KISCADEN. Maybe to add to the question that you had asked, vision and dental care are two areas where there is probably some differences in people's plans. The expense and administration for the same dollar coverage I have found that my plans are cheaper than the same coverage, BCOA UMA plan, for whatever reason when I go into the insurance market.

Senator ROCKEFELLER. Under your plans for a retiree, if one of your companies or member companies of your organization goes out of business or goes bankrupt, what is provided for retirees?

Mr. KISCADEN. We try to prefund. We provide a paid-up policy for the retiree.

Senator ROCKEFELLER. And your employees are supportive of that?

Mr. KISCADEN. Yes. In fact, we try to make them completely portable in the event they leave us they can take whatever benefits they have accumulated and take them with them.

Senator ROCKEFELLER. Is that generally true of your association or is it you are talking about one of your own particular companies?

Mr. KISCADEN. That would be one of my companies. There is so many folks in our organization I could not comment on all of their plans.

Senator ROCKEFELLER. Okay. Well, we can find that out.

Would you submit a broad variety of plans?

Mr. KISCADEN. Yes.

Senator ROCKEFELLER. That would be important to us.

Some in the coal industry have suggested that something like the Coal Commission's industry-wide fee proposal might be funded by setting off some amount against the abandoned mine land fee. Would you support that?

Mr. KISCADEN. We would not.

Senator ROCKEFELLER. Why not?

Mr. KISCADEN. I think you are comparing apples and oranges. I will not get into my opinions of the abandoned land mine fees, but it should not be a subject of collective bargaining. If that were to happen one group of the industry would certainly benefit at the expense of another.

Senator ROCKEFELLER. Okay.

This also, Mr. Kiscaden, is to you. Did your company, Quaker, buy coal reserves from Y&O Coal Co.?

Mr. KISCADEN. Yes, we did.

Senator ROCKEFELLER. Okay.

One of our first witnesses indicated that his health benefits had been cut off when Y&O ceased operations.

Mr. KISCADEN. He was referring to a time frame prior to our acquisition of anything from Y&O and it is my understanding that those folks had terminated all operations and bargained for effects with the mine workers and with the funds and paid withdrawal liability and really gone out of business.

Senator ROCKEFELLER. And so, therefore, Quaker would have no responsibilities in your judgment?

Mr. KISCADEN. That is correct.

Senator ROCKEFELLER. I am going to enter for the record that well known Business Week editorial at the time of the Pittston strike. It says, "Pittston should not be absolved from its moral obligation." Like Pittston at that time, at least one of the companies that you are representing today is no longer a signatory company. I understand that many of that company's former employees have their health care benefits paid by the fund.

Do you disagree with the Business Week idea that a company like that has a moral obligation that it should not walk away from?

Mr. NORTHRUP. Are you talking about Pittston or another company?

Senator ROCKEFELLER. North American specifically.

Mr. NORTHRUP. Your question is just general?

Senator ROCKEFELLER. Yes, North American.

Mr. NORTHRUP. Well, my understanding, Mr. Chairman, is that companies paid into the Fund for many years, and when they were paying into the Fund they were supporting also other "orphans,"

so to speak. If they leave they have met pretty much their obligation.

I would also point out that many of the companies in the Collective Bargaining Alliance, as I understand it, deal with the UMW but not through the BCOA. So they have obligations arising from their dealings with the UMWA on retirement and so forth.

Mr. GOLDSMITH. Senator, may I add to that response?

Senator ROCKEFELLER. Yes.

Mr. GOLDSMITH. In terms of the North American Coal situation I do not know all the particulars. But I do know that the structure of the benefit plan arrangements within the BCOA/UMWA frame work is such that companies during the period that they were signatory did contribute to the 1974 benefit fund for the specific purpose of having that fund pick up the obligations to provide health benefits to retired miners.

Indeed, North American Coal contributed, I believe, in the area of $50 million to that fund during the period that it was a signatory. It contributed those funds to that benefit fund, to fund that benefit fund, specifically to cover this issue.

So it is not really a moral or a dumping issue, it is an issue of a company having lived up to its contractual obligation to contributions to a fund, and then doing what was contemplated by the framers of the contract; that is, choosing to go out of business within the meaning of the collective bargaining agreement.

I think that North American Coal did precisely what it should have done under the circumstances.

Senator ROCKEFELLER. So then your feeling would be that Pittston would not have any obligations?

Mr. GOLDSMITH. I do not represent Pittston. I am not familiar with anything other than newspaper reports and I just do not have a position on whether Pittston should or should not do anything.

Senator ROCKEFELLER. Okay.

Would your feeling then be that North American would have no obligations?

Mr. GOLDSMITH. Insofar as I am aware, North American Coal discharged fully all of its obligations when it made contributions to the funds during the period it was a signatory to the collective bargaining agreement.

Senator ROCKEFELLER. Just a matter of business?

Mr. GOLDSMITH. It is a matter of business to make the required contributions. It seems to me that it is no more of a moral issue than it is for BCOA members now to be saying that they want to be released from their contractual obligations.

I think characterizing it as a moral issue when there really is no issue from North American Coal's perspective that retirees are entitled to precisely the benefit of their bargain really misses the point a little bit.

The question is not whether these people are entitled to benefits, they surely are. They worked hard and long under very difficult circumstances. The question is, who pays for the benefits. The determination of who pays was something that was collectively bargained for.

That is a matter of business, something that the parties negotiated.

Senator ROCKEFELLER. And if it worked out that those various companies, in fact, were not able in the real world to afford the cost as scattered among 132,000 human beings then that would be too bad?

Mr. GOLDSMITH. I certainly do not want to suggest that it would simply be just "too bad" if these liabilities could not be picked up. That is not at all what the position of the Collective Bargaining Alliance is. It would certainly be more than "too bad."

But the fact of the matter is that those are not the facts. The fact is that you have in the BCOA and the UMWA two very sophisticated, highly-competent, well represented organizations.

Senator ROCKEFELLER. They do not say that about each other. [Laughter.]

Mr. GOLDSMITH. Well, I guess that is their business.

But at least from the outside that appears to be the case. That being the case they have enormous resources at hand to analyze economic trends, to analyze what appropriate contribution rates should be, and to analyze what appropriate responses to medical care issues should be.

They sat down and cut a deal. It seems to me that they should be bound by the four corners of that deal. And as I said when I opened my brief comments, Senator, this is not a new problem. This is a problem that has been around for over a decade, despite the fact that there have been at least two National Bituminous Coal Wage Agreements negotiated since I first became aware of the problem.

Nothing has been done to solve it and now here we sit in 1991 wondering what is going to happen in 1993.

Senator ROCKEFELLER. Okay.

Mr. Northrup, you say in your written testimony, "I am not impressed" by the concern "that bargaining on this subject may result in a strike in 1993." You go on to say that the fact that BCOA members now account for less than a third of coal mined is "an economic reality which in fact would make a coal strike less damaging to industry as a whole."

Maybe I could ask you then, Dr. Northrup, if you were in the coal counties of West Virginia or Kentucky or other areas during the Pittston strike or the 100 plus day strikes that I was very familiar with as a Governor in 1978 and 1981, did you have occasion to talk to any of the members of the families of those miners to come to a statement like that?

Mr. NORTHRUP. Well, a strike always hurts somebody. There is no question about that.

I was talking about the economic results of a strike for the national economy. The fact is that although such strikes would damage your State, there is no doubt about that, for the country as a whole the impact would be rather small.

Senator ROCKEFELLER. That we could sustain a national strike?

Mr. NORTHRUP. Well, yes. But you see you are talking about a national strike. Basically we are talking about a strike in some States, not the whole country, and involving one-third of the industry, not the whole industry.

Senator ROCKEFELLER. So for the one-third involved it would not be as you indicated consequential?

Mr. NORTHRUP. I did not say for the one-third involved, sir, it would not be consequential. I said for the economy as a whole. Any strike damages the community in which it is in, if the strike is of any size. There is no question about that. But strikes are necessary to make collective bargaining work. That is why we permit them. They set the parameters of the agreement, they force people to compromise, and they result in reaching agreements.

Without strikes the system would not work and that is too bad. I have been through strikes, there is nothing pleasant about them. No one enjoys them that gets involved in them. And they hurt people, there is no question about that.

But looked at from the economy as a whole, a coal strike is not seriously damaging today because of the decline of the United Mine Workers in its representation and the alternative sources of coal and other forms of energy.

Senator ROCKEFELLER. All right, Dr. Northrup. I understand what you are saying and in fact I am grateful to all of you as a panel of witnesses. I appreciate very much your taking the time to be here.

Mr. NORTHRUP. Thank you, sir.

Senator ROCKEFELLER. Thank you.

Our final panel consists of Richard Trumka, who is a member of the Coal Commission, also international president, United Mine Workers of America; Mr. Michael K. Reilly, who is chairman of the Bituminous Coal Operators' Association and president and chief executive officer of Zeigler coal Holding Co. He is accompanied by Joseph Brennan, President of the same, BCOA.

Mr. Trumka, we welcome your testimony, if you would care to lead off.

STATEMENT OF RICHARD L. TRUMKA, MEMBER, COAL COMMISSION; INTERNATIONAL PRESIDENT, UNITED MINE WORKERS OF AMERICA, WASHINGTON, DC

Mr. TRUMKA. Mr. Chairman, I thank you very much for the opportunity to testify, but I thank you even more for the concern you have shown over not a few years, but a number of years for the working people, not only in West Virginia, but throughout the country, particularly coal miners who have asked for your help on numerous occasion. You have never failed them in your quest to find justice for them and to help them.

I would ask one other thing, Mr. Chairman. The number of inaccurate statements that were presented by the last panel are too numerous for me to be able to correct in the record now. I would like the opportunity to correct some of them in writing following the conclusion of this hearing, if that is acceptable.

Senator ROCKEFELLER. Of course.

Mr. TRUMKA. Thank you.

Mr. Chairman and member of the Subcommittee, I appear before you as a representative of over 120,000 retired miners and their dependents whose health care benefits are in jeopardy. These folks have worked all their lives to provide America with energy, often in dangerous and unhealthful conditions that most Americans would find appalling.

Now they are in the twilight of their lives. While they received a promise of life time benefits the ability to finance that promise has been eroded. To briefly state the UMWA's position it is absolutely essential for Congress to act on the Dole Commission's recommendations to avoid a disastrous cut off of retiree benefits in the near future.

Collective bargaining is failing as a means to protect the retired miners. The recommendations of the Dole Commission represent a fair and an equitable solution to the problem. The consequences of nonaction may well be a ruinous confrontation at the expiration of the current National Bituminous Coal Wage Agreement that will leave over 120,000 retirees and their dependents without health care at the most fragile point in their lives.

The UMWA health and retirement funds are a unique institution in the history of American industrial and labor relations. They were created in the White House some 45 years ago in an extraordinary contract between the Federal Government and the UMWA known as the Krug-Lewis Agreement.

This began a long period of government participation and interest in the provision of retiree health care in the coal industry. After several years of nagging disputes after the Krug-Lewis Agreement the parties settled their differences in 1950 by signing an agreement that laid the foundation for decades of unprecedented labor management cooperation.

Many observers believe that the NBCWA of 1950 permitted the industry to survive in a time of fierce inter-fuel competition. In other words, the retirees who are in jeopardy today made it possible for the coal industry to survive its greatest challenge.

The Dole Commission arose out of the settlement of the UMWA strike against the Pittston Company. When the 1984 contract expired in February of 1988, the miners at Pittston continued to work under the terms and conditions of the expired agreement while negotiations for a successor agreement ensued.

Pittston, however, took the position that it was no longer responsible for retiree health benefits. It ceased making payments to the UMWA health and retirement funds and it terminated benefits to approximately 1,700 retirees for whom Pittston directly paid health care benefits.

Worldwide attention was focused on the Pittston strike. Thousands of UMWA supporters, including labor, religious and civil rights leaders, were arrested in a peaceful civil resistance to Pittston's cutoff of health benefits. Secretary Dole became involved in the Pittston strike in the fall of 1989. While we eventually reached an agreement we did not satisfactorily resolve the underlying issues relating to the UMWA funds.

In recognition of this the Secretary appointed a Federal Commission to examine the issue. The Commission issued its report in November of 1990 calling for Federal legislation to assure the continuation of retiree health benefits in the coal industry. The basis for all the recommendations can be found in the introduction to the Commission report and I quote, and this was a unanimous finding, including Mr. Holsten, it says, "Retired coal miners have legitimate expectations of health care benefits for life. That is the promise they received during their working lives and that is how they

planned their retirement years. That commitment should be honored."

Now that is a powerful conclusion that should frame the Congressional debate on this issue. Once they came to that important conclusion the only question was how to best ensure the commitment would in fact be honored. The Commission reached a consensus on several important points.

The principal point on which they did not reach consensus was whether the entire coal industry should be required to contribute to the resolution of the problem of orphan retirees. A majority of Commission members supported the enactment of a small health care fee on all coal producers to pay for retirees who have no company to provide such benefits.

To implement its recommendations the major proposed that (1) Congress should authorize the creation of a new entity to provide health care to orphan retirees; (2) a new UMWA 1991 fund should be created to provide benefits to retirees of signatories of the National Bituminous Coal Wage Agreement that remain in business.

We fully support the recommendations of the majority of the Dole Commission. We believe that every coal company should be required to pay for the cost of its retirees. Where we cannot identify the entity for whom the retiree worked, the cost of providing those necessary and life-saving benefits should be the responsibility of the entire coal industry.

Why should the entire coal industry be held responsible for orphan's benefits? This is not the first instance where Congress has looked at today's coal industry to resolve a problem left over from the past. When Congress adopted the Abandoned Land Mines provision of the Surface Mining Act, it largely concluded that the coal industry of today is a successor of the coal industry of the past.

The same principle should be applied in this instance, especially since these beneficiaries were part of an industry-wide health plan that was initiated by the Federal Government. Abandoned pensioners and widows should be treated at least as good as abandoned coal lands.

Why cannot the problem be resolved in collective bargaining? The UMWA has attempted with all its resources to enforce the contractual and moral commitment to retirees. Unfortunately, court decisions have misconstrued the NBCWA in a way that has fueled employer efforts to evade their responsibilities.

In two cases involving retired miners from Royal Coal Company the court held that although the benefits were for life, the operators' obligations to its pensioners expired with the contract. By the device of refusing to sign a successor agreement with the union the employer could legally dump its pensioners on the 1974 benefit plan and thus on other employers, and that would include groups that were covered by the PBA and the CBA, although I do not know who is in either one of them because we have never been furnished a list of their members.

These misconstructions set the stage for employers to push the UMWA to the wall in negotiations, having placed the UMWA in an untenable position. In that adverse climate the union could only attempt to keep employers in the plans and expend all of its resources to do so. To protect the retirees—and I wish the Senator

was here that talked about those actives that were unwilling to protect retirees in his State because the opposite is true here. To protect the retirees the UMWA has faced injunctions, jailings, multi-million dollar fines and a hostile National Labor Relations Board.

We have not always been completely able to prevail in this harsh climate. But no one can say, however, that we have not risked all, and I mean risked all, to protect the health care benefits that those 124,000 widows and retirees have earned, been promised and are entitled to.

Collective bargaining for retiree health care simply is not working, Mr. Chairman. The original promise is being evaded with courts writing the script. Mr. Chairman, the retired miners are willing to be a responsible part of the solution. Although they do not owe one dime of the current deficits, they are willing to contribute significant amounts of excess pension assets, incorrectly stated by the representative or the consultant on the previous panel.

Monies that legally belong to them, to eliminate those deficits and to provide start-up capital to the new orphan corporation recommended by the Dole Commission. What the retirees ask in return is that the coal industry also act responsibly. Every company still in existence should step forward and say that it is willing to pay for the cost of providing health care to its retirees.

Where we cannot identify the last employer of the retiree the coal industry should jointly share the cost of providing the promised benefits. There is no way for the private parties to achieve these ends. We need Congressional intervention to fulfill the promise that began so many years ago in the oval office.

The UMWA believes that passage of the Dole Commission recommendations will result in a permanent and a fair solution of the problem of retiree health care in the coal industry. Retirees will be secure in the knowledge that the promise will be kept and that they and their families will never again be held hostage to a system from which they are by law disenfranchised.

In fact, the very people that sat at this podium on the previous panel, the identical individuals that said that collective bargaining can solve the problem sat at a table with the mine workers and refused to discuss health care because the law in Pittsburgh Plate Glass said they were not required to do so and they did not, sir.

Employers will know that they must live up to the promise made to their retired employees and that they will not be required to subsidize competitors who remain in business. The recommendations represent a sound solution to a problem that will only get worse over time if we do not act.

Mr. Chairman, let us act responsibly now before the crisis breaks full upon us and we are forced to pick up the pieces of a shattered health care structure and a permanently damaged coal industry and 124,000 beneficiaries, retirees and widows who will suffer the absolute most.

Thank you, sir.

Senator ROCKEFELLER. Thank you very much, Mr. Trumka.

[The prepared statement of Mr. Trumka appears in the appendix.]

Senator ROCKEFELLER. Mr. Reilly, we look forward to hearing from you, sir.

STATEMENT OF MICHAEL K. REILLY, CHAIRMAN, BITUMINOUS COAL OPERATORS' ASSOCIATION (BCOA), PRESIDENT AND CHIEF EXECUTIVE OFFICER, ZEIGLER COAL HOLDING CO., FAIRVIEW HEIGHTS, IL, ACCOMPANIED BY JOSEPH P. BRENNAN, PRESIDENT, BCOA, WASHINGTON, DC

Mr. REILLY. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, my name is Michael K. Reilly. I am Chairman and Chief Executive Officer of Zeigler Coal Company. I am also the Chairman of the Bituminous Coal Operators' Association.

With me today I have Bob Quenon, who was my predecessor at BCOA, as Chairman. He recently retired as Chairman of Peabody Coal Company and was a member of the Dole Commission. He is here just in case there might be some question about the Dole Commission. Also Joe Brennan is with me, who has been BCOA's President since 1975. His involvement with the funds goes back to the 1960s.

Mr. Chairman, I would like to ask to reserve a couple of minutes for Bob Dufek, who is our attorney for BCOA with Morgan Lewis to reply to some of Mr. Goldsmith's remarks that we had not heard before.

Senator ROCKEFELLER. That will be all right.

Mr. REILLY. Thank you.

Zeigler is a privately held coal producer that has operated since 1904. With Zeigler's recent acquisition of Old Ben Coal Company we now operate in Illinois, Indiana, and West Virginia. We produce approximately 16 million tons annually. All of Zeigler's mines are signatory to the National Bituminous Wage Agreement with the United Mine Workers of America.

It is important to note that Zeigler's only business is coal mining. Consequently Zeigler has no large parent company to cover its losses. Quite simply, the problem that faces signatories to the National Labor Agreement is that increasing health benefit costs for coal retirees and their dependents are being paid by drastically reduced numbers of UMWA coal mines.

[A showing of the chart.]

Mr. REILLY. I have a chart up here that shows what I believe is going to happen if this continues. We call it the Last Man's Club in the demise of current benefit programs. You can see what is going to happen to the funding base and as that funding base goes down, that is going to be the estimated increased costs on top, per ton. People talked earlier about a nickel per ton and 5 and 10 cents is going to be the competitive difference. We are talking about $2, $3, $4, $5 a ton as the funding base decreases and the few remaining signatories have to continue to pay the bill for all these dumped people and orphan retirees.

Chart 1 shows how the benefit funds could collapse. To continue to administer these health benefit funds with fewer and fewer employers paying the bill will mean that the remaining coal companies signatory to the National Labor Agreement will go out of busi-

ness. As a result, coal miner retirees will not receive the benefits they were promised.

There has been a decline in tonnage signatory to the national agreement, an 80 million drop since 1979, approximately 30 million tons in the last year alone. These health and retirement funds started in 1946 when the U.S. coal mines were seized by the Federal Government.

Julius Krug, then Secretary of the Interior, and John L. Lewis, President of the UMWA negotiated a wage agreement which established an employer-financed retirement and welfare fund and industry-wide miner controlled health plan.

These plans were the start of what are known today as the United Mine Workers Health and Retirement Funds. Because the health funds are a result of Government intervention, collective bargaining cannot solve the problem. We cannot stop non-BCOA members from dumping their retirees in the 1974 fund. We cannot force those companies to continue to contribute.

At the time of the initial commitment by the Federal Government, 80 percent of U.S. coal contributed to the program, today only 30 percent of the coal mined in the U.S. contributes to this plan.

[A change of charts.]

Mr. REILLY. We have Charts 2 and 3 here. These charts really demonstrate the increasing health care cost in a declining funding base. Chart 2 shows the increase in cost and right now it is somewhere around the $250 million figure.

[A change of charts.]

Mr. REILLY. Chart No. 3 shows the declining funding base. Back in 1974 there were approximately 120,000 signatory miners and today there are less than 50,000. So it really points up the problem that is serious.

Another development has worsened this problem. Former signatory coal companies have reneged on their obligation to contribute to these benefit funds and dumped their retiree beneficiaries on the declining member base to pay.

The Federal courts have determined that the 1974 benefit fund must provide medical benefits for all eligible pensioners without regard to the contribution status of the retiree's employer. Once the employer cuts off retiree health care under its company plans, the 1974 benefit fund is obligated to pick up the retirees and provide coverage. This coverage is paid by companies signatory to the National Labor Agreement.

The court rulings have created an incentive for coal company employers to dump retirees on the fund. LTV Corporation, North American Coal, and A.T. Massey Coal Company, just to name a few, are responsible for dumping over 3300 retirees into the 1974 benefit fund in the last 5 years. They pay nothing, while Zeigler and every other signatory company bears the additional burden.

The problem extends beyond former signatories.

[A change of charts.]

Mr. REILLY. I have one more chart and that is really to illustrate a point. Chart 4 illustrates the cost sharing inequities that current signatories to the National Labor Agreement face. Sixty percent of the current beneficiaries are orphans, that is no employer remains

in business to make contributions on their behalf. Only 25 percent of the beneficiaries are retirees of the current signatory companies now paying the bills. Fifteen percent last worked for former signatory companies that remain in business but no longer contribute.

There have been comments today concerning BCOA setting too low a contribution rate in the 1988 agreement. The facts are the current $2.50 per hour contributed is about 40 percent greater than the 1984 rate. Also, signatories to the national agreement have contributed $150 million more than the 1988 agreement required.

The cost avoided by employers still in business but not paying into the fund stands at $2.50 an hour. By 1995 the Dole Commission's projected annual per hour costs for those currently signatory to the agreement will be nearly $6 an hour, even with a pension trust transfer.

The bottom line is that for every dollar that signatory companies contribute for their own people, the same companies contribute $3 for retirees from companies no longer contributing. These economic inequities are unconscionable. In this death spiral scenario, fewer and fewer signatory employers remain to shoulder more and more dumped retirees. Since those remaining employers will face geometrically escalating costs, they either get out while they can or go broke.

As a result, there will be no money to pay for benefits for over 120,000 beneficiaries and over 124,000 beneficiaries will lose the benefits they were promised. Coal is America's most secure, most cost efficient energy source. For coal to continue to economically supply America's heavy industry and electric utilities, BCOA strongly supports the Dole Commission's findings to address these problems.

First, a two-part funding mechanism, consisting of: (1) payment by current and former signatory companies for their own retirees in the 1950 and 1974 benefit funds; (2) a national premium on all U.S. coal to provide benefits for the funds' orphans.

Our proposed solution, Mr. Chairman, is no Federal bailout. We want the coal industry to take care of its problems with its money.

The second part is state-of-the-art mandatory cost containment. The third part is a transfer of excess pension assets to eliminate the health benefit funds deficit. Liabilities of the past should be paid with assets from the past.

The Dole Commission's findings were well considered and fair. The medical benefits of 120,000 beneficiaries are at stake. That number could balloon if many of the remaining signatory companies close because they cannot pay $6 to $10 an hour to fund these dumped retirees and orphans; the 75 percent that are not their employees.

We need to prevent these retirees from losing their benefits. If we turn our backs on the men and women who worked to create the industrial standard of living we all enjoy, then we have no honor and no amount of profit will bring us peace.

Thank you, Mr. Chairman.

Senator ROCKEFELLER. Thank you, Mr. Reilly.

[The prepared statement of Mr. Reilly appears in the appendix.]

Senator ROCKEFELLER. Mr. Brennan or Mr. Dufek, was it your intention to say something?

Mr. DUFEK. Yes.

STATEMENT OF ROBERT A. DUFEK, ATTORNEY WITH MORGAN, LEWIS & BOCKIUS, WASHINGTON, DC

Mr. DUFEK. Thank you, Mr. Chairman. It seems to me that there are a couple of fundamental misconceptions in the PBA and CBA presentations that should be put to rest at this hearing. That is why I asked for the opportunity to make a very brief statement.

There is almost an Alice in Wonderland aspect to the presentations of the CBA and the PBA that I think has to be discounted at this hearing. They are really operating under two illusions. The first is that collective bargaining can solve this problem; and the second is that somehow litigation currently pending can solve this problem, either under the guarantee clause or the evergreen clause.

Let me deal with litigation first. BCOA has never taken the position that there is not a guarantee provision in the collective bargaining agreement. Indeed, there is. We have never run from that fact. We have simply said that it is part of an interrelated series or package of provisions which goes to the very heart and structure of these funds. That includes the evergreen clause, it includes the fact that there is a uniform contribution for a uniform benefit and it includes the fact that there was a collective commitment by all employers to fund these benefits over time.

What is happening is that many employers have simply walked away from that promise and fewer and fewer employers are being asked to fund an industry problem. Indeed, if the guarantee clause were successfully resolved as the PBA and the CBA would like it resolved tomorrow, that would not solve this problem. That clause, along with the Bituminous Coal Wage Agreement expires on February 1, 1993.

Based on Mr. Reilly's remarks and based on Mr. Trumka's remarks how many employers, given these numbers, given these projections, are going to continue to participate in that kind of commitment in the future? Very few. We are back into a Last Man's Club scenario in 1993. It will be resolved with chaos in the coal fields. Professor Perritt called it imploding. That is, indeed, what will happen.

So I wanted no illusion by any member of this committee that somehow litigation currently pending can resolve this problem on a long-term basis. It cannot.

Secondly, with regard to collective bargaining I, too, am a labor lawyer. I am with Morgan, Lewis and Bockius here in Washington, D.C. We have 100 labor lawyers throughout the country. I have been involved in labor management relations and collective bargaining for over 16 years—in trucking, brewing, rail, airlines, baking and coal.

The problem with retiree health care is precisely as Mr. Trumka alluded. It is a permissive topic of bargaining. The problem cannot be resolved by the BCOA and the UMWA in collective bargaining and that is why the problem has been with us for over a decade. And it will not be resolved in 1993 in collective bargaining.

The BCOA, by law, can only speak for BCOA member companies. We cannot address what other non-BCOA employers choose to do by their own moral or legal precepts, based on their own advice from counsel, having withdrawn from BCOA and bargained separately and walked away from this obligation, knowing full well that they can dump short term their retiree health care obligations on to the 1974 benefit trust but not long term.

Because again after February 1, 1993 no company will re-up. So collective bargaining is itself an illusion. Litigation is an illusion. We are either going to deal with this problem in a rational, fundamental and long-term way along the lines of the Dole Commission or we are going to deal with it in the coal fields, in a crisis and panic stricken situation where 124,000 retirees, short-term and potentially long-term, are going to be without benefits.

Thank you, Mr. Chairman.

Senator ROCKEFELLER. Thank you very much, gentlemen.

It interests me that there has been so much talk about the legalities of this or that and relatively little conversation or testimony about the beneficiaries themselves. Some say 132,000 and some say 124,000. But they kind of come off as whatever happens as a result of lawyers arguing something out. I do not view it that way.

Mr. Trumka, can you just tell us something about who these beneficiaries are, who orphan miners are, what their condition is? Some dimension that could create human perspective.

Mr. TRUMKA. Yes, Mr. Chairman.

These are old people. I think you will find their average age is between seventy-five and seventy-6 years old. In the 1974 fund their average age is sixty-five or better. They are people that worked a life time in the mine and based their financial lives on two things, a meager pension, not nearly high enough, and guaranteed health care.

The orphans fall into two categories. There are orphans whose last employer is genuinely out of business, has dried up and gone away. And to suggest that collective bargaining offers a solution to them is just ludicrous. There is no one to collectively bargain with.

There is a second group of orphans whose employers have taken the script of the Fourth Circuit and have decided like North American, like Massey and several others to dump their pensioners. Now their last employer may well be alive and in business but is not contributing to the fund. In fact, we may not have a collective bargaining relationship with them at all. And even if we did, it may not be effective because it is not a mandatory subject of bargaining.

These are people that have faced over 100,000 deaths since the turn of the century. They worked in the most hostile environment in the world. They worked under conditions that most Americans would find deplorable and not engage in. Sometimes working in low coal, 20 inches, 24 inches in height with water, contaminated air that causes respiratory diseases, hundreds of thousands of them with black lung, those without black lung with respiratory diseases.

They are at the most fragile part of their life, Mr. Chairman. I can tell you something, not only does the cutoff of health care represent economic death to them, but perhaps physical death, because they are unable to be tended to medically when they need it

the most, but the continued threat of the loss of that health care takes a very, very heavy toll on these individuals.

The fear of not having health care causes them great anxiety and in fact is hastening the day when they meet their maker.

Now we were told about deficits. The deficits have been funded, Mr. Chairman, by extending the payment period. As a result, these people cannot go and give a health card to somebody right now. These pensioners and beneficiaries and widows are required in many instances to pay cash up front that they do not have. The widow is living on $175 a month pension. Pensioners living on perhaps $200-300 in pension money.

It is not as if they are extravagant. It is not that they ask for great wealth and large houses and things of that sort. They are only asking that they be provided with the commitment and the health care that was made to them over a 40 year period. They went to work every day in the most dangerous industry in the country and they were promised two things.

Mr. Chairman, I absolutely believe it is essential that we provide those two things to them.

Senator ROCKEFELLER. Mr. Goldsmith seemed to indicate fairly strongly that he disagreed with the Business Week notion that signatories have a moral obligation to the funds, Mr. Reilly. How would you respond to that, sir?

Mr. REILLY. I think we do have a moral obligation to the funds. You know, we have always paid our dues as long as I can remember. I have been with the company for almost 30 years and we have always paid. I guess we were not very bright on figuring how to get out of our obligations. But we have always paid. It really is a crisis situation. I do not care what these people say.

You know, if people keep dropping out and do not pay and I have to pay for everybody else, I cannot do it. I am not going to be able to make it.

Senator ROCKEFELLER. But they indicated that just the three top companies alone ought to be able to handle this problem by themselves, based upon their pretax profits.

Mr. REILLY. That is ridiculous to say that three companies should pay for all the health care funds out of their profits. I do not know what their profits are today. Our business is very, very competitive. You heard these fellows talk about a nickel and a dime, and that is what it is.

I am selling coal today for 40 percent less in today's dollars than I did ten years ago. Health care costs have gone up, everything has gone up. And, you know, business is very, very tough and very competitive. And to make me pay for other people that are in business that have dumped their retirees and for the orphans of the coal industry is just not fair.

Senator ROCKEFELLER. Mr. Trumka, aren't the thousands of retirees in the fund attributable to former signatories?

Mr. TRUMKA. Everybody in the fund would be attributable back to a former signatory. That signatory may no longer be in business. Now the other thing is that while much was said about a contrived crisis, Mr. Chairman, the fact of the matter is that the courts misconstrued cases that were collectively bargained, clauses that were collectively bargained into the contract.

In the Royal case the court properly said pensioners were entitled to life time benefits. But then they struck down the provision that said they had an obligation to pay for life time benefits. They did not construe it that way. They misproperly construed it. So those signatories then had a road map to dump their pensioners.

Many of those people, in fact if you take a worst case or the most conservative figure right now, 55 percent of the people in the 1950 funds do not have their employer contributing. If you add to that those that are still in business, those in the PBA and those in the CBA, you come up with nearly 75 percent of the beneficiaries in those funds are being paid for by 25 percent or by employers who actually only have 25 percent of the beneficiaries in those funds.

Senator ROCKEFELLER. You touched on this earlier, but I just wanted to go over it again. Somebody walks in off the street and they hear somebody say that companies never were union companies and that they, therefore, have no responsibilities for these health fund problems.

Can you lead this committee through why it is you think that they ought to be involved?

Mr. TRUMKA. Absolutely, sir.

First of all, they have enjoyed all the benefits of the funds and what has happened in the coal industry. The funds were negotiated by the Federal Government. These people have produced energy for the entire world. Then comes 1950 and those beneficiaries, the very ones whose health care is now at risk, signed a contract that allowed the industry to mechanize. It allowed the industry to a mass capital to do research and development and then to begin to make progress on new equipment and new technology.

Every employer now in the coal industry is the beneficiary of that massing of capital and that technology. But we go further than that. Back in the 1940s there was a Presidential Commission, it was called the Boone Commission. It talked about the deplorable health care in the coal communities, not just for union miners, but nonunion miners.

These miners whose health care is now in jeopardy, Mr. Chairman, took their money, money out of the health care funds and they built hospitals throughout the coal communities, all across the country. It was not just community hospitals that they went to, but the entire coal community went to those hospitals.

In fact, in the President's Commission that you chaired, you found that the level of health care in the coal communities across the country was increased dramatically because of the miners and the funds. They took their money to help preserve the coal industry and the level of health care benefits was increased.

In fact, to this very day those funds are extremely important throughout the coal communities because they provide a level of assistance that keeps the health care level high. If you take out those funds the level of the health care for all citizens in those areas, not just union miners, but nonunion miners, small businessmen, large businessmen, the head of the PBA and I do not know about the CBA—I think he lives in Philadelphia—but the PBA, their level of health care would be decreased. They made that commitment.

In addition to that Secretary Dole said that health care benefits for retirees affects the entire industry and a comprehensive industry-wide solution is desperately needed.

Moreover, the solution that has been proffered by the Dole Commission would help nonunion miners as well. If their last employer goes out of business that orphans corporation would pick up the health care benefits of those nonunion miners as well. Because I happen to believe that whether you are union or nonunion if you have been promised health care benefits for life, somebody should provide them. That somebody would be the orphans corporation.

The last thing I would say is, to justify why they should be involved, two precedents currently exist. I can understand Mr. Kiscaden's reluctance to talk about abandoned mine lands. But the Congress said that today's industry is the successor of the previous industry, that today's industry should be taxed fairly, evenly, equally, to pay for problems left over from the industry before.

They said the same thing with the black lung program, that today's employers should be taxed to take care of a problem of the past. Mr. Chairman, if it is good enough for the industry to pick up and pay for abandoned coal lands, I genuinely believe it is right and fair and just and should be done to pick up abandoned retirees and widows.

Senator ROCKEFELLER. Retirees may be as important as dirt.

Mr. TRUMKA. I'm sorry?

Senator ROCKEFELLER. Retirees you are suggesting may be as important as dirt, soil?

Mr. TRUMKA. Yes, sir; just as God awful important as dirt and soil. Sometimes they have been treated just like dirt and soil, but I happen to think they have a whole lot more coming than that.

Senator ROCKEFELLER. Mr. Kiscaden emphasized that even a few pennies makes a big difference in competition within the coal industry. What conclusion do you draw about the impact on the funds of dumped employees of former signatories?

Mr. TRUMKA. Well, it has absolutely adversely affected those that continue to pay. Those that are most responsible, both morally and legally, are paying and are at a disadvantage.

For instance, Zeigler Coal is paying for the retirees of Massey, who they compete with, for North American, for LTV, for a number of others, for 15,000 orphans that have been dumped. They are still in business. They are still in the marketplace. Zeigler is paying for every single one of its retirees, plus they are paying for every one of the retirees that have been dumped.

Massey is paying for none of its retirees that are in those funds. North American is paying for none of the retirees that were in the funds. He is. (indicating Mr. Reilly.) That puts him at a competitive disadvantage.

Senator ROCKEFELLER. I would like to call Mr. Kiscaden back to the witness table to respond to that.

Mr. KISCADEN. What part?

Senator ROCKEFELLER. You brought up competition. He is suggesting, Mr. Trumka is suggesting, that Zeigler pays and that Massey and North American do not have to and that that is not quite the way it ought to be.

Mr. KISCADEN. I cannot comment on North American, but I can certainly comment on Massey as I used to work there. I find it fascinating that this gentleman to my left sits here and talks about Massey does not do this and does not do that and collective bargaining will not solve the problem, when I know that he sat and negotiated an agreement with Massey whereby the United Mine Workers agreed to pick up the health care of over 350 Massey retirees as part of a collectively bargained settlement and he in turn handed them to the funds. I find that fascinating.

Senator ROCKEFELLER. Mr. Trumka.

Mr. TRUMKA. After a long bitter strike, after negotiations, after this individual (indicating Mr. Kiscaden) personally sat at a table and said, "I will not discuss health care for the 50 pensioners. We will not pay." After a long strike, after almost a year of being out, people went back to work. Did we solve the problem? No. Did the law allow him to genuinely walk away? Yes. Did I put those pensioners in there? It was the only place that they can get health care.

Mr. Chairman, I will tell you something, I would take them to Jerusalem if that is the only place they could get their health care. And if the only place they can get it is from the orphan's fund, you bet I am going to fight with everything I am worth and everything our union is worth to provide them with that health care, because he and his company (indicating Mr. Kiscaden), and many like them, have absolutely refused to honor the commitment that was made over the years.

The only place it could be done was to put them in the orphan's fund. Yes. Absolutely. And I tell you without the least bit of conscience twang, I will take them anywhere I have to to make sure that their health care is provided for them.

Senator ROCKEFELLER. Thank you, Mr. Kiscaden. Do you want to respond to anything else that you heard here?

Mr. KISCADEN. I would like to digest it and respond in writing.

Senator ROCKEFELLER. Very well.

Mr. KISCADEN. I have heard some interesting comments.

Senator ROCKEFELLER. I thank you, sir.

Senator ROCKEFELLER. Mr. Reilly, I might ask you, you support the Coal Commission recommendations?

Mr. REILLY. I do, Mr. Chairman, yes.

Senator ROCKEFELLER. Again, this has been brought up. It is very important to spread this thoroughly, both points of view. Why can't this issue be solved through collective bargaining?

Mr. REILLY. Well, it has been going on for a long time and it has not been able to up to now. We have a slew of court cases and court action and people are not paying for their beneficiaries. The courts have thrown them back into the 1974 funds so that we have to take care of it.

The Dole Commission was put together because they were not able to resolve the problem at that time. The Secretary of Labor and all said that this was not able to be resolved and they had to try to find a solution for it. Now they have had the Commission and they have made some recommendations for a solution.

But I just do not think it can because of the way that these people have been able to get out of paying their benefits.

Senator ROCKEFELLER. Senator Symms indicated that this could be resolved and ought to be resolved through the courts.

Mr. REILLY. I do not believe it can. I really do not. We just have all kinds of court action and it is not going to be resolved in the courts. What is going to happen is there is going to be a tremendous crisis and as mines close, UMWA mines, because they are noncompetitive and the funding base gets less and less and the costs increase more and more and other people that are already on the margin go out of business, and those beneficiaries go into those funds, and my costs keep going up, I am not going to be able to make it and other companies are not either.

They are not going to open up any new mines under this agreement. You just cannot do it. It is so uncompetitive there is no way that I could open up a new mine and pay. Twenty-five percent of the people in this benefit fund have some relationship to me and seventy-5 percent do not. I mean the numbers are not going to work. I am not going to be able to do it.

I just do not believe that in collective bargaining that we can get this done. I think that we need to have legislation to get it done.

Mr. BRENNAN. Senator, could I violate your rules and just make a comment on this collective bargaining question?

Senator ROCKEFELLER. Yes.

Mr. BRENNAN. Because this has come up and I think it does deserve to be treated, and it does deserve to be dealt with. As Mr. Reilly suggests when he introduced me, I go back a fair way in this. So I guess I am a part of the history we are talking about.

But if you look at the collective bargaining issue as you try to deal with it, you come up with four or five issues that hit you right in the face. The first issue is that collective bargaining clearly cannot overturn court decisions. One of the major problems we have are court decisions.

The second point is, to the extent that this issue has been bargained, the financial base of the funds has been decreased. President Trumka very eloquently pointed to that in some of his comments.

Three, and I guess perhaps most importantly of all, if you look at that chart, what you are looking at is a smaller and smaller group of people trying to pay for a larger and larger group of beneficiaries. Given what my labor law experts tell me, you do not have to bargain over that, so no employer in his right mind is going to continue with that situation.

Finally, and perhaps most importantly, ten years ago we were facing a very similar situation with our pension funds. Clearly our pension funds were going broke. Our pension funds were several billion dollars underfunded. Senator, you remember as Governor of West Virginia, we spent a fair amount of time with each other on those questions.

Clearly, there had to be government intervention and the government intervention was MEPRA (the Multi-Employer Pension Reform Act), that imposed something over and above collective bargaining for one reason and one reason only, to prevent a last man's club from developing.

History has demonstrated that that was a very wise Congressional decision, because in 1978 we had two pension trusts that were

$4.5 billion underfunded and everybody was running for the door. Today, even though a lot of people have gotten out the door, those two pension funds in one case are fully funded, and in fact overfunded, and the other one is very well funded.

That was not a collective bargaining solution. That was Congress setting the parameters of how we do it. I think we are facing this same type of situation here.

Senator ROCKEFELLER. Thank you, Mr. Brennan.

I have just two further questions, both of which have been touched on before and I would ask any or several of you to respond to them. But again, I want to lay this on the record.

The PBA argues that coal production has not fallen significantly and, therefore, the BCOA claim of a shrinking base is false.

Mr. REILLY. Well, the figures that I have is that since 1979 the coal signatory to the National Agreement has fallen about 80 million tons. During the last year the best figures that I can find are we going to be down about 30 million tons, about 10 percent in the last year. So it is falling.

Senator ROCKEFELLER. Apart from the second question of whose fault all of this is, the PBA says that they have nothing to do with any past promises, Mr. Reilly; and, therefore, they have no responsibility for a solution. One listens to that not knowing anything particularly about the problem that would seem to be the logical argument.

What would your response be?

Mr. REILLY. Well, I think the history of our industry is very unique, as Rich Trumka said. You know, some agreements in the 1950s and mechanization of the mines really have benefitted all of us. Some of the newcomers to the business really have gained from what has happened in the past.

You know, again, the abandoned mine lands also is an industry problem. We have reclaimed our properties and we pay into that reclamation fund because it is an industry problem and we have had an industry solution.

The other point is that really the coal industry, as I say, is unique. The history of the coal and ownership of coal lands is very intertwined. You know, some PBA members I believe mine lands or operate mines that were once tied to the labor agreement.

So I think this whole thing is tied together and—I think it is an industry problem and that is why I am recommending—I pay for my own. I take my own retirees, find out where they are, and I take those and I pay for those. I do not want anybody else to pay for them. I will take care of it. Let everybody else—Massey, Pittston, Peabody, Consol, everybody—take their own retirees that we can identify in the 1950 and 1974 plans and all the reach backs. What is left, that orphan group, for a small premium, I think we can then take care of those and really take care of the benefits they were promised.

As I say, most everybody in this industry has benefitted from the past and the history of the coal industry and I think they really should be obligated to take care of this problem.

Senator ROCKEFELLER. Thank you, Mr. Reilly.

Let me just say in concluding here—I will thank all four of you very much—it is interesting that not particularly many Senators

came to this hearing. I leaned over to Senator Durenberger at one point and told him that I thought this was one of the most explosive problems that I have seen in almost 25 years of public life.

I think the degree of knowledge on the part of the American people, on the part of the U.S. Congress about this is de minimis. That is going to change. It will change either because we approach this intelligently or it will change because we do not and others do not. There will be an explosion the likes of which will be memorable.

I try to remind myself that it was Dixie Woolum and Homer and Emily Eckley that started off this hearing; and it is really about them and those that they represent that this is about. As I indicated at the beginning, we can argue the details and we no doubt will. And, in fact, I will want and welcome input from all parties towards getting a resolution to this. I am completely open that way.

But on the question of whether or not there will be a resolution that will take care of those pensioners, on that there is no doubt in my mind whatsoever. So I would really encourage all, and the Congress will come to understand this. They will come to understand this problem and they will come to understand the obligation that is borne by all parties and by us in responding to this problem.

What I mean by this problem is the retirees and the pensioners, people in their average age, in their mid-seventies or above, who have gone through what very few people on this Hill would understand very much about. So a resolution there will be. It will be in the interests of the pensioners and the retirees and it will also be done in a way that is fair and which is proper legally, and from my point of view, which is proper morally. That may not interest some, but it does interest me.

I am optimistic. I think this will be difficult. But I think the very pressure and the danger of the nature of the problem if left unresolved will gradually but finally compel us to resolve it and to resolve it properly.

I will work with everything that I have to make sure that comes to be and I will understand the goodwill of my colleagues in the Senate and in the House as we approach resolving a most extraordinarily important and human problem.

I thank all of you at the witness table and I thank those of you who preceded. This hearing is adjourned.

Mr. TRUMKA. Thank you.

Mr. REILLY. Thank you.

Mr. DUFEK. Thank you.

Mr. BRENNAN. Thank you.

[Whereupon, the hearing was adjourned at 5:22 p.m.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED

PREPARED STATEMENT OF SENATOR ROBERT C. BYRD

As the Subcommittee on Medicare and Long Term Care of the Senate Finance Committee examines the problems which currently threaten the financial viability of the United Mine Workers of America (UMWA) 1950 and 1974 Benefit Trusts, I am pleased to be able to share with the subcommittee my views on this issue. More than 125,000 retired coal miners, their spouses, and their dependents look to these trust funds for their health benefits. Yet, both the 1950 and 1974 funds face tremendous financial difficulties which jeopardize the access of these retired miners and their families to adequate and affordable health care. Unless action is taken to restore the long-term solvency of the funds, these retirees and their families are likely to find themselves among the growing number of Americans without health care coverage.

Clearly, we face a crisis which demands action, and I commend the Chairman for his leadership in this regard. Two years ago, Senator Rockefeller took the lead on this issue by introducing legislation, of which I was pleased to be an original cosponsor, designed to make the 1950 and 1974 funds solvent. I believe this hearing is but one more indication of his commitment to putting the UMWA health funds back on a sound financial footing.

The problems affecting the 1950 and 1974 funds are not difficult to identify. While the number of companies contributing to the funds has declined over time, the number of "orphan" retirees—those whose former employers have either gone out of business or have ceased making contributions to the funds, and who are now dependent upon the funds for their health care benefits—has steadily increased. At the same time, just as overall health care costs in the United States have risen dramatically in recent years, the cost of providing care to retirees under the UMWA health plans has also increased. It is these trends which have undermined, and which now, if not reversed, threaten to destroy, the long-term financial stability of the UMWA health funds.

There is no reason, however, to expect any near-term reversal of these trends. To the contrary, if the underlying problems affecting the funds are not resolved, they are likely to only grow worse. It is not difficult to see that as the costs borne by those companies which remain a part of the Bituminous Coal Operators' Association (BCOA) increase, the likelihood that they will leave the BCOA and attempt to cease making contributions to the UMWA health funds also increases. Such a development would only exacerbate the problems currently confronting the two trust funds, and could ignite a potentially explosive labor situation.

As noted earlier, we face a crisis which demands action, and, in my view, any real resolution of this crisis will require action on the part of the Federal government, including the Congress. In early 1990, Secretary of Labor Elizabeth Pole established an advisory commission (known as the "Coal Commission") to study the problems affecting the 1950 and 1974 UMWA Benefit Trusts. The report produced by the Coal Commission is a useful document, and the members of the Commission, several of whom are appearing before the subcommittee today, including its chairman, the Honorable William J. Usery, Jr., deserve our thanks for the excellent work they did. In particular, I refer the subcommittee to those portions of the Commission's report that outline the unique and integral role played by the Federal government in the creation and evolution of the coal industry's retiree health care program, as well as the need for the Federal government to play an active role in helping resolve the current crisis. As the Coal Commission noted in its report,

> The medical care program for retired coal miners represents a unique history of cooperation and confrontation between the private sector and the government. The UMWA Health and Retirement Funds were created in an agreement between the Federal government and the United Mine Workers of America during a period of government seizure of the mines. It was shaped by a Federally-appointed commission charged with examining health care in America's coal fields. Over the years, it has been recognized by specific legislative treatment, reshaped by numerous court decisions and kept alive in times of peril by government intervention in the collective bargaining process . . .
>
> The escalating cost of providing adequate health care to coal miners and their families, particularly the increasing population of orphan retirees, cannot properly or fairly be solved by the parties through collective bargaining. The Secretary of Labor's creation of this Commission is evidence in itself that the issue facing the Funds is not one that lends itself to resolution through negotiation and mediation.

In my view, the issue before us is not whether Congress should take action to help restore the financial solvency of the UMWA health funds; the issue is what action must Congress take. Having said this, I would not be so presumptuous as to attempt to lay before the subcommittee a detailed plan of what steps must be taken to restore the viability of the industry's retiree health care program. I have confidence that the Chairman and the other members of the subcommittee will study the issues involved in this matter carefully, and will develop legislation that effectively and equitably addresses the problems facing the 1950 and 1974 trust funds. It is my belief, however, that the following recommendations made by the Coal Commission must be incorporated if a real solution is to be achieved:

- Congress should authorize the use of existing excess assets in the UMWA 1950 Pension Trust to reduce the deficits in the 1950 and 1974 Benefit Trusts;
- Congress should prohibit employers from "dumping" their retiree health care obligations as long as such employers remain in business and have assets to pay for such obligations; and
- Congress should impose a statutory obligation on all signatories to the 1978 National Bituminous Coal Wage Agreement (NBCWA), and successor agreements, requiring such signatories to continue contributing to the coal industry's retiree health care system.

To allow the UMWA health funds to founder would, I believe, be a tragedy for the retirees involved, and a shortsighted abdication of responsibility on our part. We all know how the absence of adequate and affordable health insurance and health care is a growing national problem. We read stories almost daily of the millions of Americans who are without medical coverage. And we know that because of gaping holes in our insurance system, the cost of providing care to those without medical coverage often falls on the back of the American taxpayer.

We are too compassionate, and rightly so, as a Nation and as individuals, to simply deny medical care to those among us who, often for reasons entirely beyond their own control, lack the financial resources to secure adequate health care. We would, therefore, be unwise to let pass any opportunity to shore up those private insurance systems which provide much needed health care coverage to our retired citizens. We are presented with just such an opportunity today, and it is my hope that we will not falter, but that we will rise to the occasion and meet the challenge before us.

Once again, I commend my colleague, the Chairman, for all his efforts in this regard, and I thank him for this opportunity to share with the subcommittee my views on this issue.

Prepared Statement of Homer Eckley

Mr. Chairman and members of the subcommittee, my name is Homer Eckley. I'm from Cadiz, Ohio.

I grew up in a coal mining family. That was back when there were no benefits, no nothing. I went into the service. My dad went on strike, and when he came back they had benefits: Pension and hospitalization. I went into the mine with the idea that when my time came, I could retire and have benefits plus a pension.

I worked 33 years, produced a lot of coal for Y&O. I ran a shuttle car, a loading machine and a continuous miner. was hurt twice: Off once for six months with a fractured pelvis, another time two months with a broken leg.

I was laid off in 1980 and in 1984 I retired. I got my pension, it was $407 a month. Until 1988 I had health care. On January 31, 1988 Y&O cut off my health care because they thought I didn't need it anymore. I was in the middle of radiation therapy with prostate cancer. After 33 years they threw me out. It took almost two years to get coverage back from the fund.

Well, now they tell me that my mine was sold to another company and they're complaining about paying these benefits. I disagree. The entire coal industry is part of the problem. The entire coal industry should be part of the solution. It's not fair for the old folks who kept their side of the bargain

To be put in the position that I faced in 1988. Someone has to pay for what was promised in the White House back in 1946 with John L. Lewis. Since it started as an industry-wide fund covering everybody in the industry, it's only fair that the coal industry should be required to live up to its side of the bargain.

Thank you.

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY

Mr. Chairman, I want to say at the offset that I understand and appreciate the fact that the key problem we are meeting to discuss today is how the funding of the health benefits of retired mine workers can be guaranteed. These are people who worked hard all of their lives and deserve some assurance that their health care needs will be met.

I am still learning about this issue, Mr. Chairman, and am not yet sure what the best way is to accomplish this. I hope our hearing today will move us along toward a solution of the problem.

I do have a number of questions about the assessments, suggested by the coal commission, on former signatories to the Bituminous Coal Operators labor agreements and on the coal industry generally as a method of funding the health benefits of these workers.

Foremost among these concerns is whether the members of the Bituminous Coal Operators Association did not, in some measure, help to create this situation by reducing their contributions to these funds, and whether the operators have done everything they could to reduce health care costs through restructuring these plans and introducing cost containment measures, as the coal commission also recommended.

At the present time, my inclination is to believe that the Congress should not rush forward on this issue. As I understand it, there are cases before the courts the resolution of which will have implications for this matter, and it may be that we should wait for them to act on the cases before them.

In any case, I am looking forward to learning more about this matter today, Mr. Chairman.

Mr. Chairman, our colleague, Senator Hatch, has asked me to place in the hearing record a speech he made recently on this issue, and, with your permission, I would like to do so. Senator Hatch is not a member of this subcommittee, but has been interested in this issue for some time. I'm sure his remarks will be of use to members of the committee and to other interested parties.

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

As you know, some have expressed an interest in having Congress impose a solution to the funding problems facing the United Mine Workers retiree health trusts. They have expressed concern that unless action is taken, the health trusts may well run out of money by February or March of 1992. They estimate that roughly 125,000 retirees and their families may lose their health insurance in the cold of this coming winter.

Drafted, I am told, by the United Mine Workers of America and the Bituminous Coal Operators Association, the proposed solution is not novel by congressional standards, nor is it secret. Although it has not been formally introduced, I understand that copies of the proposal have been passed around downtown and the key provisions are well-known. Basically, the proposal calls for the imposition of a tax on all coal operations in the United States, regardless of a company's past, present, or expected relationship with the United Mine Workers, to salvage the union's health trusts from the brink of bankruptcy.

I am told that in the most recent version of the draft BCOA-UMWA proposal, Congress would create the Coal Industry Retiree Health Benefit Corporation, mod-

eled upon the Pension Benefit Guaranty Corporation. The corporation would be governed by a six person Board of Governors appointed by the Secretary of Labor. Two of the members would be from the UMWA, two would be from the coal industry, and two would represent the public. It is my understanding that the current proposal would require that one, if not both, of the industry representatives be from the BCOA member company. By my count, that means the law would require that, at a minimum, three of the six members of the Board would have to come from the ranks of the proponents of this legislation: the union members and a BCOA member. In other forums, we would call this legislating a packed court.

This draft would require all coal operators to pay a premium to the Corporation. An additional premium would be paid by employers who used to be signatories to a collective bargaining agreement with the Union on or after 1978. These premiums, or more accurately these taxes, would be used to underwrite the health care costs of retired miners and their families, and the participants would be guaranteed the same benefits as they received in the past. The pool of potential participants could be expanded, so there is no limit to the duration of this tax or the number of people who would be covered.

In sum, companies that have never had any relationship with the United Mine Workers or that have terminated their relationship with the United Mine Workers, would be expected to underwrite the business expenses of their competitors, whose employees are represented by the union. They would be expected to underwrite a health plan that may be the most extensive, comprehensive, and expensive plan in operation today in the United States.

As improbable as this scenario might sound, you and I both know it is a very real possibility. The justification for this solution is three-fold. First, we are told that coal is a critical national energy resource, and it still is in the Federal government's interest to assure continuous operation of the coal mines. Uncertainty over the future of the UMWA health trust funds could lead to protracted strikes and labor actions, threatening the national and international viability of the entire industry.

Second, it is noted, the health care needs of these retirees will not disappear if the UMWA health trust funds go bankrupt. If no other solution is found, these costs would be passed on to the existing public programs such as Medicare and Medicaid. Someone will have to pay the health costs of the retirees and their families, it is argued, and it is better to limit the burden to one industry rather than impose it on an entire Nation.

Third, we are told that this is an extremely important political issue for the labor movement in general and the UMWA in particular. Given the membership of the union, with its large percentage of retirees, this is an issue which cannot be ignored nor can it be lost.

This entire debate, however, has to date ignored several more basic issues which must be addressed before any congressional action should be considered. I intend to try focusing some of the debate and inquiry on the following issues.

First, Congress needs to understand why these trust funds are on the verge of bankruptcy. Is it due to the inflationary costs of health care in America today, a problem which is by no means limited to the coal industry?

On the other hand, is this deficit due, as some claim, to the fact that in 1988, the BCOA companies and the UMW agreed to a new collective bargaining agreement? Did the 1988 National Bituminous Coal Agreement change the entire formula for contributing to the health trusts, allowing the BCOA member companies to dramatically reduce the amount of monies they were contributing to the trusts? If the answer is yes, it raises serious questions. Was the economic health of the plan so different three years ago that a major contribution cut was warranted, justified, or proper?

Given the apparent financial severity of this situation, did the BCOA and the UMWA apply the overfunded assets of the pension trust funds to the deficit in the health trusts, as recommended by the Dole Commission Report or, as some have suggested, did the BCOA and the union take steps to eliminate a significant portion of those excess funds this past summer, over half of the surplus or more than $100 million, thereby eliminating any chance these monies could be used to offset the deficit in the health trusts?

The proposal I refer to raises other questions as well. Why should Congress require non-union coal operators, whose employees have never belonged to the UMWA, to pay for the union's health trusts? Why should we require some coal operators to underwrite the costs of their competitors? Have the parties who are responsible for the retiree health programs really exhausted all other alternatives? Is there really no other solution to this problem short of imposing a new tax? Is there really no chance that this issue can be resolved through collective bargaining?

Given the long-standing traditions normally voiced by my colleagues on the other side of the aisle, why should Congress interfere with an issue that should be resolved at the collective bargaining table? Why should Congress be required to overturn existing collective bargaining agreements? Almost every other legislative proposal goes to great lengths to protect the sanctity of collective bargaining. Why should this issue be the exception?

Several companies have also terminated their relationship with the UMWA in accordance with the procedures established under the National Labor Relations Act. Some companies have been sold. Others have weathered bitter strikes. The employees of others have decided not to be represented by the UMWA. I understand that there are several lawsuits now pending in Federal courts that seek to determine whether these companies have a continuing responsibility to the retiree health trusts. Why should Congress act, again contrary to long-standing tradition, before the courts have had a chance to resolve this question?

Any resolution of a difficult problem normally requires all parties to make some sacrifices in order to achieve an equitable solution. Yet, in the proposed legislation that is being discussed by the BCOA and the UMWA, the parties most responsible for this situation would appear to be the least affected. If it is decided that others should help remedy this problem, why must they be forced to underwrite one of the most, if not the most expensive health care program in the United States? Why should a non-union coal operator in Utah be forced to underwrite the cost of a competitor's health care program that exceeds the program provided his own employees?

Moreover, I assume that all of my colleagues will want to find out whether anything is or has been done to contain the health care costs of its retirees? Will the proposal contain all of the cost containment recommendations made by the Dole Commission? Since the proposal would impose a tax on complete strangers to the BCOA-UMWA proposal, why not adopt a more cost-efficient program?

Finally, why shouldn't Congress be fundamentally skeptical of a proposal which appears to have been drafted by one side in a dispute? This is not a situation where everyone who has an interest has come together and hammered out a solution. Instead, this is a situation where two organizations with similar interests appear to have temporarily put aside their differences in order to make others pay for their promises.

Senator Rockefeller should be congratulated for scheduling a hearing on this issue this coming Wednesday. I understand that the subject of the hearing is the Dole Commission Report. I only hope that the witnesses at the hearing will have an opportunity to explore these concerns and build a record that can be used if and when the Senate takes up this issue.

What I fear, however, is that the proponents may elect to follow the same strategy some have tried to utilize in the past. Wait until a tax bill is moving through Congress, and then try to add the UMWA-BCOA proposal as an amendment on the floor of the Senate. Debate would be limited and confused, and the fundamental changes in labor and legal policy called for in the proposed legislation would undoubtedly be treated in a cursory manner.

Having made these observations, I do not think anyone ought to assume that the numerous conceptual problems inherent in the BCOA-UMWA proposal will necessarily prevent it from becoming law. This issue will not be addressed in a vacuum. Like all legislation, it will be affected by what else has happened during the session and what is expected to happen. Resolution of coal health benefit underfunding may well turn into a major legislative battle in the middle of the presidential primary season. Pressures may be brought this coming year which were not evident in the past. I know you recognize that it will take considerable effort to force the Senate to address this issue in the thoughtful and deliberate manner it deserves.

Yet there remains one group that will directly bear the brunt of the resolution of this problem. 125,000 miners and their families face the stark reality that their health insurance is in jeopardy. They were led to believe by their own union leaders and the companies for which they worked that they were guaranteed lifetime benefits. They worked in an industry and under conditions most of us would never choose. No one can deny the hardships they have faced. Moreover, there is truth to the argument that the health of the coal industry has a direct impact on the health of our economy. You know better than I the significant role that coal plays in fueling our homes, our plants, and our industries. If your industry becomes paralyzed by a national strike, the economic well-being of our Nation will suffer.

The basic fact that you must address is that Congress will probably not be willing to sit idle if 125,000 retired miners and their families lose their health insurance in the middle of the winter. But, what Congress will actually do, and how it will re-

spond, is still uncertain. It is important that Congress has available to it all the facts about the real financial status of the funds. Regardless of what Congress ultimately decides to do, be it adoption of the UMWA-BCOA proposal, development of an alternative, adoption of a short-term solution, or a decision to let the parties resolve the issue by themselves, it is imperative that all interested parties have an opportunity to be heard.

PREPARED STATEMENT OF RICHARD M. HOLSTEN

First, let me express my appreciation for this opportunity to discuss the Pole Commission's recommendations on the providing of health care to UMWA retirees.

I am Dick Holsten, one of the two coal industry representatives on the Commission and presently retired after 38 years in the coal trade. I am a former Chairman of the National Coal Association, a member of the Coal Policy Executive Committee of the American Mining Congress and a charter member of the National Coal Council. However, I present this statement solely as a concerned member of the Pole Commission.

My former company is a 100-year-old coal producer with operations throughout most of the coal producing regions of the country. Over the years, many of our mines, although certainly not all of them, have been represented by the UMWA. However, we have never been a member of the Bituminous Coal Operators Association, preferring instead to negotiate our own labor contracts with the Union which are often significantly different from the National Agreement in various respects, including their health care provisions.

On the Dole Commission, therefore, I was able to participate not only as one intimately familiar with coal but more importantly as one with hands-on experience in labor negotiations and the collective bargaining process as practiced in our industry. It was from this perspective, as our sessions evolved under the competent guidance of Bill Usury, that I found myself questioning some of the fundamental assumptions about our business being made by fellow Commissioners and I found myself more and more at odds with the bail-out position being promoted by the UMWA and the BCOA. Finally, at our last session, I was forced to voice a strong dissent to the Industry Wide Funding Plan presented by the Vice Chairman as being not only unrealistic and grossly inequitable but, more importantly, because it dealt primarily with the effects rather than the causes of the Funds' financial problems.

Unfortunately, for whatever the reason, the Dole Commission adjourned without resolving the basic differences of opinion that existed among members. As such, it is doubtful that we will exert much influence on either of the two fundamental problems that led to the appointment of the Commission—the escalating cost of UMWA health care and the declining support base and contribution rates from signatory companies to fund their contractual obligations. The solution proposed by the UMWA and the BCOA acknowledges the need for general cost controls and better cost containment measures but, beyond that, it merely transfers any remaining deficit to others rather than making a genuine attempt to eliminate that deficit through prudent modification of the health care provisions in today's National Agreement.

These concepts of reach-back and an industry-wide tax to resolve the economic distress of a relatively small and shrinking segment of the coal industry are based on several assumptions that are simply erroneous or questionable at best.

(1) First is the assumption that this is a "generic" industry problem and therefore requires a broad based solution. Certainly the rising cost of health care is of great concern throughout the coal industry, just as it is nationally. But the Commission's mandate was specifically directed at the financial plight of the two UMWA Funds and there was absolutely no evidence presented at any of our sessions to indicate that the Funds' problems are generic to the industry. To the contrary, they apply only to that narrow segment of the industry still represented by the UMWA. To merely spread the pain through a broad based tax would be not only grossly inequitable but would amount to a market subsidy of UMWA coal by its direct competitors. This would be highly unsound public policy in our free enterprise system.

(2) Then there is the assumption that the production base to support the UMWA health programs will continue to erode in the future as it has in the past. UMWA coal today represents less than one-third of the U.S. coal industry compared to practically 100% in John L. Lewis' heyday. According to Mr. Trumka, that percentage could decline even further in the future as the coal industry adjusts to market changes brought about by the Clean Air Act. This

may very well be true, with or without the Clean Air Act, particularly if nothing is done to reduce the relatively high cost of union production. But this shouldn't be the case and doesn't have to be the case if the parties who created the economic problems admit their responsibilities for them and take the necessary corrective action. To accomplish this they have available to them both the ability and the necessary resources.

(3) A third erroneous assumption is that the Funds' problems are so politically sensitive that they cannot be resolved through the collective bargaining process. And yet these very same problems are the direct result of collective bargaining. Each health care benefit granted the Union by BCOA over the years may have been relatively innocuous by itself but the cumulative result today is an economic disaster. The rational long-term solution, difficult and painful though it may be, is not in Congress but through leadership at the bargaining table.

(4) Finally, the assumption is made that if ever a UMWA operator, always one, at least in terms of the Funds. And yet there are many companies who over the years have legitimately left the Union and there are many companies who in good faith have negotiated UMWA contracts that may not conform to the health care provisions and contribution rates in the National Agreement. To retroactively reach back and recapture these companies and force them to now accept financial responsibility for health care programs in the National Agreement in which they have neither participation, input nor benefit is totally irrational and makes a mockery of the collective bargaining process.

So what, then, is the solution if bailout is not the answer? I believe it must involve a joint UMWA/BCOA/Government effort that starts with an unbiased analysis of the Funds' problems and develops corrective action aimed at cause rather than effect. The primary responsibility for achieving this goal must fall on the two directly involved parties and it would be accomplished through the collective bargaining process starting immediately. Items for such bargaining could include better cost controls and cost containment measures, the adoption of cost sharing, prudent revisions in benefit coverage, redefinition and re-enrollment of beneficiaries, critical review of the administrative process and any other means of reducing the cost of UMWA health care. Finally, the parties must agree upon a realistic and actuarily sound contribution base, a feature that is surprisingly absent in the current National Agreement, creating much of the deficit problem.

In the meantime, there is a legitimate role for Congress in supporting these collective bargaining efforts. Legislation should be enacted to allow the use of surplus Pension Fund assets to reduce if not eliminate the health care deficits. There could also be legislation to provide some form of limited reassignment of certain beneficiaries now in the Funds back to their last employer, where known. These would be those pensioners who actually retired during the term of a labor agreement between their employer and the Union that contained the guarantee of life time health care.

After such reassignment, those still remaining in the Funds would be the true orphans and their health care should remain, as it always has been, the responsibility of the signatory operators. However, given the elimination of current deficits through transfer of surplus pension assets, the cost reductions available through the collective bargaining process, a limited reassignment of funding responsibility back to the last employer, the prospective stabilization of the support base already negotiated into the National Agreement and the aging of the beneficiary population, the cost to signatory operators for orphan health care would be reduced to manageable levels.

Failure of the UMWA and the BCOA to correct the economic distress created by the National Agreement, merely looking to Congress for a bailout, is a denial of their fundamental responsibilities and such action is neither in their own best interest, nor that of the coal industry as a whole, nor that of society at large. The problems being experienced today by the two UMWA Health Funds are fully correctable by the parties who created them and this is where the long term solution lies. Congress's role should be to rap their knuckles, send them back to the bargaining table and then help out in the areas of asset transfer and a limited reassignment of funding responsibility.

I appreciate this opportunity to present my views and on behalf of myself and my fellow Commissioners thank you for your interest in helping resolve the critical financial bind in which the two UMWA health funds have been placed.

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PREPARED STATEMENT OF SCOTT KISCADEN

The Private Benefits Alliance ("PBA") represents over 150 coal companies accounting for more than 150 million tons of annual domestic coal production. Members include large and small producers, eastern and western companies, oil and utility companies, and producers of bituminous, sub-bituminous and lignite coal. None are signatory to the BCOA/UMWA National Agreement. Some members do, however, have collective bargaining agreements with labor organizations other than the UMWA.

The PBA was formed in August, 1990, in response to pervasive rumors that some members of the Advisory Commission established by Secretary of Labor Elizabeth Dole to look into issues involving the UMWA Benefit Plans might recommend an industry-wide tax on all coal production to help pay for UMWA retiree health care. PBA entered the debate when it became clear that the UMWA and BCOA interests on the Commission were intent on using it as a vehicle to pass to their competitors the cost of commitments made in collective bargaining.

Despite receiving information from PBA which demonstrated that the signatory companies are fully capable of paying for the promised benefits, the Commission ignored this economic and financial documentation in its final report. On October 23, 1990, PBA provided the Secretary of Labor a letter detailing the flaws in the Coal Commission Report. (copy attached.) It was clear to PBA that, in certain important respects, the Advisory Commission became the captive of special interests. Notably, however, after receiving and reviewing the Report, Secretary Dole stated that the case for a tax had not been made and did not endorse the Coal Commission's conclusions.

THE UMWA BENEFIT PLANS ARE NOT IN A CRISIS SITUATION

From the outset, the Commission accepted the unsupported proposition that a crisis exists. Thus, the Commission failed to inquire into the financial ability of employers who have agreed to contribute to the UMWA Benefit Plans to comply with their current labor agreement obligations or to continue to provide retiree health benefits in the future. If the Commission had focused its inquiry on these essential questions, its Report would have emphasized the following points.

The current UMWA-BCOA labor agreement guarantees funding for the UMWA Benefit Plans through at least February 1, 1993. The Plans have sued the BCOA to enforce this guarantee,[1] and will almost certainly prevail. Future funding needs can be addressed through good faith bargaining as has been the case for the past 40 years.

Even more to the point, those who advocate an industry tax conveniently ignore the fact that the BCOA caused the current deficit when, in 1988 collective bargaining, industry negotiators intentionally set contribution rates at a level which they knew to be inadequate. The signatories then refused to honor their benefit guarantee which, quite predictably, created cash flow problems. Nevertheless, they further exacerbated the problem in 1991 reopener negotiations by increasing retiree benefits, thereby drawing down on excess pension assets that the Commission had designated as a source of funds for eliminating the deficit.

Ironically, the UMWA itself has targeted the signatory companies as being solely responsible for the underfunding, yet both the UMWA and BCOA continue to support an industry-wide tax. In a brief to the Supreme Court filed in October, 1990 (*UMWA* v. *Max Noble*, Docket No. 90-464), the UMWA stated:

> The immediate funding crisis in both the 1950 and 1974 Benefit Plans is entirely manufactured by the BCOA, by its refusal to honor its unconditional guarantee and increase contribution levels adequate to fund the benefits. Although fully aware of the Plans actual and potential liability, (the BCOA) chose to minimize the initial contribution rate in the agreement, promising to provide additional funding as required. It has refused to provide that funding requiring the Trustees to sue to enforce the guarantee.

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[1] Article XX(h) from 1988 NBCWA states:

Section (h) Guarantee of 1950 Plans and Trusts and 1974 Plans and Trusts.

Notwithstanding any other provisions in this Agreement the Employers hereby agree to fully guarantee the pension and health benefits provided by the 1950 Pension Fund, the 1950 Benefit Fund, the 1974 Pension Fund, the 1974 Benefit Fund and all other benefit plans described in Section (c) of this Article XX during the term of this Agreement.

SIGNATORIES ACTUALLY CONTRIBUTE FAR LESS TO THE UMWA PLANS NOW THAN THEY CONTRIBUTED IN THE PAST

Under their 1988 labor agreement signatory companies reduced their contributions to the UMWA Pension and Benefit Plans by about 50% from prior levels, with a commensurate savings of approximately 1.5 billion dollars during the term of the 1988 Wage Agreement. Even if contributions to the Benefit Plans were increased to the levels the Trustees allege is necessary to balance income and expenses, signatory companies would still pay $1.80 per hour (691 per ton) less to the Pension and Benefit Plans than they paid under the 1984 Wage Agreement. Although PBA made this fact known to the Commission, it is not even referenced in the final Report.

How did the BCOA companies manage to gain such an impressive savings while simultaneously generating an atmosphere of impending doom with respect to the Benefit Plans? First, they deliberately failed to set the proper contribution rate; then they blatantly refused to honor their guarantee. But there is more. In 1988 the BCOA also changed the basis for making contributions from a formula based on tons to one based exclusively on hours worked. Since the BCOA companies have achieved significant productivity increases, it now takes fewer hours to produce the same number of tons. As productivity has improved, contributions have gone down, creating an artificial short-fall in Plan income. Had BCOA continued to fund the Benefit Plans on a tonnage formula rather than on an hours worked basis, the current deficit would be quite small, notwithstanding that the initial rate was insufficient, and that benefits were guaranteed.

The failure of the Commission to provide a balanced and defensible Report is further compounded by its reliance on irrelevant statistics. Thus, the Report ascribes great significance to the facts that fewer companies now contribute to the Plans than have contributed in the past and that the number of UMWA hours worked has declined. For example, the Report asserts that 80% of national production was represented by the UMWA in 1950, whereas only 30% is now subject to contributions to the UMWA Plan. This is a red herring. The existence of non-signatory coal is immaterial to any current underfunding of the Plans because the Plans have incurred no liability as a consequence of new production mined by non-UMWA employees. What is important is that the total number of tons subject to UMWA Funds contributions has remained fairly constant over the past 10 years—about 300 million tons per year. While the Report assigns significance to factors that are irrelevant, it glosses over the only meaningful fact—the tonnage base traditionally used for funding the UMWA Plans has remained stable.

Further, in February 1991, BCOA and the UMWA knowingly entered into a mid-contract reopener agreement, thus exacerbating the problem. They agreed to increase pensions and retiree death benefit payments, and transferred the death benefit obligation from the health plans (which signatory companies guarantee) to the pension plan. By doing this without increasing contribution rates to cover the expense, the $217 million pension fund actuarial surplus otherwise available for transfer to the underfunded health plans decreased by approximately 50%.

CURRENT SIGNATORIES CAN AFFORD TO CONTINUE FUNDING THE UMWA PLANS WHICH THEY CREATED.

Just as the UMWA and BCOA created the current funding deficit through their own actions, so can they solve the problem on their own through good faith collective bargaining. One simple example demonstrates that the financial burden of funding the UMWA Plans does not merit Congressional involvement. The three largest BCOA member companies had 1989 revenues of $4 billion, and profits of $568 million. They could, *by themselves*, fund the Benefit Plans' deficit with only 1.2% of their 1989 combined revenues (8.4% of their combined profits).

The Commission's failure to investigate the financial ability of current contributors to pay for the benefits they promised is inexplicable. Even more disturbing is the fact that the final Report did not even discuss the information which PBA provided in this regard.

THE "ORPHAN" ISSUE IS A STRAWMAN BECAUSE THE UMWA PLANS HAVE ALWAYS PROVIDED BENEFITS TO UMWA MEMBERS WITHOUT REGARD TO WHETHER THEIR LAST EMPLOYERS WERE CURRENT CONTRIBUTORS

UMWA collective bargaining agreements historically have provided coverage for retirees whose last employer ceases to be signatory to a UMWA contract, as do most multiemployer plans. These beneficiaries are sometimes referred to as "orphans." The BCOA and the UMWA now claim that the orphans are an industry problem and an industry-wide tax should be implemented to pay for their benefits.

The orphan issue is a blatant attempt by the BCOA to gain an emotional edge in this debate without regard to the facts. Since the inception of the plans in 1950, companies which sign UMWA contracts have been fully aware that their contractual contributions were to be used to create, fund and perpetuate plans which provide benefits for all UMWA members including the "orphans" of signatory companies. The BCOA is merely hiding behind these "orphans" to disguise their real objective—reduce their contributions and increase profits at the expense of their competitors.

Paying for UMWA retiree health care is not an industry-wide obligation. Non-UMWA represented, companies are and have always been responsible for their own employees and retirees. In the same way, signatory companies are responsible for the promises they make to their own employees and to retirees covered by the multiemployer plans which the signatory employers agreed to fund. All signatory companies reap multiple benefits from their association membership and from their agreement to participate in multiemployer plans. In fact, in all recent national bargaining the BCOA declined to confront the potentially sensitive issue of escalating health care costs, and agreed to maintain benefits at a 100% coverage level. The BCOA negotiated for and received numerous benefits as a quid pro quo. That is, after all, the essence of good faith bargaining. Any attempt to legislate a solution to a specific collective bargaining issue between signatory parties undermines the very fabric of U.S. labor laws.

RETIREE HEALTH CARE IS PRECISELY THE KIND OF ISSUE THAT LENDS ITSELF TO RESOLUTION VIA THE COLLECTIVE BARGAINING PROCESS

A collective bargaining solution requires the parties who created the UMWA Benefit Plans to solve problems associated with them. This is the method of resolution envisioned by Federal labor law. U.S. labor policy is uncompromising with respect to the imposition of specific contract requirements on any company, let alone non-signatories. The government does not require a particular outcome; rather, it requires that parties solve their own problems. Taxing non-UMWA companies to pay for UMWA retiree benefits is in fundamental conflict with this most elemental tenet of labor law.

A legislative solution is not warranted simply because some Commissioners speculate that, in 1993, the retiree health care issue could cause a strike in the coal industry. Free collective bargaining, including various forms of economic pressure, is anticipated and built into the system of laws administered by the National Labor Relations Board. Those Commissioners who advocate a tax ignore the fact that a legislative bailout would usurp the collective bargaining process, which is the precise solution that Federal labor policy mandates.

On numerous occasions in the past 40 years the UMWA and the BCOA have engaged in tough bargaining about the UMWA Plans, and restructured the Plans several times. For example, in 1988 the parties created a totally new concept of benefit plan withdrawal liability which virtually insures that no current contributor can walk away from the Plans. Notably, the Report does not even acknowledge that this innovative contract provision addresses the very concern expressed by some Commissioners that current signatories might abandon the Plans in 1993.

Along these same lines it should be noted that a UMWA/BCOA initiated levy on non-signatory companies would probably violate antitrust laws. While legislation which accomplishes the same result is exempt from antitrust law, it would circumvent the policy which underlies antitrust law and should not be condoned.

ELEVATING CONTRACTUAL BENEFITS TO A STATUTORY ENTITLEMENT IS BAD PUBLIC POLICY

The industry-wide tax advocated by some Commissioners will not provide a real solution. Rather, it could be a prescription for disaster. Among other things, even before resolution of the debate about the propriety of national health care, it would legislate a health care plan that is already widely regarded as one of the most generous and least subject to effective cost containment. Moreover, some Commissioners apparently favor creation of a new Federal plan which would provide health care benefits not only to current UMWA retirees, but to any future coal industry retiree whose employer goes out of business. This would create a new statutory entitlement and an invitation for abuse.

No one questions the fact that in the United States health care in general, and health care for retirees in particular, is a critical and important issue. The debate over health care for retired UMWA miners must not be handled separately from national health care issues.

When the UMWA Plans' funding problems are viewed objectively it is clear that a legislative bailout which impacts upon companies with no contractual obligation to contribute is neither necessary nor defensible. The UMWA and the BCOA may not look forward to confronting retiree health care issues in collective bargaining, but it is without question that this is the only solution. Those who are making a media and legislative event out of this matter are engaging in pork-barrel politics. Private interest, not the public interest, is at the heart of this dispute.

Attachments.

November 30, 1990

Honorable Roderick A. DeArment
Acting Secretary of Labor
Department of Labor
200 Constitution Avenue, N.W.
Washington, D. C. 20210

Re: Private Benefits Alliance; Exceptions to the Report of the Advisory Commission on United Mine Workers of America Retiree Health Benefits

Dear Secretary DeArment:

The Private Benefits Alliance has reviewed the Coal Commission's November 5, 1990, Report with great concern. Although the PBA concurs with the position that managed care and cost containment are desirable goals, regrettably, the Report's failure to address certain points renders it fatally flawed in critical areas. Moreover, because portions of the Report are based on inaccurate information and are premised on incorrect assumptions, it is misleading and does not accurately reflect the views of a major segment of the coal producing industry. It is these deficiencies which are addressed in this correspondence. The primary areas of deficiency which we discuss in greater detail in the accompanying analysis include the following:

- The Report fails to discuss or evaluate the substantial evidence presented to the Commission that the much touted 'financial crisis' is simply illusory.

- The Commission has conducted no independent inquiry into the fundamental question of whether current contributors are financially capable of paying for the benefits promises contained in their labor agreement. The Report not only contains no evidence that current contributors cannot pay for such benefits, it ignores the compelling evidence presented to the Commission that current signatories are, in fact, fully capable of continuing to pay for such benefits.

- The Report relies on generalities and statistics which are simply immaterial to the real issues, and it fails to acknowledge or discuss facts which bear significantly on the issues.

- The Report provides no analysis or discussion concerning why the collective bargaining parties have historically agreed that the UMWA Plans would provide benefits to individuals who were never employed by current signatories. The failure to put the "orphan" issue into context necessarily results in a Report which is prejudiced in favor of the position taken by the UMWA and BCOA members on the Commission that non-signatories should be made liable for BCOA's collective bargaining promises.

- The creation of a new industry-wide retiree benefit plan would be disastrous. It will only create serious new problems without solving existing ones.

- The Report's insistence that UMWA retiree benefit issues cannot be resolved in collective bargaining is plainly wrong. The view fails to consider the most obvious points, and relies on a scenario which clearly will not occur.

- The Report is nothing more than an attempt by the BCOA and the UMWA interests on the Commission to concoct an "official document" to form a platform upon which they can base legislative proposals designed to relieve them from obligations which they have voluntarily undertaken, but no longer wish to honor.

As the points discussed in the enclosed document demonstrate, the final Report is critically deficient. The Commission has failed to undertake an independent assessment of the evolution and current context of the UMWA retiree health care issue, relying instead on the carefully crafted self-serving characterizations spoon-fed by the UMWA and BCOA representatives on the Commission. It is this very concern that caused the Private Benefits Alliance to request representation on this Commission by letter dated September 13, 1990. Although we were not provided an opportunity to take part in the direction and deliberation of the Commission's work, we hope you will find our comments of value in evaluating what response, if any, the Administration should make with respect to this matter.

In summary, after careful review of the entire Report, we believe that Commissioner Holsten captured the essence of both the problem and the solution in two insightful paragraphs. We concur with his thoughtful observations, and recommend them to you as the touchstone for any future action by the Bush Administration with respect to this issue.

> The basic cause of the Funds' problems today has really nothing to do with the federal government as some would profess. That argument is a smoke screen. Nor is this a "generic industry problem", as characterized by some. This is simply a UMWA problem and a BCOA problem that, while serious in itself, is restricted to a relatively small and shrinking sector of the U.S. coal industry. It has nothing to do with the non-union companies which today comprise a growing majority of the industry. It is the cumulative result of the collective bargaining process over the years, as far back as 1950, in which the BCOA aggressively made health care commitments to the UMWA, commitments that may have been entirely rational at the time, but have now become economically unbearable.
>
> The long term solution lies also in the collective bargaining process, not in government intervention, and certainly not in a tax on non-involved parties. The BCOA and the UMWA in their next negotiations in 1993 will have the opportunity to correct the mistakes of the past by revising their new National Bituminous Coal Wage Agreement to better reflect the economic realities of today's market environment.

Representatives of the Private Benefits Alliance would be pleased to confer with the Department concerning any questions you may have about our position in this matter.

Respectfully,

Scott Kiscaden

Scott Kiscaden
For the Private Benefits Alliance

PRIVATE BENEFITS ALLIANCE EXCEPTIONS TO THE REPORT
OF THE ADVISORY COMMISSION ON
UNITED MINE WORKERS OF AMERICA RETIREE HEALTH BENEFITS

THE REPORT'S RECOMMENDATIONS ASSUME THE EXISTENCE OF A FINANCIAL CRISIS WHICH IS NOT SUPPORTED BY THE FACTS AND CIRCUMSTANCES.

The Commission was presented with compelling information that no real financial "crisis" exists, but the Report neglects to address this crucial fact. Rather, the Report leaps to the unsupported conclusion that a crisis exists, and can be solved only by the enactment of federal legislation.

(1) BCOA has guaranteed funding in collective bargaining.

The UMWA Benefit Plans' current underfunding is not the equivalent of a crisis. Actually, their financial status is merely the result of BCOA's failure and refusal to honor its contractual guarantee to fund the Plans for the term of the 1988 Wage Agreement. Even the UMWA does not subscribe to the notion that there currently exists any funding crisis. In its Brief filed in October 1990 with the United States Supreme Court in UMWA v. Max Nobel, Docket No. 90-464, the UMWA states:

> The immediate funding crisis in both the 1950 and the 1974 Benefit Plans is entirely manufactured by the BCOA, by its refusal to honor its unconditional guarantee and increase contributions to a level adequate to fund the benefits. Although fully aware of the plans' actual and potential liabilities, [the BCOA] chose to minimize the initial contribution rate in the agreement, promising to provide additional funding as required. It has refused to provide that funding, requiring the Trustees to sue to enforce the guarantee. (emphasis supplied).

The failure of the Report to deal with the fact that Plan benefits are currently fully guaranteed by current signatory companies casts serious doubt on its credibility and negates the recommendations and conclusions pertaining to the need to obtain new sources of funding for the Plans.

(2) Current signatories are financially able to pay for the benefits promised in collective bargaining.

The Report is further flawed by its failure to acknowledge the financial ability of current signatories to the NBCWA to provide the level of funding required by the Benefit Plans. Rather, the Report seems to adopt as a fundamental principle that current signatories should be relieved from their contractual obligations. Yet, they promised retiree health benefits in collective bargaining, and provided the necessary funding for the past 40 years.

The multimillion dollar companies comprising BCOA are some of the largest and most profitable in the coal industry. Providing the level of funding necessary to stabilize the UMWA Benefit Plans would have a negligible impact on their annual profit of hundreds of millions of dollars. The Report's recommendations for spreading the payment obligation to non-signatories by imposing a coal tax are made without first examining the threshold question of whether there is any reason current signatories cannot afford to continue to provide the benefits they promised. The failure to discuss this most fundamental issue renders the objectivity and the conclusions of the Report suspect.

(3) Current signatories have actually reduced their contribution obligation.

Inexplicably, the Report does not even reference the fact that, in 1988, the BCOA reduced its level of contributions to the Funds by more than 50 percent from prior levels, effecting a savings of approximately a billion and one half dollars during the term of the current Wage Agreement. This glaring omission puts into question every assumption and conclusion contained in the Report with respect to the need to broaden the Plans' contribution base.

(4) Much of the report is premised on statistics which are not relevant to the conclusions reached.

The Report asserts that "the combination of skyrocketing health care costs, an increasing number of retirees who have been abandoned by their employees, and a smaller percentage of coal producers making contributions to the UMWA Funds have put the health care program for retirees in financial crisis." Unfortunately, the evidence offered in support of these conclusions does not withstand even minimal scrutiny.

The Report states repeatedly that the UMWA Plans pay out twice as much in benefits now as ten years ago. Without analysis and elaboration this number is meaningless. Much of the increase can be accounted for by simple inflation. Moreover, this increase is more likely indicative of the parties' failure to take control over the structure and costs of the UMWA Plans in their collective bargaining than of structural impediments which the parties cannot solve.

The Report also states that 80 percent of national production was represented by the UMWA in 1950, whereas only 30 percent is now subject to contribution to the UMWA Plans. This is another interesting but meaningless statistic. The fact that a significant non-signatory sector has developed over the past 20 years is immaterial to any current underfunding of the Plans. New production occurring outside the jurisdiction of the UMWA has not resulted in the addition of new beneficiaries in, or the imposition of new obligations on, the UMWA Plans. The only relevant point -- which the Report never mentions -- is that over the past 10 years the total number of tons subject to UMWA Funds' contributions has remained fairly constantly in the range of 300 million tons per year. Historically, tons produced has constituted the contribution base. This base actually has remained stable, not declined, as the Report suggests.

In fact, the switch in 1988 from a tonnage to an hourly contribution base is one of the primary culprits in the current contribution shortfall. Increasing productivity has resulted in fewer hours worked by signatory companies to produce the same number of tons, creating shortfalls and declines in Plan income. As productivity and profitability have gone up, contributions have declined. In a mad rush to conclude that a crisis exists, the Report omits any reference to the fact that, had the parties not converted to an hourly contribution base in 1988, there would likely be no current deficit.

Since total tons produced has remained stable, the fact that fewer companies may now be contributing to the Plans than in the past is immaterial. Indeed, it is far from clear that the fact there are fewer signatories now is of significance to anything. Fewer contributors might reflect nothing more than a trend in the industry of larger signatory companies acquiring smaller ones.

The Report also concludes that an increasing number of beneficiaries have been abandoned by their employer, and this has

contributed to the financial crisis. As discussed more fully below, this is both very misleading and most probably wrong. In fact, there may be fewer such beneficiaries in the UMWA Plans now than at any time in the past 30 years. Furthermore, the number of participants in the 1950 Plan -- which accounts for more than 80% of all beneficiaries -- has been declining for many years, and will continue to do so at a rapid pace.

THE FACT THAT THE BENEFIT PLANS PROVIDE COVERAGE TO "ORPHANS" IS AN INTEGRAL FEATURE OF THE PLANS WHICH THE UMWA AND BCOA KNOWINGLY DEVELOPED AND ENCOURAGED.

The Report contains a lengthy discussion of the evolution of the UMWA Plans. However, it never acknowledges that from their inception and as an inherent part of their design the Plans have always been funded by current signatories without regard to a connection between a given beneficiary and a current contributor. This communal feature is what has enabled the UMWA over the years to utilize the UMWA Plans as the Union's primary tool for organizing and for maintaining control over its membership. Moreover, crediting service to participants for time not worked for signatory employers has been willingly sanctioned by the BCOA in every contract since the Plans were established.

This notwithstanding, the Report seeks to impart a moral dimension to the fact that many beneficiaries in the UMWA Plans last worked for an employer which is either out of business or no longer signatory to a UMWA contract. For example, the slogans "dumping" and "abandoned" are used repeatedly, obviously with a pejorative connotation. By failing to acknowledge that the parties intended to create, fund and perpetuate Plans which would provide benefits for all UMWA members, including "orphans", the Commission has created a one-sided Report. By focusing on emotional buzzwords rather than objective analysis the Report invites a sympathetic response to suggestions that the bargaining parties should now be relieved from their contractual promises -- even if this means forcing non-signatories to pay.

It is highly misleading for the Report to characterize the funding issue as a choice between either requiring current signatories to be responsible for providing benefits to Plan beneficiaries whom they never employed, or concluding that such beneficiaries are an "industry-wide" problem. Benefits for individuals in this category have always been the subject of collective bargaining, and have never been an industry-wide problem. The UMWA and its membership have always insisted on such a communal system for delivering benefits to UMWA members, and this system has always been acceded to by signatory employers. Collective bargaining has always been the mechanism for insuring the funding of benefits to all UMWA retirees. Put another way, the Report projects a tone of indignation about the fact that the Plans provide benefits to some people who never worked for a current contributor, but never puts into context how and why this crucial feature of the Plans has served the parties so well. Thus, the Report can be validly criticized for its obvious predisposition towards characterizing the presence of "orphans" in the Plans as being an industry-wide problem, without undertaking any analysis whatsoever as to the reasons for and benefits gained by both the UMWA and BCOA in maintaining such a structure over the past 40 years.

The Report's selective history of the Plans -- jointly prepared by the UMWA and the BCOA -- is obviously weighted towards a strained and overblown emphasis on government "intervention" to justify shifting to others the responsibility for paying the cost of this communal system for providing retiree benefits. This is nothing more than a self-serving, premeditated effort by BCOA to gain support for an inappropriate public bailout of the parties'

chosen method for providing benefits to UMWA retirees. In another forum the UMWA itself has been quite candid in stating the issue. In its Supreme Court Brief in the Nobel case, supra, the Union takes issue with the BCOA's position and provides the following cogent analysis and facts:

> BCOA further argues that the district court's decision will encourage "dumping" of retiree obligations on the 1974 Benefit Plan by some employers. The Union made proposals in both 1984 and in 1988 to prevent that problem. The proposals offered in 1984 would have placed the obligation to provide these benefits on the very employers BCOA now complains are "dumping" their obligations on the 1974 Benefit Plan. The BCOA employers declined to agree to that proposal because they wanted to limit their own liability to the term of the agreement. In 1988, the Union proposed and the BCOA accepted contractual provisions for withdrawal liability for employers who withdraw from participation in the 1974 Benefit Plan. To the extent that the problem exists, it has been created largely by the BCOA's own bargaining position. (emphasis supplied).

THE PROPOSED NEW INDUSTRY WIDE PLAN IS NOT A SOLUTION, IT IS A PRESCRIPTION FOR DISASTER.

Rather than focus on the current UMWA retiree health care situation, the Report actually recommends the creation of a new Industry Wide Plan to provide health care benefits to "future orphans of employers -- whether signatory or non-signatory to a collective bargaining agreement". This new plan would provide health benefits to all future coal industry retirees provided their last employer cannot pay for such benefits. It would exacerbate the existing problem by extending benefits to new categories of individuals not now eligible to participate in the UMWA Plans. Obviously, this proposal is intended to deflect attention from the fact that any solution requiring the entire coal industry to bail out the BCOA companies from the promises contained in their contract would be both controversial and of questionable legality. By calling a new plan "industry-wide" its proponents hope to obfuscate the issue and diffuse such criticism.

In fact, such a plan would be worse than a simple bailout of the BCOA. As proposed, it would actually encourage all coal industry employers to make generous lifetime health benefit promises to their employees, without setting aside the necessary funds and without regard to whether the companies themselves have any expectation of actually paying for such benefits when they come due. This does not provide an incentive to individual employers to act responsibly. The concept of solving one interest group's self-made problem by creating an even bigger problem for everyone else is bad public policy and bad economic policy, and should never see the light of day.

The observation of Professor Alain Enthoven, a noted health care economist, should not be ignored. "The problem of retiree health care cannot be solved without major concessions by labor and stockholders. Any promise of bailouts would send the wrong message: that these people, who ought to be economically

self-sufficient and managing long-term economic viability, can be bailed out if they act irresponsibly."[1]

THE REASONS SET FORTH IN THE REPORT FOR THE CLAIM THAT THE UMWA AND THE BCOA CANNOT CONTINUE TO RESOLVE UMWA BENEFIT PLAN ISSUES IN COLLECTIVE BARGAINING ARE UNSUPPORTABLE.

The Report contains repeated suggestions that the UMWA and the BCOA can no longer address through collective bargaining the very issues that they have handled successfully for the past 40 years. The reasons advanced by those who doubt the efficacy of the collective bargaining solution cannot withstand scrutiny. For example, such positions are apparently premised on the view that current signatories will refuse to continue to fund the UMWA Plans under their next labor agreement. These doomsayers ignore the fact that the BCOA and the UMWA have always reached agreement about funding the UMWA Plans and agreement has been reached under the last two national agreements without a strike.

This view also assumes that the BCOA would be immune to the enormous economic pressure which the UMWA would certainly bring to bear in 1993 should the BCOA seek to discontinue such funding. Yet it is the prospect of such economic coercion by the UMWA that forced the creation of the Plans in 1950, has insured their maintenance over the past 40 years, and will insure their continuation in the future.

The UMWA dealt with such idle threats by the BCOA quite concisely in its Supreme Court Brief in Nobel, supra, noting:

> BCOA's final assertion is that the district court's decision will, sooner or later, destroy the 1974 Benefit Plan. That assertion is without foundation.
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> * * *
>
> The UMWA negotiated the guarantee of benefits in 1978 specifically to insure that pensioners received the benefits to which they were entitled. The BCOA agreed to renew that guarantee in the 1981, 1984 and 1988 Agreements, although frequently taking the initial position during negotiations that it would no longer agree to guarantee benefits. (Emphasis supplied).

This is not to say that funding, benefit levels and so on may not be issues in future bargaining, as they properly should. As the Report itself found, "the high cost of health care is the main issue in 87 percent of labor disputes and an issue that will dominate the collective bargaining process in the years to come". That the UMWA Benefit Plans may be disputed in future collective bargaining hardly transforms this matter into a candidate for legislative initiatives which would supersede the collective bargaining process.

At least one Commissioner expressed concern that there will be an incentive in future collective bargaining for signatories to withdraw from the obligation to continue making contributions.

1/ Enthoven, "Retiree Health Benefits as a Public Policy Issue," in Retiree Health Benefits: What is the Promise? 17 (Employee Benefits Research Institute, 1989).

This ignores the fact that the parties themselves have negotiated their own solution to that problem. The current contract contains a withdrawal liability provision which insures that the cost to any current signatory of withdrawing would be financially prohibitive. Indeed, if all signatories were to engage in a mass withdrawal at the conclusion of the current Wage Agreement, they would collectively owe approximately $1.5 billion to the Benefit Plans -- more than enough to provide lifetime health care for every beneficiary.

It seems obvious that the collective bargaining process is the best vehicle for resolving issues involving the Benefit Plans. Although limited legislative intervention such as authorizing a transfer of assets from the overfunded Pension Plan might be appropriate, any legislative action should be designed to facilitate the parties' reaching collective bargaining solutions, not to preempt the collective bargaining process.

NO NEW TAX

Any legislative solution which proposes a tax to solve this problem would surely be ill-advised and untimely. Funding for the UMWA Plans may be resolved in a far less intrusive, and far more appropriate, manner.

* * *

RESPONSE OF PRIVATE BENEFITS ALLIANCE TO STATEMENTS MADE AT THE SUBCOMMITTEE'S SEPTEMBER 25, 1991 HEARING ON THE COAL COMMISSION REPORT

STATEMENT:

Benefits for retired employees is a permissive subject of bargaining. This means that the UMWA cannot insist that the BCOA even talk about retiree health care in collective bargaining after the 1988 National Bituminous Coal Wage Agreement expires. This could lead to the collapse of the UMWA Benefit Plans, leaving the beneficiaries with only Medicare coverage.

RESPONSE:

It is true that a union may not lawfully strike only over permissive subjects of bargaining such as benefits for already retired employees. However, where an employer has already promised lifetime health care, a union's demand that the employer continue to pay for the promise may well be a mandatory subject of bargaining. In this event the BCOA would be legally obligated to bargain about continued funding of the UMWA Plans. In any event, if the Union should strike over this topic and other mandatory ones as well, the Union will have effectively elevated the retiree health benefit issue to the point where the BCOA cannot refuse to address it.

Most significantly, this new found concern about the "permissive" nature of UMWA retire health benefits must be viewed against the backdrop of a 40 year history of BCOA bargaining about such issues. Signatory companies now pay substantially less to fund the UMWA Pension and Benefit Plans than at any time in the last 15 years.

STATEMENT:

The BCOA can refuse to agree to provide retiree health benefits in the future, leaving the retirees with no benefits and no recourse.

RESPONSE:

This is implausible for several reasons. First, signatories to the 1988 NBCWA are contractually obligated to pay withdrawal liability to both UMWA Benefit Plans should they cease payments to the Plans for any reason, including a failure to execute a successor wage agreement[1/]. This provision expressly continues after contract expiration. Thus, any signatory which intends to pull out of the UMWA Plans would have to fund its obligation before doing so. If all current signatories withdrew collectively they would owe the Plans more than a billion dollars. This withdrawal liability clause forecloses the very threat BCOA now makes

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1/ Article XX provides in pertinent part:

(i) Withdrawal From 1974 Benefit Plan and Trust

(1) In addition to any other obligations set forth in this Agreement, the Employers hereby agree that, in the event that an individual Employer ceases, for whatever reason to have an obligation to contribute to the 1974 Benefit Trust, that Employer shall be considered to be in Withdrawal, and shall be liable to the 1974 Benefit Plan and Trust for Withdrawal Liability.

(2) Such Withdrawal Liability shall arise whether Withdrawal is caused by a cessation of covered operations by the Employer, the Employer's bankruptcy, failure of the Employer to execute a successor Agreement following the expiration of this or any successor Agreement, or for any other reason.

(j) Withdrawal from 1950 Benefit Plan and Trust

(1) In addition to any other obligations set forth in this Agreement, the Employers hereby agree that, in the event that an individual Employer ceases, for whatever reason, to have an obligation to contribute to the 1950 Benefit Trust, the Employer shall be considered to be in Withdrawal, and shall be liable to the 1950 Benefit Plan and Trust for Withdrawal Liability.

(2) Such Withdrawal Liability shall arise whether a Withdrawal is caused by a cessation of covered operations by the Employer, the Employer's bankruptcy, failure of the Employer to execute a successor Agreement following the expiration of this or any successor Agreement, or for any other reason.

that the UMWA Benefit Plans will disintegrate absent legislative intervention.

Second, the BCOA scenario assumes that UMWA miners would ratify a new wage agreement with the hundreds of current signatories which abandons the retirees and the UMWA multiemployer plans. This is certainly farfetched in view of Mr. Trumka's statement that he would take the pensioners to Jerusalem if necessary to get their health care.

The BCOA representatives refer to UMWA retiree health care promises as a "moral issue". Ignoring their legal obligations, if one assumes the BCOA members will follow their own consciences, they will not walk away from their acknowledged moral obligation to continue to bargain about the health care plans they created, and have maintained for so many decades.

STATEMENT:

The BCOA and UMWA spent more than half of the 1950 Pension Plan's excess assets to provide death benefit increases and to supplement the meager pensions of UMWA retirees. This was accomplished in 1991 through good faith collective bargaining and was entirely proper.

RESPONSE:

Using the excess pension plan assets to eliminate the Benefit Plans' underfunding has been endorsed by every interested party. The BCOA, the UMWA, the Coal Commission and Senator Rockefeller himself were all in agreement with this principle. Yet, in their 1991 reopener bargaining, the BCOA and UMWA agreed to new benefits which eliminated approximately $135 million of the amount available to be transferred to the Benefit Plans. Much of it was actually used to relieve BCOA companies of their separate contractual obligation to pay death benefits. This was bad faith by the parties. It illustrates how the parties use the UMWA Plans for their own best interest, and demonstrates that they are more committed to pursuing a government sponsored relief act than solving their own problem. Their protestations to the contrary, they are exacerbating, not ameliorating, their self-made crisis.

STATEMENT:

The federal government established the UMWA medical program in the Krug-Lewis Agreement.

RESPONSE:

The federal government has never been party to any agreement with the UMWA which promised medical care -- much less lifetime retiree health benefits. After the government seized the mines in 1948, Secretary of the Interior Julius Krug acceded to John L. Lewis' demand that a welfare fund financed by a 5¢ per ton royalty be created to compensate miners and their families for lost wages resulting from temporary or permanent disability, death or retirement. The Krug-Lewis Agreement also authorized creation of a separate "Medical and Hospital Fund" to be administered exclusively by trustees appointed by Lewis, and financed solely by wage deductions authorized by employees.[2/] After the

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2/ A copy of the often mentioned but seldom read Krug-Lewis Agreement is attached.

government's one-year control ended the UMWA and BCOA bargained about the multiemployer plan concept and, in 1950, established the UMWA Welfare Fund. In the succeeding four decades the parties have expanded, contracted, restructured, funded and administered the UMWA Funds through private collective bargaining, without government interference or dominance. In fact, the 1974 NBCWA is the first labor agreement to contain a reference to lifetime retiree health care.

STATEMENT:

The Abandoned Mine Land Reclamation Fee establishes a clear precedent for taxing the entire coal industry to redress a problem caused by a few.

RESPONSE:

Congress concluded that the cost of redressing environmental problems created by the coal industry during a period when reclamation standards did not exist should be borne by the users of coal in the form of the AML fee. This is not comparable to funding health care for UMWA members. By comparison, employee benefits for UMWA members, including promises of supplemental health care after retirement, is a private matter to be resolved by the parties who are directly involved.

It is commendable that in collective bargaining the UMWA has obtained repeated promises from signatory companies that they would contribute to multiemployer plans structured to insure that Union members will receive complete health care coverage after retirement. While this may be a very desirable and valuable fringe benefit for UMWA members, it cannot be said that employee benefit promises, whether made by one company or a group of companies, is a cost assignable to the entire coal industry.

The fallacy of the AML fee analogy can be easily demonstrated. If non-UMWA represented companies petitioned Congress to enact an industry wide tax to fund a plan that would provide 100% medical coverage to all retired non-union coal miners who worked at least 10 years in the industry, it is unimaginable that the UMWA or the BCOA would agree that the lack of 100% health coverage for non-UMWA miners and their families is an industry problem analogous to unclaimed and abandoned mine lands.

STATEMENT:

The AML fee should be used in whole or in part to pay for UMWA retiree health care.

RESPONSE:

It is entirely inappropriate to use the AML Fund for this purpose. In the first instance, there is no need to do so because the signatory employers can easily pay for their contractual benefits. There is no more logic to using the AML Fund to pay for UMWA retiree health care than for using the Highway Trust Fund to supplement health care expenses incurred by retired members of the Operating Engineers.

Moreover, the BCOA companies operate extensively in Appalachian underground mines where the AML tax is lower, whereas many non-signatory companies are concentrated in

Western surface mines where the fee is higher. Diverting the AML fee would exacerbate an already contentious debate about both the continuing need for the AML fee tax, and the inequitable and capricious manner in which it impacts on various segments of the industry.

An eventual phase out of the AML fee may be appropriate under these circumstances and, in any event, the future of this fee must stand or fall on its own merits. Using the AML fee to pay for UMWA retiree health care is merely an indirect method of subsidizing BCOA. Shifting BCOA's bargaining obligations to the rest of the coal industry should be debated on its own merits, not hidden behind a misuse of the AML fee.

STATEMENT:

It is appropriate to tax the entire industry to "level the playing field" because this is the only way BCOA companies can remain competitive.

RESPONSE:

An industry-wide tax would not level the playing field, it would tilt the competitive balance in the industry dramatically in BCOA's favor. This is, of course, exactly the result sought by BCOA.

The economic "playing field" is as close to equilibrium now as it has ever been. Over a period of 40 years UMWA signatory companies have agreed in bargaining to provide health benefits to UMWA retirees through a multiemployer plan structure. The BCOA has, necessarily, factored the cost of funding the UMWA Plans into the total cost of the wages, benefits, work rules and other contract terms contained in the National Agreement. The non-signatory sector of the coal industry did not get the benefit of the BCOA's private bargain with the UMWA. BCOA's attempt to transfer the cost of its private contract obligations to its competitors is unjust, unfair and unnecessary.

The BCOA proposal would result in a major and unprecedented boon to the UMWA-represented segment of the industry. If BCOA suddenly shifts to non-UMWA companies its cost of funding the UMWA Benefit Plans one of two outcomes will occur. The windfall savings will enable BCOA companies to underbid their competitors.

STATEMENT:

BCOA has become uncompetitive because the UMWA Plans provide benefits to retirees of companies which have simply walked away from their obligations. Retirees of BCOA companies comprise 25% of the beneficiary population, while 75% come from companies which are no longer in business or, in some cases, have withdrawn from participation in the UMWA Plans. The 75% are the obligation of the industry at large, not just the BCOA. The entire industry benefited from mechanization of the mines which was the quid pro quo given by the Union to BCOA in the 1950's in exchange for a small pension. The entire industry is as indebted to these UMWA retirees as the BCOA companies.

RESPONSE:

Since 1950 when the UMWA and the BCOA agreed to a system designed to deliver benefits to all qualifying UMWA members, all contributing employers have been fully aware that the UMWA Funds provided benefits to individuals without regard to whether the beneficiary's last employer was also contributing. That the BCOA companies may now regret agreeing to this concept for delivering health care benefits provides no justification for foisting their contractual commitments and collective bargaining obligations off on others. The BCOA companies are financially strong and many are multi-national. Hundreds of companies currently contribute to the UMWA Plans and the 1989 gross revenues of the three largest alone were $4.2 billion. They can clearly afford the benefits which they have promised in collective bargaining.

Insofar as funding the UMWA Benefit Plans may have affected BCOA's competitive position, it is directly attributable to BCOA willingness to sponsor one of the most costly and uncontrolled health care programs in the United States. BCOA has had repeated opportunities to seek meaningful cost containment and managed care initiatives. Instead, BCOA signed labor contracts in 1984, 1988 and 1991 which continued the Plans virtually unchanged, preferring to settle without a strike rather than confront the UMWA about needed changes.

Mechanization of the mines is a non-issue. UMWA President John L. Lewis realized that modernization was inevitable and seized on the transition to gain real wage increases for those miners who learned the skills necessary to operate the new equipment. There was no promise, explicit or implicit, that UMWA miners would receive lifetime health care in return for accepting the introduction of equipment into the mines.

BCOA's desire to shift its private burden smacks of a selfish profit motive. It is evoking the retirees' image to line its pockets at the expense of the non-signatories. The fact is that throughout its history BCOA has knowingly agreed to fund the UMWA Plans, which provide benefits to retirees from BCOA companies which are no longer in business.

STATEMENT:

Collective bargaining cannot resolve this problem. This could result in chaos in the coalfields in 1993. A legislative solution is necessary.

RESPONSE:

Collective bargaining is the only way to solve this problem. No legislation is needed. The government may request that the interested parties start now to negotiate their differences, thereby avoiding even the threat of strike in 1993. If they still cannot agree, the parties may ask that interest arbitration be interposed as a solution. This will allow issues involving the UMWA Benefit Plans to be resolved by an impartial third party.

STATEMENT:

The UMWA Benefit Plans are in a "death spiral" because of the steadily declining number of employers that contribute to the Plans.

RESPONSE:

There are many reasons why the number of contributing employers has decreased, not the least of which is the fact that large signatory companies are acquiring other signatories at a dizzying pace. Consider, for example, that just recently Amax Coal Company acquired Cannelton Coal Company, Zeigler Coal Company acquired Old Ben Coal Company, Consolidation Coal Company has announced that it may acquire AEP, and Rochester and Pittsburgh has announced that it has signed a letter of intent to purchase Pikeville Coal Company. These are only a few examples of this trend.

The key statistic is the number of tons produced by UMWA signatories, and this has remained almost constant over the past ten years. Indeed, if one takes into account the tonnage now produced by UMWA signatories and their affiliates which has been exempted from contributions to the UMWA Plans, it is clear that these companies are producing more coal now than at any time in recent history. It is undeniable that BCOA companies are double breasting to avoid contributing to the UMWA Plans.

The economic facts are the real story. BCOA companies have agreed to pay; they can afford to pay.

NATIONAL BITUMINOUS WAGE AGREEMENT

EFFECTIVE MAY 29, 1946, DURING THE PERIOD OF GOVERNMENT OPERATION OF MINES

EXECUTED AT THE WHITE HOUSE, WASHINGTON, D. C., MAY 29, 1946

AGREEMENT

THIS AGREEMENT between the Secretary of the Interior, acting as Coal Mines Administrator under the authority of Executive Order No. 9728 (dated May 21, 1946, 11 F. R. 5593), and the United Mine Workers of America, covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945.

1. Provisions of National Bituminous Coal Wage Agreement Preserved

Except as amended and supplemented herein, this Agreement carries forward and preserves the terms and conditions contained in all joint wage agreements effective April 1, 1941, through March 31, 1943, the supplemental agreement providing for the six (6) day work week, and all the various district agreements executed between the United Mine Workers and the various Coal Associations and Coal Companies (based upon the aforesaid basic agreement) as they existed on March 31, 1943, and the National Bituminous Coal Wage Agreement, dated April 11, 1945.

2. Mine Safety Program

(a) Federal Mine Safety Code

As soon as practicable and not later than 30 days from the date of the making of the Agreement, the Director of the Bureau of Mines after consultation with representatives of the United Mine Workers and such other persons as he deems appropriate, will issue a reasonable code of standards and rules pertaining to safety conditions and practices in the mines. The Coal Mines Administrator will put this code into effect at the mines. Inspectors of the Federal Bureau of Mines shall make periodic investigations of the mines and report to the Coal Mines Administrator any violations of the Federal Safety Code. In cases of violation the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager so that with all reasonable dispatch said violation will be corrected.

From time to time the Director of the Bureau of Mines may, upon request of the Coal Mines Administrator or the United Mine Workers, review and revise the Federal Mine Safety Code.

(b) Mine Safety Committee

At each mine there shall be a Mine Safety Committee selected by the Local Union. The Mine Safety Committee may inspect any mine development or equipment used in producing coal for the purpose of ascertaining whether compliance with the Federal Safety Code exists. The Committee members while engaged in the performance of their duties shall be paid by the Union, but shall be deemed to be acting within the scope of their employment in the mine within the meaning of the Workmen's Compensation Law of the state where such duties are performed.

If the Committee believes conditions found endanger the life and bodies of the mine workers, it shall report its findings and recommendations to the management. In those special instances where the Committee believes an immediate danger exists and the Committee recommends that the management remove all mine workers from the unsafe area, the operating manager or his managerial subordinate is required to follow the recommendation of the Committee, unless and until the Coal Mines Administrator, taking into account the inherently hazardous character of coal mining, determines that the authority of the Safety Committee is being misused and he cancels or modifies that authority.

The Safety Committee and the operating manager shall maintain such records concerning inspections, findings, recommendations and actions relating to this provision of the Agreement as the Coal Mines Administrator may require and shall supply such reports as he may request.

3. Workmen's Compensation and Occupational Disease

The Coal Mines Administrator undertakes to direct each operating manager to provide its employees with the protection and coverage of the benefits under Workmen's Compensation and Occupational Disease Laws, whether compulsory or elective, existing in the states in which the respective employees are employed. Refusal of any operating manager to carry out this direction shall be deemed a violation of his duties as operating manager. In the event of such refusal the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager or shutting down the mine.

4. Health and Welfare Program

There is hereby provided a health and welfare program in broad outline—and it is recognized that many important details remain to be filled in—such program to consist of three parts, as follows:

(a) A Welfare and Retirement Fund

A welfare and retirement fund is hereby created and there shall be paid into said fund by the operating managers 5¢ per ton on each ton of coal produced for use or for sale. This fund shall be managed by three trustees, one appointed by the Coal Mines Administrator, one appointed by the President of the United Mine Workers, and the third chosen by the other two. The fund shall be used for making payments to miners, and their dependents and survivors, with respect to (i) wage loss not otherwise compensated at all or adequately under the provisions of Federal or State law and resulting from sickness (temporary disability), permanent disability, death, or retirement, and (ii) other related welfare purposes, as determined by the trustees. Subject to the stated purposes of the fund, the trustees shall have full authority with respect to questions of coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provision of benefits, and all related matters.

The Coal Mines Administrator will instruct the operating managers that the obligation to make payments to the welfare and retirement fund becomes effective with reference to coal produced on and after June 1, 1946; the first actual payment is to be made on August 15, 1946, covering the period from June 1 to July 15; the second payment to be made on September 15, covering the period from July 15 to August 31; and thereafter payments are to be made on the 15th day of each month covering the preceding month.

(b) A Medical and Hospital Fund

There shall be created a medical and hospital fund, to be administered by trustees appointed by the President of the United Mine Workers. This fund shall be accumulated from the wage deductions presently being made and such as may hereafter be authorized by the Union and its members for medical, hospital and related purposes. The trustees shall administer this fund to provide, or to arrange for the availability of, medical, hospital, and related services for the miners and their dependents. The money in this fund shall be used for the indicated purposes at the discretion of the trustees of the fund; and the trustees shall provide for such regional or local variations and adjustments in wage deductions, benefits and other practices, and transfer of funds to local unions, as may be necessary and as are in accordance with agreements made within the framework of the Union's organization.

The Coal Mines Administrator agrees (after the trustees make arrangements satisfactory to the Coal Mines Administrator) to direct each operating manager to turn over to this fund, or to such local unions as the trustees of the fund may direct, all such wage deductions, beginning with a stated date to be agreed upon by the Administrator and the President of the United Mine Workers: Provided, however, that the United Mine Workers shall first obtain the consent of the affected employees to such turn-over. The Coal Mines Administrator will cooperate fully with the United Mine Workers to the end that there may be terminated as rapidly as may be practicable any existing agreements that earmark the expenditure of such wage deductions, except as the continuation of such agreements may be approved by the trustees of the fund.

Present practices with respect to wage deductions and their use for provisions of medical, hospital and related services shall continue until such date or dates as may be agreed upon by the Coal Mines Administrator and the President of the United Mine Workers.

(c) Coordination of the Welfare and Retirement Fund and the Medical and Hospital Fund

The Coal Mines Administrator and the United Mine Workers agree to use their good offices to assure that trustees of the two funds described above will cooperate in and coordinate the development of policies and working agreements necessary for the effective operation of each fund toward achieving the result that each fund will, to the maximum degree practicable, operate to complement the other.

5. Survey of Medical and Sanitary Facilities

The Coal Mines Administrator undertakes to have made a comprehensive survey and study of the hospital and medical facilities, medical treatment, sanitary, and housing conditions in the coal mining areas. The purpose of this survey will be to determine the character and scope of improvements which should be made to provide the mine workers of the Nation with medical, housing and sanitary facilities conforming to recognized American standards.

6. Wages

(a) All mine workers, whether employed by the day, tonnage or footage rate, shall receive $1.85 per day in addition to that provided for in the contract which expired March 31, 1946.

(b) Work performed on the sixth consecutive day is optional, but when performed shall be paid for at time and one-half or rate and one-half.

(c) Holidays, when worked, shall be paid for at time and one-half or rate and one-half. Holidays shall be computed in arriving at the sixth and seventh day in the week.

7. Vacation Payment

An annual vacation period shall be the rule of the industry. From Saturday, June 29, 1946, to Monday, July 8, 1946, inclusive, shall be a vacation period during which coal production shall cease. Day-men required to work during this period at coke plants and other necessarily continuous operations or on emergency or repair work shall have vacations of the same duration at other agreed periods.

All employees with a record of one year's standing (June 1, 1945, to May 31, 1946) shall receive as compensation for the above-mentioned vacation period the sum of One Hundred Dollars ($100), with the following exception: Employees who entered the armed services and those who returned from the armed services to their jobs during the qualifying period shall receive the $100 vacation payment.

All the terms and provisions of district agreements relating to vacation pay for sick and injured employees are carried forward to this Agreement and payments are to be made in the sum as provided herein.

Pro rata payments for the months they are on the payroll shall be provided for those mine workers who are given employment during the qualifying period and those who leave their employment.

The vacation payment of the 1946 period shall be made on the last pay day occurring in the month of June of that year.

8. Settlement of Disputes

Upon petition filed by the United Mine Workers with the Coal Mines Administrator showing that the procedure for the adjustment of grievances in any coal producing district is inequitable in relation to the generally prevailing standard of such procedures in the industry, the Coal Mines Administrator will direct the operating managers at mines in the district shown to have an inequitable grievance procedure to put into effect within a reasonable period of time the generally prevailing grievance procedure in the industry.

9. Discharge Cases

The Coal Mines Administrator will carry out the provision in agreements which were in effect on March 31, 1946, between coal mine operators and the United Mine Workers that cases involving the discharge of employees for cause shall be disposed of within 5 days.

10. Fines and Penalties

No fines or penalties shall be imposed unless authorized by the Coal Mines Administrator. In the event that such fines or penalties are imposed by the Coal Mines Administrator, the funds withheld for that reason shall be turned over to the trustees of the fund provided for in Section 4 (b) hereof, to be used for the purpose stated therein.

11. Supervisors

With respect to questions affecting the employment and bargaining status of foremen, supervisors, technical and clerical workers employed in the bituminous mining industry, the Coal Mines Administrator will be guided by the decisions and procedure laid down by the National Labor Relations Board.

12. Safety

Nothing herein shall operate to nullify existing state statutes, but this Agreement is intended to supplement the aforesaid statutes in the interest of increased mine safety.

13. Retroactive Wage Provisions

The wage provisions of this Agreement shall be retroactive to May 22, 1946.

14. Effective Date

This Agreement is effective as of May 29, 1946, subject to approval of appropriate Government agencies.

Signed at Washington, D. C. on this 29th day of May, 1946.

(Signed) J. A. KRUG,
Coal Mines Administrator.

(Signed) JOHN L. LEWIS,
President,
United Mine Workers of America.

THE FACTS BEHIND THE DECLINING CONTRIBUTIONS TO THE UMWA BENEFIT TRUSTS AND THE FINANCIAL CAPABILITIES OF THE SIGNATORY COAL COMPANIES

Prepared By:

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1901 N. Moore Street, Suite 1200
Arlington, Virginia 22209
(703) 276-8900

September 23, 1991

Supplement to Testimony of
Private Benefits Alliance

THE SIGNATORY COMPANIES HAVE SUGGESTED THAT

(1) The benefit trusts face a financial crisis

caused by

(2) Lower signatory coal production

caused by

(3) Former signatories no longer contributing
(out of business, non-UMWA, non-conforming)

and the

(4) Signatory companies cannot afford to fund the deficit and honor their guarantee

THE FACTS TELL A DIFFERENT STORY

THE TRUST FUND DEFICITS WOULD NOT EXIST IF THE SIGNATORY COMPANIES HAD NOT REDUCED CONTRIBUTIONS IN 1988

(1) Signatory contributions to the funds were reduced by $385 million from 1987 to 1989. (Chart 1)

(2) The 1989 annual deficit in the benefit funds was $47.8 million.

(3) Annual contributions were about $700 million historically (over $2 per ton), but are now only about $250 million (less than $1 per ton) under the new contract. (Charts 2-4)

(4) The size of the funding deficit is small (only 16 cents per ton) compared to the price of coal ($27.95 per ton). (Charts 5-6)

THE DECLINE IN CONTRIBUTIONS TO THE FUNDS IS NOT DUE TO A DECLINE IN UMWA COAL PRODUCTION; IT IS DUE TO A REDUCTION IN THE CONTRIBUTION RATES BY THE SIGNATORY COMPANIES

(1) Signatory coal production is not down significantly, as output has remained at 304-327 million tons per year over the last 6 years. (Chart 7)

(2) The reason for the decline in contributions to the 1950 Benefit Fund is that the contribution rate was converted in the 1988 contract from a basis of tons produced to hours worked. This created two problems:

- Productivity increases reduced the number of hours worked. (Chart 8)

- The initial contribution rate was too low because the productivity assumed in converting tons to hours was less than what was already being achieved, before further productivity gains. (Charts 9-10)

(3) If the contributions had continued at the tonnage rate specified in the contract (70.4 cents per ton), rather than the hourly rate of $1.83 per hour, there would have been no deficit in the 1950 Benefit Fund. (Chart 11)

THE FUNDING SHORTFALL IS DUE TO ACTIONS TAKEN BY THE MAJOR BCOA COMPANIES, NOT DUE TO THE LOSS OF CONTRIBUTIONS BY FORMER SIGNATORIES

(1) The UMWA contract is negotiated by the three largest U.S. coal companies (Consolidation Coal, Peabody, and Amax), which produce one-third of the total signatory tonnage and two-thirds of the BCOA tonnage. (Charts 12-14)

(2) All three of these companies cut their UMWA production by 10.3 million tons from 1987 to 1989, replacing this tonnage with non-UMWA, double-breasted operations. The UMWA production cutback by these three companies far exceeded the tonnage loss from companies going out of business. (Charts 15-16)

(3) These three companies had much higher labor productivity than assumed in the 1988 UMWA contract, which meant that they benefitted the most from the conversion from tons to hours, and they have further improved productivity. The contributions by these three companies alone dropped by about $136 million from 1987 to 1989. (Charts 17-18)

(4) The pre-tax profit at these three companies alone totalled $568 million in 1989, compared to the 1989 deficit in the Funds of $47.8 million. (Chart 19)

Chart 1
CONTRIBUTIONS TO THE FUNDS WERE SHARPLY REDUCED BY THE 1988 WAGE AGREEMENT

Fund	1987 Contributions ($ million)	1989 Contributions ($ million)
1950 Pension	321.1	7.9
1974 Pension	131.4	53.6
1950 Benefit	187.8	185.8
1974 Benefit	-	8.2
Total Contributions	**640.3**	**255.5**

Savings to Signatory Employers

$385 million per year

1989 Funding Deficit

$47.8 million

Chart 2

TOTAL CONTRIBUTIONS TO THE UMWA TRUSTS HAVE BEEN CUT SHARPLY

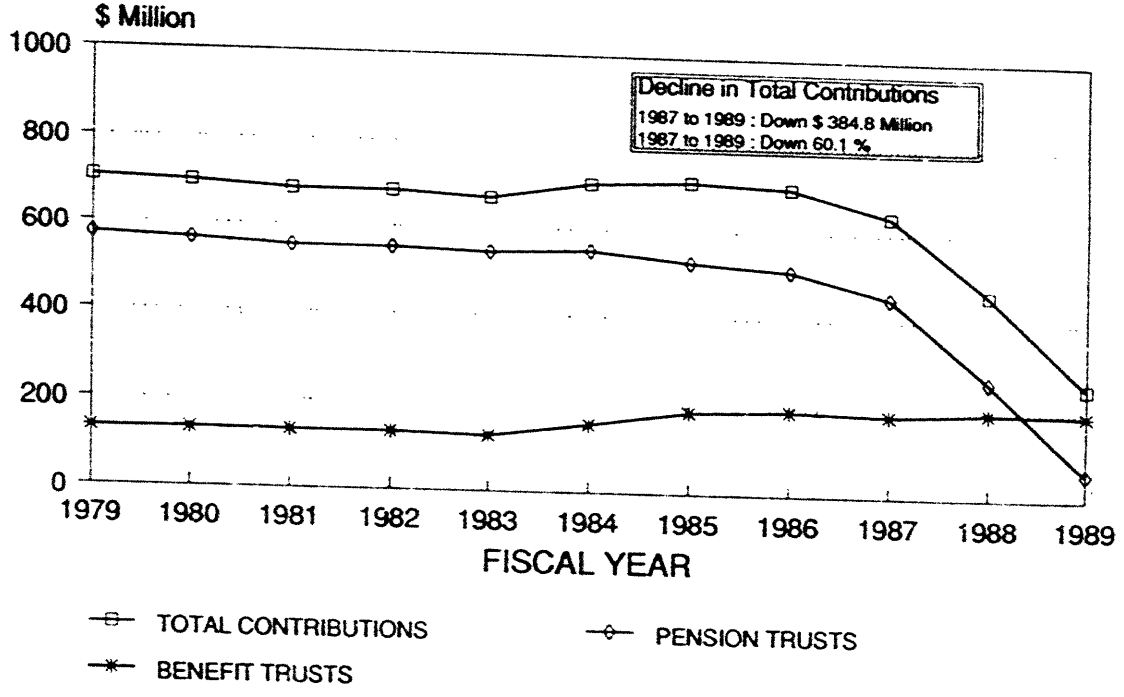


Chart 3
COSTS PER TON FOR SIGNATORY COMPANIES
HAVE BEEN REDUCED DUE TO LOWER
CONTRIBUTIONS TO THE UMWA TRUSTS

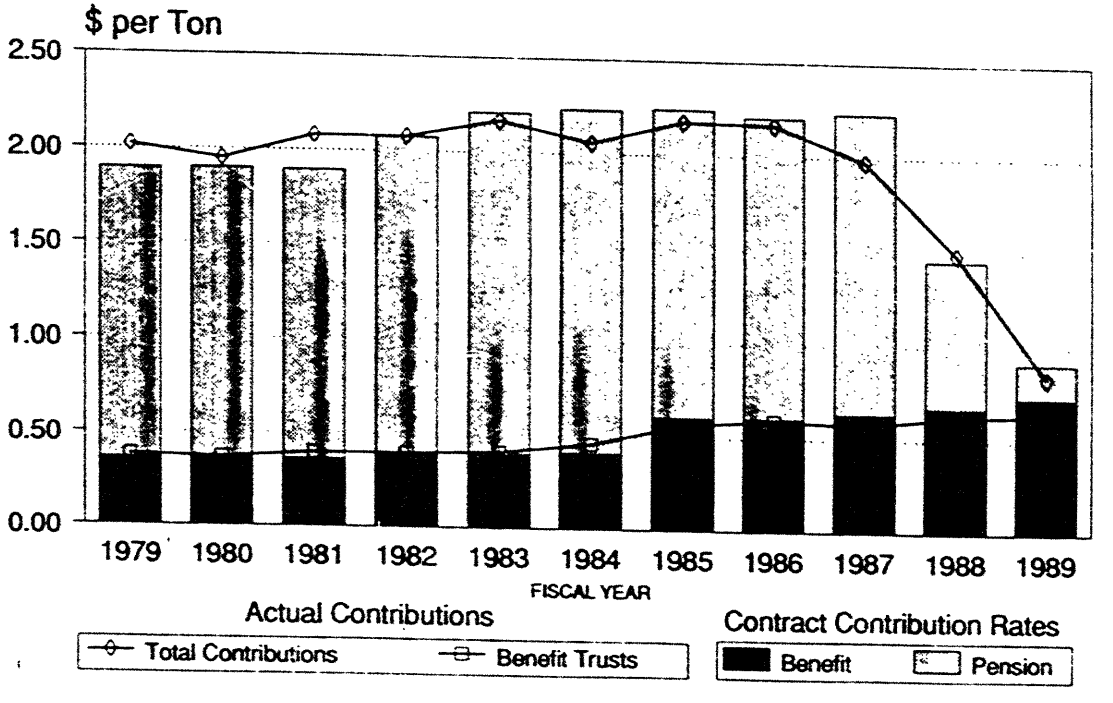


Chart 4

CONTRIBUTIONS TO THE BENEFIT TRUSTS HAVE NOT KEPT PACE WITH INFLATION

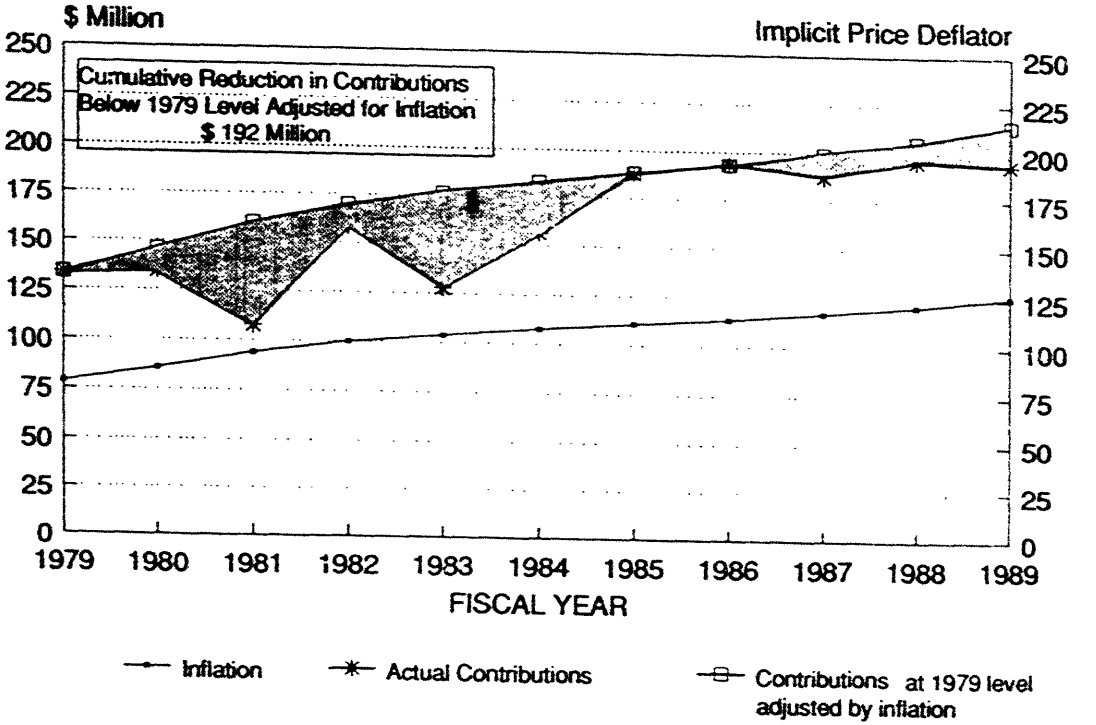
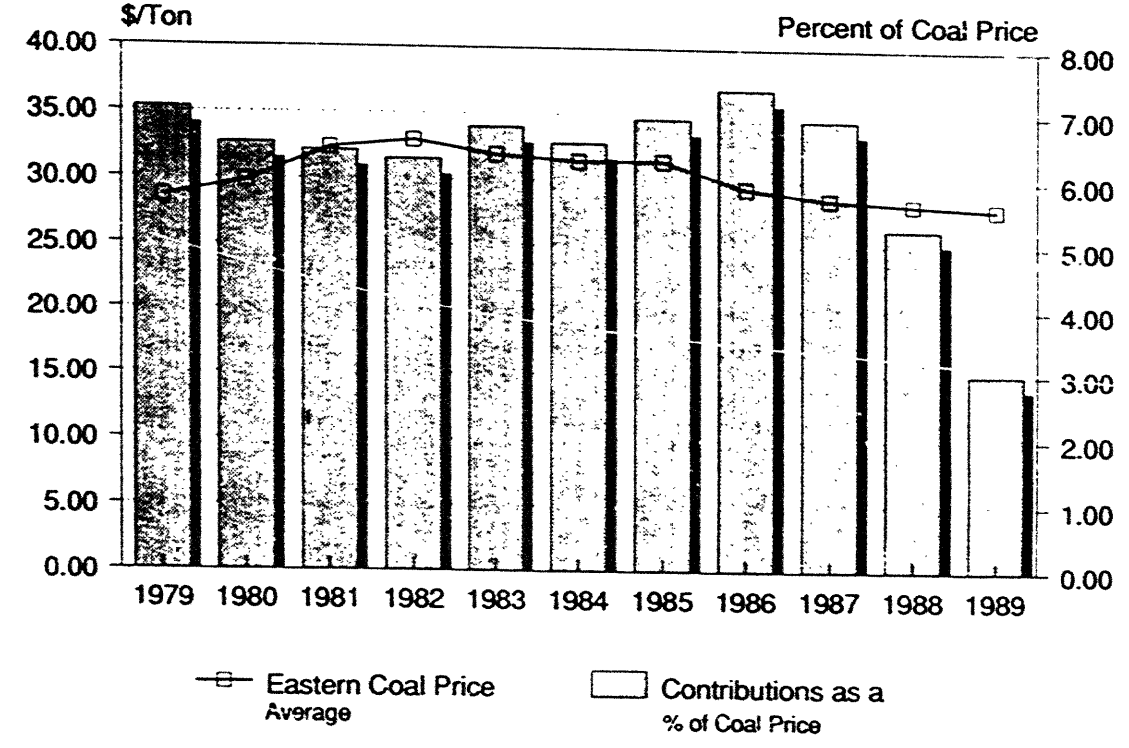


Chart 5

THE CONTRIBUTIONS TO THE TRUST FUNDS HAVE DECLINED COMPARED TO COAL PRICES



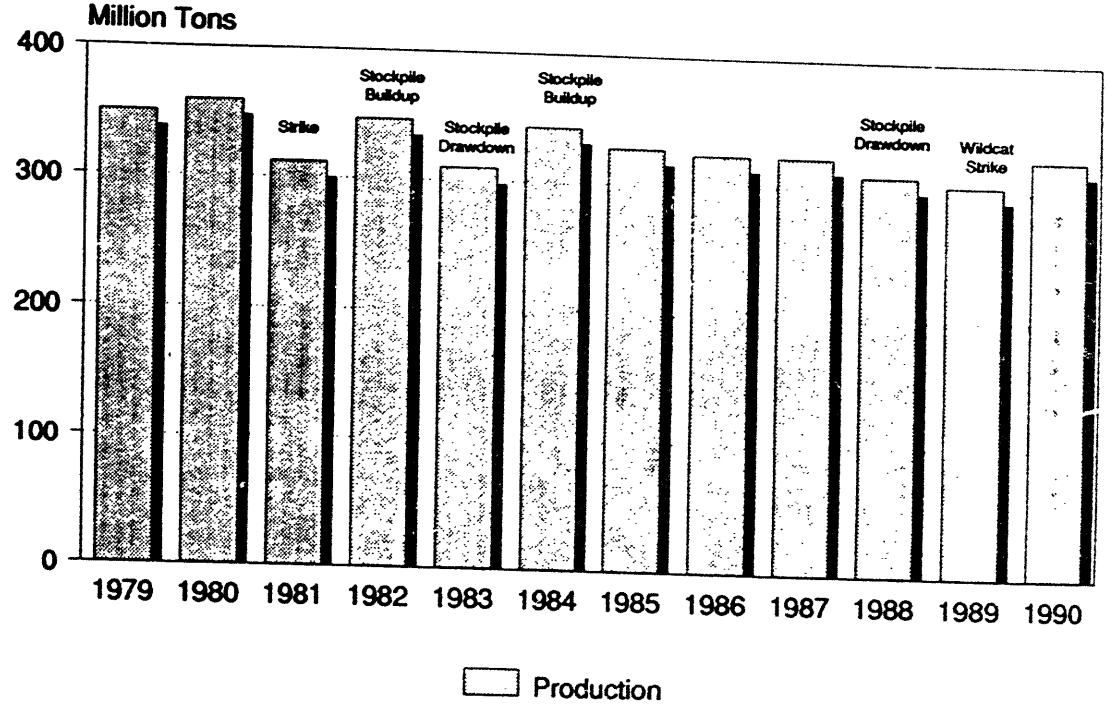
SOURCE: DOE/EIA, Coal Production

Chart 6
THE MONEY NEEDED TO FUND THE TRUSTS' DEFICITS IS SMALL COMPARED TO THE PRICE OF COAL

	FY 1989 Deficit ($ million)
1950 Benefit Trust	27.1
1974 Benefit Trust	20.7
	47.8
Signatory Production	304.3 mmt
Deficit Cost Per Ton	$0.16
Average Eastern Coal Sales Price	$27.95
Increased Cost to Fund The Deficit	0.6%

Chart 7

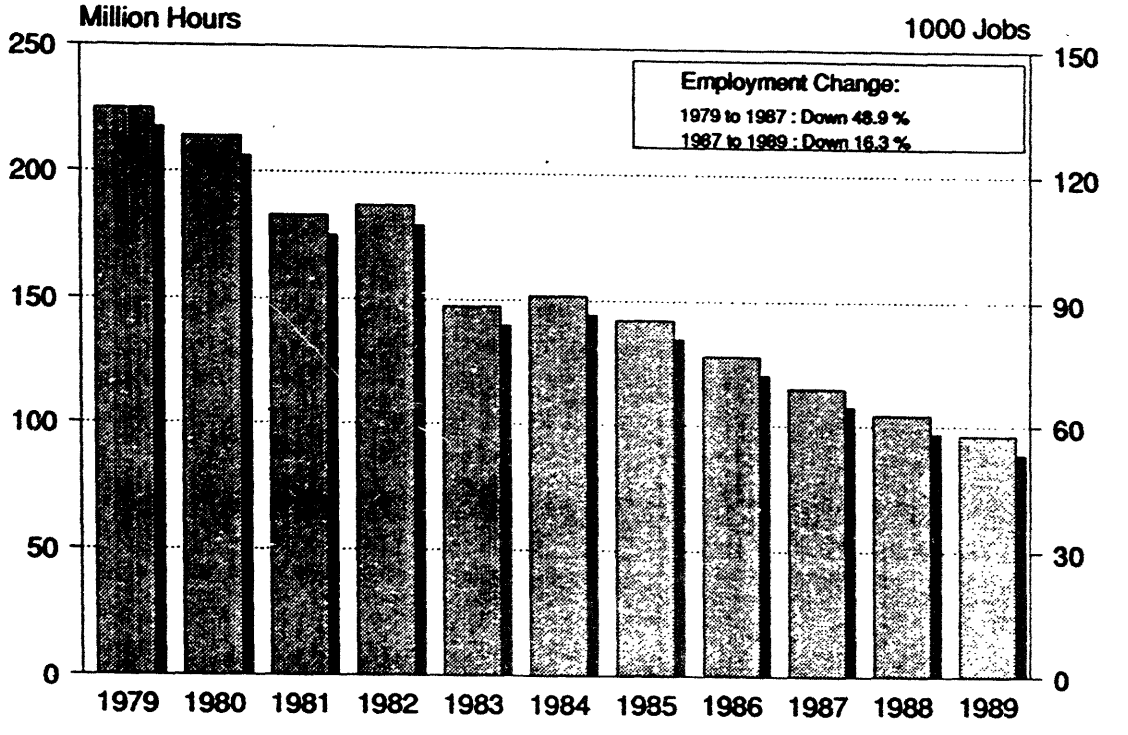
SIGNATORY PRODUCTION HAS NOT DECLINED SIGNIFICANTLY



Source: MSHA Production Data

Chart 8

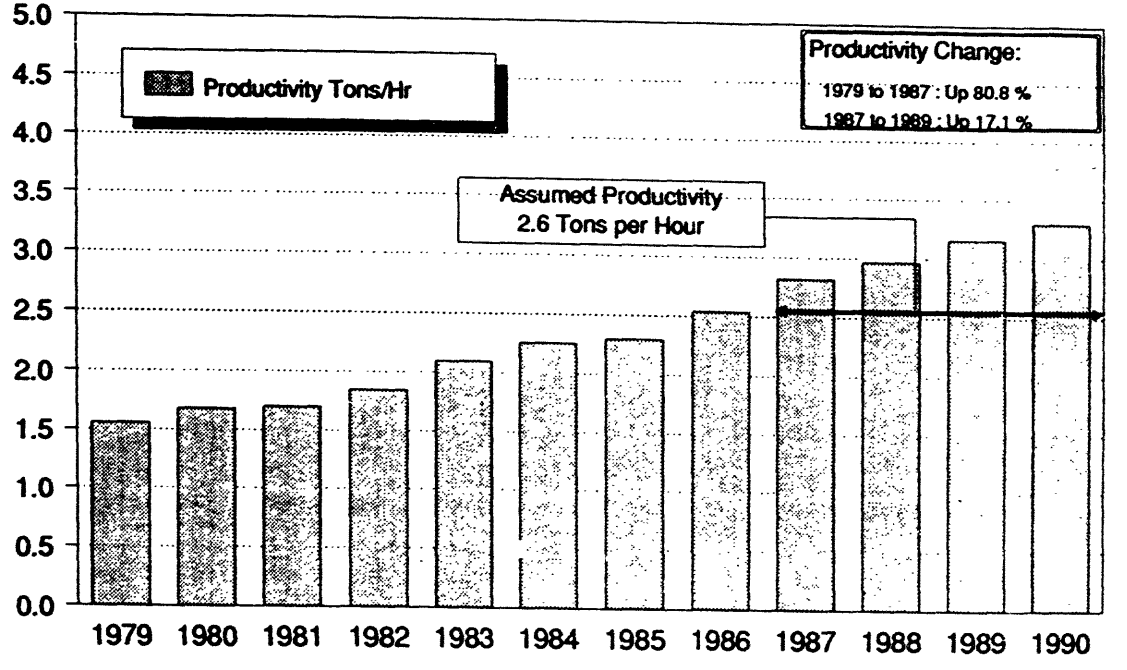
SIGNATORY EMPLOYMENT HAS DECLINED DRAMATICALLY



Source: MSHA Production Data

Chart 9

SIGNATORY PRODUCTIVITY INCREASED SHARPLY SO THE CONTRIBUTION RATES PER HOUR ARE TOO LOW TO SUPPORT THE TRUSTS



Source: MSHA Production Data

Chart 10

THE PRODUCTIVITY ASSUMPTION IN THE 1988 NBCWA WAS BELOW THE ACTUAL PRODUCTIVITY LEVEL IN 1987

- **Assumed Productivity : 2.6 Tons per Hour**

- **Actual Productivity :**

• 1987	2.82 Tons per Hour
• 1988	2.97 Tons per Hour
• 1989	3.16 Tons per Hour
• 1990	3.30 Tons per Hour

* THIS CAUSED THE 1950 BENEFIT TRUST CONTRIBUTION RATE PER TON TO DECLINE, INSTEAD OF INCREASING FROM 64.0 TO 70.4 CENTS/TON SPECIFIED BY THE PROCURED AND ACQUIRED CLAUSE.

Chart 11

IF THE CONTRIBUTIONS HAD CONTINUED AT THE TONNAGE RATES IN THE CONTRACT, THERE WOULD BE NO DEFICIT IN THE 1950 BENEFIT TRUST

1950 BENEFIT TRUST - FY 1989

	$ Million
Expenses	$214.7
Contribution at Hourly Rates	185.8
Shortfall	$28.9
Estimated Signatory Production	307 mmtons
Tonnage Contribution Rate 70.4 Cents/ton*	$216.1 million
Excess Contribution	$1.4 million

* Procured and acquired clause (Article XX(d)(1)(v) of the 1988 NBCWA).

Chart 12
THE BCOA NEGOTIATING COMMITTEE'S ACTIONS DEMONSTRATE THE CAUSE OF THE TRUSTS' FINANCIAL PROBLEMS

WHO ARE THE SIGNATORY COMPANIES?

	Percent of Signatory Production
BCOA Negotiating Committee	33%
Other BCOA Companies	17%
Non-BCOA Companies	50%

WHO IS THE NEGOTIATING COMMITTEE?

Consolidation Coal Company
Peabody Coal Company
AMAX Coal Company

Chart 13
1989 PROFILE OF THE SIGNATORY COMPANIES

BCOA Companies	Number	Signatory Production (mmtons)
Negotiating Committee	**3**	**99.9**
Electric Utilities	2	14.7
Steel Companies	2	6.5
Coal Companies	8	31.1
	15	152.2
Non-BCOA Companies		
Electric Utilities	3	10.7
Steel Companies	5	22.9
Major Coal Companies (> 1 mmt)		
Publicly-Held	10	74.5
Private	8	22.2
		96.7
Small Coal Companies	38	21.8
	64	152.1
TOTAL	79	304.3

SOURCE: MSHA data; includes tons produced by UMWA contract miners.

NOTE: Amax, a negotiating committee member, subsequently acquired Cannelton, a steel company subsidiary which produced 4.5 million tons. Also Zeigler, a BCOA member, subsequently acquired Old Ben Coal, a major non-BCOA company which produced 12.2 million tons.

Chart 14
BCOA COMPANIES

Parent Company	Coal Company	Signatory Companies
Amax, Inc.	Amax Coal Industries	Amax Coal Company Cannelton Industries Castle Gate Coal Company Maple Meadow Mining Co. Yankeetown Dock Corporation
American Elec Pwr	AEP Fuel Supply	Cedar Coal Company Central Appalachia Coal Co. Central Coal Company Central Ohio Coal Company Price River Coal Company Southern Appalachia Coal Co. Southern Ohio Coal Company Windsor Coal Company
Ashland Coal	Ashland Coal	Hobet Mining Hobet Terminals
DuPont	Consolidation Coal	Consolidation Coal Co. Itmann Coal Company McElroy Coal Company Mt. Vernon Coal Company Quarto Mining Company
Exxon	Exxon Coal & Minerals	Monterey Coal Company
General Dynamics	Freeman United	Freeman United Coal Mining
Hanson Industries	Peabody Coal Holding Company	Eastern Asso. Coal Coop. Peabody Coal Company Squaw Creek Coal Company
Inspiration Resources	Inspiration Coal	A.M. Daniel Company Harman Mining Company Sovereign Coal Corporation Wheelwright Mining, Inc.
National Intergroup	National Mines	Mathies Coal Company
Oglebay Norton	Saginaw Mining	Saginaw Mining Company
Pennsylvania P&L	Pennsylvania Mines	Pennsylvania Mines Corp.
Rochester & Pittsburgh	Rochester & Pittsburgh	Florence Mining Company Helvetia Coal Company Iselin Preparation Company Kent Coal Mining Company Keystone Coal Mining Co. O'Donnell Coal Company
Westmoreland Coal	Westmoreland Coal	Westmoreland Coal Company
Zeigler Coal Holding	Zeigler Coal	Old Ben Coal Company Zeigler Coal Company

Chart 15
THE BCOA NEGOTIATING COMMITTEE IS EXPANDING ITS NON-SIGNATORY PRODUCTION AT THE EXPENSE OF ITS SIGNATORY PRODUCTION (million tons)

		1987	1989	Change
Consolidation Coal*	Signatory	43.8	41.0	(2.8)
	Non-Signatory	8.4	12.5	4.1
	Total	52.2	53.5	
Peabody Coal*	Signatory	54.4	48.7	(5.7)
	W. UMWA	16.2	17.2	1.0
	Non-UMWA	9.1	17.9	8.8
	Non-Signatory	25.3	35.1	9.8
	Total	79.7	83.8	
AMAX Coal	Conforming	12.0	10.1	(1.9)
	Non-Conforming	-	0.2	0.2
	Signatory	12.0	10.3	(1.7)
	Non-Signatory	26.7	28.1	1.4
	Total	38.6	38.4	
TOTAL*	Signatory	110.2	99.9	(10.3)
	Non-Signatory	60.4	75.6	15.2
	Total	170.6	175.5	

* Data includes contract miners.

SOURCE: MSHA data.

Chart 16
THE BCOA COMPANIES ARE PRINCIPALLY RESPONSIBLE FOR THE DECLINE IN SIGNATORY PRODUCTION-NOT THE FORMER SIGNATORIES

	Million Tons	
	1987	1989
BCOA Companies		
Negotiating Committee	110.2	99.9
Other Companies	56.8	52.3
	167.0	152.2
Non-BCOA Signatories		
Major Companies	118.7	123.5
Small Companies	20.4	20.6
Pittston Coal Group*	11.8	6.8
	150.9	150.9
TOTAL SIGNATORIES	317.9	303.1
Companies Operating Without a Contract	2.7	1.2
Companies That Stopped Production		
Duquesne Light	0.9	-
Other Companies	2.3	-
	3.2	-
TOTAL PRODUCTION	323.8	304.3

* The signatory production includes non-conforming agreements, including Pittston, Green River, and Beech Coal (AMAX), among others. The Pittston contract has not been accepted by the Trustees.

Chart 17
THE BCOA NEGOTIATING COMMITTEE HAS REDUCED ITS SIGNATORY EMPLOYMENT THROUGH INCREASED PRODUCTIVITY AND REDUCED PRODUCTION

		Signatory Operations	
		1987	1989
Consolidation Coal*	Production (mmtons)	43.8	41.0
	Hours (million)	12.8	10.9
	Productivity (tons/hour)	3.4	3.8
Peabody Coal*	Production (mmtons)	54.4	48.8
	Hours (million)	17.4	13.8
	Productivity (tons/hour)	3.1	3.5
AMAX Coal	Production (mmtons)	12.0	10.1
	Hours (million)	3.5	2.6
	Productivity (tons/hour)	3.4	3.9
TOTAL*	Production (mmtons)	110.2	99.9
	Hours (million)	33.7	27.3
	Productivity (tons/hour)	3.3	3.7

* Data includes UMWA contract miners.

SOURCE: MSHA data.

Chart 18
CONTRIBUTION TO THE UMWA TRUSTS BY THE BCOA NEGOTIATING COMMITTEE HAVE BEEN SHARPLY REDUCED

		Contributions	
		1987	1989
Consolidation Coal*	$ million	84	29
	$/ton	1.92	0.71
	$/hour	6.56	2.66
Peabody Coal*	$ million	100	37
	$/ton	1.84	0.76
	$/hour	5.75	2.68
AMAX Coal	$ million	25	7
	$/ton	2.08	0.69
	$/hour	7.14	2.69
TOTAL*	$ million	209	73
	$/ton	1.90	0.73
	$/hour	6.20	2.67

* Contributions do not include those made by UMWA contract miners.

Chart 19

THE BCOA NEGOTIATING COMMITTEE CONSISTS OF LARGE PROFITABLE COAL COMPANIES

	1989 Financial Data ($ million)		
Coal Companies	Revenue	Profit	Contribution
Consolidation Coal	1,928	294	29
Peabody Coal	1,760	183	37
AMAX Coal	485	91	7
	4,173	568	73

THE DEFICIT IN THE TRUSTS IS SMALL COMPARED TO THE SIZE OF THESE THREE COMPANIES

	FY 1989 Deficit ($ million)
1950 Benefit	27.1
1974 Benefit	20.7
	47.8

Deficit Compared to Negotiating Committee Companies' Financial Capability

1.1% of Revenue
8.4% of Profit

PREPARED STATEMENT OF HERBERT R. NORTHRUP

Mr. Chairman and members of the Committee: I am Herbert R. Northrup, Professor of Management Emeritus at the Wharton School, University of Pennsylvania. Before my retirement in 1988, I was a professor there for 27 years, and also Director, Industrial Research Unit and Chairman, Labor Relations Council. I did my undergraduate work at Duke University, and received my M.A. and Ph.D. in economics from Harvard. I have spent 50 years studying, practicing, and administering in collective bargaining, equal employment, and related fields. I have written about 35 books and 250 articles, and have published each of the last 50 years. I appear here on behalf of the Collective Bargaining Alliance, the purpose and membership of which is fully explained in my written statement. Joining me is Willis Goldsmith, a partner specializing in labor law with the firm Jones, Day, Reavis & Pogue.

Let me emphasize at the outset that the quarrel of the Alliance companies is not with the retirees, nor for the most part with the UMW. Rather the concern is with the three largest coal companies which dominate the BCOA, as they have for many years, and particularly the two largest—Peabody and Consolidation—which are heavily foreign owned. These companies are attempting to pass their costs for health and pension benefits to their competitors after putting through a change in the method of calculating payments to the Trusts that substantially reduced the costs to the largest companies and increased the costs for the smaller ones. Such conduct is a basic cause of the decline in membership in the BCOA from over 150 members to about 15 today. Also noteworthy is the fact that each of the three large companies have major nonunion subsidiaries while most Alliance members who remain in the coal business bargain on an individual basis with the UMW.

The rationale for the impending bill, the draft of which I would like to submit for the record, is an alleged financial crisis in the Trusts. If such a crisis exists, it is primarily because the three largest BCOA member companies greatly reduced their payments to the Trusts by changing the basis of contributions from tons produced to hours worked. I am very surprised that no one representing the Trusts is here to provide a definitive statement as to whether in fact a crisis exists, if so how big is the shortfall and why it exists.

The proposed tax and "reachback" involve much more than special legislation for several large companies in the mining industry. Such a law would be a precedent for every industry and company which has a rich benefit plan to ask Congress to transfer the cost to the tax rolls or to its competitors. It would mark a radical change in national labor policy from free collective bargaining to massive government intervention. And by leaving benefits plans open ended, it would invite considerable inflationary pressures that would hurt the industry's competitive position, both nationally and internationally, resulting in loss of jobs.

I have made the following additional points in my written testimony after studying the Coal Commission Report and other materials:

1. As noted, the proposal before you marks a radical departure from the national labor policy and the principles of the National Labor Relations Act, by a substitution of government intervention for free collective bargaining. Such legislation would impose conditions on employers and employees in excess of what they agreed and beyond the terms of their agreement. It also would nullify collective agreements now in effect.

2. The reachback scheme would shift labor costs of two large European conglomerates from themselves to their smaller domestically-owned competitors. Both could well afford to meet their obligations.

3. The proposal would leave open ended one of the richest health and welfare programs in the country, and invite further enrichment, since despite a veneer of independence, the new structure would be controlled by BCOA and UMW.

4. There may well not be a crisis. BCOA companies, particularly the largest three, have the money to pay for any shortfalls which are the result of their own policies and bargaining. BCOA companies guaranteed in bargaining to pay the retirees benefits for the life of the agreement.

5. To say that this issue cannot be solved by collective bargaining is astonishing, especially coming from a former Secretary of Labor. If there is a shortfall, it was caused by bad bargaining which reduced the contributions of the largest companies. The parties have a duty to work it out, and if there is a strike, bear in mind that only one-third of coal production is represented by the BCOA, and therefore, it will not seriously harm the economy.

6. Besides being a dangerous precedent for labor relations, this proposed legislation would be an equally undesirable one for the current Congressional health care debate by endorsing one of the most extravagant and expensive health care pro-

grams in industry and by mandating its industry-wide coverage regardless of the wishes of the majority in an industry.

7. One must, therefore, conclude that a proposal to bail out several of the largest, including two foreign-owned coal companies at the expense of the rest of the industry is unfair, anti-competitive, and a very unwise and expensive precedent for public policy. The issue is not whether UMWA retirees should receive health care benefits. They should receive everything to which they are entitled by the collective bargaining agreements. It is unconscionable that the BCOA and others are creating a fear atmosphere on this subject. Retirees should be reassured that their benefits can be provided pursuant to the existing BCOA/UMWA agreement, and in the future, given the will of these parties to reach a bargained result.

Attachments.

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to improve the provision of health care to retirees in the coal industry, to revise the manner in which such care is funded and maintained, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Short Title.

This Act may be cited as the "Coal Industry Retiree Health Benefit Protection Act of 1991."

Section 2. Table of Contents.

The table of contents is as follows:

TABLE OF CONTENTS

Section 3. Findings and Declaration of Policy.

(a) The Congress finds that--

(1) coal provides a significant portion of the energy used in the United States;

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

(3) a significant portion of the national work force is or has been employed in the production of coal for interstate commerce and in the national interest;

(4) the government of the United States has regulated the coal industry, employment in the industry, and the provision of retirement benefits within the industry;

(5) the continued well-being and security of employees, retirees and their dependents within the coal industry are directly affected by the provision of health benefits to retirees and their dependents;

(6) withdrawals of contributing employers from privately maintained benefit plans, originally established by agreement with the the United States, covering retirees within the coal industry result in substantially increased funding burdens for employers who continue to contribute to such plans, adversely affect labor-management relations, and impair the timely and uninterrupted provision of health care to retirees; and

(7) other employees in the coal industry who have been promised health benefits upon retirement have no assurance that such promises will be kept.

(b) The Congress further finds that--

(1) it is necessary to modify and reform the current private benefit plan structure for retirees within the coal industry in order to protect against benefit losses, and to reduce discord and disorder within the industry; and

(2) it is necessary to supplement the current private benefit plan structure with a benefit protection program that will place primary emphasis on benefit continuation, and contain program costs within reasonable limits.

(c) It is hereby declared to be the policy of this Act--

(1) to remedy problems which discourage the provision funding and delivery of health care to coal industry retirees;

(2) to provide reasonable protection for the health benefits of coal industry retirees;

(3) to encourage responsible collective bargaining concerning such health benefits; and

(4) to provide a financially self-sufficient program for the provision of retiree health benefits in the coal industry.

TITLE I - AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Section 101. Whenever in this title an amendment or repeal is expressed in terms of an amendment to or a repeal of a section or other provision, the reference is to a section or other provision of the Employee Retirement Income Security Act of 1974.

Section 102. The Employee Retirement Income Security Act of 1974 is amended by inserting at the end thereof the following new Title V.

"COAL INDUSTRY RETIREE HEALTH BENEFIT CORPORATION

"Section 5001(a)(1) There is hereby created the Coal Industry Retiree Health Benefit Corporation, which shall be a body corporate under the direction of a Board of Directors. Within the limitations of law and regulation, the Board of Directors shall determine the general policies that govern the operations of the Corporation. The principal office of the Corporation shall be in the District of Columbia or at any other place determined by the Corporation.

"(2) The Board of Directors of the Corporation shall consist of six persons, who shall be appointed by the Secretary of Labor. Each director shall be appointed for a term of three years. The Board shall at all times have as members two persons from employers in the coal-mining industry, (at least one of whom shall be from an entity which is or was a settlor of a plan described in § 404(c) of the Internal Revenue Code of 1986), two persons from an organization that represents coal industry employees, and which is or was a settlor of a plan described in § 404(c) of the Internal Revenue Code of 1986, and two other persons, who must have knowledge and experience in the field of employee welfare and health benefit plans, who represent the public interest. A vacancy in the Board shall be filled in the same manner as the original appointment was made. Any director appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A director may serve after the expiration of his term until his successor has taken office.

"(b)(1) The Secretary of Labor shall have general regulatory power over the Corporation and shall make such rules and regulations as shall be necessary and proper to ensure that the purposes of this chapter are accomplished.

"(2) The Secretary of Labor may examine and audit the books and financial transactions of the Corporation and may require the Corporation to issue any reports on its activities that the Secretary determines to be advisable. The Secretary shall, not later than June 30 of each year, submit to the Congress a report describing the activities of the Corporation under this chapter.

"(c) The Corporation shall have power (1) to adopt, alter, and use a corporate seal; (2) to have succession until dissolved by Act of Congress; (3) to make and enforce such bylaws, rules, and regulations as may be necessary or appropriate to carry out the purposes or provisions of this chapter; (4) to make and perform contracts, agreements, and commitments; (5) to prescribe and impose fees and charges for services by the Corporation; (6) to settle, adjust, and compromise, and with or without consideration or benefit to the Corporation to release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the Corporation; (7) to sue and be sued, complain and defend, in any State, Federal, or other court; (8) to acquire, take, hold, and own, and to deal with and dispose of any property; and (9) to determine its necessary expenditures and the manner in which the same shall be incurred, allowed, and paid, and appoint, employ, and fix and provide for the compensation and benefits of officers, employees,

attorneys, and agents, all without regard to any other law except as may be provided by the Corporation or by laws hereafter enacted by the Congress expressly in limitation of this sentence.

"(d) The Corporation, its property, its franchise, capital, reserves, surplus, and its income (including but not limited to, any income of any fund established under section 5005), shall be exempt from all taxation now or hereafter imposed by the United States (other than taxes imposed under chapter 21 of Title 26, relating to Federal Insurance Contributions Act and chapter 23 of Title 26, relating to Federal Unemployment Tax Act) or by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of the Corporation shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed.

"(e) Notwithstanding section 1349 of Title 28 or any other provision of law, (1) the Corporation shall be deemed to be an agency included in sections 1345 and 1442 of such Title 28; (2) all civil actions to which the Corporation is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value; and (3) any civil or other action, case or controversy in a court of a State, or any court other than a district court of the United States, to which the Corporation is a party may at any time before the trial thereof be removed by the Corporation to the United States district court for the district and division embracing

the place where the same is pending, or if there is no such district court, to the district court of the United States for the district in which the principal office of the Corporation is located, by following any procedure for removal of causes in effect at the time of such removal. No attachment or execution shall be issued against the Corporation or any of its property before final judgment in any State, Federal, or other court.

"(f) The receipts and disbursements of the Corporation shall not be included in the totals of the budget of the United States government and shall be exempt from any general limitations imposed by statute or budget outlays of the United States. The United States is not liable for any obligation or liability incurred by the Corporation.

"(g) In any action brought under this title, whether to collect premiums, penalties, and interest under sections 5005 or 5006 or for any other purpose, the court shall award the Corporation its costs and reasonable counsel fees.

"RETIREE ELIGIBILITY

"Sec. 5002(a). Subject to the provisions and limitations of this subchapter, the Corporation shall provide medical, surgical and other health care and death benefits, including long-term custodial care, to qualified retirees.

"(b) For purposes of this section, the term "qualified retiree" means an individual (or the otherwise eligible dependents of such individual) who--

(1) as of or prior to the date of enactment of this Act, was a participant or beneficiary under an eligible coal industry welfare benefit plan, but who is not a participant under a successor coal industry welfare plan; or

(2) on or after the date of enactment of this Act--

(A) receives, or becomes eligible to receive, pension benefits under an eligible coal industry pension plan;

(B) receives or becomes eligible to receive post-retirement health benefits under either an employee benefit plan maintained by the employer who last employed the individual in the coal industry or under a successor coal industry welfare plan; and

(C) does not receive, or ceases receiving, such post-retirement health care benefits;

(3) on or after the date of the enactment of this Act,

(A) receives or becomes eligible to receive post-retirement health benefits under a plan maintained by an employer in the coal industry as a result of employment for which the employer would have been required to make contributions to a plan described in Section 404(c) of the Internal Revenue Code of 1986 had the employer been bound to a collective bargaining agreement requiring such contributions, but

(B) who does not receive, or who ceases to receive, health benefits under such plan; or

(4) on or after the date of enactment of this Act, receives, or becomes eligible to receive, pension benefits under a employee pension plan maintained by an eligible employer in the coal industry, and who has satisfied the requirements for eligibility for benefits established pursuant to section 5004.

"(c) For purposes of subsection (b), the term-

(1) "eligible coal industry pension plan" means a multiemployer pension plan that is a plan described in section 404(c) of the Internal Revenue Code of 1986;

(2) "eligible coal industry welfare benefit plan" means an employee welfare benefit plan that covers participants and beneficiaries of a pension plan described in paragraph (1), but excluding any plan described in paragraph (3).

(3) "successor coal industry welfare plan" means an employee welfare plan which is a successor to a plan described in Section 404(c) of the Internal Revenue Code of 1986 and paragraph (2) of this subsection, and which was created pursuant to the recommendation of the Commission appointed by the Secretary of Labor to examine the problems confronting the continued provision of health and other welfare benefits to retired coal miners and their families.

"(d) For purposes of subsection (b)(3), the term "eligible employer in the coal industry" means an employer who satisfies the requirements of section 5004, 5004(a), 5004(b).

"(e) For purposes of this title, the term "employer" shall have the same meaning as that described in Title IV.

"(f) For purposes of this title, the phrase "plan described in section 404(c) of the Internal Revenue Code of 1986" shall include a plan described in such section, as well as a continuation of, or successor to, such a plan.

"BENEFITS PROVIDED

"Section 5003(a). Except as provided in subsections (b), (c) and (d), the benefits provided by the Corporation shall be the same as those last provided to the participant or beneficiary under the eligible coal industry welfare benefit plan, successor coal industry welfare plan, or an employee welfare benefit plan maintained by the employer who last employed the individual in the coal industry, under which he or she last received benefits.

"(b) Notwithstanding the forgoing, the Corporation may by regulation provide a different level of benefits to individual participants and beneficiaries for administrative convenience, provided that no such individual shall receive a level of benefits that is not substantially equal to, or superior to, that to which he or she is otherwise entitled to under subsection (a).

"(c) The benefits provided to retired employees of an eligible employer in the coal industry shall be as determined by the Corporation.

"(d) The Corporation may adopt such cost containment and/or managed care programs it deems advisable, provided that such programs do not effect a reduction of benefits, or an imposition of additional costs, for covered services provided to participants and beneficiaries.

"COAL INDUSTRY EMPLOYER ELECTIVE COVERAGE

"Section 5004(a). An Employer may elect to become an eligible employer in the coal industry by meeting the following conditions.

(1) The employer must employ workers in the coal industry;

(2) The employer agrees to pay a premium, as determined by the Corporation, sufficient to provide lifetime retirement health coverage to all of its employees in positions described in the National Bituminous Coal Wage Agreement of 1988, or any successor agreement, who have worked a total of twenty years, including both service with that employer, service for any other eligible employer in the coal industry, and service for any other employer that is credited for purposes of eligibility by a plan described in Section 404(c) of the Internal Revenue Plan: and

(3) The employer is not currently obligated by a collective bargaining agreement to make contributions to a plan described in Section 404(c) of the Internal Revenue Code.

"(b) Upon the retirement of an employee described in the preceding paragraph of an eligible employer, with twenty or more years of service, upon such terms and conditions as established by the Corporation, such employee and his or her dependent(s) shall receive benefits, upon such terms and conditions as determined by the Corporation.

"PREMIUMS

"Section 5005(a). The Corporation shall establish a Coal Industry Retiree Health Benefit Fund (hereinafter referred to as the "Fund"). All amounts received by the Corporation shall be deposited in the Fund, and all expenditures made by the Corporation shall be made out of the Fund.

"(b) Except as otherwise provided in this section, the balance of the Fund shall at any time consist of the aggregate at such time of the following items:

(1) Cash on hand or on deposit; and

(2) Amounts invested in United States Government or agency securities.

"(c) Each producer of coal from a mine located in the United States, and each importer of coal produced outside the United States, shall pay the Corporation a premium, equal to the rate determined under subsection (d) or (e), and in the manner

prescribed by subsection (f), on each hour worked producing coal and/or ton of coal so mined by the producer or imported by the importer.

"(d)(1) For purposes of subsection (c)--

(A) the premium rate on coal from underground mines shall be $_____ per _____;

(B) the premium rate on coal from surface mines shall be $_____ and _____ per _____;

(C) the premium rate on imported coal shall be $___ per ton.

(2) For purposes of this section-

(A) the term "ton" means 2,000 pounds;

(B) the term "United States" has the same meaning given in section 3(10); and

(C) the terms "coal from underground mines" and "coal from surface mines" have the same meanings given in section 4121(d) of the Internal Revenue Code of 1986.

"(e) The Corporation may modify the rates set forth in subsection (d)(1) to such levels as the Corporation may deem appropriate and necessary to establish and maintain the Fund and the payment of benefits under section 5003. The Corporation shall transmit notice of such modification to the Secretary of Labor at least 120 days prior to the effective date of the modification, and the Secretary shall cause notice of

the modification to be published in the *Federal Register* within 30 days of receipt of the notice from the Corporation.

"(f)(1) Premiums charged under this section are due on the 10th day of each calendar month immediately following the month in which the coal is produced, and shall be paid to the Corporation in accordance with forms and schedules promulgated by the Corporation.

"Section 5006(a). In addition to the amounts specified above, each responsible employer shall pay to the Corporation the additional premium set forth in this section.

"(b) The amount of the additional premium shall equal the responsible employer's allocated share of the Fund's identified liability.

"(c) For purposes of this section, the term "responsible employer" means

(1) an employer who was signatory to a collective bargaining agreement effective on or after _____, 1978, requiring contributions to a plan described in Section 404(c) of the Internal Revenue Code, and was the last employer in the coal industry of any participant receiving benefits from (or whose dependents are receiving benefits from) the Fund; or

(2) an employer maintaining, or that previously maintained, a plan covering employees described in section 5002(b)(3).

"(d) The "allocated share of the Fund's identified liability" for a responsible employer shall be assessed annually, as follows:

(1) the total benefits projected to be expended by the Fund for the current year (determined as of the first of the year), multiplied by

(2) the ratio of the number of participants (or dependents of participants) receiving benefits from the Corporation for whom the responsible employer is identified as having been their last employer in the coal industry over the total number of participants (or dependents of participants) in the plan.

"(e) The premium required by this section shall be paid each year in twelve equal monthly installments, due by the tenth day of each month.

"(f) In the event an employer determined by the Corporation to be a responsible employer contests its liability, or the amount of its liability, assessed pursuant to this section, the employer shall pay such assessed amounts in the manner and amount determined by the Corporation, but may seek a refund of all amounts it believes it has overpaid.

"INVESTIGATORY AUTHORITY; CIVIL ACTIONS

"Section 5007(a). The corporation may make such investigations as it deems necessary to enforce any provision of this title or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing under, oath or otherwise as the Corporation shall determine, as to all the facts and circumstances [illegible] to be investigated.

"(b) For the purpose of any such investigation, or any other proceeding under this title, any member of the board of directors of the Corporation, or any officer designated by the chairman, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Corporation deems relevant or material to the inquiry.

"(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Corporation may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. The court may issue an order requiring such person to appear before the Corporation, or member or officer designated by the Corporation, and to produce records or to give testimony related to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as of contempt thereof. All process in any such case may be served in the judicial district in which such person is an inhabitant or may be found.

"(d) In order to avoid unnecessary expense and duplication of functions among government agencies, the Corporation may make such arrangements or agreements for cooperation or mutual assistance in the performance of its functions under this title as is practicable and consistent with law. The Corporation may utilize the facilities or

services any department, agency, or establishment of the United States or of any State of political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment. The head of each department, agency, or establishment of the United States shall cooperate with the Corporation and, to the extent permitted by law, provide such information and facilities as it may request for its assistance in the performance of its functions under this title. The Attorney General or his representative shall receive from the Corporation for appropriate action such evidence developed in the performance of its functions under this title as may be found to warrant consideration for criminal prosecution under the provisions of this or any other Federal Law.

"(e)(1) Civil actions may be brought by the Corporation for appropriate relief, legal or equitable or both, to enforce the provision of this title.

(2) Except as otherwise provided in this title, where such an action is brought in a district court of the United States, it may be brought in the district where the Corporation is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(3) The district courts of the Unites States shall have jurisdiction of actions brought by the Corporation under this title without regard to the amount in controversy in any such action.

(4)(A) An action under this subsection may not be brought after the later of --

(i) 6 years after the date on which the cause of action arose, or

(ii) 3 years after the applicable date specified in subparagraph (B).

(B) The applicable date specified in this subparagraph is the earliest date on which the Corporation acquired or should have acquired actual knowledge of the existence of such cause of action."

TITLE II - PROVISIONS RELATED TO SUCCESSOR TO PLAN DESCRIBED IN SECTION 404(C) OF THE INTERNAL REVENUE CODE

Section 201. The following is added to the end of Section 404(c) of the Internal Revenue Code of 1986:

"(3) Contributions made by an employer to a plan which is a successor to a plan described in Paragraphs (1) and (2) of this Subsection, and which was created pursuant to the recommendation of the Commission appointed by the Secretary of Labor to examine the problems confronting the continued provision of health and other welfare benefits to retired coal miners and their families, shall not be deductible under this section, but, if they would

otherwise be deductible shall be deductible under this section if the following conditions are met:

(A) The plan shall provide health and welfare benefits to employees (or to the dependents of such retired employees) who

(i)(I) are or were participants or beneficiaries under a welfare plan that is a successor to a plan described in paragraphs (1) and (2) of this subsection; or (II) who receive, or become eligible to receive, pension benefits under a pension plan that is or is a successor to a pension plan described in paragraphs (1) and (2) and become eligible to recieve health care benefits under an employee benefit plan maintained by the employer who last employed the participant in the coal industry;

(ii) are not receiving health care benefits under an employee benefit plan maintained by the employer who last employed the participant in the coal industry; and

(iii) are participants (or the beneficiaries of participants) whose last employer in the coal industry is obligated to make contributions to such plan.

"(4) No payments for health or welfare benefits made by an employer that, on or after the date of this Act, was obligated to make contributions to a welfare benefit plan described in this subsection but who ceases to make such

contributions or to be obligated to make such contributions, shall be deductible by the employer except as follows:

(I) All such payments would otherwise be deductible, but for the application of this paragraph; and

(II) The employer makes a payment (either in a lump sum or in installments upon such terms reasonably agreed to by the Trustees of such plan) to a plan described in paragraph (3) of this subsection equal to the total contribution base for the five highest years payable to all plans described in this subsection multiplied by the contribution rate payable to a plan described in paragraph (3) under the applicable collective bargaining agreement in effect immediately preceding the employers cessation of contributions or of the obligation to contribute."

Section 202. Transfer of Surplus Assets

(a) Notwithstanding any other provision of law, a plan described in subsection (c) shall transfer surplus assets to a plan described in subsection (d) whenever-

(1) the actuary for a plan described in subsection (c) notifies the joint board of trustees of the plan and the settlors in writing that the plan contains surplus assets;

(2) the actuary's determination is accepted by the trustees; and

(3) both settlors direct the board of trustees to transfer all (or any portion of) such surplus assets from a plan described in subsection (c) to a plan described in subsection (d).

(b)(1) No deduction shall be allowed under the Internal Revenue Code of 1986 with respect to a transfer of surplus assets pursuant to subsection (a), but such transfer shall not adversely affect the deductibility (under applicable provisions of such Code) of contributions previously made by employers or amounts hereafter contributed by employers to a plan described in subsection (c) or (d).

(2) A transfer of surplus assets pursuant to subsection (a)-

(A) shall not be treated as an employer reversion from a qualified plan for purposes of section 4980 of the Internal Revenue Code of 1986, and

(B) shall not be includible in the gross income of any employer maintaining a plan described in subsection (c).

(c) A plan is described in this subsection if

(1) it is a plan described in section 404(c) of the Internal Revenue Code of 1986 or a continuation thereof

(2) it provides pension benefits; and

(3) participation in the plan is substantially limited to individuals who retired prior to January 1, 1976.

(d) A plan is described in this subsection if-

(1) it is a plan described in section 404(c) of the Internal Revenue Code of 1986 or a continuation thereof, and

(2) it provides health benefits to retirees and beneficiaries of the industry which maintained the plan described in subsection (c).

(e) In addition to any transfers to a plan described in subsection (d), within 90 days of this Act, there shall be a transfer of $50,000,000 from a plan described in subsection (c) to the Coal Industry Retiree Health Benefit Corporation. Such transfer shall be treated in the same manner as transfers otherwise permitted by this section.

STATEMENT OF THE COLLECTIVE BARGAINING ALLIANCE ON THE 1950 AND 1974 UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS

The Collective Bargaining Alliance strongly believes that funding of the United Mine Workers of America (UMWA) Health and Benefit Plans negotiated between the UMWA and the Bituminous Coal Operators Association (BCOA) can and properly should be resolved through the traditional process of collective bargaining. The Alliance believes that it would be a serious error for Congress to interject itself into a purely private contractual matter. To do so would inject Congress directly into the collective bargaining process, in conflict with the fundamental philosophy of the National Labor Relations Act: "The basic theory of the law in its original form, as today, was that the arrangement of substantive terms and conditions of employment was a private responsibility from which the government should stand apart." Archibald Cox, *et al.*, *Labor Law* (New York, 1981, 9th Edition).

The Collective Bargaining Alliance is a group of former signatories to the National Bituminous Coal Wage Agreement (NBCWA). Most of these former signatories were, at one time, members of the Bituminous Coal Operators Association (BCOA). Former signatories who are members of the Alliance fall into three broad categories. The first category consists of employers who, after withdrawing from the BCOA, agreed to contracts with the UMWA which were different from the NBCWA insofar as those companies' obligations to contribute to the Funds. The second category includes employers who, after contributing for years into the Funds, ceased producing coal and whose retirees are now collecting retirement benefits from the Funds, exactly as anticipated by all concerned when the Funds were first created. The third category consists of employers whose employees are no longer represented by the UMWA, but are represented by other unions or by no union.

Members of the Alliance share the concern expressed by others in this hearing for the health benefits of retired coal miners and their families. Health care benefits for these individuals can and should, in our view, continue to be addressed in accordance with the existing collective bargaining agreements providing for these benefits. If the parties signatory to those agreements wish to change the level of benefits, substitute other benefits, or adjust the manner in which the benefits are paid for, such changes can and properly should be negotiated in subsequent bargaining. In fact, the Alliance believes that collective bargaining agreements, and the collective bargaining process which gave rise to those agreements, are the only proper vehicles for establishing the rights and responsibilities which arise in connection with the UMWA Funds. Alliance members have lived up to their commitments under the collective bargaining agreements to which they were parties, and have every intention of living up to any commitments made in their future collective bargaining agreements. It would be fundamentally unfair, however, for Congress to require former NBCWA signatories to subsidize their competitors in the BCOA by obligating them to support the Funds in a manner inconsistent with the obligations which they undertook in their own collective bargaining agreements, which were voluntarily agreed to by the UMWA.

The BCOA and the UMWA are now proposing a form of "bailout" legislation which would require non-BCOA coal operators, and companies no longer even engaged in the mining of bituminous coal, to subsidize the labor costs of several large BCOA companies. The proposal would force non-BCOA companies to support union health and benefit plans which were negotiated between the BCOA and the UMWA. This extraordinary concept would mandate both retroactive and open-ended prospective financial support from employers who either never had, or no longer have, any financial or contractual obligation to contribute to the Funds. This so-called "reach-back" scheme would primarily benefit several large, foreign-owned interests at the expense of the domestic industry. Domestic non-signatory companies would be required to subsidize the foreign owners who control some of the nation's largest coal companies.

The BCOA is currently composed of 18 member companies. BCOA members and other nonmembers who have signed "me too" agreements to the present NBCWA produce only one-third of the bituminous coal mined in the United States. The BCOA has been dominated for many years by three member companies, Peabody Coal, Consolidation Coal, and AMAX Coal, three of the largest coal companies in the world. Today, two of those highly profitable companies—Peabody and Consolidation—are foreign-owned or controlled: Peabody is now wholly owned by the UK's Hanson PLC, and Consolidation is now 50% owned by Germany's Rheinbraun AG. From 1985 through 1989 the earnings of these companies have increased steadily. In fact, during that period the earnings of Consolidation and Peabody nearly doubled: Consolidation's profits after tax increased from $124 million in 1985 to $223 million

in 1989, while Peabody's profits after tax increased from $56.3 million in 1985 to $102 million in 1989. As discussed below, the increased profitability of these large, foreign-owned interests is hardly surprising in view of the negotiated change in contribution base to the UMWA funds, which saved the three largest BCOA members $136 million in reduced contributions in 1989 alone.

Moreover, the current health benefits provided by the 1950 and 1974 UMWA Health and Benefit Plans are among the most generous in the country. There are no deductibles of any significance, nor are there any co-payments like those which exist in the vast majority of other health plans. In addition, the Plans have been engaged in wasteful practices which have increased the cost of providing health benefits. The result is that the cost of providing these health benefits has increased even more dramatically over the past decade than health care costs in general. At a time when other industries are attempting to reduce the rising cost of health care, the BCOA is turning to Congress and their competitors to subsidize their costs. Further, the BCOA and the UMWA have slashed the amount of contributions being paid into the Plans from the previous funding levels. As a result, the cost of providing benefits under the 1950 and 1974 Benefit Plans exceeds the amounts of contributions to those Plans as required by the present contribution levels under the 1988 NBCWA.

Despite the shortfall in the Funds, there is no immediate "crisis." Since at least 1978, each NBCWA has contained a guarantee by the signatory companies that full benefits will be maintained for the term of that agreement, regardless of the costs. Thus, if the contribution rates must be increased in order to provide the benefits, the BCOA is both empowered and required to increase them. In fact, the Trustees have recently obtained court orders requiring the BCOA to do exactly that. It should be further noted that even the BCO has never suggested that it is unable to fund the benefits, just that it is unwilling to do so.

SOURCES OF THE ALLEGED FUNDING "CRISIS"

The funding problems of the 1950 and 1974 Benefit Plans are the predictable consequences of a series of collective bargaining agreements negotiated between the BCOA and UMWA. Under the 1988 NBCWA, contributions made by the signatory companies to the UMWA Funds (including the 1950 and 1974 Pension Plans) dropped by approximately 60%. Contributions attributable to 1987 equalled $640.3 million as compared to $255.5 million in 1989. This dramatic decrease was caused primarily by two actions taken by the parties to the 1988 NBCWA: (1) the change in the contribution basis for financing the Plans from a "per tonnage" charge on coal mined to a pure "hours worked" charge; and (2) the complete elimination of contributions to the overfunded 1950 Pension Plan, rather than shifting contributions to the 1950 or 1974 Benefit Plans.

The BCOA and the UMWA knew of the existence of the "orphaned" retiree problem, now described by them as a "crisis," during the negotiation of every NBCWA. Nevertheless, BCOA and UMWA provided only $.02 per hour worked in contributions to the 1974 Benefit Plan during the term of the 1978 NBCWA, *and failed to provide any funding whatsoever for the 1974 Benefit Plan during the entire term of the 1981 and 1984 NBCWAs.*

Further, a Federal court has made a factual finding that while negotiating the 1988 NBCWA:

> The parties discussed the need for additional funding for the 1974 Benefit Plan. *The BCOA initially resisted renewing the guarantee of benefits, but ultimately agreed to do so.* The BCOA proposed a contribution of five cents per hour to the 1974 Benefit Plan, and ultimately agreed to eight cents, assuming a zero balance at the end of the contract. *The Union negotiators had projected that contributions in the range of eighteen to twenty-two cents per hour would be necessary to provide benefits to the potential beneficiaries and maintain the corpus of the trust at the end of the contract.* They expressed skepticism that eight cents would be sufficient to provide benefits to the potential beneficiaries over the term of the agreement. *The BCOA responded that, since they were guaranteeing the benefits, the UMWA should not be concerned about the contribution rate, and that additional money would be forthcoming if necessary. The BCOA preferred to maximize cost savings by minimizing the initial contribution rate, and providing additional funding under the guarantee clause if necessary.* [Emphasis added.]

UMWA v. *Noble*, 720 F. Supp. 1169 (W.D. Pa. 1989).

Between December 6, 1974 and January 31, 1988, total contributions to all the Plans by signatories to a standard UMWA wage agreement had risen from $2.41 per

hour worked to $5.21 per hour worked by the end of the 1984 NBCWA. With the execution of the 1988 NBCWA, this contribution rate per hour worked was slashed by more than one-half.

It promptly became apparent that the negotiated contribution rates found in the 1988 NBCWA were woefully inadequate. Indeed, the total negotiated contribution rate called for in the 1988 contract was *less* than that contained in the 1978 agreement. Although, since 1988 the BCOA increased the negotiated rate for the 1950 Benefit Plan (in large part under court order), even these stopgap measures only raised the total contribution rate to $3.25 per hour worked, less than the contribution level of 10 years ago.

The excess funding in the 1950 Pension Plan has been viewed by the Coal Commission and many others, as a source of money with which to resolve the financial problems of the Benefit Plans, provided that Congress would enact legislation authorizing such a transfer. However, despite the alleged "crisis" in the 1950 Benefit Plan, the BCOA and UMWA agreed in their February 1991 reopener negotiations to immediately spend a substantial portion of this excess as one-time cash payments to pensioners and surviving widows. The parties also dedicated much of the balance of the pension fund surplus to financing retiree death benefits. Thus the Agreement between BCOA and the UMWA which was effective February 1, 1991, will effectively reduce the $230 million 1950 Pension Plan surplus by over $130 million.

Another important factor in creating the funding shortfall has been that in the 1988 NBCWA, the BCOA and UMWA negotiated a precipitous shift away from a contribution formula based predominantly on tons of coal produced (and to a lesser extent on hours worked) to a contribution formula based purely on hours worked. The impact of this change on total funding of the Plans has been enormous! The change principally benefits the large signatory companies which are succeeding in slashing employment, while largely maintaining production, and shifting greater funding burdens onto smaller operators. Thus, as fewer and fewer hours are worked by the large signatory companies to produce practically the same amount of coal, the contribution base to the Plans necessarily declines in direct proportion to the decline in hours worked. Since contributions to the Plans are now tied exclusively to hours worked, there exists a corresponding decline in funding of the Benefit Plans.

Further exacerbating this problem was the invalid assumption made by BCOA and UMWA in negotiating the 1988 NBCWA regarding what the productivity level would be under that Agreement. For the 1988 NBCWA, the BCOA and the UMWA used a productivity rate of 2.6 tons per hour worked for the life of the Agreement, which began on February 1, 1988. In fact, however, productivity in 1987 was already at 2.82 tons per hour worked. The productivity level for 1989 rose to 3.16 tons per hour worked. It is widely expected that this progression will continue, even further exacerbating the funding shortfall in the future.

Using the incorrect lower productivity rate to set contributions to the Plans generated an enormous windfall for the three largest members of BCOA—Peabody, Consolidation and AMAX—by saving them *$136,000,000* in reduced contributions to the Plans in 1989 alone. Spread over the more than 3 years which have elapsed since the 1988 NBCWA became effective, this savings rate would generate approximately $450,000,000 in savings to those three companies. This money would have gone into the Plans under the terms of the 1984 NBCWA, but, instead, under the 1988 NBCWA went into corporate funds.

A "REACHBACK" PROVISION IS UNFAIR

A "reachback" provision requiring former signatories to subsidize the Benefit Plans is fundamentally unfair. First, such a provision would ignore the plain fact that the former signatory *did* contribute to the Plans for a number of years, often contributing tens of millions of dollars to the Plans during the periods in which they were participants. Having made these contributions, these employers had a legitimate expectation that their retirees would be covered by the Plans, if and when those companies either discontinued mining coal or ceased to be a signatory. Indeed, a number of the former signatories who are still producing coal under UMWA contracts have signed collective bargaining agreements with the UMWA in which the UMWA has agreed that these companies will no longer be required to contribute to one or both of these Plans, or to contribute on a reduced basis. As noted by Commissioner Holsten's dissent to the Coal Commission Report, reopening those agreements "would make a sham of the collective bargaining process."

> "[T]his portion of the proposal would establish a dual standard for contract compliance. On the one hand, signatory operators would be required to honor their commitments to fund retiree health care costs. The union, on

the other hand, would be relieved of any contractual concessions it may have willingly made to certain coal operators in the form of lower contribution rates to these same funds."

What makes the Commission's funding proposal particularly pernicious is that it is both open-ended and controlled by a select group who have no motivation to control the costs of these plans, so long as the costs are passed on to others in the industry.

Further, a "reachback" provision, by the BCOA's own admission, would not solve the current or future funding problems. As Commissioner Robert H. Quenon, President and Chief Executive Officer of Peabody Coal Company and the lead BCOA negotiator in 1988 stated, "even that base [referring to the former signatories] is not large enough to provide the continued support without great disadvantage to the people [present signatories] who are providing the money to support the orphans." Minutes of Commission's open meeting, October 17, 1990 at 13.

The Commission's "reachback" funding proposal is an unprecedented intrusion into the collective bargaining process so carefully constructed by the national labor relations laws. It violates the most fundamental policy of our labor laws that the government shall not dictate the substantive terms of labor agreements nor impose specific contract requirements on any party to collective bargaining agreements, much less non-signatory parties. To the extent that disagreements arise between the parties as to the proper interpretation or enforcement of terms set forth in collective bargaining agreements as has arisen with respect to the so-called "evergreen clause" in the 1978 and subsequent NBCWAs—the courts or arbitration, not Congress, are the proper forums for resolution of these disputes. To provide otherwise would establish an extremely dangerous precedent whereby Congress would be called upon to interpret the terms of simple contractual agreements.

The Commission's proposal also may have an undesirable precedential impact in the complex and difficult issue of the provision of medical coverage throughout our Nation, which is and will continue to be the subject of extensive debate in Congress. To put a Congressional imprimatur on one of the most generous and expensive health care programs in industry by mandating that the costs be spread industry-wide or to other specific employers would send entirely the wrong message across the country. It would signal that this federalized approach may be what congressional leaders in the health care debate have in mind for the rest of industry, and for the rest of the country. For these reasons, and the very serious antitrust and constitutional problems which it raises, this proposal should not be adopted.

COLLECTIVE BARGAINING CAUSED, AND CAN SUBSTANTIALLY RESOLVE, THE FUNDING DEFICITS

Plainly stated, the BCOA and the UMWA bargained themselves into their current situation and can bargain themselves out of it. If they do not, it will not be because they are unable to bargain on the issue or that the collective bargaining process is incapable of resolving the issue. Instead, it will be because the parties do not want to reach a bargained result.

Powerful economic and organizational forces exist which should cause the BCOA and UMWA to resolve this issue through the collective bargaining process. Indeed, through that process the BCOA and UMWA have managed to avoid economic strikes for the last decade. This fact is in stark contrast to the several lengthy economic and rampant wildcat strikes in the 1970's and early 1980's. Labor peace and other contractual benefits obtained by the BCOA in the 1984 and 1988 Agreements, and in the 1991 reopener, were in part the bargained-for result of agreeing to maintain an extremely generous and costly health care program for UMWA retirees.

Of course, neither the BCOA nor the UMWA wants to compromise on this issue through the give-and-take of collective bargaining unless forced to do so. The BCOA does not want to pay for the so-called "orphans" and the UMWA does not want to give up any of the rich benefits which have historically been part of the negotiated NBCWA. But the BCOA and UMWA have agreed on one thing—they could solve *their* problems if they could get *someone else* to pay for them. This is, of course, a perfect solution for the BCOA. It would transfer part of their labor costs to their competitors. However, this situation is anything but perfect to those companies which are no longer or never have been signatory to the NBCWA, but which would be told by Congress to foot the BCOA's bill.

In sum, as expressed by Commissioner Richard Holsten in dissenting to the Coal Commission Report:

"The long term solution lies in the collective bargaining process, not in government intervention and certainly not in a tax on noninvolved parties.

The BCOA and the UMWA in their next negotiations in 1993 will have the opportunity to correct the mistakes of the past by revising their new National Bituminous Coal Wage Agreement to better reflect the economic realities of today's market environment.

In the interim, between now and 1993, a bridging can be achieved through the use of surplus pension assets, through cost containment and through reasonable cost reductions. The interim costs to signatory companies, as shown by the Commission's own actuarial projections, would be modest and future costs would be manageable.

Simply put, this is not an industry-wide problem. It does not require an industry-wide solution. This is a BCOA/UMWA problem created by the collective bargaining process and correctable through that same process. In the interim, the present deficits can be eliminated and a smooth and relatively painless transition can be made involving present signatory companies only."

CONCLUSION

If the BCOA and UMWA would exert the same energy to resolving this issue at the collective bargaining table as they have exerted in stage-managing the appearance of a so called "crisis," there is no reason why the funding of the union's retiree benefit plans could not be resolved. The proposed "reachback" scheme to bail out several of the Nation's largest foreign-owned coal operators, at the expense of the remainder of the coal industry, is unfair, anti-competitive, and bad precedent. If legislation of the type suggested by the Coal Commission is enacted, Congress should prepare to be inundated with similar demands from many other industries where the parties to collective bargaining agreements become disenchanted with the terms of those agreements and resort to the expedient of a legislated solution.

PREPARED STATEMENT OF HENRY H. PERRITT, JR.

Mr. Chairman and members of the subcommittee, I am pleased to be afforded the opportunity to present my views to your subcommittee on the work of the Coal Commission and on reform of financing and delivery of health care in the coal industry. I am also honored once again to work with Bill Usery, champion of cooperative problem solving, and a unique national resource.

I am a Professor of Law at Villanova Law School, where I have been on the faculty for ten years. I have written several books and articles on collective bargaining, employee benefits, administrative law, and dispute resolution, including the book Employee Benefits Claims Law and Practice, published by John Wiley & Sons in 1990. I served as Vice Chairman of the Coal Commission. Before the Coal Commission was established I represented both employers and employees on issues relating to collective bargaining, and individual employee rights. At the request of the UMWA and a group of coal industry employers I have agreed to assist a joint effort to encourage enactment of legislation to implement the Coal Commission recommendations.

The work of the Coal Commission is significant in a number of respects. One of the most significant is the fact that its members were private citizens of distinction and diverse viewpoints; yet they agreed on fourteen fundamental principles, reprinted in appendix 2 of the Coal Commission's report. I wish to elaborate on some of those principles and their application to the present situation. The work of the Commission represents a conceptual framework for solutions; not a detailed plan. While I personally am convinced that the Commission's framework is the most appropriate one to solve the problem; the framework is not mine; it represents a substantial consensus of the Commission. My job as Vice Chairman was to work with all the members of the Commission to help find common ground and to assist in forging a coherent approach consistent with the expertise and perspectives of each member. No realistic solution to a problem as difficult as this is completely satisfactory to everyone. But if we do not do something now, the problem will just get worse. It will not go away.

The present 1950 and 1974 UMWA Health and Retirement Funds cover more than 125,000 people and have a deficit of more than $100 million, resulting from dramatic increases in benefit costs and an erosion of the contribution base. The Commission agreed that the health care system centered on the funds could be saved only by extending the contribution base beyond current contributors, and that a governmental role is necessary to ensure contributions. The Commission also agreed that the administration and delivery of benefits should follow state-of-the-art

practices to ensure high quality and cost-effective care, and to ensure that the system is financially sustainable and the risks insurable. The Commission agreed that a multi-employer funding and administration arrangement is appropriate and that a central funding and administration arrangement is desirable to cover retirees and active employees on a voluntary basis.

Stabilizing financing of the retiree health care system as the Commission recommended serves a number of goals. It represents a basically private solution to a major health care problem. It honors the expectations of retirees who worked hard to create economic prosperity for others and protects them from breaches of faith in delivering health benefits they were promised in their declining years. It enables private sector innovation for ensuring equitable access to high quality and effective health care at reasonable cost.

The two alternative concepts offered in the Commission's final report are close in their major features, and both are consistent with the fourteen principles. I believe that the industry-wide financing proposal described at pages 60 to 64 of the Commission's report is the better of the two alternatives.

COLLECTIVE BARGAINING CANNOT SOLVE THE PROBLEM

The government's fingerprints are all over this problem, and public institutions should not be afraid to get their hands dirty helping private actors to solve it. Just as it was appropriate for the Federal government to sponsor solutions to the problems of abandoned mine lands, so it is appropriate for the Federal government to sponsor solutions to the problems of abandoned retirees.

The health care plan began with an agreement to which one party was the United States Government. The present funding problem is the result of conflicting obligations imposed by court decisions. The scope of collective bargaining, and thus its power as a solution, is circumscribed by the general labor laws.

The financing crisis for retiree health care results from the concentration of funding responsibilities for a generic industry problem on a shrinking fraction of the industry. Any voluntary contractual mechanism to make such funding obligations legally enforceable is doomed to failure because the remaining contributors have stronger and stronger incentives not to contribute voluntarily. For this reason alone, the usual collective bargaining approach under the general labor laws is not a feasible financing approach. Whatever the appropriate financing obligations are, they must be imposed by external law and made enforceable without regard to contract duration. Once one accepts this proposition, the remaining question is who should be subject to an obligation to contribute.

The law has developed in a way that jeopardizes the private structures for financing and delivering health care. This particular private structure has been determined by the United States Court of Appeals in two judicial circuits to guarantee lifetime health care benefits to persons already retired. That means that the commitments to the retirees must be honored.

Other judicial decisions and delays in the litigation process have undermined the key financing features of the present private arrangements. These judicial decisions allow employers to dump their retiree health benefit obligations on the existing health care funds, and to evade contribution obligations. Contributing employers can stop contributing when they withdraw from the multi-employer bargaining group or otherwise cease to be parties to the master collective agreement. It is not clear that collectively bargained withdrawal liability can be enforced effectively.

The judicial decisions taken together say that the health benefits must be paid, while depriving the private sector of the means to pay for them. The equities here are not those of present signatories and the UMWA seeking to ensnare someone else in their private arrangements; the equitable realities are that the law has frustrated realization of a private arrangement to provide a safety net for people who have a vested right to retiree health care benefits.

A variety of other governmental policies reflected in labor law and interpretation of labor law have made it difficult for the United Mine Workers of America to maintain a sufficient organization base and contractual uniformity to secure an adequate financing base. Apart from the equities, the reality is that an historically comprehensive, innovative, and strong private arrangement for health care is falling apart. When the present system falls apart there will be instability, not only in the organized part of the industry but in the coal industry generally.

THE PROBLEM WILL NOT GO AWAY

If coal industry health care delivery and financing cannot be reformed, the following scenario is conceivable. There could be a cataclysmic breakup in multi-employer

bargaining in 1992, accompanied by significant economic disruption. The large individual producers that dominate BCOA could withdraw, and could take the position that the evergreen and guarantee litigation frees them, upon contract expiration, from the obligation to pay for the Funds' deficits. Regardless of the legal merits of this position, litigating the merits would take years. The Funds, deprived of adequate contributions, would suspend, terminate, or cut back benefits to retirees, producing strike activity that might be difficult or impossible for the UMWA to control. History suggests that the strike activity would spread broadly throughout the coal industry.

It is far better to work out a comprehensive solution now within the framework suggested by the Commission, than to improvise later in a panic over coalfield conflict.

SOMEONE WILL PAY FOR BENEFITS IN THE END; THE COAL INDUSTRY IS A BETTER FINANCING SOURCE THAN THE TAXPAYER

The insistence on solving this problem entirely through collective bargaining is unrealistic and cruel. That insistence assumes that it is okay for individual employers to cancel health care benefits promised to retirees (or to cancel financing arrangements for those benefits, which ultimately results in cancelling the benefits). Cancelling the benefits is not okay, either legally or as a matter of policy. We do not advance the cause of health care reform by starting with the proposition that people should do without health care.

The courts have said that the fund beneficiaries have a vested right to benefits. An essential principle of private contract law is that legally operative expectations based on contracts be fulfilled. Otherwise private arrangements through contract cannot operate. Reneging on the commitment to retirees undercuts the most basic principle of private and market-based solutions to social problems.

In the end, someone is going to pay for retiree health care, and the amount required does not change with different definitions of the contributor population. There are only three possible financing sources: the retirees themselves, the taxpayer, the coal industry.

The retirees cannot do it; they lack the resources. The Supreme Court of the United States has recognized that retirees have little bargaining power on their own. The National Labor Relations Act has been interpreted to prevent unions from representing the interests of these disempowered citizens. Public policy should not allow the makers of promises to walk away from their promises when these retirees are the victims. Any approach that does not provide for financing of the health care plan beyond 1993 encourages this outcome.

The present financing structure is falling apart, and the likelihood is that it will not exist after 1993.

Seeking to continue the status quo thus ultimately throws the burden of financing promised health care on the taxpayer. It is not good public policy deliberately to embark on a course that will make the public sector responsible for providing health care for a significant new group of retirees who historically have had a comprehensive private structure for financing and delivering health care. When private mechanisms for financing health care collapse, people do not do without health care altogether. They seek public benefits. All taxpayers, employers and individual, pay for those. They go to hospital emergency rooms. We all pay for that too, through higher taxes and health insurance premiums inflated through cost-shifting by the hospitals. Each time we allow a private health care institution to collapse, the strain on other institutions increases.

This is not the time to dismantle private structures and enlarge the role of the public sector. An industry-wide industry financing mechanism is the only way to avoid that outcome.

THE PRESENT CRISIS IN THIS INDUSTRY WITH ITS UNIQUE HISTORY PROVIDES A UNIQUE OPPORTUNITY TO DEVELOP PRIVATE INSTITUTIONAL ARRANGEMENTS FOR HEALTH CARE REFORM

Private sector arrangements for financing and delivering health care are preferable to wholly governmental arrangements. The coal industry health care system is one of oldest, most comprehensive and ambitious private sector health care systems in America. It was one of the first employer financed health care insurance programs. It was one of the first large plans that encouraged group medical practice. It was one of the first large plans that used multi-employer financing as a means of insurance to protect against the risks of individual employers going out of business or becoming unwilling to finance benefit commitments. Many features of modern

HMOs and preferred provider plans were initially developed and tried out in practice in the coal industry plan. The coal industry is distinctive for being a sector in which a comprehensive private structure has existed for forty years to finance and deliver health care benefits.

This is not an experience that America should discard; we should build upon it.

Too little attention has been paid to that part of the Coal Commission's recommendation dealing with cost containment, access and quality, beginning at page 69 of the Commission's report. These recommendations, which were subscribed to by the entire commission membership, represent a joint commitment by labor and management to the principal features advocated by most students of health care reform: physician selection based on performance; development and use of appropriate practice protocols; delivery of care through a network of providers; point-of-service participant choice; use of capitation and other appropriate risk sharing arrangements.

Opportunities to implement these health care reform ideas, and to learn more about what works and what does not to ensure access, quality and cost containment are all too rare. The coal industry problem is an opportunity for reform in care delivery, but one which cannot be realized without stabilizing the financing of health care.

AMONG INDUSTRY-BASED FINANCING SOLUTIONS; A COMBINATION OF PAST-EMPLOYER AND INDUSTRY WIDE RESPONSIBILITY IS MOST APPROPRIATE

The industry-wide funding plan in the Coal Commission report appropriately allocates financing responsibility among three groups: signatories, past signatories and the rest of the industry.

It is not appropriate statutorily to require present signatories to continue to pay for benefits for someone else's retirees. Such a perpetual obligation is not imposed by the labor laws, and I am not persuaded that they agreed to pay, all by themselves, for the entire industry's orphaned retirees.

The question then becomes whether financing should be extended only to those with an historic connection with the Funds or whether it should be extended industry-wide. It is appropriate to impose some residual mandatory premiums industry-wide for two reasons: First, the mandatory premiums finance orphans, who by definition are not associated with any employer still in business; the orphan responsibility is a broad industry responsibility. Second, the boundary between past signatories and the rest of the industry is so indistinct as to be an inappropriate conceptual limitation on the financing structure.

The testimony at the Commission meeting on October 10, 1990 reveals that there is no clear line between those with an historic connection and those without such a connection.

Many of those companies who professed not to have any connection with the retiree health care financing problem have in fact mined coal with miners covered by the Funds and the collectively bargained contribution obligations and thus could be said to have "dumped" retirees, although technical definitions of "successorship" in labor law may not formally obligate the surviving and testifying entities. This points up the difficulty of any solution that depends only on financing by those with a "responsibility." The very people who proclaim lack of responsibility most vigorously have at least some de facto responsibility.

There is no such thing as mining coal and yet having no involvement in the crisis confronting health care financing and delivery in the coal industry. Contract operations are a strong phenomenon in coal mining, as are thinly capitalized subsidiaries. It is not uncommon for a contract operator or a thinly capitalized subsidiary or joint venture to walk away from obligations to finance retiree health care. Frequently entities who now appear not to have had any historic involvement with the Funds were in fact involved as contributors of capital, as participants in joint ventures or as purchasers of contract coal. It is difficult to know whose hands are clean.

It is not only a matter of clean hands. It is also a matter of administrative feasibility. It is extremely difficult to build a financing mechanism that relies entirely on unscrambling the supply contracts, joint ventures, capital structures, and investment roles of a decade ago to pin responsibility on investment capital that has walked away from freely undertaken funding obligations.

Even more generally, the coal operator who sells coal at a price not reflecting contributions for retiree health care contributes to the problem by eroding the market share of the operators who must recover the costs of retiree health care not only for their own retirees but also for orphans. An industry-wide financing approach tends to level the competitive playing field, because it spreads the cost of health care more broadly.

THE INDUSTRY-WIDE FINANCING FORMULA CAN TAKE SEVERAL FORMS

Several variations on industry-wide financing are worth further consideration. First, and most obvious, are variations in the assessment rate structure. Assessments could be calculated based on hours, or they could be calculated based on tons mined. An hours-based formula tends to increase the burden on low-productivity operations and decrease it on higher productivity operations. Because productivity tends to increase over time, an hours-based formula tends to erode the contribution base in the long run. Also, related to the rate structure is the fact that the rate need not be the same for all operators and for all coal. Some variation based on BTU content may be appropriate, and some variation based on past connection with the collectively bargained funds may also be appropriate.

Second, it is possible to "annuitize" the exposure for true orphans and finance this amount with a discrete number of assessments. For example, one might conclude that the present value of the cost of health care through the proposed Coal Industry Retiree Benefit Fund from now until the year 2039 is X. An assessment of Y cents per ton for three years would raise X, thus, covering the requirement. Under this variation, no long term industry assessment would be involved.

Third, an industry-wide assessment for the coal industry retiree benefit fund could be put in place by modifying the Abandoned Mine Lands assessment as proposed in testimony by Arch Minerals Corporation, presented in the Commission's public hearing on October 10, 1990.

ANY SOLUTION MUST INCLUDE AN APPROPRIATE STRUCTURE TO ENSURE EQUITY IN HANDLING FUNDS FOR BENEFITS, AND FOR ACCOMMODATING AN INNOVATIVE HEALTH CARE COST-CONTAINMENT SYSTEM

An essential element in the industry-wide funding plan is establishing a private, nonprofit corporation, with a strong and specific legislative mandate to use state-of-the-art managed care and cost containment techniques, as defined in Section D of Chapter Five of the Coal Commission's report. A statutory mandate, specifying the types of managed care procedures to be implemented, is necessary to ensure that the new entity actually uses the managed care techniques and that unanticipated legal barriers do not impede cost containment efforts.

New entities as proposed in the industry wide financing alternative are appropriate ways to achieve cost containment. While the existing funds have made considerable progress in managing costs, historical controversies and the diffusion of governance responsibility make it difficult for state of the art cost containment to be implemented fully through the existing structure. The new entities also are necessary to improve health care delivery more generally in the long run. Ambitious health care reform cannot be accomplished on a fragmented single employer basis; a strong central administrative mechanism is necessary to implement managed care and cost containment. Perpetuating the present structural arrangement and delivery patterns would make it more difficult to conform care delivery practices to new health care financing developed separate from the Coal Commission or coal industry collective bargaining.

The Industry-Wide Funding Plan makes maximum use of private institutions and economic incentives rather than compulsion. It is the only approach that produces a real prospect of managed care and cost containment, because single employer plans are not likely, as a practical matter, to have sufficient market power, expertise, or emphasis.

A separate structure for orphan benefits, such as the Coal Industry Retiree Benefit Fund in the Coal Commission Report also is appropriate because secure, broadly-based financing for the orphans cannot be arranged through a collectively bargained structure. A significant part of the industry is not organized by the UMWA. Any structural arrangement that forces this part of the industry to make contributions or premium payments to a collectively bargained delivery mechanism is infeasible. A new entity established by law and made appropriately accountable to public institutions is necessary to avoid these problems. The new entity contemplated by the industry-wide funding proposal can be shaped by non-union operators as well as the members of the unionized segment of the industry to meet everyone's needs. A appropriate institutional design, broadly responsive to all segments of the industry can serve as a vehicle for financing and delivering health care to active miners as well as retirees, and thus become the starting point for a true industry-wide insurance arrangement.

NEW ENTITIES FOR THIS INDUSTRY NEED NOT CREATE A NEW GOVERNMENT ENTITLEMENT PROGRAM

There is no reason to suppose that creating a new entity, such as the proposed Coal Industry Retiree Benefit Fund, creates a new government entitlement program. Such a new entity can be a private corporation, and its obligations would not be those of the government. Political pressures to increase benefits or to change the financing mechanism would be no different in kind or character from political pressures against any energy tax or in favor of amending the copyright laws—to identify two subjects in recent experience.

THE SOLUTION TO COAL INDUSTRY HEALTH CARE CAN CREATE PRECEDENTS FOR LABOR-MANAGEMENT COOPERATION IN CONTROLLING THE COST OF HEALTH CARE, WHILE IMPROVING QUALITY AND ACCESS, WITHOUT SETTING PRECEDENTS FOR FINANCING

There are significant considerations relating to the precedential value of the Commission's recommendations and the political reactions thereto. The managed care part of the solution could serve as a precedent for other industries. In contrast, the financing mechanism need not represent a precedent for other industries. The coal industry can be distinguished from other industries with respect to the genesis of the immediate problem, the consequences of failure to solve it, and the government' historic intervention.

The Industry-Wide Funding Plan does not represent the ultimate solution to health care financing and delivery in the coal industry; that will take much debate and more time. The proposal does represent a sound structure within which longer term comprehensive reform can occur.

The present crisis regarding coal industry retiree health care provides an opportunity for all segments of the industry—employees and employers, union-operators and non-union operators, labor and management—to work together to fashion their own solution to the health care needs of their unique industry. I hope we can work to permit everyone to shape their own destinies rather than hoping that health care needs will evaporate.

Attachments.

RESPONSE OF MR. PERRITT TO A QUESTION SUBMITTED BY SENATOR DAVID L. BOREN

Question. Your Report issued prior to the results of the 1991 UMWA-BCOA Reopener being known. Those negotiations resulted in a significant reduction in the money you suggested be reallocated from the Pension Benefit Fund. Doesn't that have substantial impact on any recommendation for taxing the industry at large since BCOA-UMWA took away a substantial asset which could have been used to solve this problem?

Answer. I do not have personal knowledge of the details of the negotiating and agreements during the period after the Commission reported. Based on information provided during the hearing, I believe substantial surplus remains in the pension plans. Moreover, it is important to realize that the participants and beneficiaries of the pension plans have entitlements which should be considered in connection with any reprogramming of the surplus.

Most significantly, the negotiated reprogramming of surplus pension plan assets was consistent with the Commission's recommendations and the principle of self help on the part of the Union and the covered employers. The negotiations reduced current demands on the health care plans, thus reducing to some extent the magnitude of the problem that ultimately requires legislation.

Attachment.

A Report to the Secretary of Labor and the American People

The Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits

November 1990
Washington, D.C.

COAL COMMISSION
200 Constitution Avenue, N. W.
Washington, D. C. 20210-0001
Fax: 202-523-3442
202-523-8271

November 5, 1990

Honorable Elizabeth Dole
Secretary of Labor
Washington, D. C. 20210

Dear Madam Secretary:

The Coal Commission was created on March 12, 1990 "to focus on health care issues arising from the 1950 and 1974 UMWA Benefit Plans and the effects of resolving these issues on the coal industry as a whole." The Commission also was directed to advise you on:

1. The financial status and prospects of the United Mine Workers of America 1950 and 1974 Pension Trusts (Pension Plans) and 1950 and 1974 Benefit Trusts (Benefit Plans);

2. The provision and means of delivery of health care benefits to coal industry retirees and their dependents who either currently are or formerly were represented by the UMWA; and

3. Arrangements to assure long-term financial viability of the 1950 and 1974 Pension and Benefit Plans.

The Commission is pleased to forward to you its findings and recommendations on the financial status of the 1950 and 1974 UMWA Health and Retirement Funds and on the quality and availability of health care benefits for UMWA retirees.

In general, the Commission reached consensus on a wide range of issues aimed at ensuring the long-term financial stability of the Funds. These issues include imposition of a statutory obligation to contribute on current and past signatories to the National Bituminous Coal Wage Agreement, mechanisms to prevent future dumping of retiree health care liabilities, statutory authority to utilize excess pension assets, and the implementation of state-of-the-art managed care techniques. Of course, a number of factual, legal, financial and policy matters will have to be reviewed as these matters are resolved.

The principal substantive difference among members was on the question of who should provide financing for orphan retirees. Many Commission members believe that orphans represent an industry-wide problem that should be resolved on an industry-wide basis. Others believe that only current and past signatories should be required to finance orphan health care. Implicit in both views is that collective bargaining alone cannot resolve the problem of delivering promised benefits to retirees.

As Chairman, I commend you for the extraordinary people you selected to serve on the Commission. I could not ask for a better group of more highly qualified and truly dedicated public servants to work on the issues referred to the Commission. Each member, serving without remuneration, contributed enormous amounts of time and energy to the issues considered. Together, with an exceptionally strong staff, the members worked tirelessly to solve an extremely difficult and perplexing problem.

Many constructive and creative ideas were presented and discussed, and some forceful arguments were offered in support of varying solutions. This report represents the very best consensus that could be achieved considering the strong views held by different Commission members on the numerous issues addressed.

On behalf of the Commission, I wish to thank those at the Department of Labor and the many others who helped the Commission accomplish its work. The Commission appreciates too your sincere interest and generous support in helping to solve this very difficult and complex health care problem confronting the coal industry.

Respectfully yours,

W. J. Usery, Jr.
Chairman

Enclosure

EXECUTIVE SUMMARY

The UMWA Health and Retirement Funds (Funds) is a unique institution. It was created in the White House in a contract between the federal government and the UMWA and for 45 years, it has provided comprehensive health care benefits for retired miners and their families. Unfortunately, the combination of skyrocketing health care costs, an increasing number of retirees who have been abandoned by their employers, and a smaller percentage of coal producers making contributions to the UMWA Funds have put the health care program for retirees in a financial crisis.

In the last 10 years, the health care costs paid by the UMWA Health and Retirement Funds have doubled from $117.4 million to $245.3 million. By 1993, the Funds will have an estimated deficit of $300 million. Much of the cost is attributable to "orphaned" retirees whose companies have gone out of business or ceased paying for health care benefits. More than half of the Funds' population is composed of orphan retirees. How to continue to provide health benefits to "orphans" is the essence of the problem. Signatory coal operators who are still in the coal business are willing to pay the fair cost of their retirees, but are increasingly unwilling to shoulder the burden of paying for orphans, which they view as an industry-wide problem. Health care benefits are an emotional subject in the coal industry, not only because coal miners have been promised and guaranteed health care benefits for life, but also because coal miners in their labor contracts have traded lower pensions over the years for better health care benefits.

The current deficit for the Funds is $114.7 million, and the deficit will continue to grow at the current rate of contribution. A close analysis of the administration and operation of the Funds reveals that they are doing an adequate job in administering the Funds and in providing health care benefits for the retired coal miners. In short, the growing deficit is much broader than the administration of the Funds.

There is consensus, that is, agreement among most of the Commission members, on a number of important issues. The Commission firmly believes that the retired miners are entitled to the health care benefits that were promised and guaranteed them and that such commitments must be honored. The Commission agrees that a statutory obligation to contribute to the plans should be imposed on current and former signatories to the National Bituminous Coal Wage

Agreement. The Commission agrees that mechanisms must be enacted to prevent future dumping of retiree health care obligations on the Funds. The Commission supports statutory authority for the parties to utilize excess pension assets to reduce existing deficits. Finally, the Commission supports the implementation of managed care and cost containment activities designed to reduce costs without the loss of benefits.

The principal substantive point on which the Commission did not reach consensus is whether the entire industry should contribute to the resolution of the problem of orphan retirees. Many commissioners support the enactment of a small health care fee on current and former signatories, and other coal producers to help pay for health benefits of retirees who have no company to provide such benefits. Others believe that only current and former signatories should be required to contribute. As a result, two alternative approaches for a possible long-term solution are offered by the Commission. It is recognized there may be appropriate modifications to either of these solutions, and that other satisfactory plans could be developed.

Commissioners

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INTRODUCTION

A. Creation of the Commission. On March 12, 1990, Secretary of Labor Elizabeth Dole appointed an 11-member Commission to review and make recommendations concerning the financial crisis confronting the 1950 and 1974 UMWA (United Mine Workers of America) Benefit Funds. Secretary Dole appointed W.J. Usery, Jr. to serve as Chairman of the Advisory Commission on United Mine Workers of America (UMWA) Retiree Health Benefits (the Commission) and directed the Commission to present its findings and recommendations to her by October 11, 1990. On September 27, 1990, Secretary Dole extended the Commission's reporting date to October 17, 1990, to permit the public additional time to make presentations and submit materials to the Commission for consideration. On October 18, 1990, Secretary Dole extended the Commission's reporting date to October 31, 1990 to allow the Commission members time to submit written proposals and statements for inclusion in the final report. On November 1, 1990, Secretary Dole extended the Commission's reporting date to November 5, 1990 to allow additional time for preparation and submission of the Commission's final report.

B. Statement of the Problem. The medical care program for retired coal miners represents a unique history of cooperation and confrontation between the private sector and the government. The UMWA Health and Retirement Funds were created in an agreement between the federal government and the United Mine Workers of America during a period of government seizure of the mines. It was shaped by a federally-appointed commission charged with examining health care in America's coal fields. Over the years, it has been recognized by specific legislative treatment, reshaped by numerous court decisions and kept alive in times of peril by government intervention in the collective bargaining process.

Retired coal miners have legitimate expectations of health care benefits for life; that was the promise they received during their working lives and that is how they planned their retirement years. That commitment should be honored. But today those expectations and commitments are in jeopardy.

The Commission was asked to examine the problem and to recommend a solution for assuring that orphan retirees in the 1950 and 1974 Benefit Trusts will continue to receive promised medical care. To deal effectively with its charge, the Commission had to consider the unique nature of the Funds; the sharp decline in the contribution base supporting them; the rapidly escalating medical care costs; and the strong historical tie among the Funds, its beneficiaries and the collective bargaining relationship which has been in place for over 40 years. In short, the Commission was asked to reconcile the changing landscape of the coal industry with the legitimate demands of history.

The 1950 and 1974 Benefit Funds are in financial crisis for several reasons. First, the number of coal companies making contributions to the Funds has declined significantly. In 1950 the companies making contributions to the Funds accounted for 80 percent of the coal produced in the nation; by 1990 companies making contributions to the Funds account for only 30 percent of national coal production. Second, the cost of providing health care to retired miners and their families has increased significantly from 1950 to 1990. In the last 10 years alone, the total cost of health care benefits paid by the Funds has doubled from $117.4 million to $245.3 million. Third, there has been a steady increase in the number of orphaned retirees whose employers have either gone out of business or no longer provide health care benefits. The combination of these factors has left the Funds, which were created to provide retired coal miners and their families with one of the finest health care programs in the nation, in financial crisis.

While the 1950 and 1974 UMWA Benefit Funds are inadequately funded, the 1950 UMWA Pension Fund is over funded by approximately $237 million, assuming the current plan actuaries assumptions are realized. This surplus of pension funds has prompted legislative proposals (1) to transfer some of these excess assets to the Benefit Funds and (2) to require certain coal operators--who were, but who are now no longer contractually obligated to make contributions--to resume making contributions to the Benefit Funds.

The crisis created by the high cost of health care is not unique to the coal industry. It is a major problem in the United States and one that affects much of American industry. The need to provide quality health care for American workers is a national challenge and, according

to Secretary Dole, this challenge affects the "entire work force and [America's] competitive edge in the world market." The high cost of health care is the main issue in 87 percent of the labor disputes and is an issue that will dominate the collective bargaining process in the years to come.

On January 1, 1990, the parties to the strike at the Pittston Coal Company reached a settlement in their 10-month-long labor dispute, and on February 19, 1990, a new four-and-a-half-year contract was ratified by members of the UMWA. The payment of health care benefits to retired and disabled miners and their families was a major issue in the strike and was responsible in large measure for the subsequent formation of this Commission.

The current deficit for the 1950 and 1974 UMWA Health Benefit Funds is $114.7 million. By 1993, the deficit for the 1950 and 1974 UMWA Health Benefit Funds is expected to be more than $300 million. Secretary Dole contends that in order "to avoid a [more] serious crisis [in the future]," a "long-term resolution is needed" to deal with the problem of accelerating health care costs in the coal industry. That crisis could come as early as 1993 when collective bargaining commences between the UMWA and members of the Bituminous Coal Operators' Association (BCOA) on a successor agreement to the expiring 1988 National Bituminous Coal Wage Agreement (NBCWA).

The federal courts also have been active in resolving disputes concerning the operation and contributions to the Funds. In addition, Congress has enacted legislation affecting the coal industry, most recently, the Clean Air Act, and has considered legislation authorizing the transfer of money from the 1950 Pension Fund to the 1950 Benefit Fund.

The escalating cost of providing adequate health care to coal miners and their families, particularly the increasing population of orphan retirees, cannot properly or fairly be solved by the parties through collective bargaining alone. The Secretary of Labor's creation of this Commission is evidence in itself that the issue facing the Funds is not one that lends itself to resolution through negotiation and mediation. The problem of the escalating cost of health care is a problem of potentially great magnitude which today is threatening to bankrupt the UMWA Health and Retirement Funds, and which tomorrow may threaten the

financial solvency of union and nonunion coal mining companies alike. In short, at the present rate of inflation in health care costs, many companies over the longer term may not be able to provide health care coverage for their employees because the cost of health care may exceed the company's profits.

The time to deal with the problem is now before it becomes even more serious. If the coal industry and government can work together to solve this problem as it has worked together to solve problems in the past, the whole nation can benefit from the results. Not only will the coal industry remain healthy, but the nation too can benefit from the results achieved from the cooperative effort of the industry and the government.

C. Charge of the Commission. For these reasons, Secretary Dole created the Coal Commission and directed it "to focus on health care issues arising from the 1950 and 1974 UMWA Benefit Plans and the effects of resolving these issues on the coal industry as a whole." In particular, she asked the Commission to advise her on:

1) The financial status and prospects of the United Mine Workers of America 1950 and 1974 Pension Trusts (Pension Plans) and 1950 and 1974 Benefit Trusts (Benefit Plans);

2) The provision and means of delivery of health care benefits to coal industry retirees and their dependents who either currently are or formerly were represented by the UMWA; and

3) Arrangements to assure long-term financial viability of the 1950 and 1974 Pension and Benefit Plans.

The members appointed by Secretary Dole to serve on the Coal Commission have a wide range of experience and represent all facets of the coal industry. The union, coal operators--both BCOA and non-BCOA, the private insurance industry, as well as academics, actuarial, medical and government policy experts, and those with extensive

experience in labor law, mediation, and labor negotiations make up the membership. According to Deputy Secretary of Labor Roderick A. DeArment, who opened its first meeting, the Commission will have "free reign to explore any and all solutions" to the financial crisis confronting the 1950 and 1974 Benefit Funds.

D. Work of the Commission. In achieving the objectives set forth by the Secretary of Labor, the Commission reviewed the history of the trust funds and the types of health care benefits beneficiaries are entitled to receive. The members also reviewed the financial status of the health care and pension trust funds, and examined projected costs and expenditures for a 20-year period. In addition, the Commission analyzed how the health care trust funds are managed. Based on the information considered and examined, the Commission reached the findings and conclusions set forth in the report and submit their recommendations for ensuring the integrity of retiree health benefits in the coal industry.

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CHAPTER ONE

THE COAL INDUSTRY

A. The Industry. In the United States the domestic coal industry continues to grow in both size and strategic importance as the nation's most abundant and economic basic energy resource. In 1990 domestic coal production should reach 1 billion tons, marking the fourth consecutive year of growth. Valued at an estimated $21 billion today, domestic coal production ranks as one of the nation's most important basic industries.

B. Background. Coal had its origin millions of years ago in the lush forests and dense swamps that once covered vast areas of the earth's surface. Over the intervening ages, this vegetative matter was subjected to different sets of temperatures and pressures and became a solid hydrocarbon rather than a gaseous or a liquid one.

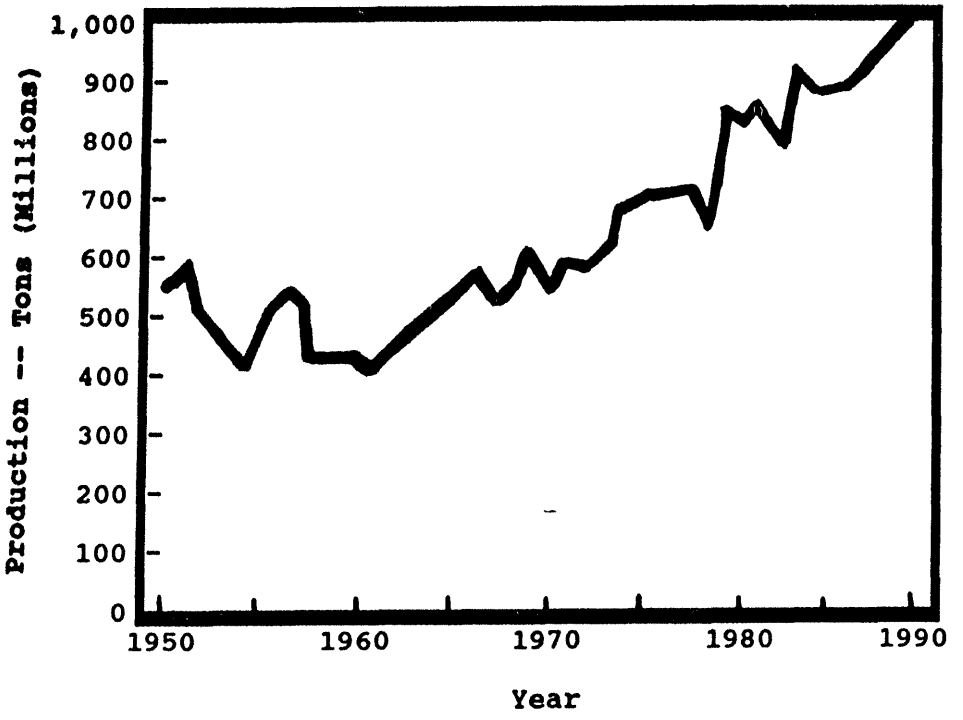
The United States possesses approximately 35 percent of the world's coal reserves. Indeed, with a demonstrated reserve base in excess of 470 billion tons and recoverable reserves of nearly 270 billion tons, U.S. coal reserves exceed the entire world's supply of oil and gas and are adequate to meet today's demand levels for centuries to come.

Geologically, the oldest and highest quality coals are found in numerous seams throughout much of Appalachia. Midwestern and Rocky Mountain coal deposits are generally younger and of somewhat lower quality while the youngest and lowest quality coals are the vast lignite deposits of the northern Great Plains and the Gulf Coast states. Coal quality is generally measured by heat content and residual impurities and it can vary considerably from region to region, from seam to seam and even within a given seam. Of particular interest today is sulfur content which can range from very low to medium or high depending upon the prevailing geologic conditions when the coal was formed.

C. Coal Utilization and Production. As with other primary energy sources, coal is used principally for the heat that is released upon combustion which can transform water into high temperature, high pressure steam to perform useful work. Certain coals also contain chemical properties needed in steel making and as feed stock for the chemical industry. In addition, coal can be converted into synthetic oil and gas and used as a direct substitute for these primary energy sources.

With the conversion of the American railroad system to diesel locomotives following World War II and the advent of plentiful supplies of natural gas and oil for space heating and commercial purposes, the domestic coal industry in the 1950s lost two of its traditional markets. These gradually have been replaced by the growing electric utility market and, since 1960, coal demand and production in the United States have grown at an average rate of almost 5 percent per year. Production in 1990 should exceed 1 billion tons for the first time. (Figure 1)

U.S. Coal Production
1950 - 1990 (Est.)



(FIGURE 1)

Today, about 86% of the coal produced in the United States is used to generate electricity and accounts for nearly 56% of the nation's total electric power production. In addition, approximately 10% of industry output is exported to the European Common Market, South America, and Pacific Rim countries and contributes significantly to our international trade balances. The remaining production is consumed by heavy industry for processing and steel making purposes.

Coal is produced in 26 States with 60 percent mined east of the Mississippi River. The five largest coal producing States, accounting for nearly two-thirds of the nation's output, are Wyoming, Kentucky, West Virginia, Pennsylvania and Illinois. Other major producers are Texas, Virginia, Montana, Indiana, and Ohio.

Nearly two-thirds of the nation's output comes from surface mines which use large mobile excavating equipment to remove the overburden and expose coal seams located within a few hundred feet of the surface. Upon completion of mining, the surface is then restored to its approximate original contour and to pre-mined levels of vegetative productivity. Underground mining is also highly mechanized with yesterday's picks and shovels replaced by continuous mining machinery that safely and economically recovers coal seams to depths of 2,000 feet or more. Very often, the coal is further processed after mining to remove impurities and upgrade quality before shipment to customers by conveyor belt, truck, rail, barge or ocean vessel.

Thus, as a plentiful, economic and secure energy resource, coal is and should remain a cornerstone of our national energy supply for generations to come.

D. Industry Structure. The coal industry is one of extremes, both very large and very small. There are literally thousands of individual mines (3,800 in 1989) ranging in size from a surface mine in Wyoming which produces nearly 30 million tons per year to mines that extract only a few thousand tons annually. The fifty largest mines in the country, accounting for nearly one-third of the nation's output, each produce at least 3 million tons annually, and yet the average size of a U.S. coal mine in 1988 was only 265,000 tons. Truly, the U.S. coal industry is one of contrasts.

Ownership within the industry is equally diverse, ranging from individual entrepreneurs to some of the nation's largest corporations. Of the top twenty coal companies, representing over 50 percent of the coal industry output (Table 1), all are subsidiaries or affiliates of other energy, mining or diversified interests.

Major U.S. Coal Producers, 1989

(Million Short Tons)

		Tonnage	Pct. of Total Production
1.	**Peabody Holding Group** (Hanson Industries)	86.7	8.9
2.	**Consolidation Coal Company** (E.I. DuPont de Nemours)	53.5	5.5
3.	**AMAX Coal Industries Inc.** (AMAX Inc.)	38.4	3.9
4.	**ARCO Coal Company** (Atlantic Richfield Company)	31.1	3.2
5.	**Texas Utilities Mining Company** (Texas Utilities Company)	29.9	3.1
6.	**Exxon Coal and Minerals Company** (Exxon Corporation)	28.1	2.9
7.	**Shell Mining Company** (Royal Dutch Shell)	25.5	2.6
8.	**NERCO** (PacificCorp)	24.5	2.5
9.	**Sun Coal Company** (Sun Company, Inc.)	22.8	2.3
10.	**North America Coal Corporation** (NAACO, Inc.)	22.5	2.3
11.	**Western Energy Company** (Montana Power Company)	21.8	2.2
12.	**Island Creek Corporation** (Occidental Petroleum Corporation)	19.6	2.0
13.	**Arch Mineral Corporation** (Ashland Oil; Hunt Petroleum Inc.; Hunt Industries)	18.9	1.9
14.	**Kerr-McGee Coal Corporation** (Kerr-McGee Corporation)	17.6	1.8
15.	**A.T. Massey Coal Co.'s Sub.** (Fluor Corporation)	16.9	1.7
16.	**Kiewit Mining Group** (Peter Kiewit Sons Co.)	15.9	1.6
17.	**BHP-Utah Minerals** (Broken Hill Proprietary Co., Inc.)	15.2	1.6
18.	**Pittsburg and Midway** (Chevron Corporation)	15.1	1.5
19.	**Cyprus Coal Company** (Cyprus Mineral Corporation)	14.2	1.5
20.	**Coastal Coal** (Coastal Corporation)	13.4	1.4

(TABLE 1)

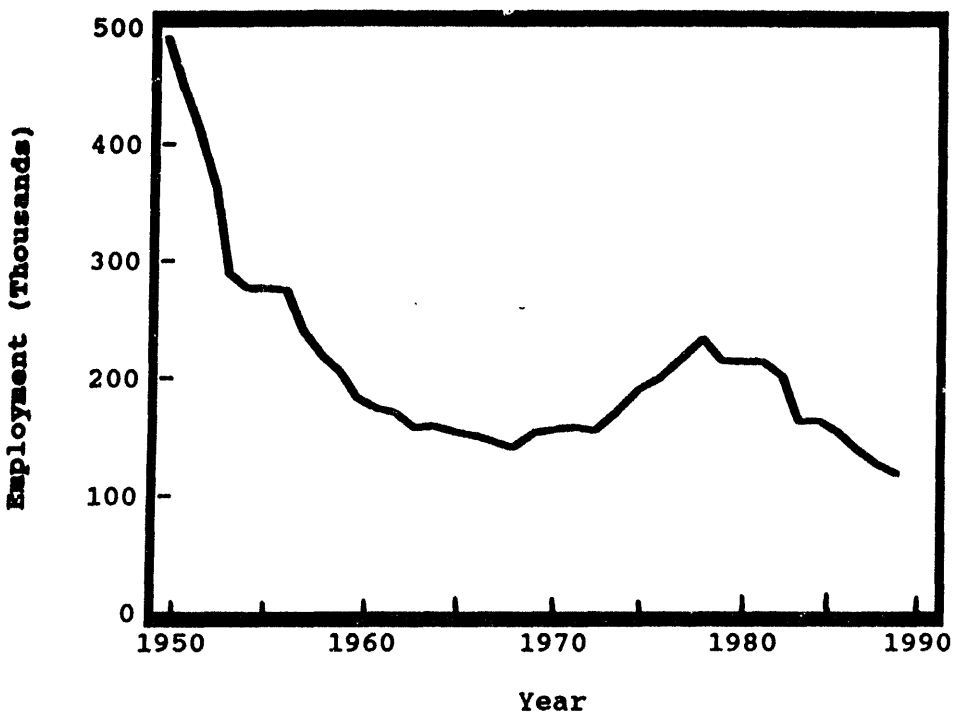
Coal mining today can be both capital and labor intensive. Major mining systems and individual pieces of equipment can cost millions of dollars each but the labor component, particularly at smaller mines, can also be high. It is this balance between cost of capital and cost of labor that ultimately determines the competitiveness of individual operations.

The coal industry traditionally has been demand driven. During the last decade production of coal has increased, but new mining capacity installed during the energy boom of the late 1970s and early 1980s has outpaced production and has remained under utilized. As a result, coal prices and overall profit margins have been weak. Prolonging this overcapacity problem has been the inability or failure of coal's largest customer, the electric utility industry, to install new coal fired generation on a timely basis due in part to regulatory and environmental uncertainty. However, while much of the production growth during the past ten years has come from utilization of excess capacity, growth in the future should once again require the installation of new equipment and the employment of new miners.

E. Labor. As a result of the shift in markets and the rapid mechanization of U.S. mines during the 1950s and 1960s, coal mine employment declined 75 percent during this period from a high of 488,000 in 1950 to 130,000 by 1969. (Figure 2) This downward tend was reversed during the 1970s due to increased production but mainly in response to new federal and state legislation regulating coal mine safety and mined land reclamation.

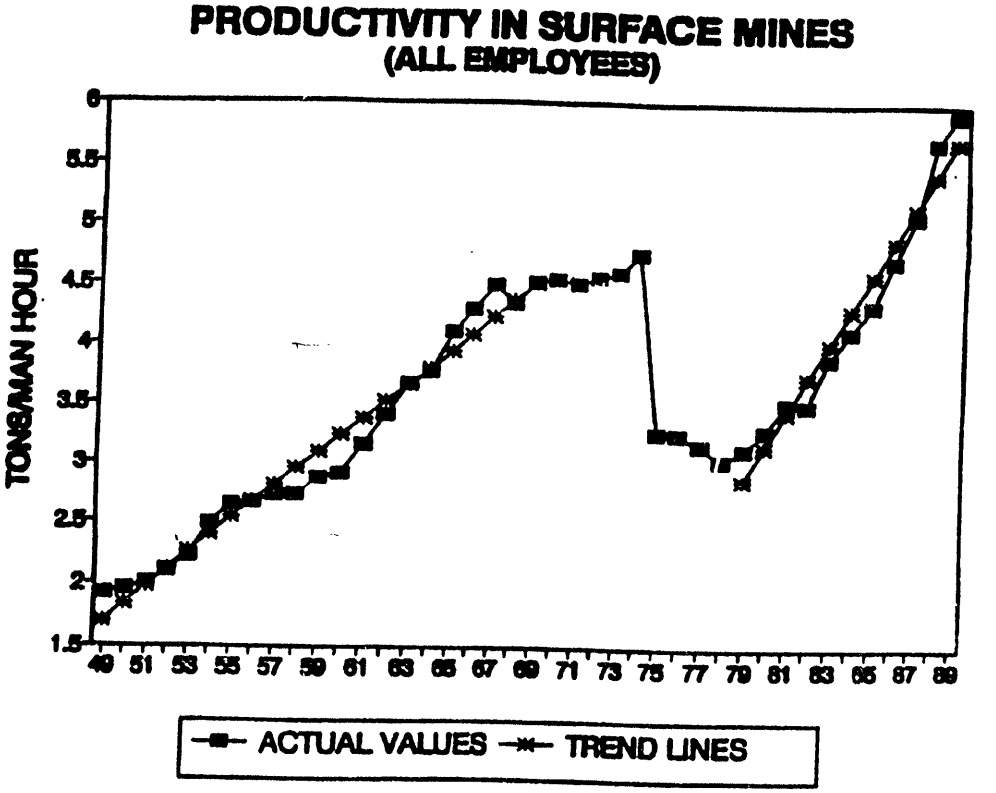
However, beginning in the late 1970s and throughout the 1980s, the downward trend has resumed and coal mine employment today is at a post-war low despite record levels of production.

U.S. Coal Mine Employment
1950 - 1988

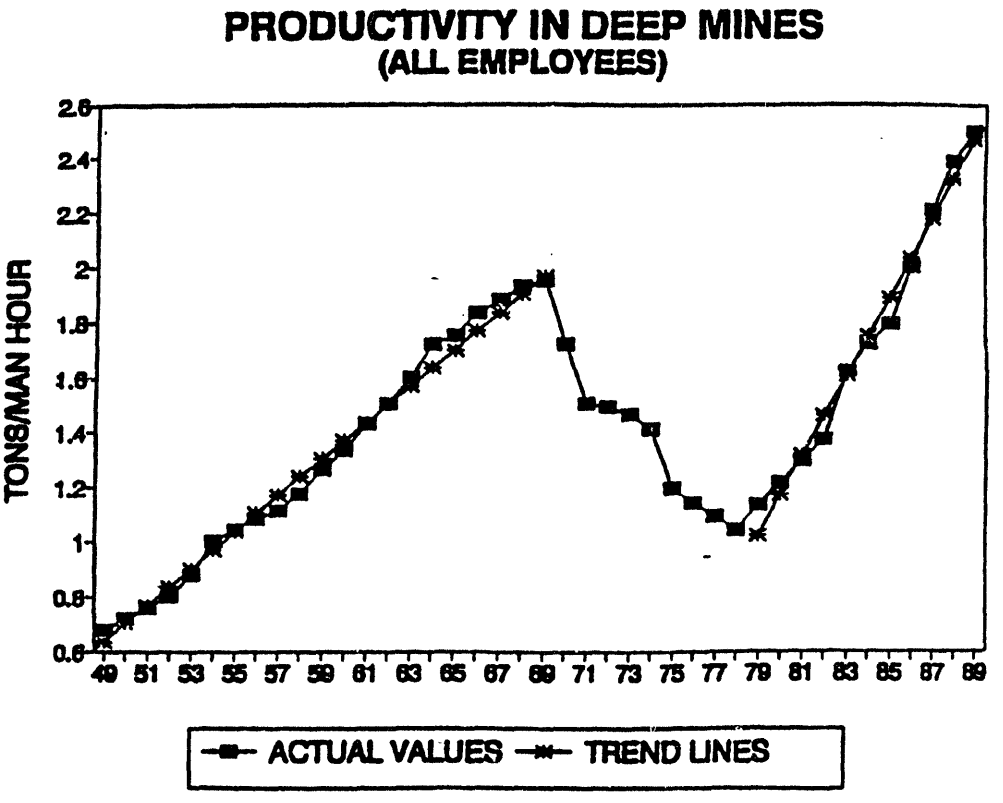


(FIGURE 2)

From 1950 through 1969, coal mine productivity grew steadily but then declined during the 1970s as a result of the new federal and state laws and regulations. However, during the 1980s that trend has been reversed and industry-wide productivity has increased at a rate of over 8 percent per year during the past decade. (FIGURES 3 & 4)


PRODUCTIVITY IN SURFACE MINES
(ALL EMPLOYEES)
TONS/MAN HOUR
6
5.5
5
4.5
4
3.5
3
2.5
2
1.5
49 51 53 55 57 59 61 63 65 67 69 71 73 75 77 79 81 83 85 87 89
ACTUAL VALUES
TREND LINES

(FIGURE 3)



(FIGURE 4)

As mining operations and equipment have become more technical and complex, there has been a corresponding change in the work force. Today's miner is likely to be older, better educated, better paid and has about ten years' experience with the same company. In addition, women miners are common today. A coal miner's average annual income is about $35,000 and can be considerably higher with normal overtime and bonuses. Health and welfare benefits rank among the best in U.S. industry. In short, coal miners today are among America's most highly trained, skilled and best paid industrial workers.

CHAPTER TWO

HISTORY OF THE FUNDS[1]

A. The Funds. The Funds are unique. They were created by the federal government and the UMWA during a period of labor strife in the 1940s. Shortly thereafter, the Funds became an integral part of the first National Bituminous Coal Wage Agreement (NBCWA) at a time when the bargaining parties were faced with the challenge of saving the coal industry.

The original Fund was an experiment in the delivery of medical care and other benefits to coal miners. In the years that followed, the Funds became an essential part of the collective bargaining process. More recently, the rising cost of health care benefits has made the Funds and the health benefits they provide a major point of contention in the collective bargaining process. The Funds today represent the end result of over 40 years of historic evolution and efforts by the parties to fit a medical care system into a changing economic and labor relations environment.

B. Historical Development. The history of the Funds can be divided into five distinct periods:

- The period of establishment and its historical underpinnings, which saw two factors, the Union's desire for improved medical care for coal miners and labor-management strife, come together in 1946 to establish the Fund. The Fund's administration was fraught with problems and disagreements between the Union and Operator Trustees.

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[1] The material on the History of the Health Care Benefits in the Bituminous Coal Industry was prepared and presented to the Coal Commission by Richard L. Trumka, International President of the United Mine Workers of America, and Joseph P. Brennan, President of the Bituminous Coal Operators' Association, Inc. Some Commission members do not believe that the government is responsible for the Funds' present financial crisis or that it is necessary for the government to be involved in resolving the present crisis.

- o The period of development, stretching from 1950 to 1960, which saw the growth of the Funds and its medical care delivery philosophy and infra-structure that in many ways continues to dominate much of their operations.

- o The period of retrenchment, during the decade of the 1960s, as economic reality came in conflict with institutional goals. During this period, many of the major initiatives of the earlier years were discarded, eligibility rules were scaled back, and the Fund faced the possibility that its historic mission might not be achieved.

- o The period of transition ran roughly through the 1970s. Employer involvement increased. The law demanded fundamental change, especially as it related to pensions; change that came to dominate the attention of the bargaining parties for much of the decade. The Funds moved from being the provider of medical care for all miners to essentially a program for certain retirees.

- o The period of crisis covers the 1980s to the present. During the 1980s, the Pension Funds flourished, but the medical care program became increasingly contentious. During this same period, the contribution base declined even though national coal production increased substantially. In the 1980s, medical care costs also rose rapidly, even though cost containment was a major objective of the parties. The net result is that the Health Benefit Funds are now facing a financial crisis.

Four common factors run through the history of the UMWA Funds. Each of them separately and together have contributed to the evolution of the Funds. These factors are (1) government involvement; (2) the collective bargaining process; (3) the medical care delivery system; and (4) the industry.

1. Period of Establishment. The period of establishment covers the system of medical benefits in place before the Fund and the efforts made by the Union to establish it that culminated in the historic Krug-Lewis Agreement.

a. Medical Care Delivery System. Prior to the creation of the UMWA Welfare and Retirement Funds, medical care in coal field communities consisted of a prepaid system based on deductions from the miners' paychecks. Under this system the coal company deducted money from wages and hired doctors to provide medical services to the miners. In many cases this was necessary because the isolated, rural areas where coal was produced did not attract medical professionals and only the lure of a guaranteed income could induce doctors to set up practice in coal mining communities. Over time, the company doctor system developed in ways that the miners felt were not in their best interests.

Because of nationwide concern about health care matters during the Great Depression, President Roosevelt in 1935 appointed an Inter-departmental Committee to Coordinate Health and Welfare Activities. He named as chairman of the committee Josephine Roche, who later became the Neutral Trustee and Executive Director of the Fund. One of the major activities of the committee was to convene a National Health Conference, at which Dr. Walter Polakov, Director of the UMWA Department of Engineering, called for the establishment of "group medicine and group hospitalization" in coal mining communities.

Based on Dr. Polakov's presentation, the Union, through the Good Will Fund of Boston and the Twentieth Century Fund of New York, commissioned a report on medical conditions in the coal field communities by the Bureau of Cooperative Medicine. The study concluded that there was a pressing need for medical care reform in the coal fields.

b. Government Involvement and Collective Bargaining. With the end of the Second World War, Union negotiators renewed their efforts for medical care reform. When negotiations opened in 1945, the UMWA proposed a royalty of 10 cents per ton of coal to be paid to the Union to "provide for its members modern medical and surgical service, hospitalization, insurance, rehabilitation and economic protection." Although this was a new concept in America, a precedent existed in Great Britain where a welfare fund had been created in 1920, financed by royalties on coal production.

The operators rejected the participating royalty. The proposal ultimately was dropped when Secretary of Labor Frances Perkins entered the negotiations. She met with both sides and offered a compromise that did not include a royalty. The Union accepted the Secretary's compromise suggestion and dropped the medical care proposal until the next round of negotiations.

When the National Bituminous Wage Conference convened in 1946, a health and welfare fund for miners was the Union's top priority. The operators again rejected the proposal and the miners walked off the job on April 1, 1946. Negotiations under the auspices of the U. S. Department of Labor continued sporadically through April. On May 10, 1946, President Truman summoned John L. Lewis and Charles O'Neill, chief spokesman for the northern operators, to the White House. The stalemate appeared to break when the White House announced an agreement in principle on a health and welfare fund.

Despite the announcement by the White House, the operators still would not agree to the creation of a fund. Another conference at the White House failed to forge an agreement and the negotiations again collapsed.

Faced with the prospect of a long strike, President Truman issued an Executive Order directing the Secretary of the Interior to take possession of all bituminous coal mines in the United States and to negotiate with the Union "appropriate changes in the terms and conditions of employment." Secretary of the Interior Julius Krug seized the mines the following day and ordered the miners back to work. The miners refused, and negotiations between the UMWA and the federal government continued, first at the Interior Department and then at the White House with President Truman participating in several conferences.

After a week of negotiations, the historic Krug-Lewis agreement was announced and the strike ended. It created a welfare and retirement fund to make payments to miners and their dependents and survivors in cases of sickness, permanent disability, death or retirement, and other welfare purposes determined by the Trustees. The fund was to be

managed by three Trustees, one to be appointed by the federal government, one to be appointed by the UMWA, and the third chosen by the other two. Financing for the new fund was to derive from a royalty of 5 cents per ton of coal produced for use or sale.

The Krug-Lewis agreement also created a separate medical and hospital fund to be administered by Trustees appointed by the UMWA. The purpose of the fund was to provide for medical, hospital, and related services for the miners and their dependents.

The Krug-Lewis agreement also committed the federal government to undertake "a comprehensive survey and study of the hospital and medical facilities, medical treatment, sanitary, and housing conditions in coal mining areas." The expressed purpose was to determine what improvements were necessary to bring the coal field communities into conformity with "recognized American standards." It was the first nationwide medical survey of an industry ever conducted by the United States government.

To conduct the study, the Secretary chose Rear Admiral Joel T. Boone of the United States Navy Medical Corps. Federal government medical specialists spent nearly a year in the various coal fields of the nation exploring the medical care system. Their report, "The Medical Survey of the Bituminous Coal Industry," found that, in coal field communities, "provisions for health range from excellent, on a par with America's most progressive communities, to very poor, their tolerance a disgrace to a nation to which the world looks for pattern and guidance." The survey team discovered that "three-fourths of the hospitals are inadequate with regard to one or more of the following: surgical rooms, delivery rooms, labor rooms, nurseries and x-ray facilities." The study concluded that "the present practice of medicine in the coal fields on a contract basis cannot be supported. They are synonymous with many abuses. They are undesirable and in many instances deplorable."

Thus, the Boone Report not only confirmed earlier reports of conditions in the coal mining communities, but also established a strong federal government interest in correcting long-standing inadequacies in medical care delivery. Perhaps most important, it provided a road map for the newly created UMWA Fund to begin the process of reform.

Shortly after the Boone Report was issued, the mines were returned to their private owners and a new National Bituminous Coal contract was executed. It combined the pension and medical programs and increased the royalties to 10 cents per ton of coal. Thus began a two-year struggle over activation of the pension program. While the level of the pension benefit and various eligibility issues were in dispute, there was also a major disagreement over whether the Fund should be on a pay-as-you-go or a pre-funded basis. After seven months of stalemate, the Neutral Trustee resigned in frustration.

The failure to agree on pensions caused miners to walk out of the mines in March 1948. Recognizing the intractability of the situation, the Speaker of the U. S. House of Representatives, Joseph Martin, asked the Trustees to meet with him on April 10, 1948. At the meeting in the Capitol, Speaker Martin suggested Senator Styles Bridges of New Hampshire as a neutral Trustee. Both Trustees agreed to the Speaker's suggestion. Senator Bridges pointed out the delay of almost two years since the Krug-Lewis agreement. He proposed to set the retirement age at 62 with 20 years of service and retirement subsequent to the Krug-Lewis agreement. By a vote of Lewis and Bridges the resolution was adopted and the deadlock was broken. Thus the Fund pension program was placed on a pay-as-you-go basis.

2. Period of Development. The 1950s saw a period of labor management cooperation and significant changes in the way coal was mined. During this period the medical program of the Fund was fully developed.

a. Collective Bargaining Process. The development of the current medical care system is directly tied to the relationship between the parties. The 1950 Wage Agreement marked the beginning of a period of cooperation which had as its basic premise, a concordat between the UMWA and the coal industry that the Fund would move forward and operators would be able to mechanize their mines. A long period of relative labor-management peace ensued as both parties recognized that cooperation was essential to the long term viability of the coal industry.

b. Medical Care Delivery System. Ten regional offices were established throughout the coal fields, with the direction to make arrangements with local doctors and hospitals for the provision of "the highest standard of medical service at the lowest possible cost."

One of the first programs initiated by the Fund was a rehabilitation program for severely disabled miners. Under this program, over 1,200 severely disabled miners were rehabilitated. The Fund searched the coal fields to locate the disabled miners and sent them to the finest rehabilitation centers in the United States. At those centers, disabled miners received the best treatment that modern medicine and surgery had to offer, including artificial limbs and extensive physical therapy to teach them how to walk again. After a period of physical restoration, the miners received occupational therapy so they could provide for their families.

The Fund also made great strides in improving overall medical care in coal mining communities, especially in Southern Appalachia. Recognizing the need for modern hospital and clinic facilities in the coal fields, the Fund constructed and operated ten hospitals in Kentucky, West Virginia and Virginia. The hospitals, known as Miners Memorial Hospitals, provided intern and residency programs and training for professional and practical nurses.

c. Government Involvement. Government involvement in the developmental phase of the Funds was evident in their programs. The doctors recruited to administer the medical care program were, for the most part, former officials of the U. S. Public Health Service. The program which they established, both with respect to delivery and scope of coverage, reflected the views of those seeking much greater government involvement and a restructuring of the health care delivery system.

In addition, the Fund was not a qualified trust under the Internal Revenue Code. As a result, Fund income beyond the level of administrative expenses was deemed taxable. Moreover, employer contributions were not deductible. To correct this a special section was inserted in the Internal Revenue Code in 1954 that permitted the deduction of employer contributions to a trust fund established under circumscribed conditions, one of which was government sponsorship.

d. Industry. After World War II, railroads converted to diesel locomotives; the home heating market was all but lost; natural gas pipelines were constructed; and imported oil began to flow into the country, further eroding coal's markets. As a result, the amount of coal produced fell sharply and the number of miners working dropped drastically. In 1945, 383,000 mine workers produced nearly 578 million tons of coal. By 1960, it took only 169,400 miners to produce nearly 416 million tons of coal.

The economic situation caused two interconnected problems for the Fund and the Miners Memorial Hospitals. First, the sharp reduction in coal output caused financial problems as royalty income fell. Second, the loss of over 200,000 miners drastically reduced the potential number of Fund patients to utilize the services of the new hospitals. Thus, the hospitals had to rely on non-Fund beneficiary patients to meet economies of scale, placing them in direct, and often bitter, competition with other hospitals and local medical societies.

3. Period of Retrenchment. By the 1960s, the difficult economics of the coal industry forced the Fund to take actions to meet financial realities.

a. Government Involvement and the Medical Delivery System. The economic decline of the coal industry forced the Fund to sell the hospitals. Again, the federal government was to play an important role. The United Presbyterian Church approached the Fund with an offer to buy the hospitals, but the purchase was contingent on receiving federal funds from the U. S. Department of Commerce. Eventually, with the help of Assistant Secretary of Labor Daniel Patrick Moynihan and the personal involvement of President Kennedy, federal funds were made available and the hospitals were sold. Although they were no longer owned and controlled by the Funds, they continued to serve miners and other residents of the coal field communities and contributed to a significant improvement in overall medical care.

b. Collective Bargaining Process. Collective bargaining in the beginning of this period saw a continuation of the cooperative efforts that began in 1950. The latter part of the decade, however, saw a resumption of tensions at the bargaining table as the industry began to revive.

In the coal fields there had been wildcat strikes as a result of the retrenchment actions by the Trustees, particularly with respect to eligibility for a health card. For example, in 1960, the Trustees ruled that unemployed miners could only have health cards for one year and from 1962 to 1966 health cards were taken from the employees of companies with delinquent contributions. Both health and retirement benefits were paid from a single trust. Economic realities forced the Trustees to make decisions on the level of benefits. Health care benefits were paid first, retirement benefits were paid last and were not guaranteed. If coal production dropped and there was not enough money in the Fund to pay the "target level" retirement benefit, the amount of the retirement benefit was reduced. In slow times money was diverted from the retirement payments to pay for health care benefits.

c. Industry. Employment levels bottomed out at 124,500 working miners in 1969 as compared to the 415,600 in 1950. Toward the latter part of the decade, there was an unrecognized turn in the fortunes of coal because of the increasing demand by the utilities for energy. But such growth was not a straight line projection of the past. Western production was becoming significant, surface mining was growing, and the potential of coal was attracting large sources of capital outside of the traditional coal industry.

d. Government Involvement. Congress and many state legislatures passed laws on prevention, treatment and compensation for Black Lung which would cost billions of dollars. Moreover, the designation of Black Lung as an occupational disease shifted the medical costs connected with the disease from the Fund to the Black Lung Trust or individual employers, although the cost impact would not be felt for years.

Coal mine health and safety concerns led to the passage of the Coal Mine Health and Safety Act of 1969.

4. Period of Transition. The decade of the 1970s was a period of change for the Funds, the coal industry, and the UMWA. It was characterized by the rapid growth of coal mining nationally, significant changes in health, safety and environmental regulations, and the entry into the work force of a new generation of coal miners. In addition, the Employee Retirement Income Security Act of 1974 (ERISA) became law, imposing significant costs and administrative burdens on the Funds.

a. Collective Bargaining Process. After the death of John L. Lewis in 1969, the Funds once again became a central bargaining issue between the parties. Benefit levels, particularly pensions, were looked upon by the new young work force as being low. Employers became more and more aware of the cost implications of the Fund and the role that it would play in future labor-management relations.

From the 1971 negotiations forward, there was heavy involvement by both settlors on all aspects of the Funds' operation. The parties monitored Fund administration through oversight of the Trustees and in setting benefit levels and eligibility criteria at the bargaining table. There were several reasons for the shift toward more settlor involvement.

First, the total cost of the programs increased as the number of beneficiaries grew and inflation became a constant.

Second, the legal terrain changed dramatically, especially with pensions, creating a permanent obligation where there was previously none. The intervention of the federal judiciary, especially in Boyle v. Blankenship, Kiser v. Huge, etc., 329 F. Supp. 1089 (D.C.C. 1971), aff'd 511 F.2d 447 (D.C.C. 1975), overruled many of the eligibility and administrative actions by the Trustees and added nearly 19,000 retired miners to the Fund, many of whom spent a considerable amount of their work careers in nonunion mines. In addition, the new group of retired miners brought thousands of dependents eligible for health care with them.

And, third, the dramatic influx of new workers in the early 1970s suggested a review and a revamping of the pension and benefits programs to meet the needs of these younger workers.

In response to these forces, the 1974 Agreement restructured the Fund into four separate Trusts -- two for pre-1976 retirees, the 1950 Pension and 1950 Benefit Plans, and two for post-1975 retirees and the active work force, the 1974 Pension and 1974 Benefit Plans. The new plans also established a negotiated plan of benefits removing Trustee discretion to set benefit levels and eligibility standards.

The enormous overhang of pension liability of the post-ERISA period mandated a close working relationship between the parties. The parties agreed on a rapid funding schedule for the 1950 Pension Plan, a schedule that resulted in full funding of that Plan in 1987. The newly created ongoing liability of the 1974 Plan was to be funded on an hourly contribution basis.

b. Industry. The decade of the 1970s saw a major turn around for the coal industry in terms of production, employment, and future potential. The impact on the Funds was threefold: first, the new growth potential offered the prospect of financial stability after two decades of stagnation and decline; second, there was an influx of young coal miners with expectations considerably higher than their grandfathers; and, third, a whole generation of miners retired. This occurred at a time when pension and medical care costs began to escalate and contractual pension obligations became fixed by statute.

But the most compelling feature of the period was the decline in the relative national share of NBCWA tonnage. The coal industry was being altered in a major way. New investors came into the coal industry who often were not interested in old established relationships and were unwilling to participate in the Funds. The new mines in the west were highly productive and did not want to subsidize their low productivity competitors. If there was to be a relationship with the UMWA, they wanted it to be outside the national agreement.

In this environment, the NBCWA also came under sharp attack from the signatories, and more and more attention came to be focused on the health and retirement system. One of the mutual responses to this trend by the UMWA and the BCOA was to fund the pensions as rapidly as possible to make them immune from economic trends in the industry. This effort was successful.

c. Medical Care Delivery System. In the 1970s, sharply increasing costs focused concern on the Funds. During the term of the 1974 NBCWA, contributions were reallocated among the various trusts in an effort to maintain the benefit stream. But the Funds fell into serious financial difficulty, leading to the reduction of medical benefits and eventually a total cutoff during the strike at the expiration of the Agreement. This first ever reduction of medical benefits resulted in a massive unauthorized work stoppage during the summer of 1977.

d. Government Involvement. The 1971 negotiations took place during wage and price controls and the agreement had to be approved by the government. Both sides worked together to win government approval because the 15 percent increase in labor costs exceeded the Government's wage guidelines. The government approved the 15 percent wage increase and the doubling of the contribution rate to 80 cents per ton. However, it did not agree to allow an increase in the price of coal to the consumer to pass through the increase in the contribution rate as agreed by the parties.

5. Period of Crisis. The strains of the 1974 Agreement were carried forward into the 1978 negotiations. The Funds, especially the Benefit Plans, have been a matter of concern to the parties ever since.

a. Collective Bargaining and the Delivery System. Both parties entered the negotiations in 1977 with definite ideas on health care issues. The BCOA proposed individual company health plans and the UMWA wanted a guarantee that health benefits would not be cut in the future. Failure to reach agreement on these and many other issues caused an 111-day contract strike. Once again the federal government was involved; the White House intervened in the dispute and negotiations were conducted in the Secretary of Labor's office.

Under the 1978 agreement the Funds ceased to provide medical benefits to all beneficiaries; responsibility for active miners and for post-1975 retirees shifted to the individual companies as part of a broad agreement that also restored and guaranteed the benefits and introduced the so-called "evergreen clause" or continuing contribution obligation into the Agreement. This clause is currently in litigation. The 1974 Benefit Trust remained as a Fund for retirees whose last employer had gone out of business. The meaning of this eligibility language is in dispute and also is in litigation.

For the Funds' beneficiaries the changes were far more basic. Beneficiaries had freedom of choice in selecting medical care providers, effectively ending the clinic system and participating physicians and hospitals. A new program was established covering acute drug needs.

The Trustees, in addition to their role as administrators, were to act as arbitrators in the company health plans to ensure that active miners and retirees on company plans would receive the same level of benefits as those beneficiaries on the Funds' rolls. This arbitration arrangement has been sanctioned by the Department of Labor since it was put into place in 1979.

The disparity in the levels of productivity between bituminous and sub-bituminous western mines also led to a negotiated agreement between some western coal operators and the UMWA. Under the terms of the Western Coal Wage Agreement of 1978, western coal companies agreed to create company-based health care and retirement funds which provided benefits that were as good as or better than the benefits provided under UMWA Health and Retirement Funds. Retirees in the Funds from those companies became the liability of the western mine operators, who then were relieved from the obligation to make further contributions to the UMWA Health and Retirement Funds.

In the 1980s there has been a struggle for Fund survival. Contractually, the parties have focused on cost and quality control. In 1984, a specific commitment to jointly address costs was written into the agreement. The 1988 Agreement mandated that the Trustees develop and implement an industry wide fee schedule and continue other cost control programs such as: inpatient hospital pre-admission and length of stay reviews; case management and quality of care programs; an aggressive prescription drug program; and other initiatives that result in no loss or reduction of benefits to participants.

b. Industry. Overshadowing the delivery vehicle have been the cost implications and the labor relations impact of the Funds. By the early 1980s NBCWA tonnage had slipped to close to 40 percent of national production, down from the approximately 80 percent levels when the Fund began. Today it has dropped to about 30 percent as the growth of non-NBCWA coal continued throughout the 1980s. Companies withdrew from BCOA and sought to individualize their bargaining relationship, often in an effort to end their financial obligations to the Funds.

c. Role of Government. As a result of the 1977-78 dispute, President Carter appointed a Presidential Coal Commission to examine the issues that had lead to the bitter strike, including "health, safety and living conditions in the Nation's coal fields." The Commission found that

health care indeed had improved in the coal fields. "Conditions since the Boone Report have changed dramatically, largely because of the efforts of the miners and their Union -- but also because of contributions by the Federal Government, State and coal companies." And the benefit of the Funds' program was not limited solely to the immediate beneficiaries. The Commission concluded that "both union and non-union miners have gained better health care from the systems developed for the UMWA."

In 1980, the Congress passed the Multi-Employer Pension Plan Amendments Act (MPPAA) to ERISA. The UMWA and the BCOA strongly supported the passage of MPPAA which embodied the concept of withdrawal liability. In the legislation which ultimately passed, there are special sections for the 1950 Pension Plan based upon its unique nature and the circumstances surrounding its inception.

In 1989, Senators Rockefeller, Heinz, Byrd and Specter introduced legislation to stabilize the funding base of the benefit funds. Included in this legislation was authority to transfer the over funded portion of the 1950 Pension Trust to the Benefit Trusts.

The impact of government upon the Funds has not been limited to the executive and legislative branches. Court decisions too have had major impacts, good and bad, upon the Funds and their solvency. Two are illustrative of the problems.

As noted, the court's decision in Blankenship dealt with the issues of alleged mismanagement of the Fund's finances and arbitrary changes to eligibility standards. In Blankenship, Judge Gesell in 1971 ordered the removal of Union and Neutral Trustees and appointment of a new neutral trustee. He also ordered the appointment of an independent financial advisor and directed that investments be made only in the interest of participants and beneficiaries.

The Royal/Nobel line of cases is still pending before the Courts. Those decisions have added thousands of former miners to the 1974 Benefit Fund with significant financial costs. This matter represents a serious dispute between the parties.

The medical care delivery system that has evolved is as much a creature of government as it is of the collective bargaining process. There is a line running from the original Boone Report to the present system. In a way, the original Krug-Lewis agreement predisposed if not predetermined the system that evolved.

d. Funds Today. Today, the Funds remain a major purchaser of medical care, but the development of health care is now a much broader community effort with the coal industry being only one part of the system.

The Funds should be viewed as a microcosm of the broader national dilemma over retiree health care. This financial crisis not only has the potential to jeopardize necessary health care benefits for retirees, it also threatens the relationship between labor and management in the coal industry. The challenge is to find ways to cope with the present crisis in the medical care delivery system started by a collective bargaining agreement negotiated between the UMWA and the coal operators, with help from the Federal Government, four and one-half decades ago.[2]

[2] See Appendix 3 for a history of the contribution levels from 1946 to the present.

CHAPTER THREE

COVERAGE OF THE FUNDS

A. Coverage. As early as the 1950s the United Mine Workers of America and the major bituminous coal operators negotiated labor contracts that included employer contributions into a jointly administered central health care fund for active and disabled miners, retirees and dependents.

In 1974 the UMWA and the Bituminous Coal Operators' Association (BCOA), representing major coal producers, agreed to the establishment of two separate health benefit funds to be administered by independent trustees. One (the 1950 Benefit Plan) would be a closed fund for miners and dependents who retired prior to 1976, while the second, the 1974 Health Benefit Plan, would cover health care for active and disabled miners, dependents, and those retiring after 1975. Each would be funded by employer contributions at levels established through collective bargaining. Obligations under the 1950 Benefit Plan would continue to be funded on tonnage-based contributions. Obligations under the 1974 Benefit Plan were to be funded on an hours-based formula.

In 1978 the UMWA and BCOA agreed that health care for active miners, future retirees and dependents would become the responsibility of single employers rather than the central funds. The level of benefits would remain the same but the operators would be free to set up individual plans for this coverage. The operators would continue to make contributions to the 1950 Benefit Plan at levels adequate to fund health care coverage for those miners who retired prior to 1976 and would provide individual health benefits for their active miners, their post-1975 retirees and dependents. The 1974 Benefit Plan would be retained for the purpose of providing health care for those retirees and dependents whose last employer was "no longer in business."

Today, the UMWA Health and Retirement Funds are structured as follows:

1. 1950 Pension Plan. The 1950 Pension Plan provides retirement benefits to miners who retired before December 31, 1975 and to those "who became disabled after May 28, 1946, and before December 6, 1974, as the result of a mine accident."[3] In addition, the 1950 Pension Plan provides retirement benefits to the widows and beneficiaries of retired or disabled UMWA coal miners who are eligible to receive retirement benefits under the 1950 Plan.

2. 1950 Benefit Plan. The 1950 Benefit Plan provides health care benefits for "retired and disabled mine workers who receive pensions from the 1950 Pension Plan."[4] The 1950 Benefit Plan also provides health care benefits to the dependents of retired or disabled mine workers who receive retirement benefits from the 1950 Pension Plan. In addition, the 1950 Benefit Plan "provides health and death benefits to the eligible survivors of retired or disabled UMWA mine workers."[5] In some instances, the 1950 Benefit Plan also provides health care benefits for "disabled mine workers under the age of fifty-five who do not qualify for disability pensions but who will qualify for retirement pensions upon reaching the age of fifty-five."[6] The 1950 Benefit Plan also provides for the payment of death benefits "to eligible surviving dependents of deceased pensioners or to the estates of deceased pensioners who are not survived by eligible dependents."[7]

3. 1974 Pension Plan. The 1974 Pension Plan provides retirement benefits to UMWA coal miners who retire after December 31, 1975. The 1974 Pension Plan also provides retirement benefits to UMWA coal miners "who became disabled after December 5, 1974, as

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[3] Summary Plan Description, 1950 Pension Plan and Trust; 1950 Benefit Plan and Trust, United Mine Workers of America Health and Retirement Funds (undated).

[4] Id.

[5] Id.

[6] Id.

[7] Id. at 3.

the result of a mine accident."[8] In addition, the 1974 Pension Plan provides retirement benefits to the widows and beneficiaries of retired or disabled coal miners who are eligible to receive retirement benefits under the 1974 Plan.

4. 1974 Benefit Plan. The 1974 Benefit Plan provides health care and death benefits only to UMWA coal miners whose companies are no longer in business. The 1974 Benefit Plan also provides health care and death benefits to the dependents and the spouses of such miners.

B. Comparison with Other Plans. A comparison of the health care and retirement benefits received by UMWA members with those received by members of the United Auto Workers (UAW) and the United Steelworkers of America (USWA) reveals similarities and some differences.[9] On the whole, the health care benefits received by UMWA members are far more comprehensive than health care benefits received by UAW and USWA members; nor does the UMWA plan require deduction or coinsurance. However, the retirement benefits received by UMWA members tend to be less than the retirement benefits received by UAW and USWA members. A detailed comparison of the health care benefits available under each plan is set forth in Figure 5.

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[8] Summary Plan Description, 1974 Pension Plan and Trust, United Mine Workers of America Health and Retirement Funds (undated).

[9] The data comparing the health care benefits received by members of the UMWA with the types of health care benefits received by members of the United Auto Workers and members of the United Steel Workers of America was prepared by Micheal Buckner, Research Director at the United Mine Workers of America, and Bruce C. Swan, Administrative Assistant to the Chairman, Bethlehem Steel Corporation.

(FIGURE 5)

UMWA/USWA/UAW

Retiree Health Benefits Comparison

	UMWA	USWA*	UAW
Type of Plan	Comprehensive	Basic/Major Medical	Basic/Catastrophic Medical
Dependent Coverage	Spouse, unmarried children under 22 years of age, parents living in the same household, unmarried grandchildren living in the house under age 22, or disabled dependent.	Spouse, unmarried children under 19 years of age (or under 25 years of age if full-time student), or disabled dependent.	Same as USWA, except covered to age 25, if a dependent for tax purposes.
Medical Necessity Language	Yes	Yes	Yes
Deductibles	None	None on basic. Optional Major Medical* $100 individual $200 family	None on basic. Major Medical $100 individual 2 deductibles/family
Copays	Physician Services Only $5.00/visit Prescriptions: $5.00/prescription	None on basic. Major Medical 20%	None on basic. Major Medical 20%
Annual Maximum	None	Major Medical: $30,000	None
Annual Out-of-Pocket Cap	$150/family	None	Major Medical: $2,000
Lifetime Maximum	None	Major Medical: $50,000	Major Medical: $50,000
Reinstatement Provision	N/A	$1,000/calendar year	N/A

* Optional Major Medical program is an optional program and requires retiree contributions.

BENEFITS DESCRIPTION	UMWA	USWA	UAW
Hospital Coverage - Basic			
Managed Care	Hospital Pre-certification Concurrent Review Discharge Planning Select Surgeon Program Physician UR Prescription Drug UR Catastrophic Case Management	Yes. Pre-certification required for the following: Hospitals, including rehab facilities; Skilled Nursing or Extended Care facilities; Psychiatric Care (Inpatient and Outpatient) Home Health Care; Emergency Admissions to be certified within 48 hours	None
Non-Compliance Penalty	N/A	$100.00	N/A
INPATIENT			
Inpatient Days Available	Unlimited	120 days per admission	365 days/hospitalization
Non-participating Hospital Payment	N/A	$25 for the first day $10 thereafter	N/A
Mental/Nervous	Up to 60 days treatment (does not include A&D)	30 Days during any 12-month period	45 days; renewed after 60 days of no confinement
Alcohol and Drug Detox and Rehab	7 calendar days for Detox	Not Covered	45 days; renewed after 60 days of no confinement
Dental Services	Covered, but only for limited oral surgical procedures.	Covered if certified by the physician that hospitalization is medically necessary to safeguard the health of the patient.	Same as USWA
Maternity	Covered - 100%. Coverage for newborn child	Covered - 100%. Coverage for newborn child limited to the first 10 days. Birthing Centers also covered.	Covered -100% (Includes routine nursery care of newborns.)

BENEFITS DESCRIPTION	UMWA	USWA	UAW
Hospital Coverage - Basic			
OUTPATIENT			
Alcohol & Drug	Covered	Not Covered	100% of R&C-first 5 visits; patient pays 10% of charge thereafter; $1,000 annual maximum
Dental Services	Same as inpatient dental	Covered if medically necessary to safeguard the health of the patient	Same as USWA
Emergency Accident	Initial treatment within 48 hours of accident	Initial treatment within 48 hours of the accident	Initial treatment within 72 hours of the accident. Unlimited follow-up care.
Emergency Medical	Initial treatment within 48 hours	Not covered (see Optional Major Medical)	Initial treatment within 72 hours
Radiation Therapy	Covered	Covered	Covered
Chemotherapy	Covered	Not covered (see Optional Major Medical)	Covered
Hydrotherapy/ Physiotherapy	Covered	Not Covered (see Optional Major Medical)	Covered
Diagnostic Services	Covered	Covered. Limited to: x-ray examinations with films, ultrasound when used as a substitute for x-rays with films, metabolism testing, radioactive isotope studies, cardiographic and encephalographic examinations.	Covered

BENEFITS DESCRIPTION	UMWA	USWA	UAW
Hospital Coverage - Basic			
OUTPATIENT			
Pre-Admission Testing	Covered	Covered when performed within 5 days of the scheduled admission	Covered
Surgery	Covered	Covered	Covered
ADDITIONAL BENEFITS			
Skilled Nursing Facility	Covered	Not Covered (see Optional Major Medical)	Up to 730 days or two days for every one day of unused hospital care. 100% payment.
Home Health Care Agency	Covered	Not Covered (see Optional Major Medical)	Each 3 days of care used for home care reduced hospital days by one day.
Kidney Dialysis	Covered	Covered in outpatient department	Covered
PHYSICIANS' SERVICES			
In-Hospital Medical Visits	Covered with copays	120	365/730
Surgical Services	Covered	Covered	Covered
Recurrent/Related Surgeries	Covered	Performed in the home, physician's office or outpatient department of a hospital. Maximum payment of $150/calendar year.	Covered

BENEFITS DESCRIPTION	UMWA	USWA	UAW
PHYSICIANS' SERVICES			
Surgical Assistants	Same as USWA	Covered for a licensed physician who actively assists the operating surgeon provided that the need for an assistant is medically appropriate and the hospital does not employ surgical interns, residents or house staff who are utilized for such assistance.	Same as USWA
Second Surgical Opinion Program	None	None	Voluntary
Non-Compliance Penalty	N/A	N/A	None
PHYSICIANS' SERVICES - BASIC			
Anesthesia	Covered	Covered	Covered
Radiation Therapy/ Chemotherapy	Covered Covered provided that it is not experimental	Covered Not covered (see Optional Major Medical)	Covered Same as UMWA
Diagnostic X-Ray and Ultrasound	Covered	$75 maximum payment per calendar year	Covered
Diagnostic Examinations	Covered with copays	$75 maximum payment per calendar year. Limited to the following services: radioactive isotope studies, metabolism testing, cardiographic and encephalographic examinations.	Covered

BENEFITS DESCRIPTION	UMWA	USWA	UAW
PHYSICIANS' SERVICES - Basic			
Concurrent Care	Same as USWA	Medical/Surgical care covered when medically necessary and rendered by different physicians in different specialties	Same as USWA
Emergency Accident	Within 48 hours after accident	Within 48 hours after the accident; unlimited follow-up care	Within 72 hours after the accident. Unlimited follow-up care
Emergency Medical	Within 48 hours of the onset of the medical emergency	Not covered (see Optional Major Medical)	Same as Emergency Accident
Skilled Nursing Facility	Covered	Not covered (see Optional Major Medical)	2 Visits in a 7-day period
Home Health Care	Covered	Not covered (see Optional Major Medical)	Not covered

BENEFITS DESCRIPTION	UMWA	USWA*	UAW
MAJOR MEDICAL			
Ambulance	Covered (also includes coverage for other transportation)	Covered	Covered under basic plan
Blood	Covered	Blood, blood plasma in excess of 3 pints and transfusions	Not covered
Chemotherapy	Covered	Covered	Covered
Chiropractic Care	Not Covered	Not Covered	Not Covered
Consultations	Covered w/copays	Covered	Covered under basic plan
Diagnostic X-Ray and Lab	Covered	Covered amounts exceeding the diagnostic maximums under Basic Blue Shield	Covered under basic plan
Durable Medical Equipment	Covered	Covered	Covered under basic plan
Emergency Medical	Covered	Covered	Covered under basic plan
Eyeglasses/Contact Lenses	One pair following cataract surgery for the prescription and fitting	One pair following cataract surgery for the prescription and fitting	One pair following cataract surgery for the prescription and fitting
Hearing Aids	Same as USWA (also covers necessary repairs and maintenance)	Covered including the examination for prescription and fitting	Covered separately - includes examination
Home and Office Visits	Covered w/copays	Covered	Covered

* Optional Major Medical program is an optional program and requires retiree contributions.

BENEFITS DESCRIPTION	UMWA	USWA*	UAW
MAJOR MEDICAL			
Home Health Care Agency	Covered under Basic	Covered - 100 visits per calendar year	Covered under Basic
Hydrotherapy/ Physiotherapy	Covered under Basic	Covered	Covered under Basic
Immunizations	Covered	Covered except for travel	Not covered
Mental/Nervous	Covered (see basic section)	$1,500 maximum payment per calendar year. Psychologists services payable only for psychological testing	Not covered
Physical Therapy	Covered	Covered	Covered under basic plan
Prescription Drugs	Covered w/copays	Covered - includes 90% reimbursement for Generics	Participating provider - 100% less $5.00 copay
Skilled Nursing Facility	Covered under Basic	Covered	Covered under Basic
Private Room	Covered when medically necessary	Covered when medically necessary	Covered under basic plan
Prosthetics	Covered. Replacements covered when medically necessary	Covered. Replacements covered when medically necessary	Covered under basic plan
Oxygen & Administration	Covered	Covered	Covered

* Optional Major Medical program is an optional program and requires retiree contributions.

BENEFITS DESCRIPTION	UMWA	USWA*	UAW
MAJOR MEDICAL			
R.N.'s	Covered in a SNF or patient's home through Home Health Care Agency	Covered	Covered
L.P.N.'s	Covered in a SNF or patient's home through Home Health Care Agency	In hospital when required; out of hospital when required. Services in excess of 240 hours paid at 50%	Covered
VISION CARE	Applicable to active and retired employees and their eligible dependents. Fee schedule with frequency limitation every 2 years Benefit — Actual Charge Up to Maximum Amount Visual exam $20 Per lens – Single vision $10 Bifocal $15 Trifocal $20 Lenticular $25 Contact $15 Frames $14	Not covered	Applicable active employees, retirees and their eligible dependents. Fee schedule with frequency limitation every 2 years. Benefit — Actual Charge Up to Maximum Amount Visual exam Opthomologist $40.60 Optometrist $34.00 Per lens – Single vision $19.50 Bifocal $26.75 Trifocal $34.00 Lenticular $41.30 Contact $26.75 Frames $25.60

The chart references the current UAW health care package. In recently concluded rounds of collective bargaining, the health care package has been changed for both GM and Ford workers.

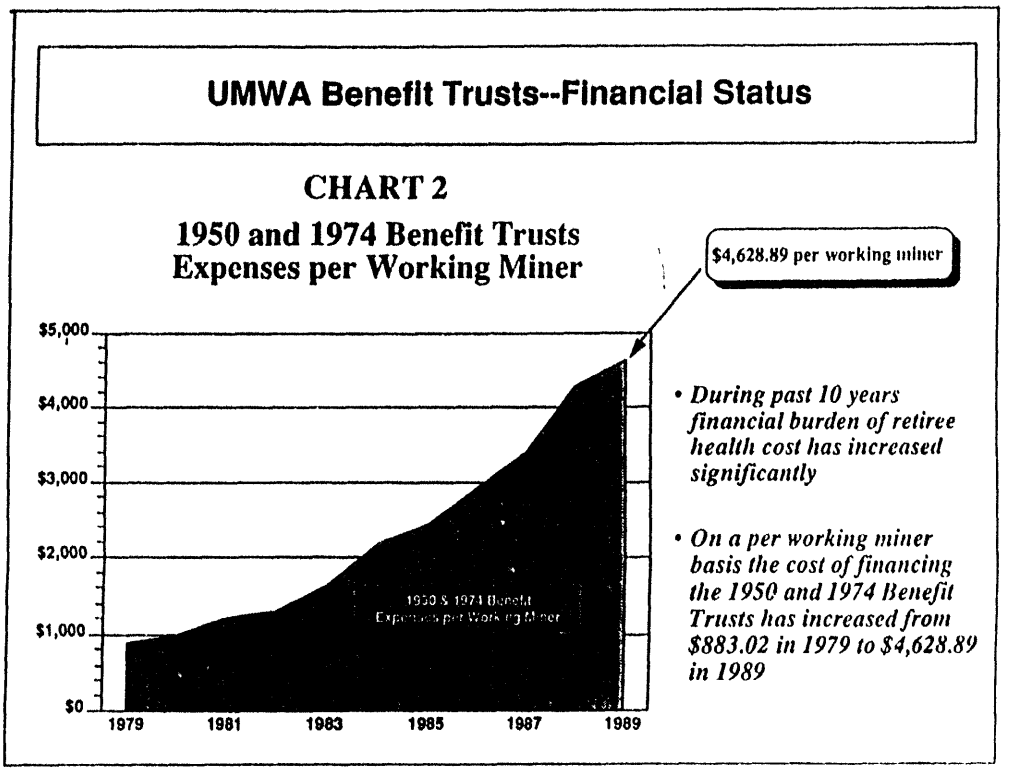
* Optional Major Medical program is an optional program and requires retiree contributions.

CHAPTER FOUR

FINANCIAL STATUS

A. Financial Status of the Trust Funds. The current financial status of the UMWA Benefit Trusts is the result of the convergence of numerous forces both in the coal industry and in health care. Medical care inflation in the U.S. has been about double the overall rate of inflation. The coal industry has undergone significant changes in recent years, with precipitous declines in employment levels and substantial numbers of mine closings. The Funds have suffered shortfalls during the term of the current National Bituminous Coal Wage Agreement (NBCWA) due to insufficient contribution rates, a declining base of contributing companies and the addition of thousands of court-ordered "orphan" beneficiaries whose last employers are no longer operating or are no longer signatories to the current NBCWA.

The financial burden of retiree health costs has increased significantly during the 1980s. Over the past 10 years, the combined expenses of the 1950 and 1974 Benefit Trusts have more than doubled, increasing from $117.4 million in 1979 to $245.3 million in 1989. The annual cost of financing both health care plans, per-working miner, has increased from about $883 to $4,628. (Figure 6)



(FIGURE 6)

At present, each active miner supports 2.4 Funds' beneficiaries, while 10 years ago each miner supported only 1.6 beneficiaries. In addition, active miners support retirees and widows who receive medical care through single employer insurance plans.

The funding base for both Funds currently is declining faster than the beneficiary population. Over the past 20 years, coal production from mines signatory to the NBCWA contracts and contributing to the Funds has declined, while non-NBCWA mines have increased production. NBCWA mines today represent only about 30 percent of total coal industry production and new and tougher environmental regulations expected to go into effect in the near future pursuant to Clean Air Act amendments aimed at controlling acid rain could diminish the funding base even further.

As of July 31, 1990, both Trust Funds showed a $114.7 million deficit, despite the increased contributions from coal operators.[10]

The Funds have brought legal action against a number of employers that are not currently signatory but were signatory to the prior National Bituminous Coal Wage Agreements, seeking to enforce the obligation of those employers to continue to contribute to the Funds. The Funds also have sued the BCOA to increase the rate of contribution to the Trust in order to effectuate the guarantee of benefits contained in the collective bargaining agreement.

1. 1950 Benefit Fund. Total benefit expenses for the Fund in FY 1989 were $202.4 million. As of December 1989, there were 114,300 total beneficiaries: 31 percent retired miners, 41 percent surviving spouses and 28 percent dependents. About half of the beneficiaries worked for employers who are no longer in operation or no longer making contributions to the Fund, reflecting the significant changes that have occurred in the coal industry in recent decades.

The 1950 Fund is essentially a closed Fund limited to retirees as of December 31, 1975, and their dependents. The total number of beneficiaries has declined about six percent over the last several years. This continuing decline reflects the high mortality rate which for the over 65 age group, is 30 percent higher than the national average for males and 16 percent higher for females. It is estimated that the 1950 Fund could conceivably cease operation about the year 2030 upon the death of the last beneficiary.

Despite the decline in the benefit population and implementation of cost containment measures in 1984 and 1988, the cost of providing health care continues to rise, although at a rate below the national average for medical care inflation, and is projected to do so in the future.

In FY 1989, the Fund spent $78.9 million for prescription drugs, $71.6 million for physician services and $39.8 million for hospital

[10] The Funds contend that the BCOA is required to establish further increases in contributions pursuant to the guarantee clause of the NBCWA of 1988.

services.[11] The net health expenses for the Fund in FY 1989 were as follows: 41.5 percent for drugs; 37.6 percent for doctors and 20.9 percent for hospitals. The relatively large share of prescription drug costs reflects the fact that Medicare does not cover prescription drugs and the 1950 Fund bears the entire cost.

During the five-year period from 1984 to 1989, the Fund's prescription drug expenses increased 79 percent and physician services rose 66 percent. The cost of hospital inpatient care declined by 12 percent due to efforts by the Funds to control costs in this area.

The 1950 Benefit Trust is vulnerable to unexpected economic downturns, strikes or congressional action, such as the recent repeal of Catastrophic Care legislation or the Clean Air Act. In addition, the Fund also is involved in litigation that can affect the financial status of the Fund.

Since 1978, with the establishment of employer health plans, the UMWA Funds have functioned essentially as a Medicare wraparound plan with a prescription drug program. The vast majority of Funds' beneficiaries are Medicare enrollees.

Under a special arrangement with Medicare, beneficiaries are provided "one-stop shopping." The Funds perform administrative services for beneficiaries and pay providers for care. In turn, the Funds receive reimbursement from Medicare, both for the costs of health services and for the overhead costs of administration.

The Funds provide services that would otherwise be provided by a Medicare Part B (physicians services) carrier. They do not, however, reimburse hospitals under Medicare Part A.

Retirees covered under coal companies' plans, although eligible for the same benefits as those covered under the Funds, are not provided "one-stop shopping." Company plan retirees who are Medicare eligible are served by their community Part A and Part B Medicare contractors, with company plans providing wraparound coverage of deductibles and coinsurance.

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[11] These amounts exclude death benefits and administrative costs.

In late 1989, a dispute existed between the Funds and Medicare as to the appropriate level of reimbursement. Cost reports remained unsettled from FY 1985. Negotiators for the Funds and Health Care Financing Administration (HCFA) addressed reimbursement methodology and the need to shift from reimbursement made on the basis of Funds' cash payments to Funds' accrued obligations to providers.

Cost reports through 1984 had been settled consistently on the basis of average prevailing charge limits used by Medicare carriers. Medicare had proposed that rather than applying prevailing charges to determine the Funds' allowable costs, they planned to use the average amount paid by Medicare carriers. The proposed payment screen would by definition be lower.

During the Commission's deliberations, in late September of 1990, the Funds and Medicare resolved the reimbursement dispute in the context of moving toward a capitated reimbursement arrangement for FY 1991 and the future.

Under the capitation arrangement, the Funds are to be paid a predetermined amount per member per month, and the Funds are to provide Medicare services to beneficiaries. If the Funds' actual costs exceed the capitation amount, the signatory employers will be expected to make up the shortfall. If actual costs are less than the capitation amount, the Funds would retain any Medicare payment in excess of actual costs to offset future costs of the Funds. For each year after FY 1991, the payment rate will be increased by a percentage that is based on the Part B national per capita cost, as determined and published annually. A demonstration project is to evaluate whether a capitated payment arrangement will provide a mutually beneficial cost-effective method of payment for Medicare-covered services for the Funds' beneficiaries.

The negotiated settlement allows for termination 30 days after mutual agreement to end the program, and permits the Funds to terminate unilaterally on 90 days notice. Upon termination, or failure to enter into a demonstration program, the Funds may reinstate the arrangement in effect at the time of the settlement. Under a reinstated arrangement, allowable costs would be determined by comparing the Funds' average payment with a computed average Medicare reasonable charge for a sample of procedures and localities.

Capitation reimbursement offers better incentives for cost savings and simplified reimbursement methodology. Capitation reimbursement has the advantage of providing prompt and predictable reimbursement to the Funds, enabling them to strike better bargains with providers. Capitation allows Medicare the opportunity to predictably control costs for a defined population of beneficiaries. This arrangement constitutes a form of "carve-out" under the Volume Performance Standards recently enacted by the Congress in order to bring Medicare Part B costs under control.

Medicare Part B spending nationwide has been spiraling out of control. The Funds offer a mechanism for helping to control excessive utilization of physicians' services while protecting beneficiaries. Capitated Medicare payments to the Funds have been structured to strengthen that mechanism.

The Funds also will receive substantial cash payments under the settlement's provisions for a change from a cash to accrual accounting in the Funds' cost reports. This cash may be used only to pay the Funds' backlog of Medicare covered claims.

2. 1974 Benefit Fund. Total expenses for the Fund in FY 1989 were $30.7 million. As of December 1989, there were 12,752 total beneficiaries: 42 percent retired miners and 58 percent widows, spouses and other dependents. All of the beneficiaries of the 1974 Fund are "orphans" who have no employment relationship with current signatories, but whose last employer has terminated their health benefit coverage.

In the past two years, the Fund's population has more than doubled. The rapid growth reflects the severe contraction of coal industry employment in the 1980s and recent court decisions which have added 61% of the beneficiaries to the Fund. The average age of a beneficiary in the 1974 Benefit Fund is 62 years old.

The 1974 Fund's gross per capita health care expenses have increased 52 percent over the past five years. The amount is still below the national average, as a result of the cost containment measures implemented by the Fund.

In FY 1989, the Fund's total expenses were $30.7 million of which $8.1 million was spent for physician services, $5.3 million for prescription drugs and $4.8 million for hospital care. The net expenses for the Fund are divided as follows: 44.7 percent for physicians, 29. 1 percent for drugs and 26.2 percent for hospitals.[12]

During the most recent five-year period, prescription drug expenses increased 87 percent and doctor costs rose 55 percent. The cost of inpatient hospital care declined by 17 percent due to aggressive cost containment measures implemented by the Fund.

A number of financial and legal issues have combined to leave the Fund with net assets of only $1.6 million for FY 1989. Projections for mid-1990 show a deficit of $24.8 million. Expenses exceed $3 million per-month with $7.5 million in retroactive payments required by the Nobel case. Other litigation is also in progress that could further impact the solvency of the Fund. The Funds have brought legal action against a number of employers that are not currently signatory but were signatory to the prior National Bituminous Coal Wage Agreements, seeking to enforce the obligation of those employers to continue to contribute to the Funds. The Funds also have sued the BCOA to increase the rate of contribution to the Trust in order to effectuate the guarantee of benefits contained in the collective bargaining agreement.

3. 1950 Pension Fund. As of July 1, 1990, the plan remains fully funded, since the market value of assets exceeds the current liability of accrued benefits. The number of participants, including spouses who become eligible upon the death of their husbands, was 108,750. The number of plan participants, excluding spouses, decreased by 4.7 percent last year.

For the year ending June 30, 1990, the plan had net assets of approximately $1.7 billion. Fund expenses totaled $5.8 million and benefit payments were in excess of $224 million. The plan had an actuarial surplus of about $237 million as of July 1, 1990.

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[12] These figures do not include the cost of death benefits, administrative costs and court decisions.

A number of suggestions have been offered pertaining to the use of the surplus. One option is to apply a portion of the surplus to eliminate the current deficit in the 1950 Benefit Fund. Transferring the surplus is not currently allowed by law and would need Congressional approval. If the current pool of beneficiaries expires before the funds are spent, the surplus reverts to the 1974 Pension Fund.

4. 1974 Pension Fund. As of July 1, 1989, the total number of reported plan participants was relatively unchanged, increasing slightly over the year from 217,617 to 217,759. The total number of reported active participants declined last year by 14 percent from 64,647 to 55,348.

As of February 1, 1990, monthly benefits were increased for all categories of beneficiaries. The benefit increases increased the actuarial liability by nearly $168 million.

As of July 1, 1990, the actuarial asset value of the Fund was $3.5 billion. Benefits paid totaled more than $224 million. The difference between the actuarial value of accumulated plan benefits and the net assets available for benefits was almost $108 million.

The basic benefit for a 30-year retiree at age 55 is $491 per month. The final benefit at age 62 for a 30-year retiree is $622 per month. (Figure 7) By comparison the basic monthly benefit for a steelworker ranges from approximately $870 to $1,070 and for an auto worker is $1,500 at age 55 dropping to $795 at age 62.

Comparison of Monthly Pension Benefits
30 Year Retiree
1974 PLAN

	UAW	USWA	UAW
Age 55	$491	$870 / $1,080	$795
Basic			
Temp to Age 62		$200	$705
Age 62	$622	$870 / $1,080	$795

(FIGURE 7)

B. Projected Costs and Revenues. Consulting actuaries Milliman & Robertson developed possible trends and projected costs and revenues for a 20-year period for the Benefit Funds. Experience data provided by the Funds shows that gross health expense per capita has increased 9.1 percent per year for the 1950 Benefit Trust and 8.4 percent per year for the 1974 Benefit Trust over the past five years. But since an increasing portion of the population is eligible for Medicare each year, actual Funds net per-capita costs are increasing more slowly.

Most experts predict that medical care costs will not continue to escalate indefinitely at the rates of the past decade. However, a moderation of health care cost increases will not affect all segments of the community equally.

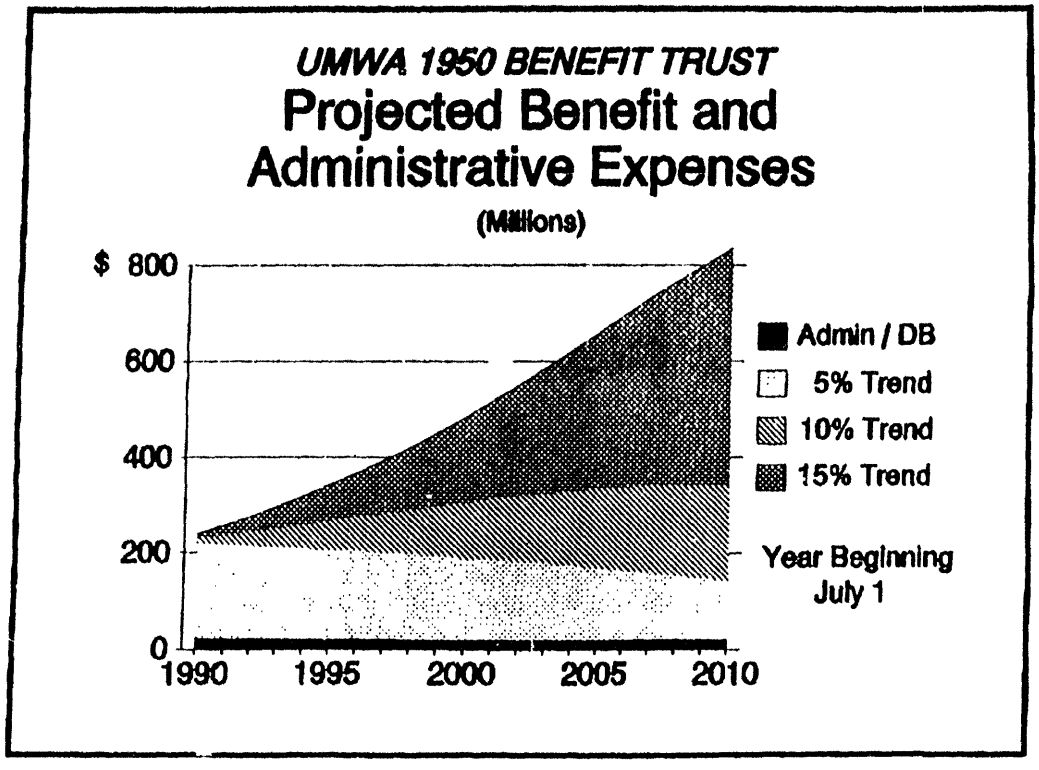
For FY 1990, conforming hours (those worked under the NBCWA) were 88.9 million, signatory hours, including hours worked under conforming and nonconforming agreements, were 91.8 million and the projection is a 3 percent decline per-year. Productivity is currently 3.29 tons per-hour with a 2.5 percent increase projected each year.

The cost projections are based on 3 alternative assumptions regarding trends in costs-per-beneficiary -- 5 percent, 10 percent and 15 percent increases in future years.

About 20 percent of the Funds' current medical costs are for physician services rendered to Medicare beneficiaries. This proportion will grow as more of the Funds' beneficiaries reach age 65. Federal legislation in this area (such as Catastrophic care) could lead to reductions in the overall net per-capita costs for the Funds.

1. 20-Year Projections for 1950 Fund. By the year 2010, the Fund is expected to be predominantly a widow's fund, with less than 3,000 retired miners remaining in the fund. In addition, virtually all beneficiaries will be covered under Medicare. As mentioned earlier, the Fund could expire by the year 2030.

At the end of FY 1990, the current expenses of the Fund are approximately $229 million and are projected to grow, utilizing the 10 percent trend to about $367 million. The 10 percent trend is utilized because in recent years the Fund's expenses have grown at approximately 9 percent a year. (Figure 8)

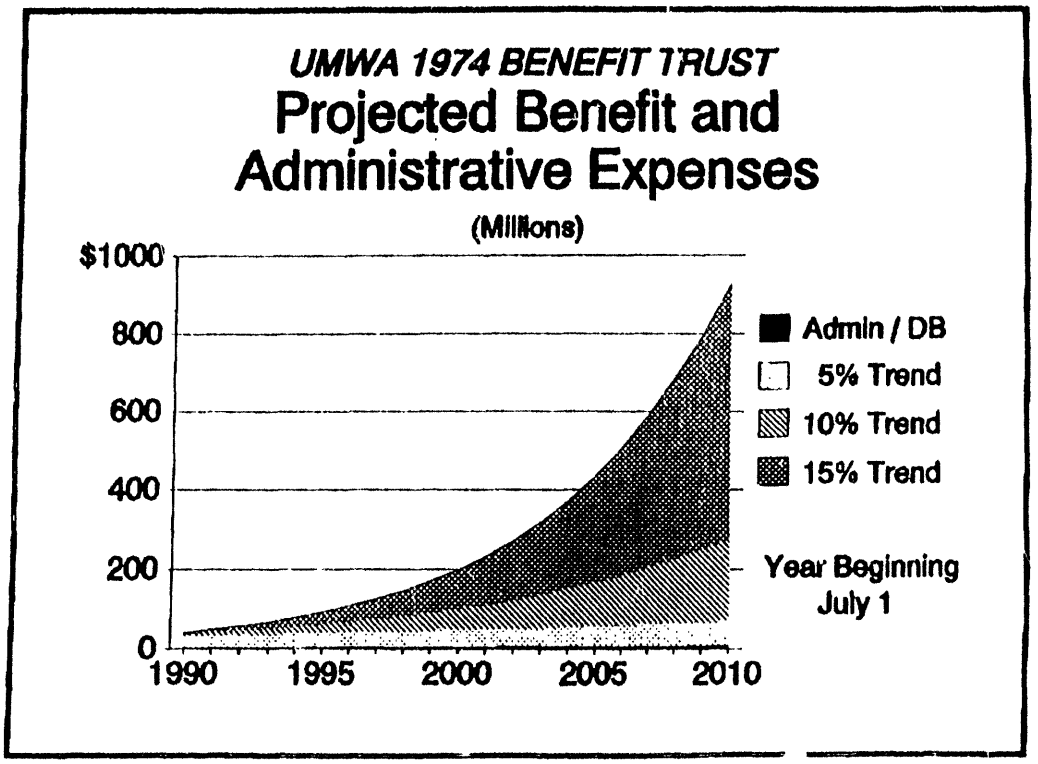

UMWA 1950 BENEFIT TRUST
Projected Benefit and Administrative Expenses
(Millions)
$ 800
600
400
200
0
1990
1995
2000
2005
2010
Admin / DB
5% Trend
10% Trend
15% Trend
Year Beginning July 1

(FIGURE 8)

Both conforming man-hours and tonnage of coal mined are expected to decline, with the number of hours decreasing more drastically than production. The Fund now requires a contribution of $2.55 per-conforming hour to maintain current levels of benefits.

2. 20-Year Projections for the 1974 Fund. Depending on the number of "orphans" added to the fund, the number of beneficiaries in the Fund could either decline or grow significantly. Since February, 1988, the Funds have added more than 1,000 new card holders (primary beneficiaries) per year. These additions were due to the court decisions and resolved most of the pending "no-longer-in-business" issues. However, the rate of future increases in the population is difficult to project.

For the projection of expenses, the actuaries linked the 5 percent trend to the addition of 500 orphans annually, the 10 percent trend is linked to an increase of 1,000 orphans each year and the 15 percent trend is linked with 1,500 extra orphans. Utilizing the 10 percent trend, the Fund's expenses could be expected to be in the $300 million range in 2010. (Figure 9)



(FIGURE 9)

Signatory hours are projected to decline by three percent each year and the Benefit Fund cost per-hour, using the 10 percent trend, is projected to increase substantially to nearly $5 per-hour. On the basis of tonnage mined, the projected cost-per-ton, under the 10 percent trend rises from approximately $.12 per ton to almost $1.

3. 20-Year Projections for the Combined Funds. Currently, the 1950 Benefit Fund is clearly dominant in terms of the number of beneficiaries. But, by the year 2010, assuming continuing additions of orphans as described above, the two Funds will be about equal in population. The main difference is that the 1950 Fund will be pre-

dominantly widows. The combined Funds, using the 10 percent growth factor, would have annual expenses topping the $600 million mark.

C. Summary of Litigation. There are three categories of cases that have an impact on the 1950 and 1974 Benefit Trusts. Two of these categories affect the base and amount of contributions to the trusts, and the other category affects the number of beneficiaries in the 1974 Trust.

1. Eligibility Cases. This line of cases concerns the meaning of the 1974 Benefit Trust's "no longer in business" eligibility criterion, and the fate of pensioners whose last employers no longer provide them with health benefits under individual company health plans. Some of these pensioners last worked for companies that are still operating in the coal industry on a non-signatory or nonunion basis, and some last worked for companies that have gone out of the coal business but remain in some other type of business, or have financially viable corporate parents or affiliates. These companies no longer are making contributions to the 1950 and 1974 Benefit Funds.

The two main eligibility cases are the Royal Coal[13] and the Max Nobel[14] cases. In these cases, federal courts have held that the 1974 Trust must serve as a "safety net" for any pensioners subsequent to January 1, 1976 whose last employer is no longer signatory to the current National Bituminous Coal Wage Agreement (NBCWA) and whose last employer is not obligated to provide benefits to the pensioner under an individual company health plan. The Nobel case was decided by the United States District Court for the Western District of Pennsylvania in late 1989, and was affirmed without opinion by the Third Circuit Court of Appeals. On September 17, 1990, BCOA filed a petition for certiorari asking the Supreme Court of the United States to review the Nobel case.

The result of these and other closely related eligibility cases is to increase the number of beneficiaries in the 1974 Trust, thus increasing the

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[13] District 29, UMWA v. UMWA 1974 Benefit Plan and Trust, 826 F.2d 280 (4th Cir. 1987), cert. denied, 485 U.S. 935 (1988).

[14] United Mine Workers of America International Union v. Max Nobel, 720 F.Supp. 1169 (W.D. Pa. 1989), aff'd without opinion, 902 F.2d 1558 (3rd Cir. 1990), petition for cert. filed, (Sept. 17, 1990).

Trust's expenses and depleting its limited financial resources, at current contribution rates.

2. Evergreen Cases. This line of cases involves the scope of the contribution base to each of the Trusts. In these cases, the trustees have filed lawsuits to enforce a contractual provision known as the "evergreen clause" against several employers which did not sign the 1984 or 1988 National Bituminous Coal Wage Agreements, but continued to operate. The trustees claim that the evergreen clause, incorporated in all Coal Wage Agreements since 1978, requires all employers that signed the NBCWA of 1978, 1981, or 1984, to continue making contributions to the Trusts at the rate established under the NBCWA of 1988. If successful, this litigation would require present or former signatories, who are not contributing to the Trusts at the current rates to do so, thereby increasing the Trusts' contribution base and revenues.

Currently, there are four cases pending in the United States District Court for the District of Columbia and one case pending in the United States District Court for the Southern District of West Virginia, concerning the evergreen clause. The issue in one of the District of Columbia cases is whether former signatories have a current obligation to contribute to the Trusts, even though they are not signatory to the NBCWA of 1988.[15] The other three District of Columbia cases and the West Virginia case concern whether employers that are signatory to the evergreen clause can lawfully negotiate separate agreements with the UMWA that purport to permit those employers to contribute nothing to the Trusts, or to continue at reduced rates or on terms different from the NBCWA.[16]

3. Guarantee Cases. There are two cases pending in the District of Columbia that have been brought by the trustees against BCOA to

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[15] United Mine Workers of America 1974 Pension Trust v. A & E Coal Company, (No. 88-1126-TFH).

[16] United Mine Workers of America 1974 Pension Trust v. The Pittston Company, No. 88-0969-TFH; United Mine Workers of America 1950 Benefit Plan and Trust v. Pittsburgh & Midway Coal Mining Co., No. 88-3716-TFH, consolidated with Pierce v. United Mine Workers of America 1950 Benefit Trust, No. 89-2833-TFH; Connors v. Island Creek Corp., No. 87-1210-SSH, consolidated with Connors v. Drummond Coal Co., No. 87-1973-SSH, United Mine Workers of America 1974 Pension Trust v. Rawl Sales & Processing Co., (No. 3:90-0890, S.D.W.Va.).

require BCOA to increase the rate at which employers contribute to the Trusts.

One of the cases concerns the contribution rate to the 1950 Benefit Trust,[17] and the other case concerns the contribution rate to the 1974 Benefit Trust.[18] In the "Guarantee Cases" litigation, BCOA acknowledges that it has authority under the so-called guarantee clause of the NBCWA to increase the rate at which employers contribute to the Trusts. BCOA contends, however, that its members and other signatory employers are not obligated to pay a disproportionate share of the Trusts' revenue needs, and that signatory employers should not have to pay for the benefits of financially viable companies who are improperly dumping their retiree health costs into the Trusts. BCOA further contends that if all employers signatory to the evergreen clause were complying with their contractual obligations and making full contributions to the Trusts, and if the trustees were prudently managing the funds, the contribution rates established under the agreement would be sufficient to pay for the benefits of all the Trusts' legitimate beneficiaries.

On June 29, 1990, the U.S. District Court for the District of Columbia issued a preliminary injunction requiring BCOA to increase the contribution rate to the 1974 Benefit Trust so that an additional $2 million per month is paid to the 1974 Benefit Trust on each of September 10, 1990, October 10, 1990, November 10, 1990, and December 10, 1990, unless the BCOA can establish that alternative sources of revenue have become available prior to those dates. On August 14, 1990, the court issued a preliminary injunction, later modified on August 16 and September 7, 1990, requiring BCOA to increase the contribution rate to the 1950 Benefit Trust so that an additional $6 million per month will be paid to the 1950 Benefit Trust on each of October 10, 1990, November 10, 1990, December 10, 1990 and January 10, 1991, unless the BCOA can establish that alternative sources of revenue have become available prior to those dates. BCOA has appealed the preliminary injunction in the 1950 Benefit Trust case, and that appeal is pending in the United States Court of Appeals for the District of Columbia Circuit.

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[17] UMWA 1950 Benefit Plan and Trust v. BCOA, (No. 89-1744-TPJ, D.D.C.), appeal docketed, (No. 90-7139, D.C. Cir., Sept. 17, 1990).

[18] UMWA 1974 Benefit Plan and Trust v. BCOA, (No. 90-0674-TPJ, D.D.C.).

CHAPTER FIVE

FINDINGS AND RECOMMENDATIONS

The solution to the health care crisis in the coal industry consists of two parts. The first part deals with liquidating the deficit and assuring the long-term solvency of the Funds. The second part deals with the implementation of cost containment measures to reduce the expense involved in providing health care benefits to retired miners and their families.

In arriving at its findings and recommendations, the Commission considered a number of analytical questions that are critical to resolving the long-term crisis of retiree health care in the coal industry. (See Appendix 1.) Based upon its consideration of these and other questions, the information available, and the time permitted, the Commission arrived at a broad consensus, recognizing that further work will be required and that modifications may occur.

A. CONSENSUS.

First, and most broadly, the members of the Commission believe that the Commission's main objective is to find a long-term solution to the problem of delivering and financing health care in the coal industry. In addition, there is a consensus of the Commission that is, agreement of most of the Commission members, on the following points:

1. Contribution Obligations. Contribution obligations should be statutorily imposed on past signatories, pursuing a test similar to the ERISA "control group" test, possibly reaching back to the signatory class of 1978.

2. Withdrawal Liability. Withdrawal liability should be imposed prospectively to prevent dumping, that is, shifting the liability for health care to employers who have no relationship with the employee.

3. Transfer of Pension Surplus. The surplus in the 1950 Pension Trust should be transferred in one of several ways to fund the deficits in the 1950 and 1974 Benefit Trusts, as part of an overall financing package.

4. State-of-the-Art Cost Containment and Managed Care. Any plan should use state-of-the-art cost containment and managed care measures as part of an overall package of health care delivery and financing, as described in Section D of this Chapter.

5. Re-enrollment of Beneficiaries. Comprehensive re-enrollment and certification of beneficiaries is appropriate to ensure that benefits are directed only to those entitled to receive them.

6. Long-term Financing. Any residual financing requirement must be limited to the smallest level practical. The contribution obligation that might be imposed on those with no contractual or historic connection to the Funds should be at the lowest practicable level: (1) after those with a contractual or historic connection have contributed; (2) after any pension surplus has been used appropriately, and (3) after managed care and cost containment measures outlined in Section D of this Chapter have been implemented.

7. Flexibility in Determining Dimensions of the Contribution Base. There should be flexibility and further consideration on exactly how any broadened contribution obligation might work. The assessments could be calculated based on hours worked, tons mined, and tons imported. Also, the rate need not be the same for all operators and for all coal. Variations based on BTU content may be appropriate, as well as variation based on past connection with the Funds.

8. "Sunset" Provision on Financing Structure. A "sunset" provision, which would re-evaluate the new delivery system and financing structure, would be appropriate after a period of time.

9. Limited Applicability of Proposed Solutions. These proposed solutions are not permanent solutions for the coal industry; nor are they intended for any other industry.

10. Extension beyond 1993. Any financing package must extend beyond 1993.

In short, the Commission has reached an understanding on a wide range of issues aimed at resolving the crisis of retiree health care in the coal industry. Most important of these are 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.

While a broad consensus exists on these points, the Commission did not develop a consensus on the question of who should provide financing for orphan retirees. Many Commissioners believe that the orphans represent an industry-wide problem that should be resolved on an industry-wide basis. Others believe that only current and past signatories should be required to finance orphan health care. This represents the principal substantive disagreement among Commission members.

B. FUNDING

Because of the lack of consensus on the question of who should pay for orphans, the Commission has reviewed an industry-wide funding proposal and an alternative funding proposal. The Commission believes that both proposals, modified as may be appropriate, should be considered, along with any other funding arrangements that may be developed, to resolve the crisis in retiree health care in the coal industry.

1. Industry-Wide Funding Plan

The crisis of retiree health care in the coal industry derives from three related problems. First, some employers have sought to avoid, or are avoiding, their obligations to provide health care benefits to retirees and their families, foisting the cost of providing promised benefits on other employers. Second, an ever-growing population of orphan retirees is being supported by a shrinking group of employers and employees. And third, the cost of providing health care benefits to retirees has increased significantly. These problems must be resolved to obtain a long-term solution to retiree health care in the coal industry. This proposal will achieve that result.

I.

CONGRESS SHOULD AUTHORIZE THE CREATION OF A NEW ENTITY CALLED THE COAL INDUSTRY RETIREE BENEFIT FUND TO PROVIDE HEALTH CARE TO ORPHAN RETIREES.

This Fund, created by statute, would provide health care benefits to orphan retirees whose last employer (using an ERISA control group definition) is "out of business". This would include orphan beneficiaries currently in the UMWA 1950 and 1974 Benefit Funds and future orphans of employers -- whether signatory or non-signatory to a collective bargaining agreement -- that meet the "out of business" test. The Fund would be vested with rights to prevent dumping of obligations. The beneficiaries would receive the level of retiree health care benefits they were entitled to receive at the time of entry. The Fund would be financed by an industry fee which applies to all employers in the coal business, including a fee on imported coal.

II.

A NEW UMWA 1991 BENEFIT FUND SHOULD BE CREATED TO PROVIDE BENEFITS TO RETIREES OF CURRENT AND PAST SIGNATORIES OF THE NBCWA THAT REMAIN IN BUSINESS.

This Fund would provide health care benefits to retirees whose last employer (using an ERISA control group definition) remains in business. This would include beneficiaries of the 1950 and 1974 Benefit Funds whose last employer is signatory to the current NBCWA or was signatory to the NBCWA of 1978, 1981, or 1984. Congress would impose a statutory obligation on such employers to finance the cost of health care for its retirees who are placed in the 1991 Fund. Each employer will be required to pay a fair share into the Fund to provide benefits to its beneficiaries. Beneficiaries of the 1991 Fund will receive the same health care benefits they receive in the 1950 or 1974 Funds. To create greater purchasing power and economies of scale, employers may opt to provide benefits for active employees and individual company retirees under the 1974 Pension Plan through the 1991 Benefit Fund, upon proper payment to the Fund.

III.

CONGRESS SHOULD AUTHORIZE THE SETTLORS TO UTILIZE THE EXCESS ASSETS OF THE UMWA 1950 PENSION PLAN TO REDUCE EXISTING DEFICITS IN THE BENEFIT PLANS.

Historically, the UMWA Pension and Benefit Trusts have been considered a single entity for a number of purposes, including payments. There has been a "reallocation" option in the agreement since 1974 giving BCOA the right to divert contributions from the pension plan to the benefit plan when necessary. BCOA has, over the years, either on its own or at the request of the UMWA, exercised this option many times, most recently immediately prior to the expiration of the 1984 NBCWA.

The 1950 Pension Trust is over funded by approximately $237 million. The obligations are covered by a dedicated bond portfolio which virtually guarantees the payment of benefits even in the event that there is no further signatory employment. Congress should authorize the settlors to utilize the excess pension assets to reduce the existing deficits in the 1950 and 1974 Benefit Funds.

IV.

CONGRESS SHOULD PROHIBIT THE DUMPING OF RETIREE HEALTH CARE OBLIGATIONS SO LONG AS THE EMPLOYER REMAINS IN BUSINESS AND HAS ASSETS TO PAY FOR SUCH OBLIGATIONS.

The ability of an employer to renege on commitments to its retirees and dump liability on the Funds disrupts any effective long range solution. Dumping liability is fatal to any multi-employer fund as it creates a clear incentive for employers to withdraw as quickly as possible. This disruptive potential is recognized clearly in the 1980 Multi-employer Pension Plan Amendments Act, and action under that statute has served to stabilize most pension funds including the two established under the NBCWA.

Unfortunately, there is no comparable anti-dumping structure in the health care area. The parties imposed substantial withdrawal liability on current signatories to the 1988 Agreement. However, thousands of beneficiaries whose last employers are non-signatory are a substantial burden on the Fund. More than half of current beneficiaries of the 1974

Trust are former employees or widows of companies still in the coal business or in other business ventures. The Commission believes that this situation is intolerable and must be stopped.

V.

CONGRESS SHOULD IMPOSE A STATUTORY OBLIGATION TO CONTRIBUTE ON SIGNATORIES TO THE NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1978 AND ANY SUCCESSOR AGREEMENT.

Throughout our deliberations, the responsibility of past signatories was a major concern. This subject has been a part of the collective bargaining dilemma that led to the founding of the Commission, is the topic of current litigation and provides an incentive for employers to leave the multi-employer plan.

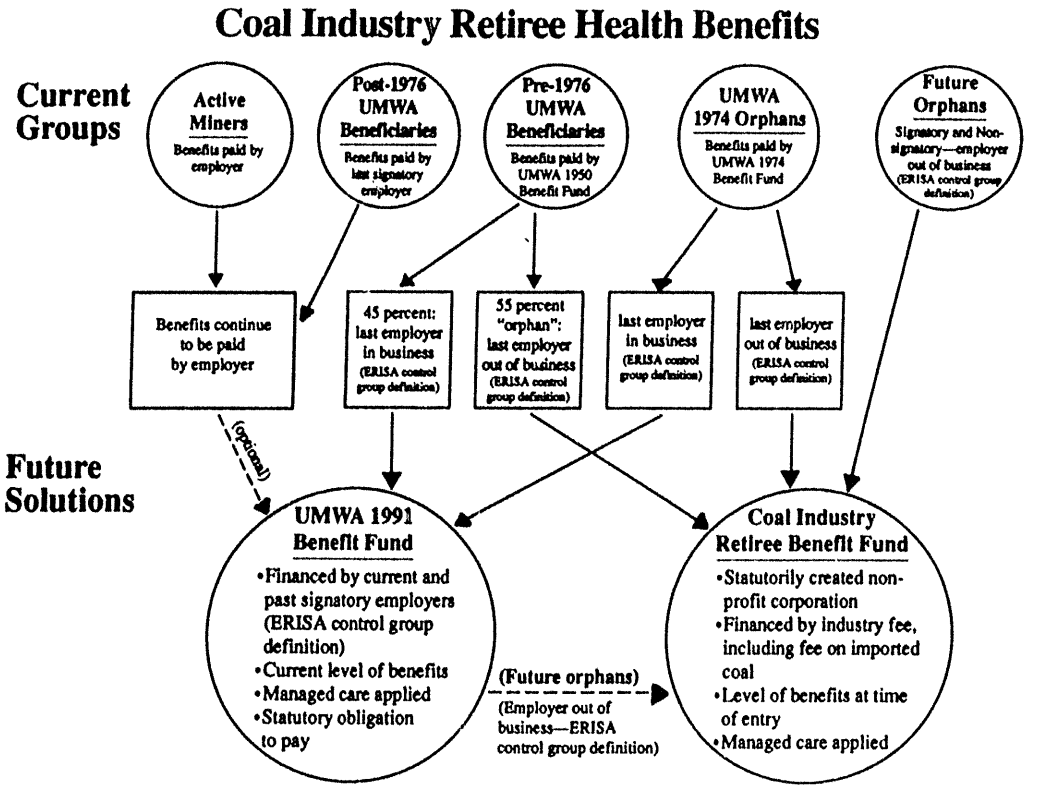
This, when combined with the anti-dumping recommendation, is aimed at the stabilization of the contribution base and the prevention of a "last man's" club. The "evergreen" obligation has been a part of the agreement between the parties since 1978 and was designed to prevent massive withdrawals from the Funds. Because long and counter-productive delays can be expected in attempts to enforce this obligation through litigation, Congress should codify the continuing obligation to contribute clause to which current and former signatories agreed.

VI.

STATE-OF-THE-ART MANAGED CARE AND COST CONTAINMENT TECHNIQUES SHOULD BE IMPLEMENTED AS PART OF AN OVERALL SOLUTION TO THE RETIREE HEALTH CARE CRISIS.

The Commission discussed ways to improve the quality of health care and, at the same time, reduce the cost of health care. Proper use of managed care and cost containment can achieve these objectives without the loss or reduction of benefits. Such techniques should be implemented in both of the newly created funds. (Figure 10)

INDUSTRY-WIDE FUNDING PLAN



(FIGURE 10)

2. ALTERNATIVE FUNDING PLAN

An alternative approach to the financing problem exists. It seeks objectives very similar to those of the industry-wide proposal. This approach has a different funding mechanism than the industry-wide proposal for making retiree health care for coal miners financially secure.

Specifically, any plan should meet the following needs:

a. Eliminate the current deficit of $83 million as of July 31, 1990;

b. Establish adequate financing to cover the 1950 and 1974 Benefit Funds claims and expenses through 1995 and beyond. With the expiration of the present labor contract in 1993, collective bargaining should become involved;

c. Ensure adequate provisions for additional revenues to provide for any future "orphan" beneficiaries;

d. Utilize current managed care techniques to enhance quality of care while reducing overall fund expenditures on a per capita basis; and,

e. Continue health benefits to retirees and beneficiaries.

The major difference in this approach relates to its financing. Instead of imposing a new tax on all coal operators and establishing a new agency of the federal government, this plan seeks additional revenues from a broadened base of current and past signatories to the contracts, establishing and providing revenues for the Benefit Funds. Past obligations would be defined as those arising from firms once signatory who may be identified through a chain of succession to a current operator.

Summarized below are the assumptions, financing arrangements and potential margins contained in the alternative financing proposal.

1. Assumptions

- Actual experience under the 1950 and 1974 Benefit Funds will be consistent with 10% trend projections, which includes assumption of 1,000 new orphans, annually, under the 1974 Fund. (See Margins below.)

- Actual experience under the 1950 and 1974 Pension Funds will be consistent with current actuarial assumptions.

- Managed care recommendations will be adopted as of January 1, 1991.

- Medicare screens for physicians will be adopted as of January 1, 1991.

- Current beneficiaries will be subject to re-enrollment during 1991.

- Legislation will be enacted prohibiting future "dumping" and providing for pension-type withdrawal liability provisions.

- Legislation will be enacted permitting transfer of surplus assets from the 1950 Pension Fund to the 1950 and 1974 Benefit Funds.

- Legislation will be enacted requiring past signatories to contribute to Benefit Funds on an equitable basis.

2. Existing Deficit. The deficit under the 1950 and 1974 Benefit Funds as of July 31, 1990 is about $83 million, after adjusting for the recent court injunctions and the Medicare capitation agreement. The projected deficit as of January 1, 1991 is about $115 million. This will be eliminated by a transfer of $115 million from the 1950 Pension Fund.

3. Financing For Calendar Years 1991 and 1992

a. The current hourly contribution rate of $2.17 for the 1950 Fund will be indexed by the Consumer Price Index (CPI) from April 1, 1989 to January 1, 1991 and to January 1, 1992, respectively.

The 8-cent hourly contribution rate for the 1974 Fund will be increased to 10-cents effective January 1, 1991 and 12-cents effective January 1, 1992.

b. Based on the above financing, the Funds will be short about $70 million each year. This will be provided for as follows:

- A "reachback" to former signatories - this would result in revenues of about $30 million per year. (Revenues are somewhat uncertain as former signatories could object, claiming they bargained out of the agreement in good faith.)

- An estimated $10 million reduction in benefit payments from the adoption of Medicare screens for physicians.

- The balance is provided for by a per tonnage charge on signatory coal of 10 to 12-cents or the balance is provided for by an annual transfer of $30 million from the 1950 Pension Fund.

4. Financing For Calendar Years 1992 through 1995

a. The 1992 hourly contribution rates would be further indexed, by CPI, to each January 1 of 1993, 1994 and 1995.

b. The estimated shortfall for each of these calendar years is about $100 million. This will be provided for as follows:

- The "reachback" will continue to provide about $30 million.

- The savings from Medicare screens will continue at about $10 million.

- The remainder of the pension surplus (about $160 millon as of January 1, 1993) will provide about $55 million per year.*

- The balance of the required $100 million will come from a per tonnage charge on signatory coal of about 2-cents.*

5. Possible Margins

- No financial recognition of potential savings from the adoption of managed care provisions. These could result in savings of $10 million per year increasing with inflation.

- If there are no new "orphans" to the 1974 Fund (rather than 1,000 assumed in original projections) then there will be additional surplus of $8 million on January 1, 1993 and $45 million on January 1, 1996.

- If the court-ordered "orphans" were returned to their former employers then there could be additional surplus of up to $90 million on January 1, 1996.

- Actual savings from adoption of Medicare screens could be 5% to 6% rather than assumed 4%. Also, $10 million will gradually increase with inflation up to about $12 to $15 million on January 1, 1996.

* If $30 million pension surplus is used in years 1991 and 1992, then only $30 million a year will be available for years 1993 through 1995. Hence, per tonnage charge would be about 10 cents rather than 2-cents.

6. Net Effects

If actual experience is consistent with that assumed, including the indexing of employer contributions and the adoption of managed care provisions, then the total additional surplus on January 1, 1996 could amount to $125-$175 million.

7. Other Possible Changes

- Increase benefits for 1950 retirees by 3% on January 1, 1993. This will cost about $40 to $45 million and could be provided for from indicated margins.

- Increase the $5 co-payments for physicians' services and prescription drugs to $5.25 on January 1, 1991 and by 5% thereafter, with appropriate adjustments to annual maximums.

C. COST CONTAINMENT MEASURES.

The Coal Commission believes that cost containment represents a promising approach for reducing the overall cost of providing health care to UMWA retirees and their dependents.

The approach described preserves freedom of choice while reinforcing managed care network use by allowing a point of service decision as to whether a network medical provider will be used. The Funds, with the backing of the UMWA and the contributing employers, have provided the groundwork for additional managed care approaches. It is expected that the cost containment measures described would not substantially add to the administrative costs.

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1. The major elements of this approach are:

   a. Select physicians on the basis of demonstrated quality care and medical cost efficiency, using state-of-the-art methodology.

   b. Implement formulary for drugs and subject the prescription program to a rigorous review of appropriate use.

   c. Obtain a unit price discount of 10% to 20% in exchange for patient volume and preferred provider status with the amount of the potential discount varying by geographic region.

   d. Limit benefit payments to physicians to the Medicare allowable charge, while protecting beneficiaries from balance billing by providers.

   e. Utilize Medicare's "appropriateness of service" protocols in the claims payment function where they are more stringent.

   f. Create mandatory utilization review (UR) procedures, but place the responsibility to follow such procedures on the physician/hospital, not the beneficiaries.

   g. Expect savings from a combination of selecting the most efficient physicians and state-of-the-art utilization management techniques, including ambulatory care techniques, to range from 5% to 15% for medical services delivered by the managed care network. The amount of actual savings will vary by the effectiveness of utilization management.

   h. To receive maximum benefits available, beneficiaries must access specialty medical care only through referral by the primary care physician pre-selected by the beneficiaries.

   i. Beneficiaries have the option to use a managed care network physician or hospital at the time medical services are needed (point-of-service). The consequence of not using a network provider is a reduced benefit plan, perhaps a Comprehensive Major Medical Plan with deductibles and coinsurance with a modest annual maximum out of pocket expense or the hold harmless protection might be waived outside the network.

j. The rationale for reduced medical benefits for non-network providers is to offset the less efficient medical delivery system.

2. Comments. In those areas where there is no competition for patients among medical providers, the primary strategy for improving the cost effectiveness of the medical benefit program must primarily be mandatory UR procedures using the latest techniques available. Medical services not properly submitted to UR procedures might be subject to a penalty or no payment if a retrospective review indicates the services are not medically necessary.

Without a provider pre-agreement to accept Fund determinations of proper cost and utilization for medical services received, the "hold harmless" protection of beneficiaries from balance billing of excessive fees by medical providers will continue to be needed. Mandatory UR procedures (rather than the current voluntary UR program) reflecting state of the art techniques may be expected to reduce costs by 2% to 5% in these noncompetitive areas, which is lower than the savings possible from a managed medical delivery system.

In those areas where there is an aggregation of beneficiaries in a noncompetitive medical market, the Fund may have a meaningful impact on the medical providers. If there is no aggregation of beneficiaries, then the influence of the Fund on medical providers will be minimal, but so will the financial impact on the total Fund medical expense from the small number of beneficiaries in that area.

3. Variations on the Managed Care Option. It might also be helpful to develop a risk sharing arrangement with network providers in as many areas as possible, perhaps forming physician hospital organizations and sharing some percentage of risk for capitated risk pools.

4. Medicare Capitation Arrangement. The current administration is interested in promoting managed care applications to the Medicare population, and has negotiated a capitation arrangement between HCFA and the Funds.

It should be noted that an ideal arrangement would include both Part A and Part B benefits in some fashion which would allow the Fund to benefit from the savings potential from reduced inappropriate use of inpatient hospital services. It is also important to remember that reduced inpatient hospital use is often partially offset by increased use of Part B Medicare benefits.

The capitation agreement with HCFA will make it even more important for the Fund to move aggressively forward with the effective use of state-of-the-art managed care techniques.

5. Long-Term Impact of Managed Care Option. The cost savings obtained through reducing benefits through deductible and coinsurance provisions result in a one-time nonrecurring savings. Once the savings achieved from reduced benefits (including any utilization reduction due to cost sharing) have been realized, the future increases in medical benefit costs will be essentially the same as the Medical Component of the Consumer Price Index (CPI).

Long-term savings from a managed medical delivery system can occur in connection with two factors:

a. Annual negotiated unit price prospective payment arrangements with providers which are linked to an appropriate external reference such as the All Items-CPI, rather than the Medical Component, or an index or reference appropriate to the coal industry, provided that overall aggregate payments are within prospectively determined limits.

b. Efficient medical care resulting in less intensity of medical services per patient served. It is expected that efficient medical care received from a managed medical delivery system will result in better quality medicine, fewer medical services per patient and better coordination of those services.

This lower utilization rate can be expected to result in a lower medical cost trend over subsequent years. It is expected that an unmanaged medical delivery system will likely require three to six years of incremental progress to achieve medical efficiency.

6. Long-Term Cost Containment. Long-term cost containment can be achieved in three ways:

a. Develop protocols of practice by the medical profession that are sensitive to resource constraints, sometimes called "standards," "guidelines," or "parameters." These are efforts by respected medical authorities to specify what are appropriate and inappropriate treatment patterns, which can specify a preferred mode of treatment or set boundaries on the range of appropriate practice. At the very least, these protocols should be developed and disseminated to physicians providing care under the Plans.

b. Apply the guidelines as a part of utilization review, with due regard to the need to maintain reasonable clinical autonomy and efficient physician decision-making.

c. Articulate expenditure targets, similar to the Medicare Volume Performance Standards, noncompliance with which could trigger further action through negotiation or by the plan administrator.

CHAPTER SIX

STATEMENTS OF COMMISSIONERS

A. Statement of Vice Chairman Henry H. Perritt. I believe that the two concepts offered at the meeting of October 17, 1990 are extremely close in their major features, and that it would have been desirable to bridge the gap and have a single recommendation. I believe that the industry-wide proposal is the better of the two.

I do not attribute the views expressed in this statement to any other member of the Commission. They are my own, and are offered to fulfill my obligation as a member of the Commission to offer my best independent judgment about the best way to solve the problem given to us, rather than offering an approach that has been tailored to conform to external constraints imposed by others' perceptions of Administration policy.

The financing crisis for retiree health care results from the concentration of funding responsibilities for a generic industry problem on a shrinking fraction of the industry. Any voluntary contractual mechanism to make such funding obligations legally enforceable is doomed to failure because the remaining contributors have stronger and stronger incentives not to contribute voluntarily. For this reason alone, the usual collective bargaining approach under the general labor laws is not a feasible financing approach. Whatever the appropriate financing obligations are, they must be imposed by external law and made enforceable without regard to contract duration. Thus, the only question is who should be subject to the mandatory premiums.

The Administration and the Commission quite properly prefer private sector arrangements for financing and delivering health care. The coal industry is distinctive for being a sector in which a comprehensive private structure has existed for forty years to finance and deliver health care benefits. This structure has been determined by the United States Courts of Appeals in two judicial circuits to guarantee lifetime health care benefits to persons already retired. An essential principle of private contract law is that legally operative expectations based on contracts be fulfilled. Otherwise private arrangements through contract cannot operate. That means that the commitments to the retirees must be honored.

The judicial branch of the government, however, through other judicial decisions and through delay in the litigation process, has undermined the key features of the present private arrangements. These judicial decisions allow employers to dump their retiree health benefit obligations on the existing health care funds, and to evade contribution obligations. The judicial decisions taken together say that the health benefits must be paid, while depriving the private sector of the means to pay for them. The equities here are not those of present signatories and the UMWA seeking to ensnare someone else in their private arrangements; the equitable realities are that the law has frustrated realization of a private arrangement to provide a safety net for people who have a vested right to retiree health care benefits.

A variety of other governmental policies reflected in labor law and interpretation of labor law have made it difficult for the United Mine Workers of America to maintain a sufficient organization base and contractual uniformity to secure an adequate financing base. Apart from the equities, the reality is that an historically comprehensive, innovative, and strong private arrangement for health care is falling apart. When the present system falls apart there will be instability, not only in the organized part of the industry but in the coal industry generally.

If health care delivery and financing cannot be reformed, the following scenario is conceivable. There would be a cataclysmic breakup in multi-employer bargaining in 1992, accompanied by significant economic disruption. The large individual producers that dominate BCOA would withdraw, and would take the position that the evergreen and guarantee litigation frees them, upon contract expiration, from the obligation to pay for the Funds' deficits. Regardless of the legal merits of this position, litigating the merits would take years. The Funds, deprived of adequate contributions, would suspend, terminate, or cut back benefits to retirees, producing strike activity that might be difficult or impossible for the UMWA to control. History suggests that the strike activity would spread broadly throughout the coal industry.

In the end, someone is going to pay for retiree health care, and the amount required does not change with different definitions of the contributor population. There are only three possibilities: the retirees themselves, the taxpayer, the coal industry. The retirees cannot do it; they lack the resources. The present financing structure is falling apart,

and the likelihood is that it will not exist after 1993. Seeking to continue the status quo thus ultimately throws the burden of financing health care that was promised to beneficiaries on the taxpayer. It is not good public policy deliberately to embark on a course that will make the public sector responsible for providing health care for a significant new group of retirees who historically have had a comprehensive structure for financing and delivering health care. This is not the time to dismantle private structures and enlarge the role of the public sector. An industry-wide industry financing mechanism is the only way to avoid that outcome. The Industry-Wide Funding Plan appropriately allocates financing responsibility among three groups: signatories, past signatories and the rest of the industry.

Stabilizing financing of the retiree health care system serves a number of interests. It serves the interests of proponents of private solutions. It serves the interests of those who believe in the integrity of private contracts. It serves the interests of anyone who believes that retirees who worked hard to create economic prosperity for others should not suffer from breaches of faith in delivering health benefits they were promised in their declining years.

The insistence on solving this problem entirely through collective bargaining is unrealistic and disingenuous. There is an assumption buried in the proposals for solving this problem through bargaining, which I find unacceptable. The assumption accepts as an outcome the cancellation by individual employers of health care benefits promised to retirees (or cancellation of financing arrangements for those benefits). The Supreme Court of the United States has recognized that retirees have little bargaining power on their own. The National Labor Relations Act has been interpreted to prevent unions from representing the interests of these disempowered citizens. I cannot agree to allowing the makers of promises to walk away from their promises when these retirees are the victims. Any approach that does not provide for financing of the health care plan beyond 1993 encourages this outcome.

I do not believe that it is appropriate statutorily to require present signatories to continue to pay for benefits for someone else's retirees. Such a perpetual obligation is not imposed by the labor laws, and I am not persuaded that they agreed to pay, by themselves.

The question then becomes whether financing should be extended only to those with an historic connection with the Funds or whether it should be extended industry-wide. It is appropriate to impose some residual mandatory premiums industry-wide for two reasons: First, the mandatory premiums finance orphans, who by definition are not associated with any employer still in business; the orphan responsibility is a broad industry responsibility. Second, the boundary between past signatories and the rest of the industry is so indistinct as to be an inappropriate conceptual limitation on the financing structure.

The testimony at the Commission meeting on October 10, 1990 reveals that there is no clear line between those with an historic connection and those without such a connection.

Many of those companies who professed not to have any connection with the retiree health care financing problem have in fact mined coal with miners covered by the Funds and the collectively bargained contribution obligations and thus could be said to have "dumped" retirees, although technical definitions of "successorship" labor law may not formally obligate the surviving and testifying entities. This points up the difficulty of any solution that depends only on financing by those with a "responsibility." The very people who proclaim lack of responsibility most vigorously have at least some de facto responsibility.

Notably, significant non-BCOA support exists for an industry-wide financing approach.

There is no such thing as mining coal and yet having no involvement in the crisis confronting health care financing and delivery in the coal industry. Contract operations are a strong phenomenon in coal mining, as are thinly capitalized subsidiaries. It is not uncommon for a contract operator or a thinly capitalized subsidiary or joint venture to walk away from obligations to finance retiree health care. Frequently entities who now appear not to have had any historic involvement with the Funds were in fact involved as contributors of capital, as participants in joint ventures or as purchasers of contract coal. It is difficult to know whose hands are clean.

It is not only a matter of clean hands. It is also a matter of administrative feasibility. It is extremely difficult to build a financing

mechanism that relies entirely on unscrambling the supply contracts, joint ventures, capital structures, and investment roles of a decade ago to pin responsibility on investment capital that has walked away from freely undertaken funding obligations.

Even more generally, the coal operator who sells coal at a price not reflecting contributions for retiree health care contributes to the problem by eroding the market share of the operators who must recover the costs of retiree health care not only for their own retirees but also for orphans. An industry-wide financing approach tends to level the competitive playing field, because it spreads the cost of health care more broadly.

Several variations on industry-wide financing are worth further consideration. First, and most obvious, are variations in the assessment rate structure. Assessments could be calculated based on hours, or they could be calculated based on tons mined. An hours-based formula tends to increase the burden on low-productivity operations and decrease it on higher productivity operations. Because productivity tends to increase over time, an hours-based formula tends to erode the contribution based in the long run. Also, related to the rate structure is the fact that the rate need not be the same for all operators and for all coal. Some variation base on BTU content may be appropriate, and some variation based on past connection with the collectively bargained funds may also be appropriate.

Second, it is possible to "annuitize" the exposure for true orphans and finance this amount with a discrete number of assessments. For example, one might conclude that the present value of the cost of health care through the Coal Industry Retiree Benefit Fund from now until the year 2039 is X. An assessment of Y cents per ton for three years would raise X, thus, covering the requirement. Under this variation, no long term industry assessment would be involved.

Third, an industry-wide assessment for the Coal Industry Retiree Benefit Fund could be put in place by modifying the Abandoned Mines Lands assessment as proposed in testimony by Arch Minerals Corporation, presented in the Commission's public hearing on October 10, 1990.

An essential element in the Industry-Wide Funding Plan is establishing a private, nonprofit corporation, with a strong and specific legislative mandate to use state-of-the-art managed care and cost containment techniques, as defined in Section D of Chapter Five of this Report. A statutory mandate, specifying the types of managed care procedures to be implemented, is necessary to ensure that the new entity actually uses the managed care techniques and that unanticipated legal impediments to their use do not impede cost containment efforts.

The new entities are appropriate ways to achieve cost containment. While the existing funds have made considerable progress in managing costs, historical controversies and the diffusion of governance responsibility make it difficult for state of the art cost containment to be implemented fully through the existing structure. The new entities also are necessary to improve health care delivery more generally in the long run. Ambitious health care reform cannot be accomplished on a fragmented single employer basis; a strong central administrative mechanism is necessary to implement managed care and cost containment. Perpetuating the present structural arrangement and delivery patterns would make it more difficult to conform care delivery practices to new health care financing and delivery concepts or to integrate them with new statutory initiatives developed separate from the Coal Commission or coal industry collective bargaining.

The Industry-Wide Funding Plan makes maximum use of private institutions and economic incentives rather than compulsion. It is the only approach that produces a real prospect of managed care and cost containment, because single employer plans are not likely, as a practical matter, to have sufficient market power, expertise, or emphasis.

The separate Coal Industry Retiree Benefit Fund also is appropriate because secure, broadly-based financing for the orphans cannot be arranged through a collectively bargained structure. A significant part of the industry is not organized by the UMWA. Any structural arrangement that forces this part of the industry to make contributions or premium payments to a collectively bargained delivery mechanism is infeasible. A new entity established by law and made appropriately accountable to public institutions is necessary to avoid these problems.

There is no reason to suppose that creating a new entity, such as the Coal Industry Retiree Benefit Fund proposed creates a new government entitlement program. The Coal Industry Retiree Benefit Fund is a private corporation, and its obligations are not those of the government. Political pressures to increase benefits or to change the financing mechanism would be no different in kind or character from political pressures against any energy tax or in favor of amending the copyright laws -- to identify two subjects in recent experience.

There are significant considerations relating to the precedential value of the Commission's recommendations and the political reactions thereto. The managed care part of the solution could serve as a precedent for other industries. In contrast, the financing mechanism need not represent a precedent for other industry. The coal industry can be distinguished from other industries with respect to the genesis of the immediate problem, the consequences of failure to solve it, and the government' historic intervention.

The Industry-Wide Funding Plan does not represent the ultimate solution to health care financing and delivery in the coal industry; that will take much debate and more time. The proposal does represent a sound structure within which longer term comprehensive reform can occur.

B. Statement of Commissioner Richard M. Holsten. It is with deep regret that I voice this dissent to the Industry-Wide Funding Plan (the UMWA/BCOA proposal) aimed at resolving the financial deficiencies currently being experienced by the two UMWA health funds. There are at least three areas in that proposal that I cannot in good conscience support.

1. I have no objection to the creation of a new health fund, although I would strongly recommend it be limited to present orphans only so as to avoid an open-ended perpetuation of today's problems. It is the proposed method of financing that bothers me.

The vast majority of coal producers on whom this new tax would fall are not now members of either the BCOA or the UMWA. Most of them have never been part of either group and thus have had no role in the creation, implementation or administration of the Funds. To require these companies now to bail out their direct competitors' health care responsibilities in addition to funding their own employee health care programs would be grossly inequitable and would amount to a subsidy of signatory operators that is no more justified than would be the use of federal tax revenues which the Commission unanimously opposes.

2. The proposal would also broaden the financing base for present UMWA retirees by requiring all former UMWA employers back to 1978 to contribute to the 1950 Fund on a per capita basis (the "reachback provision").

First, I acknowledge the guarantee of lifetime health benefits that has been contractually made to UMWA pensioners and their dependents. This guarantee has to be honored. Yet there are many companies who, for very valid strategic or economic reasons and using entirely legitimate means, have withdrawn from the Union and, at least according to the courts today, from their obligations to the Funds.

I agree with that part of the Industry-Wide Funding Plan that would tighten up withdrawal provisions in the future. However, to retroactively apply those same restrictions to companies who have legally withdrawn in the past would not only be highly unfair but would upset

the very delicate market balance between union and non-union production that exists today within our intensely competitive industry.

Furthermore, this portion of the proposal would establish a dual standard for contract compliance. On the one hand, signatory operators would be required to honor their commitments to fund retiree health care costs. The union, on the other hand, would be relieved of any contractual concessions it may have willingly made to certain coal operators in the form of lower contribution rates to these same funds. If one party to a contract is obligated to honor its commitments, so must the other. The retroactive "reachback" provision would negate that mutuality of commitment and would make a sham of the collective bargaining process.

3. The proposal does very little to correct the underlying deficiencies that have led to the financial crisis currently faced by the Funds, namely, the extremely high cost of health care benefits that are being underwritten by signatory operators.

Apart from some general cost containment features, which may or may not translate into hard dollars, and a proposed tightening of the withdrawal provisions, there is little in the way of cost reduction, cost sharing, eligibility review or other efforts to lower the cost of providing health care benefits. Thus, the Industry-Wide Funding Plan is pretty much business as usual for signatory operators but spread the pain to others.

The basic cause of the Funds' problems today has really nothing to do with the federal government as some would profess. That argument is a smoke screen. Nor is this a "generic industry problem" as characterized by some. This is simply a UMWA problem and a BCOA problem that, while serious in itself, is restricted to a relatively small and shrinking sector of the U.S. coal industry. It has nothing to do with nonunion companies which today comprise a growing majority of the industry. It is the cumulative result of the collective bargaining process over the years, as far back as 1950, in which the BCOA has progressively made improved health care commitments to the UMWA, commitments that may have been entirely rational at the time but have now become economically unbearable.

The long term solution lies also in the collective bargaining process, not in government intervention and certainly not in a tax on non-involved parties. The BCOA and the UMWA in their next negotiations in 1993 will have the opportunity to correct the mistakes of the past by revising their new National Bituminous Coal Wage Agreement to better reflect the economic realities of today's market environment.

In the interim, between now and 1993, a bridging can be achieved through the use of surplus pension assets, through cost containment and through reasonable cost reductions. The interim costs to signatory companies, as shown by the Commission's own actuarial projections, would be modest and future costs would be manageable.

Simply put, this is not an industry-wide problem. It does not require an industry-wide solution. This is a BCOA/UMWA problem created by the collective bargaining process and correctable through that same process. In the interim, the present deficits can be eliminated and a smooth and relatively painless transition can be made involving present signatory companies only.

C. Statement of Commissioners Michael J. Mahoney, Carl J. Schramm, Arlene Holen, Richard M. Holsten.

I.

HEALTH CARE FUNDING SHOULD PRESERVE THE INTEGRITY OF THE COLLECTIVE BARGAINING PROCESS

Limiting obligations to signatories rests on several considerations. Primemost is that the Benefit Funds are a creature of collective bargaining. Thus, to establish a federally established power to compel non-signatories to contribute to a creature not of their making is fundamentally inequitable and unsound public policy. Since the passage of the Wagner Act, collective bargaining has been, as a matter of public policy, the avenue of resolution for industrial conflict in the United States. This process rests on the ability of the parties to measure each other's bargaining strength and reach a joint resolution of their differences. To erect non-contract streams of revenue to the Funds is to impose the outcome of bargaining on outside parties. To achieve such an outcome would require the subversion of the process of collective bargaining in the coal industry. It would establish artificial subsidies to the implicit price of benefits to the signatories, making the costs of settlement fall on parties altogether removed from the process itself. It would weaken the integrity of the collective bargaining process by providing incentives for promised benefits that cannot be delivered. It would further weaken incentives to monitor contract compliance.

II.

HEALTH CARE FUNDING SHOULD NOT CREATE MARKET INEFFICIENCIES

There is a larger question of social policy relating to industrial efficiency. To establish artificially lower-than-market prices to the signatory parties for the costs of health benefits is to invite inefficient behavior from signatory firms. Such a system clearly establishes a tax whose marginal incidence would fall on non-signatory operators. Any such system of taxation, neither demonstrably progressive nor fair, establishes what economists call welfare losses. Such losses reflect lost

wealth to the economy or society as a result of incentives that implicitly reduce system-wide efficiency. In this case, the firms receiving the transfer will operate at sub-optimal levels, a micro-economic appearance of the phenomenon of moral risk. As the testimony repeatedly suggested, still further incentives to non-signatory operators to avoid the tax would arise.

III.

INEQUITABLE TO IMPOSE BURDEN ON NON-RESPONSIBLE OPERATORS

Issues of elemental fairness are involved. The record shows that reprehensible practices as regards successorship exist in this industry. Thinly capitalized operators, often the sham invention of larger firms, come and go in a fashion that appears to exist only to avoid the risk of being held as a party to the collectively bargained agreement regarding pension and welfare benefits. Nevertheless, while such behavior cannot be condoned, respectable operators who made decisions in the past to move to different locales, invest in different technology, or pursue their business with or without respect to union presence must be recognized. To reach to such firms ex post facto for funding of the bargained benefits, which in many cases will not relate to their own employees either past or present, is nothing but fiscal expedience that cannot be justified.

IV.

SOUND TAX POLICY ARGUES AGAINST SUBSIDIZING THE FUNDS

The notion of taxation of any industry in a fashion different from any other must be viewed with the most vigorous skepticism. In the case of the mining industry, what would evolve under the new tax proposed might be viewed as a system of state-sponsored health care for those who are tied to one industry. There is no "special case" justification for such a result. While mining has been benefited by government intervention in the past, and has also suffered at the hands of a judiciary inclined to make convenient if not economically-justified decisions to place certain workers under the protection of the Funds, such a history does not

compel a conclusion that federal tax policy should operate to subsidize the Funds in the future. To find otherwise would result in a federally supervised tax-based system of health care finance which could be used as precedent in other industries in the future.

V.

NEITHER BLACK LUNG OR ABANDONED MINES PROGRAM SERVES AS PRECEDENT

Much has been made of the precedential value of both the black lung program that reaches all workers and operators in the industry, as well as the program for land reclamation that imposes costs on all firms in the industry. These programs are separable from the question of an industry-wide tax on operators to fund health benefits. In the case of black lung, the program was established as an entitlement whose funding was guaranteed by government. Funding has been provided by the coal industry and general revenues. But apart from the commitment of general revenues to such benefits, the pneumoconiosis program is similar to that of mine reclamation in that both black lung and surface despoliation are common in varying degrees to all coal mining operations. Contractually established benefits, on the other hand, fall only on the parties who contract, and within this universe, the benefits vary widely depending on the circumstances governing the outcome between the union and a specific operator. Witness the existence of non-union firms and non-conforming contracts as evidence. Because of the indivisibility of labor inputs, established as a part of our national labor policy, neither the Black Lung or Abandoned Mines Land Fund serve as precedent to consider in this case.

VI.

ANY NEW TAX SHOULD DEFRAY BLACK-LUNG DEFICIT

The coal industry has been subsidized by forgiveness of interest on the indebtedness of the Black Lung Disability Trust Fund, the deficit of which already exceeds $3 billion. This deficit would have been about $1 billion higher, had not interest accruals been stopped by Congress for five

years, between 1986 and 1990. Thus, the Black Lung Disability Trust Fund, which was set up to pay benefits which are the responsibility of the coal industry, has been heavily subsidized by U.S. taxpayers. Any new industry-wide tax should properly be used first to defray outstanding black lung obligations.

VII.

INEQUITABLE TO FORCE COSTS ON THOSE WITH LESSER BENEFITS

The imposition of an industry-wide tax to support retiree health benefits would create another serious distortion and inequity. Coal users would pass on the implicit costs to their customers. To advance such a position, given that the benefits provided under the contract are fairly described as significantly better than the scope of benefits enjoyed by a majority of working men and women in the United States, would be to force the cost of this substantially above average benefit package on many men and women with no health insurance benefits at all or benefits of lesser quality. Such an outcome is unacceptable given the existence of uninsured individuals in the nation.

VIII.

NEW ENTITY WOULD CREATE FEDERAL LIABILITIES

Establishing a new federal entity, the Coal Industry Retiree Benefit Fund, which would be financed by an industry-wide tax as in the UMWA/BCOA proposal, essentially creates a federal corporation to broadly guarantee health benefits for both union and non-union operations in the coal industry. Such a federal guarantee of privately-determined health benefits is unprecedented and likely to create enormous future liabilities for the federal government.

CHAPTER SEVEN

CONCLUSION

No fewer than four advisory councils have been charged with the task of studying the problem of health care in America. This suggests that the rising cost of health care may be one of the greatest challenge facing our nation today. It most certainly is the greatest challenge facing the coal industry.

The Commission believes that this Report will be a valuable resource for policy makers because it does not simply analyze the issues involved, and then offer recommendations, but instead contains workable solutions to the complex and troubling problem of providing retiree health care for coal miners.

While the difficulty of providing health care for retired coal miners is symptomatic of the overall health care crisis, the recommendations contained within the Report are specifically tailored to the coal industry. These recommendations, however, are based upon general principles which can be utilized by any industry or provider of health care.

In this era of increasingly difficult fiscal constraints, responsible differences of opinion exist with respect to how to provide long-term financing for the UMWA Health and Retirement Funds. While acknowledging this fact, the Commission is unanimous in expressing a deep sense of urgency that steps be taken to address this problem right now.

APPENDICES

APPENDIX 1

QUESTIONS RAISED DURING COMMISSION DELIBERATIONS

a. Should financing be accomplished through current signatories only?

b. Should financing be accomplished through a group including present signatories and former signatories as of, e.g., 1978 or 1988?

c. Should financing be accomplished through a group, including present signatories, past signatories, and all others in the industry?

d. Can financing be accomplished by contract or is legislation required?

e. Is a new organizational entity required should the present fund, as is or as modified, continue?

f. Should the beneficiary class be frozen or "capped" to include only those presently retired or those as of some date in the future?

g. How should "beneficiary" be defined? Should re-enrollment occur? How should dependents be covered? Should active miners and retirees who are participants in single employer plans be eligible to participate in the multi-employer plan?

h. Assuming that it is necessary to define control group or "affiliate" to implement past signatory contribution obligations or to prohibit dumping, how should those concepts be defined to cover joint venture partnerships, corporate subsidiaries, and parties to supply contracts?

i. How should bankruptcy affect contribution obligations?

j. Under what circumstances can contributing employers terminate the obligation to contribute? What kind of withdrawal liability should exist?

k. What changes, if any, should be made to the preliminary report on cost containment issued on October, 11, 1990?

l. What use, if any, should be made of the pension surplus? Transfer all of the assets to the health care plan? Transfer some of the assets to beneficiaries to fund new co-payments? Use some or all of it for a general pension increase?

m. What should the formula be for contributions? Should contributions be based on tonnage or hours? What should the rate structure be?

n. What forms of contribution might be considered other than traditional contributions by employers?

o. What additional data is required?

APPENDIX 2

PRINCIPLES

In discussing the problem and proposed solutions, sharp differences of opinion were expressed and numerous ideas were exchanged. To assist the Commission in finding a long term solution to the problem of the deficits facing the UMWA Health and Retirement Funds, 14 general principles concerning delivery, funding and general considerations were discussed and generally agreed upon by the Commission.

The 14 principles are as follows:

DELIVERY

1. The health care delivery system should be designed to honor the expectations of coal miners, based on commitments made under the terms of the various National Bituminous Coal Wage Agreements.

2. The health care delivery system should be financially sustainable and the risks covered should be insurable; it should not motivate contributors to seek relief from the program.

3. Any redesigned health care delivery system should reflect current practices that ensure quality and cost effective health care services, including appropriate managed care, plan design, effectiveness of care provided, and cost containment practices.

4. Persons and institutions with a commitment to provide health care should not dump that responsibility on other employers or on public agencies.

5. Because of the nature of the beneficiaries, a multi-employer funding and administration arrangement is necessary to cover retirees under the 1950 and 1974 Benefit Trusts and those who will become eligible for benefits under those Trusts.

6. There should be a central funding and administration arrangement to cover retirees and active employees of operators who wish to provide coverage through such a central arrangement.

7. There must be a clearly defined program, possibly based on regulation and/or competition, to ensure that the program is properly administered and its assets well spent. This is particularly true in the case of mandatory contributions.

8. An effort should be made to define a mechanism to provide a suitable arrangement to cover active and retired miners with health care insurance consistent with insurance principles and proper safeguards with respect to cost and nature of care. A wide range of options should be considered, including reconfiguration of benefits to develop private markets for long term retiree health care insurance, and ensuring the availability of health insurance at reasonable cost to small coal industry employers.

FUNDING

9. The contribution base must be extended on an equitable basis beyond current contributors. The "last person out" phenomenon should be prevented.

10. A governmental role will be necessary to ensure contributions by those with an obligation to contribute.

11. A near term funding source must be found for meeting requirements associated with the larger orphans burden and the smaller contribution base for 1950 Benefit Fund beneficiaries.

12. All other appropriate sources of funding should be explored, consistent with the foregoing principles, to lessen the burden on active employers of providing health care benefits.

GENERAL

13. The role of the federal government should be minimized, and the role of private institutions, including collective bargaining, should be emphasized and strengthened.

14. No approach represents a solution unless it has genuine support from labor and management.

APPENDIX 3

CONTRIBUTION RATES
UMWA HEALTH AND RETIREMENT FUNDS

	Rate per Ton	Rate per Hour
June 1, 1946	$0.05	
July 1, 1947	$0.10	
July 1, 1948	$0.20	
March 6, 1950	$0.30	
October 1, 1952	$0.40	
1971 Agreement		
November 12, 1971	$0.60	
November 12, 1972	$0.65	
May 12, 1973	$0.70	
November 12, 1973	$0.75	
May 12, 1974	$0.80	
1974 Agreement		
December 6, 1974	$0.74	$0.90
December 6, 1975	$0.78	$1.40
December 6, 1976	$0.82	$1.54
1978 Agreement		
March 27, 1978	$1.39	$0.92
April 27, 1978	$1.39	$0.77
March 27, 1979	$1.39	$0.78
March 27, 1980	$1.39	$0.77
1981 Agreement		
June 7, 1991	$1.43	$1.04
June 7, 1982	$1.59	$1.00
June 7, 1983	$1.60	$1.02
1984 Agreement		
October 1, 1984	$1.79	$1.03
October 1, 1985	$1.79	$0.97
October 1, 1986	$1.82	$0.97
October 1, 1987	$1.82	$1.02
1988 Agreement		
February 1, 1988		$2.38
July 1, 1988		$2.55
February 1, 1989		$2.68
May 1, 1989		$2.85
February 1, 1990		$2.96
August 1, 1990[19]		$3.21
September 1, 1990[20]		$3.96

[19] Four month $0.25 rate increase pursuant to court injunction.

[20] Four month $0.75 rate increase pursuant to court injunction.

APPENDIX 4

LIST OF ACRONYMS

BCOA	-	Bituminous Coal Operators' Association
BTU	-	British Thermal Unit
CPI	-	Consumer Price Index
DOL	-	U.S. Department of Labor
ERISA	-	Employee Retirement Income Security Act
FACA	-	Federal Advisory Committee Act
FDA	-	Food and Drug Administration
FOIA	-	Freedom of Information Act
GSA	-	General Services Administration
HCFA	-	Health Care Financing Administration
HHS	-	U.S. Department of Health and Human Services
HIAA	-	Health Insurance Association of America
HMO	-	Health Maintenance Organization
JCAH	-	Joint Commission for Accreditation of Hospitals and Organizations
NBCWA	-	National Bituminous Coal Wage Agreement
PPO	-	Preferred Provider Organization
TPA	-	Third Party Administrator

UAW	-	United Auto Workers
UMW	-	United Mine Workers
UMWA	-	United Mine Workers of America
UR	-	Utilization Review
USWA	-	United Steel Workers of America

APPENDIX 5

GLOSSARY OF TERMS

Actuary

A person professionally trained in the technical and mathematical aspects of insurance, pensions, and related fields. The actuary estimates how much money must be contributed to a pension fund each year in order to provide the benefits that will become payable in the future.

Actuarial assumption

Factors which actuaries use in estimating the cost of funding a defined benefit pension plan. Examples are rates of return on plan investments, morality rates, and the rates at which plan participants are expected to leave the plan because of retirement, disability, or termination of employment.

BCOA

The Bituminous Coal Operators Association is an association of coal operators organized for the purposes of conducting negotiations with the UMWA.

BTU

Amount of heat required to raise the temperature of one pound of water one degree Fahrenheit at or near 39.2 F.

Beneficiary

A person designated by a participant, or by the terms of a pension or welfare benefit plan, who is or may become entitled to benefits under the plan. Under the UMWA health benefit plans, beneficiaries include retired miners, disabled miners, spouses and children under the age of 22, as well as parents and unmarried grandchildren under the age of 22.

Capitated reimbursement

An arrangement under which a health care provider receives a prospectively determined payment for services provided to patients. The advantage of a capitated reimbursement arrangement is that it creates incentives which may result in reduction in the amount of inappropriate and excessive services provided.

Copayments

The portion of covered medical expenses which a beneficiary must pay. Under the UMWA health benefit plans, this includes $5.00 per visit to a physician or for drugs up to a yearly maximum of $100 per family.

Coal operators

Companies engaged in the business of mining coal.

Collective bargaining

A procedure, governed by various laws, which looks toward the making of agreements between employer and accredited representatives of employees concerning wages, hours, benefits, and other conditions of employment.

Cost containment

Health care cost containment refers to a wide variety of methods of limiting or managing health care costs. Examples of cost containment measures range from systems of co-payments or deductibles to managed care arrangements which attempt to enhance the quality and efficiency of health care.

Deductible

A specific amount of covered medical expenses which a beneficiary must pay before receiving benefits. Although the UMWA plan does not contain a deductible, many health plans have this feature.

Employee Retirement Income Security Act of 1974 (ERISA)

ERISA established uniform federal standards for persons involved in the administration of pension and welfare benefit plans. ERISA established uniform standards for benefit plans with respect to fiduciary responsibility, including the investment of plan assets, funding, reporting and disclosure, participation and vesting. ERISA also established procedures for the termination of pension plans, including the imposition of liability on employers with unfunded liabilities who withdrawal from multi-employer plans.

Formulary

A list of drugs that have been approved for reimbursement under a health plan.

Funding

A systematic program under which contributions are made to a pension plan in amounts and at times approximately concurrent with the accruing of benefit rights under a retirement plan.

HCFA

The Health Care Financing Administration is an agency within the Department of Health and Human Services which is responsible for administering the Medicare program.

Managed Care

A system of utilization review and cost containment features, designed to ensure that care is provided in the most cost-effective setting. The term is frequently equated with alternative delivery systems that are known by names as health maintenance organizations (HMOs), preferred provider organizations (PPOs), and independent practice associations (IPAs).

Medicaid

A program of health insurance for the poor and medically indigent. States share in financing the program and determine eligibility and benefits consistent with federal standards.

Medicare

A Federal program of hospitalization and other insurance for persons aged 65 and over.

Part A is the Hospital Insurance program, which covers the cost of hospital and related post-hospital services. As an entitlement program, it is available without payment of a premium. Beneficiaries are responsible for an initial deductible per spell of illness, and coinsurance in certain circumstances.

Part B is the Supplemental Medical Insurance program (SMI) which covers the costs of physician services, outpatient laboratory and X-ray tests, durable medical equipment, out patient hospital care, and certain other services. As a voluntary program, Part B requires payment of a monthly premium. Beneficiaries are responsible for a deductible and coinsurance for most covered services.

Medicare Carrier

A private contractor who administers claims processing and payment for Part B services. (See Medicare)

Medicare wrap around

A type of health care program designed to provide health care coverage for those medical expenses that are not covered by Medicare.

Multi-Employer Pension Plan

A collectively bargained pension plan to which more than one nonrelated employer contributes.

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Multi-Employer Pension Plan Amendments Act of 1980 (MPPAA)

An amendment to ERISA which changed the rules for multi-employer plan terminations. Under ERISA, employers who withdrew from multi-employer plans did not suffer withdrawal liability unless the plan terminated within five years of the withdrawal. However, this liability was limited to 30% of the employer's net worth.

MPPAA addressed perceived weakness under ERISA which were viewed as encouraging withdrawal from multi-employer plans. Under the changes, employers withdrawing from a plan must pay their fair share of the plan's unfunded liability by continuing payments to the plan for twenty years or until the employer's liability is fully satisfied.

National Bituminous Coal Wage Agreement (NBCWA)

The prevailing labor agreement negotiated between the UMWA and the BCOA that is binding on members of the BCOA and other coal operators signatory to it.

Non-conforming Agreements

Labor agreements negotiated between the UMWA and non-BCOA companies that contain terms and conditions, including contribution obligations to the 1950 and 1974 Funds, that differ from those in the National Bituminous Wage Agreement.

Non-signatory Companies

Coal operators whose mines are not represented by the UMWA.

Signatory companies

Coal operators who have signed the National Bituminous Coal Wage Agreement, or other agreements with the UMWA.

Welfare Benefit Plan

A plan which provides medical, surgical or hospital care or benefits in the case of sickness, accident, disability, death or unemployment. The term may also includes other benefits such as vacation or apprenticeship plans.

APPENDIX 6

COMMISSION CALENDAR

March 12, 1990	Establishment of Advisory Commission on United Mine Workers of America (UMWA) Retiree Health Benefits
April 11, 1990	First Commission Meeting U.S. Department of Labor Washington, D.C.
June 13, 1990	Second Commission Meeting U.S. Department of Labor Washington, D.C.
August 30, 1990	Third Commission Meeting U.S. Department of Labor Washington, D.C.
October 10, 1990	Fourth Commission Meeting U.S. Department of Labor Washington, D.C.
October 11, 1990	Fifth Commission Meeting U.S. Department of Labor Washington, D.C.
October 17, 1990	Final Commission Meeting U.S. Department of Labor Washington, D.C.
November 5, 1990	Submission of Commission Report to the Secretary of Labor, Honorable Elizabeth Dole

APPENDIX 7

[ORIGINAL CHARTER]

ADVISORY COMMITTEE CHARTER

THE COMMITTEE'S OFFICIAL DESIGNATION

Advisory Commission on United Mine Workers of America (UMWA) Retiree Health Benefits.

THE COMMITTEE'S OBJECTIVES AND THE SCOPE OF ITS ACTIVITY

The Commission is to make recommendations to the Secretary of Labor on health care issues arising from 1950 and 1974 UMWA Benefit Plans and the effects of resolving these issues on the coal industry as a whole. The Commission will make appropriate studies of these issues and make reports and recommendations to the Secretary.

THE PERIOD OF TIME NECESSARY FOR THE COMMITTEE TO CARRY OUT ITS PURPOSES

Six months.

THE AGENCY AND/OR OFFICIAL TO WHOM THE COMMITTEE REPORTS

The Secretary of Labor.

THE AGENCY RESPONSIBLE FOR PROVIDING THE NECESSARY SUPPORT FOR THE COMMITTEE

The Department of Labor.

DESCRIPTION OF THE DUTIES FOR WHICH THE COMMISSION IS RESPONSIBLE

The Commission will focus on health care issues arising from the 1950 and 1974 UMWA Benefit Plans and the effects of resolving these issues on the coal industry as a whole.

The duties of the Commission shall include reviewing and advising on:

(1) The financial status and prospects of the United Mine Workers of America 1950 and 1974 Pension Trusts (Pension Plans) and 1950 and 1974 Benefit Trusts (Benefit Plans);

(2) The provision and means of delivery of health care benefits to coal industry retirees and their dependents who either currently are or formerly were represented by the UMWA; and

(3) Arrangements to assure the long-term financial viability of the 1950 and 1974 Pension and Benefit Plans.

The Commission shall submit a final written report containing its recommendations, and such interim reports as requested by the Secretary.

MEMBERSHIP

The Commission is composed of not more than twelve members, including a chairperson, who will be designated by the Secretary of Labor. The members shall represent the viewpoints of coal industry operators; coal industry employees, including retirees; the employee benefit and health care communities; and the public, including the employee relations community. None of the members of the Commission shall be deemed by their service on the Commission to be employees of the federal government.

The Commission may establish subcommittees as it deems appropriate.

THE ESTIMATED OPERATING COSTS IN DOLLARS AND STAFF-YEARS FOR SUCH COMMISSION

The estimated operating cost of the Commission will be approximately $125,000, and two and one-half staff years.

THE ESTIMATED NUMBER AND FREQUENCY OF COMMITTEE MEETINGS

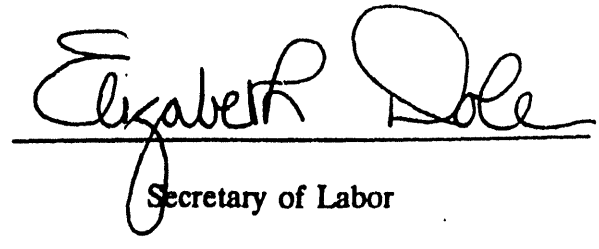
The Commission will have approximately six meetings.

TERMINATION DATE

The Commission shall terminate October 1, 1990.

FILING DATE

This charter is filed on the date indicated below.



Secretary of Labor

March 12, 1990
Date

[FIRST EXTENSION]

ADVISORY COMMITTEE CHARTER

THE COMMITTEE'S OFFICIAL DESIGNATION

Advisory Commission on United Mine Workers of America (UMWA) Retiree Health Benefits.

THE COMMITTEE'S OBJECTIVES AND THE SCOPE OF ITS ACTIVITY

The Commission is to make recommendations to the Secretary of Labor on health care issues arising from 1950 and 1974 UMWA Benefit Plans and the effects of resolving these issues on the coal industry as a whole. The Commission will make appropriate studies of these issues and make reports and recommendations to the Secretary.

THE PERIOD OF TIME NECESSARY FOR THE COMMITTEE TO CARRY OUT ITS PURPOSES

Six months.

THE AGENCY AND/OR OFFICIAL TO WHOM THE COMMITTEE REPORTS

The Secretary of Labor.

THE AGENCY RESPONSIBLE FOR PROVIDING THE NECESSARY SUPPORT FOR THE COMMITTEE

The Department of Labor.

DESCRIPTION OF THE DUTIES FOR
WHICH THE COMMISSION IS RESPONSIBLE

The Commission will focus on health care issues arising from the 1950 and 1974 UMWA Benefit Plans and the effects of resolving these issues on the coal industry as a whole.

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(2) The provision and means of delivery of health care benefits to coal industry retirees and their dependents who either currently are or formerly were represented by the UMWA; and

(3) Arrangements to assure the long-term financial viability of the 1950 and 1974 Pension and Benefit Plans.

The Commission shall submit a final written report containing its recommendations, and such interim reports as requested by the Secretary.

MEMBERSHIP

The Commission is composed of not more than twelve members, including a chairperson, who will be designated by the Secretary of Labor. The members shall represent the viewpoints of coal industry operators; coal industry employees, including retirees; the employee benefit and health care communities; and the public, including the employee relations community. None of the members of the Commission shall be deemed by their service on the Commission to be employees of the federal government.

The Commission may establish subcommittees as it deems appropriate.

THE ESTIMATED OPERATING COSTS IN DOLLARS AND STAFF-YEARS FOR SUCH COMMISSION

The estimated operating cost of the Commission will be approximately $125,000, and two and one-half staff years.

THE ESTIMATED NUMBER AND FREQUENCY OF COMMITTEE MEETINGS

The Commission will have approximately six meetings.

TERMINATION DATE

The Commission shall terminate October 17, 1990.

FILING DATE

This charter is effective on the date indicated below.

Elizabeth Dole

Secretary of Labor

October 1, 1990
Date

[SECOND EXTENSION]

ADVISORY COMMITTEE CHARTER

THE COMMITTEE'S OFFICIAL DESIGNATION

Advisory Commission on United Mine Workers of America (UMWA) Retiree Health Benefits.

THE COMMITTEE'S OBJECTIVE AND
THE SCOPE OF ITS ACTIVITY

The Commission is to make recommendations to the Secretary of Labor on health care issues arising from the 1950 and 1974 UMWA Benefit Plans and the effects of resolving these issues on the coal industry as a whole. The Commission will make appropriate studies of these issues and make reports and recommendations to the Secretary.

THE PERIOD OF TIME NECESSARY FOR
THE COMMITTEE TO CARRY OUT ITS PURPOSES

The Commission will complete its work by October 31, 1990.

THE AGENCY AND/OR OFFICIAL
TO WHOM THE COMMITTEE REPORTS

Secretary of Labor

THE AGENCY RESPONSIBLE FOR PROVIDING
THE NECESSARY SUPPORT FOR THE COMMITTEE

Department of Labor

DESCRIPTION OF THE DUTIES FOR
WHICH THE COMMITTEE IS RESPONSIBLE

The Commission will focus on health care issues arising from the 1950 and 1974 UMWA Benefit Plans and the effects of resolving these issues on the coal industry as a whole.

The duties of the Commission shall include reviewing and advising on:

(1) The financial status and prospects of the United Mine Workers of America 1950 and 1974 Pension Trusts (Pension Plans) and 1950 and 1974 Benefit Trusts (Benefit Plans);

(2) The provision and means of delivery of health care benefits to coal industry retirees and their dependents who either currently are or formerly were represented by the UMWA; and

(3) Arrangements to assure the long-term financial viability of the 1950 and 1974 Pension and Benefit Plans.

The Commission shall submit a final written report containing its recommendations, and such interim reports as requested by the Secretary.

MEMBERSHIP

The Commission is composed of not more than twelve members, including a chairperson, who will be designated by the Secretary of Labor. The members shall represent the viewpoints of coal industry operators; coal industry employees, including retirees; the employee benefit and health care communities; and the public, including the employee relations community. None of the members of the Commission shall be deemed by their service on the Commission to be employees of the federal government.

The Commission may establish subcommittees as it deems appropriate.

THE ESTIMATED OPERATING COSTS IN DOLLARS AND STAFF-YEARS FOR SUCH COMMISSION

The estimated operating cost of the Commission will be approximately $125,000, and two and one-half staff years.

THE ESTIMATED NUMBER AND FREQUENCY OF COMMITTEE MEETINGS

The Commission will have approximately six meetings.

TERMINATION DATE

The Commission shall terminate on October 31, 1990.

FILING DATE

This charter is effective on the date indicated below.

Elizabeth Dole

Secretary of Labor

October 18, 1990
Date

[THIRD EXTENSION]

ADVISORY COMMITTEE CHARTER

THE COMMITTEE'S OFFICIAL DESIGNATION

Advisory Commission on United Mine Workers of America (UMWA) Retiree Health Benefits.

THE COMMITTEE'S OBJECTIVE AND
THE SCOPE OF ITS ACTIVITY

The Commission is to make recommendations to the Secretary of Labor on health care issues arising from the 1950 and 1974 UMWA Benefit Plans and the effects of resolving these issues on the coal industry as a whole. The Commission will make appropriate studies of these issues and make reports and recommendations to the Secretary.

THE PERIOD OF TIME NECESSARY FOR
THE COMMITTEE TO CARRY OUT ITS PURPOSES

The Commission will complete its work by November 5, 1990.

THE AGENCY AND/OR OFFICIAL
TO WHOM THE COMMITTEE REPORTS

Secretary of Labor

THE AGENCY RESPONSIBLE FOR PROVIDING
THE NECESSARY SUPPORT FOR THE COMMITTEE

Department of Labor

DESCRIPTION OF THE DUTIES FOR
WHICH THE COMMITTEE IS RESPONSIBLE

The Commission will focus on health care issues arising from the 1950 and 1974 UMWA Benefit Plans and the effects of resolving these issues on the coal industry as a whole.

The duties of the Commission shall include reviewing and advising on:

(1) The financial status and prospects of the United Mine Workers of America 1950 and 1974 Pension Trusts (Pension Plans) and 1950 and 1974 Benefit Trusts (Benefit Plans);

(2) The provision and means of delivery of health care benefits to coal industry retirees and their dependents who either currently are or formerly were represented by the UMWA; and

(3) Arrangements to assure the long-term financial viability of the 1950 and 1974 Pension and Benefit Plans.

The Commission shall submit a final written report containing its recommendations, and such interim reports as requested by the Secretary.

MEMBERSHIP

The Commission is composed of not more than twelve members, including a chairperson, who will be designated by the Secretary of Labor. The members shall represent the viewpoints of coal industry operators; coal industry employees, including retirees; the employee benefit and health care communities; and the public, including the employee relations community. None of the members of the Commission shall be deemed by their service on the Commission to be employees of the federal government.

The Commission may establish subcommittees as it deems appropriate.

THE ESTIMATED OPERATING COSTS IN DOLLARS AND STAFF-YEARS FOR SUCH COMMISSION

The estimated operating cost of the Commission will be approximately $125,000, and two and one-half staff years.

THE ESTIMATED NUMBER AND FREQUENCY OF COMMITTEE MEETINGS

The Commission will have approximately six meetings.

TERMINATION DATE

The Commission shall terminate on November 5, 1990.

FILING DATE

This charter is effective on the date indicated below.

Elizabeth Dole

Secretary of Labor

November 1, 1990
Date

APPENDIX 8

PUBLIC MEETINGS

The Commission held public meetings to offer representatives of the public the opportunity to provide their views with respect to issues arising from the United Mine Workers of America (UMWA) 1950 and 1974 Benefit Trusts and the effects of resolving these issues on the coal industry as a whole. Notice was published in the Federal Register before each meeting and the Chairman invited representatives of the public to express their views.

The six Commission meetings had an average public attendance of sixty-five (65) individuals and organizations, representing the full spectrum of the coal industry. Eighteen witnesses testified before the Commission at the hearings. Written statements were received by an additional twenty-nine individuals and organizations. The Commission expresses its appreciation to the representatives of the public who shared their thoughts with us.

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Disabled Miner
Eastover Mining Company

The Honorable
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Widow of Miner
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Seth D. Zinman
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APPENDIX 9

INDIVIDUALS AND ORGANIZATIONS SUBMITTING WRITTEN

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Ronald G. Wasson
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APPENDIX 10

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Marshall A. Deutsch
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Roland G. Droitsch
Deputy Assistant Secretary for Policy

David S. Fortney
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PREPARED STATEMENT OF MICHAEL K. REILLY

Mr. Chairman and Members of the Committee: My name is Michael K. Reilly. I am the Chairman and Chief Executive Officer of Zeigler Coal Company and also Chairman of the Bituminous Coal Operators' Association (BCOA).

Zeigler is a privately held coal producer that has operated in the State of Illinois since 1904. Due to our recent acquisition of Old Ben Coal Company, we now operate six mines in Illinois as well as mines in Indiana and West Virginia. Together, we produce roughly 16,000,000 tons annually. Both Zeigler and Old Ben are signatory to the National Bituminous Coal Wage Agreement (NBCWA) with the United Mine Workers of America (UMWA). It is important to note that Zeigler's only business is coal mining.

BCOA is a multi-employer trade association representing 14 employers in the bituminous coal industry. Those BCOA companies produce approximately 18% of the total U. S. production. Non-member companies that are signatory to the national labor agreement add about an additional 12%. BCOA's primary mission is collective bargaining with the UMWA, although it does have extensive responsibilities in other areas, including training, health and safety, and the administration of the NBCWA. BCOA is a Settlor of the UMWA Health and Retirement Funds. As Settlor, BCOA's responsibility includes the appointment of two trustees, the negotiation of benefit levels and eligibility standards and the establishment of rates appropriate to the needs of the Funds and the obligations imposed by the national labor agreement.

DEATH SPIRAL

The health benefits of 120,000 retirees and their dependents are in jeopardy. This crisis arose because some who have a moral, if not legal, obligation to pay for the promised benefits have reneged. Others have gone out of business—leaving their retired miners "orphans." Expenses have risen dramatically due to both medical inflation and unanticipated court ordered beneficiary growth. This results in increased costs for the remaining employers who choose to meet their legal and moral obligations. This combination of events results in a death spiral for UMWA jobs and the retiree health benefit funds (see attached Chart 1). We are at the point where fewer and fewer employers are being asked to carry the burden of providing health benefits for an entire generation of coal industry retirees, of which 75% never worked for or had any identifiable connection with a currently contributing company. These companies and their employees can no longer afford to carry this burden of history. In fact, this burden unsolved will claim existing companies and their retirees as additional victims.

BCOA appears here today because we want to try to insure a continuation of the benefit programs for retirees in the two Funds. The only other option is a final spasm of withdrawals, which will both destroy the benefits to the people involved and cause a period of labor unrest not seen in this industry since the late 1940's.

THE FUNDS

There are two multi-employer Health Funds established under the NBCWA.

The 1950 Health Fund covers miners retiring before 1976 and their dependents. Currently, there are 104,000 total beneficiaries in that Fund, of which 70% are widows, spouses and dependents. The average age of the beneficiaries is 75 years.

The 1974 Health Fund, which was originally established as an orphan fund, covers all other eligible retired miners and their dependents, whose former employers no longer pay for benefits because they are out of business or because they have "dumped" their liabilities on the NBCWA signatory companies such as Zeigler. There are over 15,000 beneficiaries in the 1974 Fund; about two-thirds are there because of court direction.

Together both Funds provide a comprehensive health care benefit for more than 120,000 beneficiaries at a total cost of over $400,000,000 per year. Approximately 40% of this is offset by reimbursements from the Medicare and Black Lung programs. The Medicare program is particularly significant since 83% of the current beneficiaries are covered by that program and are required to participate in it.

In addition, each signatory employer provides medical benefits for its own active and retired coal miners. This dual arrangement has been in effect since 1978.

THE HISTORY OF THE PROBLEM—THE FEDERAL ROLE

These Health and Retirement Funds started in 1946, when U.S. coal mines were seized by the Federal Government. Julius Krug, then Secretary of the Interior, and

John L. Lewis, President of the UMWA, negotiated a wage agreement which established an employer financed retirement and welfare fund and an industry-wide, miner controlled health plan. This was the first significant involvement of the Federal Government in the collective bargaining process of the coal industry. These plans were the start of what are known today as the UMWA Health and Retirement Funds. In exchange for mechanization of the mines in 1950, the coal operators, through their new collective bargaining association, the BCOA, agreed to a jointly administered multi-employer fund in conformance with the 1947 Taft-Hartley Act.

At the time of the initial commitment by the Federal Government, 80% of the coal mined in the United States contributed to the program. Today, less than 30% of the coal mined in the U.S. contributes to the program.

Since our employment peak in 1978, 90,000 miners at NBCWA mines have lost their jobs. Since 1970 over 130,000,000 annual tons of coal production has been lost from signatory mines. At the same time, the most recent government mandate has impacted the Funds. Federal courts have ruled that the 1974 Benefit Fund must provide medical benefits for all eligible pensioners without regard to the contribution status of the retiree's employer. Once the employer cuts retiree health care under its company plan, the 1974 Benefit Fund is obligated to provide continued coverage for the "dumped" retirees. This is paid for by the remaining companies.

Many employers have done just that and the court rulings have created an incentive for employers to dump retirees on the Fund. LTV Steel, North American, and Massey have done so, adding over 3,300 people into the 1974 Benefit Fund in the last five years. Moreover, all of these employers and companies such as Pittston also have retirees in the 1950 Fund who are now the responsibility of a shrinking "last man's club."

The net result is virtually all the net lost employment in the coal industry has come from the signatory sector.

THE PROBLEM TODAY: DUMPING AND ORPHANS

Charts 2 and 3 (attached) demonstrate the increasing health care cost and declining funding base trends. As just noted, a second development has worsened this problem. Former signatory coal companies have reneged on their obligation to contribute to these Benefit Plans and "dumped" their retiree beneficiaries on the declining number of signatory mines which have been forced to pay for benefit costs.

They pay nothing while Zeigler and every other signatory company bears the additional burden. The problem extends beyond former signatories. Fully 60% of current beneficiaries of both Funds are "orphans," i.e., they have no employer remaining in business to make contributions on their behalf.

Currently only 25% of the beneficiaries of the two Benefit Funds are retirees of a current signatory company. Fifteen percent last worked for former signatory companies that remain in business but no longer contribute (Chart 4 attached).

The following statistics underscore this last point:

Of the more than 15,000 current beneficiaries in the 1974 Benefit Fund, more than 9,000 last worked for employers who are former signatories of the NBCWA and remain in business, but do not pay into the Benefit Fund.

The problem is not just limited to the 1974 Fund. For example, Pittston no longer contributes for its 3,400 beneficiaries in the 1950 Benefit Fund.

North American Coal Company remains in the coal industry and has over 850 retirees in the 1950 Benefit Fund as well as about 600 in the 1974 Fund. They no longer contribute to these Benefit Funds.

A. T. Massey Coal Company has 1,100 retirees in the 1950 and 1974 Benefit Funds, but does not pay into either Fund.

The bottom line is that for every dollar that NBCWA companies currently contribute for their own employees and retirees, NBCWA companies contribute three dollars for other companies' retirees. These economic inequities are unconscionable.

The cost avoided by these former contributing companies currently stands at $2.50 per hour. By 1995, using the Dole Commission's projected annual expenses, the per hour cost for those currently signatory to the agreement will be nearly $6.

The Trustees have not been able to enforce any kind of post contract obligation on employers even as the courts have directed lifetime benefits. This has accelerated the withdrawals of signatory employers and the creation of the "last man's club."

These economic inequities cannot continue. In 1993, if just the BCOA companies are left to maintain the program, the costs will explode as thousands of retirees are dumped on the 1974 Benefit Fund and the funding base collapses (Chart 1 attached). In this situation, costs to the remaining companies would instantly triple, reaching an unrealistically high level that would quickly destroy the last vestige of the fund-

ing base. Since those remaining employers face geometrically escalating costs they either get out while they can or go broke. As a result, even with the best intentions of management and the most militant collective bargaining stance by labor, the program must eventually collapse and retirees lose health benefits.

The death spiral will be complete.

Inevitably, the issue will pit company against company, active miner against retiree and region against region as the issue becomes one, not of health care but of survival. Simply put, no program can endure where a declining contribution base, an increasing cost burden and a "last man's club" come together as its three shaky pillars.

COAL COMMISSION REPORT

We strongly support the Dole Commission's findings to address the problems described. The findings include recommendations for:

- A two-part funding mechanism consisting of:

  (1) Payment by current and former signatory companies for their retirees in the 1950 and 1974 Benefit Funds. It is only fair that companies still in business pay for their retirees.

  (2) A national premium on a cents per hour worked basis on all coal produced in the U. S. to provide benefits for 60% of the Funds' beneficiaries that are orphans

- State of the art, mandatory cost containment programs for the care of retired miners and their dependents, and use of Medicare fee limits.
- Keeping the promise to past retirees for medical benefits, but recognizing the need to negotiate contract terms we can live with economically for post-1993 retirees. We want to fix the problem without perpetuating it.
- Transfer excess pension assets from the 1950 Pension Fund to permit the uninterrupted payment of medical benefits, and start the new program at zero deficit. Liabilities of the past should be paid with assets from the past.

In summary, the Dole Commission's findings were well considered and fair. Each coal company should pay for their own retirees' benefits. But it is also equitable that we all share in a small premium to pay for the orphan retirees of companies no longer in business. The present crisis is not the fault of the orphans. We need to structure a solution to prevent this problem from crippling our future energy supply with labor strife. We should not be forced to turn our backs on the men and women who carved the bowels of this earth to create the industrial standard of living we all enjoy.

There are some additional comments which are important to the solution of the problem.

There should be effective cost containment

The twin objectives should be to insure the quality of care and the application of "state of the art" cost containment programs. The Commission was very clear in this respect and we support its conclusions enthusiastically. We will not attempt to put a cost savings on such programs, but we believe their effect to be substantial.

Government programs should continue their role

At the present time 83% of the retirees of the Benefit Funds are covered by Medicare. The Benefit Plans require beneficiaries to enroll in Medicare and they pay the premium. If health benefits are to be continued for retired miners this requirement should be maintained.

There should be flexibility with respect to future beneficiaries. both active and retired

BCOA is not interested in the simple perpetuation of programs for their own sake. There are many innovations in the delivery of medical care designed to make costs more bearable. Some of these are contained in our own program, others have been negotiated by the UMWA in other agreements and still more are being used by other labor management groups.

The program should not be viewed as the province of the UMWA and the BCOA.

As we said at the time of the 1988 negotiations, BCOA can and will no longer speak for industry. We are prepared to find some way to provide for our own former employees and to deal with the UMWA on how that should be done. But for the broader industry mechanism, there should be broader industry and labor direction.

The program should start fresh and cover only those people who are eligible under the rules. We do not know how many, if any, people will be affected, but the perception and reality of the new effort will be best served with a clean slate. Proper administration of the program is essential.

There will have to be a transfer of excess pension assets

There is simply not enough money available for existing signatories to bring the Funds to a break even position by the end of the agreement. The distribution of excess assets in the 1950 Pension Fund will do four things:

1. Start the new program at zero.
2. Permit the uninterrupted payment of medical benefits.
3. Provide for some seed money for the new program.
4. Make sure, that, to the extent possible, the liabilities of the past are paid with assets from the past.

Collective bargaining will not solve the problem.

The proponents of a collective bargaining solution who suggest this do not understand the bargaining process and the historical background involved. This program was born outside of the normal bargaining arrangement and its entire history has been shaped by non-bargaining influences, particularly governmental.

Collective bargaining is not the answer for several reasons:

(1) Collective bargaining cannot overturn court decisions. The problems in the 1974 Fund are the result of the anomaly caused by the courts mandating a lifetime benefit, but obligating only current signatories to pay for it.

(2) To the extent that the issue has been bargained the financial base of the Funds has eroded. Further, it is a well-established principal of labor law that there is not a duty to bargain over retiree health care issues.

(3) The base has eroded so far that remaining employers cannot agree to this continuation of health benefits under the present structure. This is especially true because the 60% orphan population and the current legal environment which permits employers to leave the Funds and dump their former employees (in both Funds) on those who remain.

(4) The Chairman of the Dole Commission, who has had first-hand knowledge not only with the NBCWA, but also with the bitter Pittston strike over this issue has stated repeatedly that the issue is not resolvable in bargaining.

(5) Given almost the same type of situation, a last man's club, Congress acted to intrude in the bargaining process and impose substantial penalties on employers choosing to leave a multi-employer pension plan. I would add that the BCOA strongly supported that legislation for the same reasons we are here today—the burden of the past could not be borne by an increasingly smaller number of contributors.

Congress often intrudes in collective bargaining. The national labor relations act is such an intrusion. So are health and safety laws, the Multi-Employer Pension Reform Act, anti-discrimination laws, minimum wage laws, bankruptcy statutes and a whole series of other legislated solutions to what were perceived as problems with broader ramifications than the more narrow interests of the two parties. We do not usually support government intervention into the process, but we recognize that there are times when it is inevitable.

BCOA ACTIONS

During the period since the Dole Commission and before, BCOA has tried to maintain the viability of the Funds and seek some kind of long-range solution to its problems. We did so against the backdrop of a very competitive marketplace and the sure knowledge that with every increase in the royalty rate, fewer hours would be worked and more employers put at grave financial risk. These are some of the efforts we have undertaken:

1. See to the full funding of the 1950 Pension Plan and the near full finding of the 1974 Pension Plan. This was done with signatory money and a government framework which discouraged the "last man's club."
2. Maintain the current benefit program until the Congress could act to put it on some kind of sound long-term footing. The price tag for this is $150,000,000 over what would have been required under the rates established in the 1988 NBCWA.
3. Devote both human and financial resources to help the Funds to be as efficient and effective as they can be.
4. Jointly pursue with the UMWA a solution to the problem which is based in the private sector, but yet meets the Nation's obligation to its retired miners.

Finally, we fully cooperated with the Commission in its deliberations.

THE RETIREE HEALTH CARE PROGRAM—CAN IT CONTINUE?

As we said at the outset, we come here today to seek a solution to a crisis. Retirees of companies that have been signatory to a National Bituminous Coal Wage Agreement since 1950 have been led to believe that their health care program would continue for life. That belief has been reinforced by the Courts and by the structure of a program which came into being under government agreement.

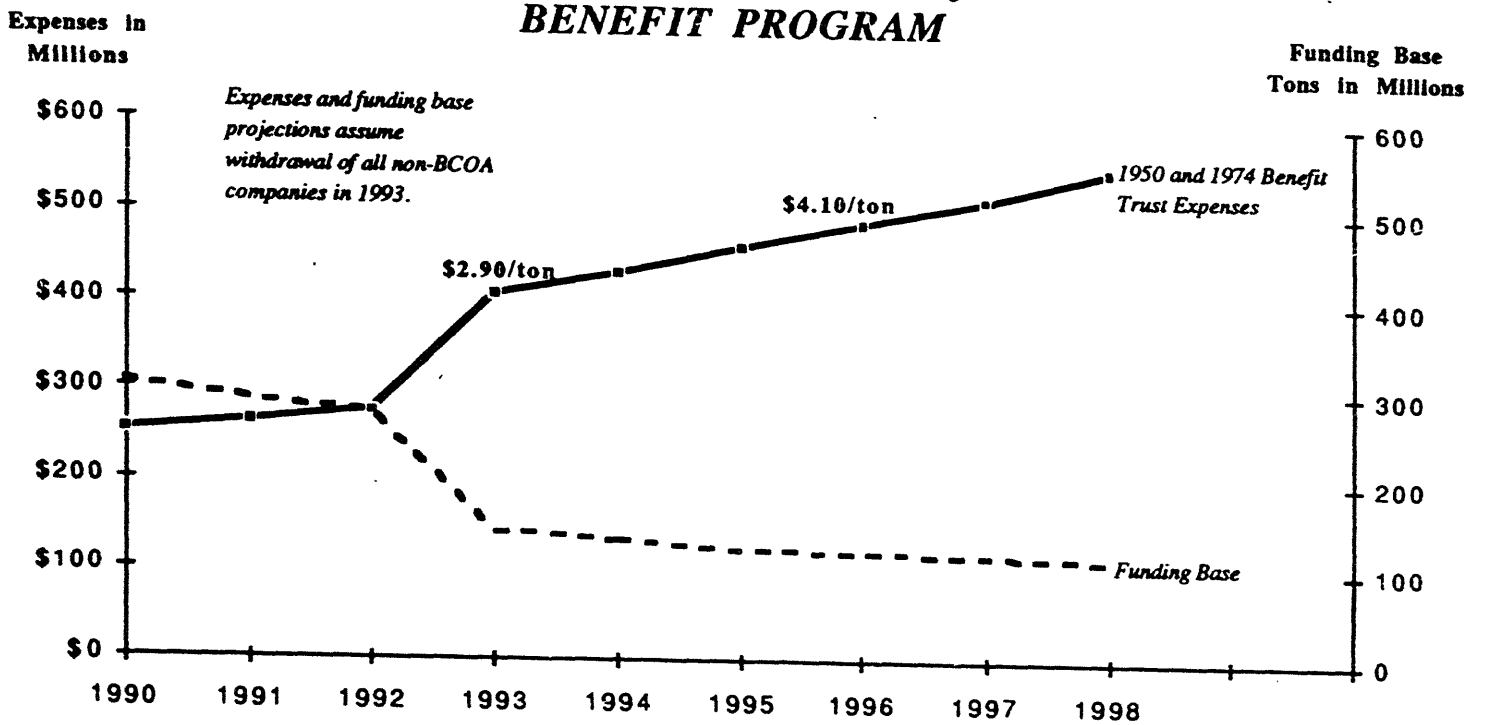
What is at issue here today is whether to fulfill that strongly held belief. There is Federal responsibility. Those who have been a part of the program should not abandon its cost to others. There is responsibility for the entire industry.

The Coal Commission's excellent report demonstrates that with legislative assistance a private sector resolution can be achieved.

Coal is a dynamic and growing industry and it looks to a future as a vital part of the U.S. economy. But coal also has a past and the we must somehow deal with that past so as to honor its commitments as we strive for the future that beckons.

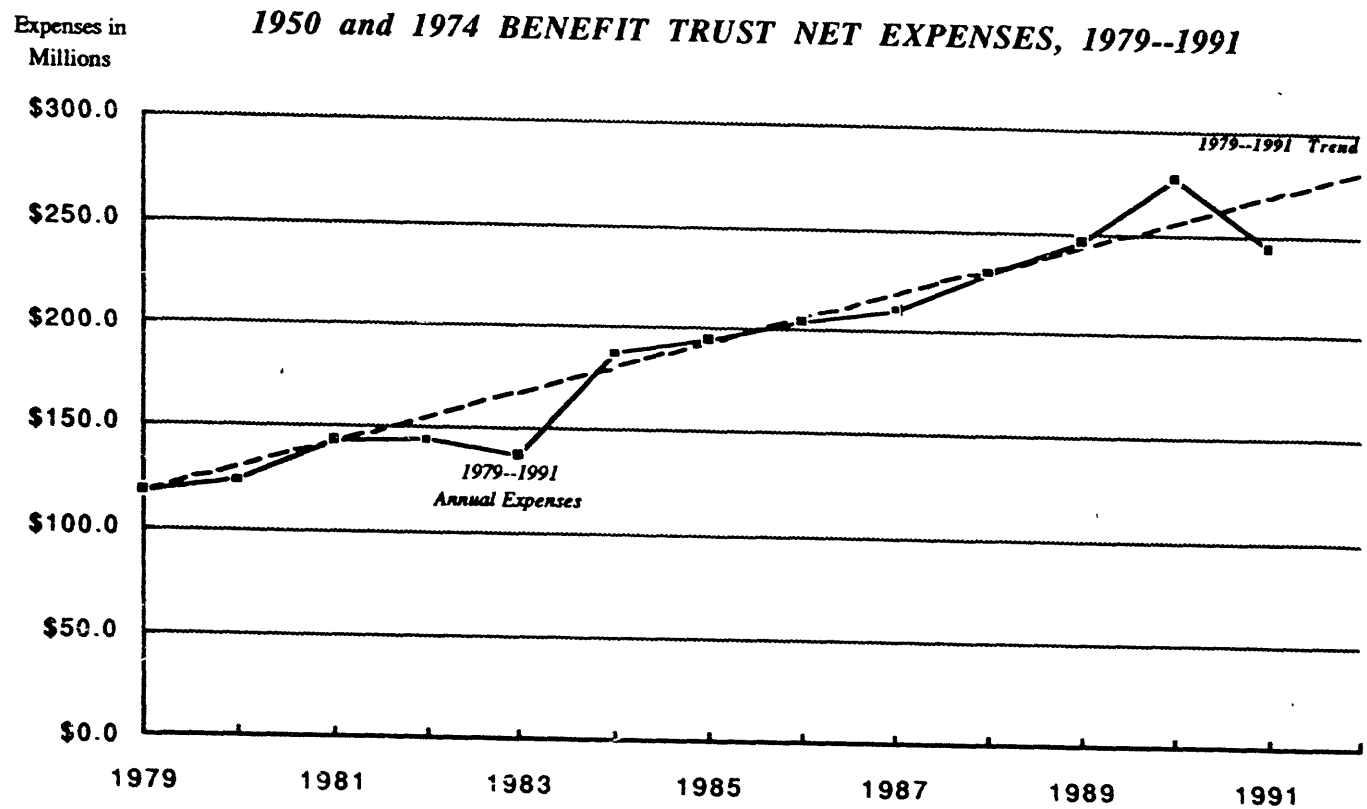
CHART 1

"LAST MAN'S CLUB"--DEMISE of CURRENT BENEFIT PROGRAM



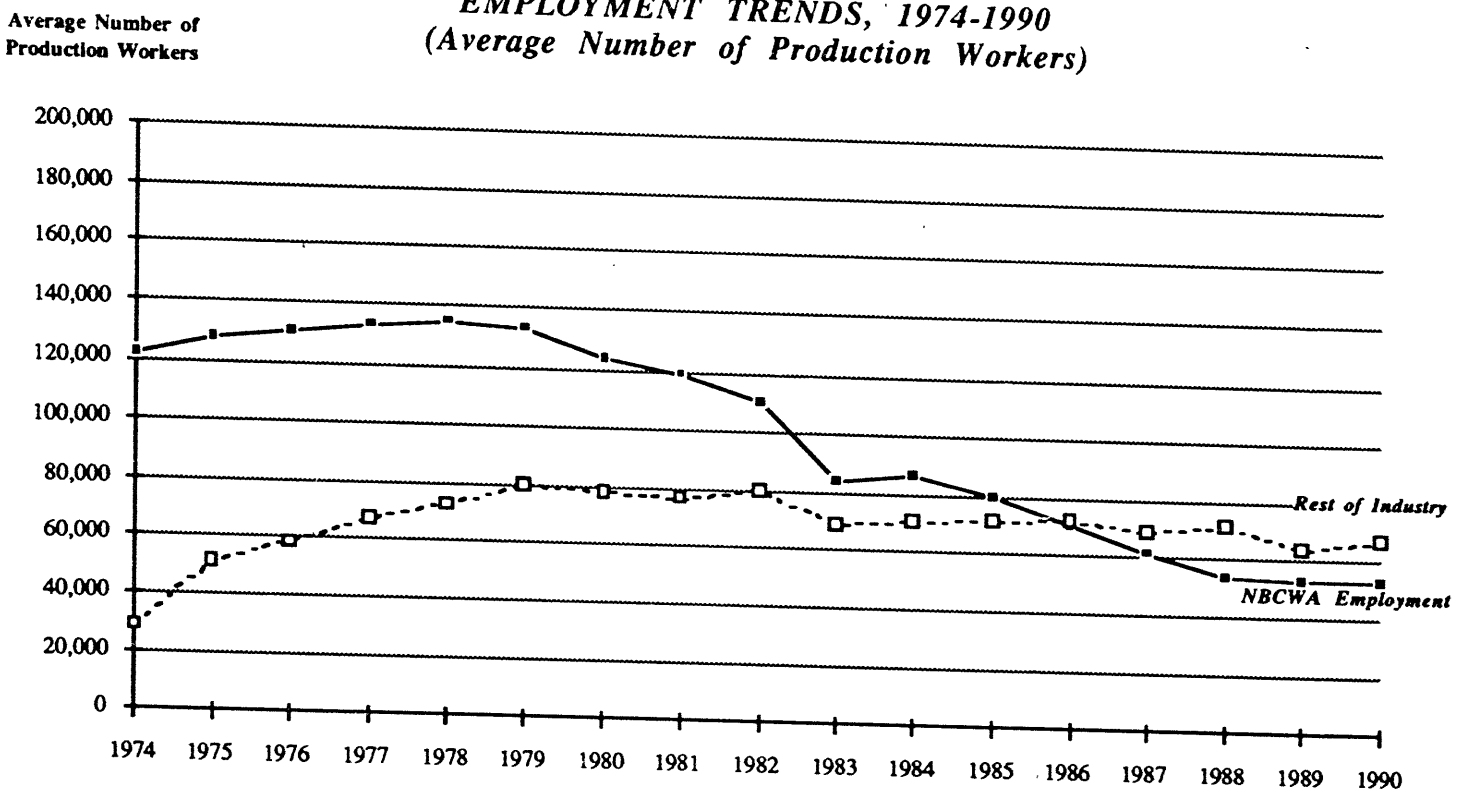
*Expense trends based on Coal Commission middle net health expense projections (revised to include the impact on expenses of withdrawal of non-BCOA companies). Funding base projections (1993-1998) reflect only BCOA companies.

CHART 2



*1950 Benefit Trust and 1974 Benefit Trust financial reports.

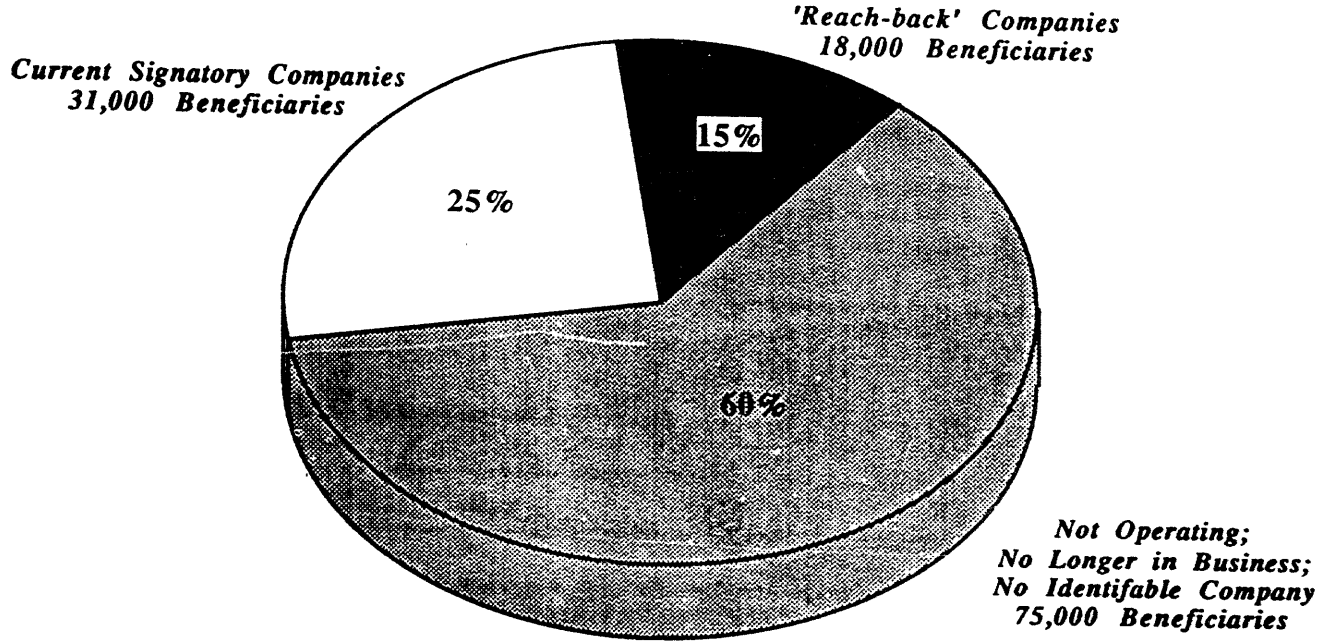
CHART 3



*BCOA analysis of Bureau of Labor Statistics and UMWA Health and Retirement Funds data.

CHART 4

1950 AND 1974 BENEFIT TRUST BENEFICIARY POPULATION
Retirees and dependents classified by status of last employer



**Includes retired miners, spouses, widows of retired miners and eligible dependents. Beneficiary classifications based on UMWA Health and Retirement Funds analysis of eligibility data for the 1950 and 1974 Benefit Trust.*

RESPONSES OF MICHAEL K. REILLY TO QUESTIONS SUBMITTED BY SENATOR DAVID L. BOREN

Question 1

Some BCOA members have said they might refuse to continue funding the UMWA Benefit Plans in future agreements. I believe Mr. Perritt mentioned this in the Coal Commission Report as one of the reasons why legislation was needed. How do you reconcile this threat with the fact the 1988 contract contains a benefit plan withdrawal liability provision that would obligate the BCOA companies to pay hundreds of millions of dollars if they were to pull out of the Plans?

Response

Withdrawal liability alone is not going to solve the problem nor will it stand as an obstacle to those companies who leave the program.

The contractual withdrawal liability provision added in 1988 was designed to generate payments that would be equivalent to (at most) 5 years of contributions and is simply not adequate to fully fund the Benefit Program. This would be especially true in the case of a large scale withdrawal that would result in companies dumping substantial numbers of retirees in the 1974 Benefit Fund further adding to the expenses of the Fund.

In the example we cited in our testimony (Chart 1), if just BCOA companies are left to maintain the program in 1993, the costs to each BCOA company would increase to over $15 per hour in the next Contract. The impact of withdrawal liability in this situation would be small. If 30% of the amount of withdrawal liability owed were collected this would add about $140 million to the funding base. This collection rate is comparable to the actual collection rates for pension withdrawal liability. Spread over 5 years this would reduce the costs by about 90¢ per hour. If 100% of the liability were collected, this would add about $470 million but would only reduce the costs to the remaining contributing companies by about $3.00 per hour.

Ironically, the same former signatory companies that make the claim that contractual withdrawal liability will solve the funding problems are the very same ones that are attempting to evade the contractual "Evergreen" protections that have been part of every contract since 1978. And it is certain, that this same situation will occur and attempts to impose contractual withdrawal liability will be challenged in the future.

Question 2

You complain that the Plans are having problems because some former contributors have pulled out. But isn't it true that if current signatories and their own non-signatory affiliates contributed to the UMWA Plans on all of their production that this would bring in far more tonnage than the combined production of the few companies that have withdrawn?

Response

The fundamental problem of the Benefit Funds is related to the increasing health care costs for an "orphan" population of retirees in the face of a declining funding base. The problem is not the result of the companies that have continued to meet their retiree health care obligation. The problem stems, in part, from those companies that have not.

Since the early 1970's more than 130 million tons of contributing production has been lost. Part of this decline reflects the impact of such major companies as Pittston, A.T. Massey, North American Coal, LTV Steel, Allied Chemical, Union Carbide that have either left the coal industry or simply have ceased contributing to the Funds. In fact, these 6 companies alone accounted for approximately 40 million tons of annual production in the 1970s and early 1980s. But the vast majority of the decline is related to companies that have simply gone out of business. Simply adding the non-signatory affiliates of current contributing companies would not solve this fundamental problem. It would not replace all of the lost tonnage or, more significantly, cover future declines.

Orphan retirees and the retirees from former contributing companies that have still remained in business account for approximately 75% of the beneficiaries in the two Funds. As a result, for every dollar spent for their own retirees, current contributing companies pay approximately $3.00 for orphan retirees and for the retirees of former contributing companies. Ultimately no company can afford to contribute to the Funds simply to pay the retiree health care costs of its competitors.

The Coal Commission unanimously agreed that benefits were promised to the 120,000 beneficiaries who depend on the Funds. The costs of providing these benefits will continue to grow and unless a comprehensive solution is found the program will simply collapse. Piling higher and higher costs on fewer and fewer companies will not solve the problem.

Under an industry-wide solution all companies, including these affiliates, would be paying their fair share of the "orphan" liabilities.

Question 3

Why should current BCOA members like Consol's Bailey and Buchannon Complexes which produce about 10 million tons and Peabody's Western Mines which produce about 20 million tons and Amax's Western Mines which produce well over 20 million tons not contribute to the Funds before asking other companies or the taxpayers?

Response

According to UMWA Health and Retirement Funds data, the three companies--AMAX, Consol and Peabody--account for less than 10% of the beneficiaries in the Benefit Funds but they account for approximately 30% of the contribution income to the Benefit Funds.

In contrast, various former signatory companies (such as Pittston, North American, A.T. Massey) account for approximately 15% of the beneficiaries in the Benefit Funds but they do not contribute at all.

BCOA believes that current and former contributors should be responsible for health care benefits of their retirees and should equitably share with the rest of the industry in providing for financing the benefits of those companies that are out of business and can no longer provide for their retirees.

Examples of Former Signatory Companies
(Number of Beneficiaries)*

	1950 Benefit*	1974 Benefit*
Pittston Coal Group (and related companies)	3,408	-
LTV Corporation (and related companies)	2,581	2,090
North American Coal Company (and related companies)	879	663
Allied Chemical (and related companies)	564	143
A.T. Massey (and related companies)	512	606
Youghiogheny & Ohio Coal Company	401	485

**Includes retired miners, spouses, widows of retired miners and eligible dependents. Beneficiary classifications based on UMWA Health and Retirement Funds analysis of eligibility data for the 1950 and 1974 Benefit Fund. 1950 Benefit beneficiaries based on August 1990 eligibility data. 1974 Benefit beneficiaries based on January--February 1991 eligibility data.*

Question 4

During the term of the 1988 NBCWA, it has been estimated that nearly $1.5 billion will be saved by present BCOA signatories. Do your figures differ? If so, how? Have you calculated the signatories' non-UMWA production? If you added payments on that coal, what is the total annual savings during the term of the 1988 NBCWA?

Response

With respect to the specific charge that BCOA reduced the contribution rate and has manufactured the current crisis, the charge is false. Total contribution rates and (more significantly) total contributions to the two Benefits Funds have increased under the 1988 Contract. The current rate paid to the two Benefit Funds of $2.50/hr. is approximately 70¢ per hour higher than the rate in the 1984 Contract.

In fact, total contributions to the Benefit Funds have increased. Contributions to the Benefit Funds have averaged over $230 million during past two years. This compares with $188 million at the end of the 1984 Agreement.

The decreases in contributions that are cited (by the PBA and others) are decreases in pension contributions. Essentially the 1950 Pension Fund was on a very rapid funding schedule (we had to fund at a rapid rate because of ERISA). To meet these requirements the 1950 Pension Fund tonnage royalty was set at $1.11 per ton. This rate generated approximately $340 million per year in pension contributions.

These pension payments represented an enormous competitive disadvantage for NBCWA mines. The continuation of these enormous pension payments would have been destructive to the competitive position of NBCWA companies and the jobs of UMWA miners.

The 1950 Pension Fund achieved full-funding status in May 1987 and as a result there was no need for additional contributions in the 1988 Contract. Full-funding was achieved because of the Multi-Employer Pension Plan Amendments to ERISA. This congressional action included coal industry specific requirements, which were beyond the reach of collective bargaining, into the plans. The provisions were designed to prevent a "last mans' club" problem from undermining the pension program. This same problem is at the core of the current funding problem that threatens the Benefit Funds today.

Question 5

You have no disagreement with a transfer of excess assets from the Pension to Health Benefit plans do you? Actually, you have envisioned that for years. Knowing that, how could you possibly have negotiated terms of the 1991 reopener which immediately reduced that asset base and required virtually nothing to be paid out of the pockets of BCOA companies? Were you relying on a legislative fix and thus not worrying too much about how the existing funds were utilized?

Response

The changes in the reopener were made to reduce the funding problem of the Benefit Funds. This action was consistent with our longstanding efforts to find a comprehensive solution to the funding problems of these Funds.

The impact of the 1991 reopener was to reduce the costs immediately to the Benefit Funds by approximately $10 million per year. This was accomplished by negotiating an end to death benefit payments from the Benefit Funds and replacing this payment with a new death benefit payment from the Pension Funds. In the long run this action will save well over $100 million in payments by the Benefit Funds.

Because of the surplus funding in the 1950 Pension Fund these additional payments can be made largely from surplus investment income with only a small reduction in the assets available for transfer. In fact, the Funds' actuary estimates that the 1950 Pension Fund has a surplus of $180 million as of July 1, 1991. This amount is projected to increase by an additional $15 to $20 million annually. So that by January 1993 the surplus will be well over $200 million.

The fundamental problems of the Benefit Funds go far beyond a simple quick fix solution. The Coal Commission's outlook for the Benefit Funds projected that health benefits would increase nearly $18 million per year over the next decade reaching $300 million by 1994 and $400 million by the end of the decade. Furthermore, our analysis shows that in 1993, if just the BCOA companies are left to maintain the program, the costs will be substantially higher as thousands of additional retirees from non-BCOA companies are dumped on the 1974 Benefit Fund. These circumstances hardly reflect a problem that can be settled with a simple transfer of surplus pension assets.

Question 6

Why does BCOA seek 1978 as the reachback year; is it because in 1976 BCOA companies pulled their Western Mines and millions of tons out of the Funds?

Response

The 1978 date was recommended by the Coal Commission. This recommendation was based on the "Evergreen" clause which was added to the contract in 1978. Every company that signed the 1978 Contract or that signed subsequent contracts has agreed to continue to contribute to the Funds as long as there is an obligation to contribute.

The suggestion that the use of the 1978 date is somehow linked to the "spinoff" of Western Surface Agreement mines is incorrect. In fact, when the western mines negotiated separate agreements with the UMWA, these agreements included provisions for those companies to take the responsibility for providing for pension and health care benefits for their retirees. These responsibilities have been met by these companies. Similarly, UMWA construction workers negotiated separate "spinoff" contracts with coal mine construction companies. These contracts included provisions for those companies to take responsibility for providing for pension and health care benefits for their retirees.

In contrast to these orderly "spinoffs," various former contributing companies have simply walked away from their contractual obligations and dumped their retiree health care responsibilities on the dwindling number of companies that contribute to the Funds.

Question 7

If BCOA or the UMWA talks about the potential for a strike or labor unrest then ask the following: The use of economic pressure is fundamental to the U.S. labor laws, it does not seem right or just that the threat of a strike in a segment of American industry should bring Congress to the point of legislating a solution to what should be a collective bargaining negotiating issue. In fact, Congress is not supposed to harken to private interest, although that is precisely what BCOA and the UMWA are advocating. If you can come together with a unified position to urge that your financial obligations be thrust on others, I suggest that you can come together with a unified position to resolve the problems which you alone have created through what has heretofore been mutually satisfying collective bargaining.

Response

In our statements to the Coal Commission and in our testimony before the Subcommittee, we have tried to describe as precisely as possible the burden of the current circumstances and the simple point that unless a comprehensive solution to the fundamental problem of the benefit program can be found it will simply collapse. The few remaining contributing companies will not be able to sustain the program.

The suggestion that the funding problem of the Benefit Funds can be resolved in collective bargaining is really a proxy for the demise of the program. Collective bargaining can not solve the problem. Under labor law retiree benefits are not a mandatory subject for bargaining. In 1984 and in 1988 companies such as A.T. Massey and Pittston were ultimately able to walk away from their obligations. Compounding this, the courts have ruled that retiree health benefits are a lifetime benefit, but the same courts have ruled that the obligation to contribute expires at the end of the Labor Agreement.

We believe that given the current situation; the history of the government's involvement in the program; the legal environment; and the need to restore some semblance of a level playing field regarding retiree health benefits in the coal industry that the proposals of the Coal Commission provide for a private solution to what will otherwise become a public problem.

In this instance we have a limited amount of time to develop a comprehensive solution that can solve this problem. Those that have attempted to trivialize the problem (without offering a solution) are only buying time in the hope that the program will ultimately collapse and their long awaited escape from their retiree health care responsibilities will be complete.

SUBMITTED BY SENATOR JOHN D. ROCKEFELLER IV

BACKGROUND ON RETIRED COAL MINERS' HEALTH BENEFITS

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

September 24, 1991

JCX-18-91

INTRODUCTION

The Subcommittee on Medicare and Long-term Care of the Senate Committee on Finance has scheduled a public hearing on September 25, 1991, on health benefits of retired coal miners.

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides background regarding the United Mine Workers of America health and retirement funds, with emphasis on the health funds, including a general description of the funds, the financial status of the health funds, and the findings of the Coal Commission regarding financing of the health funds.

RETIRED COAL MINERS' HEALTH BENEFITS

United Mine Workers of America Health and Retirement Funds

The United Mine Workers of America (UMWA) health and retirement funds were established in 1974 pursuant to an agreement between the UMWA and the Bituminous Coal Operator's Association (BCOA) to provide pension and health benefits to retired coal miners. The funds have been maintained for this purpose through a series of collective bargaining agreements. The funds created in 1974 were a restructuring of the original benefit fund, which was established in 1946.

The funds consist of four different plans, each of which is funded through a separate trust. The 1950 Pension Plan provides retirement benefits to miners who retired on or before December 31, 1975, and their beneficiaries. The 1950 Benefit Plan provides health benefits for retired mine workers who receive pensions from the 1950 Pension Plan and their dependents. The 1974 Pension Plan provides retirement benefits to miners who retire after December 31, 1975, and their beneficiaries. The 1974 Benefit Plan provides medical benefits to miners who retired after 1975. It also provides benefits to miners whose last employers are no longer in

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[1] This document may be cited as follows: Joint Committee on Taxation, Background on Retired Coal Miners' Health Benefits (JCX-18-91), September 24, 1991.

business or, in some cases, no longer signatory to the National Bituminous Coal Wage Agreement (NBCWA). These miners are referred to as orphans.[2]

Financial Status of the Benefit Trusts[3]

Sources of funds

The Pension and Benefit Trusts are generally funded by contributions made by signatories to the NBCWA. The amount of required contributions is set forth in the relevant agreements. One of the matters under debate by the parties is the extent to which there are contribution obligations in addition to those imposed under the current NBCWA, with respect to both parties who are and who are not signatories to the current agreement.

One of these issues relates to the so-called guarantee clause of the NBCWA. Under this clause, certain health benefits are guaranteed, and the BCOA has the authority to increase the rate of contributions to pay for benefits. The extent to which the BCOA is required to do so is currently the subject of litigation. Last year the District Court for the District of Columbia issued preliminary injunctions requiring the BCOA to increase the contribution rate to both the 1950 and 1974 Benefit Trusts.

Another issue arises under the so-called evergreen clause. The trustees of the Trusts argue that this provision requires former signatories to the NBCWA who still operate to make contributions at the rate established by the 1988 NBCWA. This is also the subject of litigation.

Financial condition

As of July 31, 1990, the 1950 and 1974 Benefit Trusts were estimated to have a combined deficit of $114.7 million. It is estimated that these Trusts will have a combined deficit of $300 million by 1993.

A number of factors have been cited as the cause of the deficit, including factors particular to the coal industry and factors relating to health care in general. In the case of the 1974 Benefit Trust, these factors include the rising cost of health care, a declining base of contributors and an increasing beneficiary base, including the addition of so-called orphan beneficiaries, whose last employers are no longer operating or, in some cases, are no longer signatories to the current NBCWA. The appropriate way of paying for the benefits of such beneficiaries is one of the key issues regarding funding of the Benefit Trusts.

The 1950 Benefit Plan is a closed plan (because it applies only to workers who retired before 1976 and their beneficiaries) and thus is experiencing a falling, rather than increasing, benefit base. However, this Trust is currently significantly underfunded, and is likely to remain underfunded given increases in health care costs, among other factors.

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[2] These are the basic benefits provided under each plan. Certain other benefits, such as disability benefits, may also be provided.

[3] Information on the financial status of the trusts is from the Report of the Advisory Commission on Mine Workers Retiree Health Benefits (the Coal Commission Report), November 1990.

The Coal Commission Report

Overview

Former Secretary of Labor Elizabeth Dole created the Advisory Commission on Mine Workers Retiree Health Benefits (the Coal Commission) on March 12, 1990, to study the health care issues arising under the 1950 and 1974 Benefit Plans and the effect of resolving these issues on the coal industry as a whole.

The Coal Commission issued its report in November 1990. The report contains a detailed analysis of the history of the funds and their financial condition, as well as an analysis of the condition of the 1950 and 1974 Pension Trusts.

The Commission concluded that the Benefit Trusts are adequately administered and that the sources of the deficit go beyond administration. A key issue in addressing funding of the Trusts is how to provide health benefits to orphan retirees. The Commission agreed that the retired miners are entitled to the health care benefits that were promised and that this promise should be honored. Another issue, controlling the cost of health care, is not unique to the coal industry plans, but is a factor leading to the financial problems of the Benefit Trusts. The Benefit Plans were designed to provide generous benefits, and provide essentially first-dollar medical coverage, with no deductibles or copayments.

The Commission agreed on certain actions that should be taken in connection with the funding of the Benefit Trusts, but was unable to reach a consensus on whether the entire industry should contribute to the funding of the benefits for the orphan retirees. Thus, the Commission presented two alternative approaches for a possible long-term solution to this problem. The Commission acknowledged that modifications to either of these solutions may be appropriate and that other plans could also be developed. The Commission's recommendations are summarized below.

Items of consensus

There was a consensus among the Commission that the following actions should be taken.

(1) Contribution obligations.--The Commission agreed that contribution obligations should be imposed by statute on former signatories to the NBCWA, possibly reaching back to the signatory class of 1978. A "controlled group" concept would be pursued, i.e., the obligation might be imposed on all related employers or employers under common control.

(2) Withdrawal liability.--Withdrawal liability should be imposed prospectively on employers to prevent shifting of liability for retirees to employers who have no relationship with the retiree.

(3) Transfer of pension surplus.--The 1950 Pension Trust was estimated to have a surplus of $237 million as of July 1, 1990. The Commission agreed that the surplus should be transferred as part of an overall financing package to fund the deficit in the 1950 and 1974 Benefit Trusts. During a reopening of the bargaining agreement in February 1991, pension benefits were increased under the 1950 Pension Plan. This increase in benefits would reduce the surplus below the $237 million reported for July 1990.

(4) Cost containment and managed care.--Cost containment and managed care measures should be used to control costs. The report contains an outline of such measures.

(5) Re-enrollment of beneficiaries.--Comprehensive certification of beneficiaries is recommended to ensure that benefits are provided only to eligible recipients.

(6) Long-term financing.--Any residual financing requirement should be limited to the smallest level practical. Any obligation imposed on those with no connection to the Benefit Trusts should be at the lowest practical level after those with a contractual or historic connection to the Trusts have contributed, after any pension surplus has been used appropriately, and after managed care and cost containment measures have been implemented.

(7) Flexibility in determining dimensions of the contribution base.--Any broadened contribution obligation should be adopted only after further consideration. Assessments could be calculated based on any number of factors, including hours worked, tons of coal mined, tons of coal imported, BTU content, and past connection with the Trusts. The obligation need not be the same for all operators or all coal.

(8) Sunset provision on financing structure.--A provision which would reevaluate the new health benefits delivery system and financing structure after it has been in effect for some time would be appropriate.

(9) Limited applicability of proposed solutions.--The proposed solutions are not intended as permanent solutions for the coal industry nor are they intended for any other industry.

(10) Extension beyond 1993.--Any financing package must extend beyond 1993. The current NBCWA expires on January 31, 1993.

Funding for orphan retirees

The Commission did not reach consensus on the appropriate method of financing benefits for orphan retirees. Some Commissioners thought that the entire coal industry should provide financing, while others thought the obligation should be limited to current and past signatories to the NBCWA.

Under the industry-wide approach, a Federal Coal Industry Retiree Benefit Fund would be created by statute to provide benefits to miners whose last employer is out of business. This would include both current and future orphan retirees. The fund would be financed by an industry fee applied to all employers in the coal business, including a fee on imported coal.

The alternative approach would collect additional revenues from a broadened base of current and past signatories to the NBCWA. Past obligations would be defined as those arising from firms once signatory who may be identified through a chain of succession to a current operator. The Commission Report contains a more detailed description of this approach.

Some persons disagree with both of the approaches advanced by the Coal Commission, and contend that the current signatories to the NBCWA are capable of paying benefits promised under the Benefit Plans.

United States Senate

WASHINGTON, DC 20510

November 20, 1989

The Honorable John D. Rockefeller IV
United States Senate
Washington, D.C. 20510

Dear Jay,

With the conclusion of the first session of the 101st Congress, we want to comment on some important unfinished legislative business on which you have played a leading role in the Senate. We refer to S. 1708, your bill to restore the financial stability of the health benefit trust funds for retired coal miners. We support your efforts on this legislation.

We understand that the funds face serious financial difficulties. This is a matter of national importance and concern. Pensioners and their families across the country rely on the funds for health care and the funds are important to the stability of the coal industry.

We recognize that the Senate could not act on your bill, S. 1708, in the closing days of this session. Because of the extraordinary importance of the stability of the health benefit funds for retired coal miners, we want you to know that we are determined to see the issue addressed in the new session of Congress. We intend to work with you to address the issue, and we will find a legislative vehicle to bring the issue to the floor early in the new year.

We look forward to working with you to address this very important matter.

Sincerely,

George J. Mitchell

Lloyd Bentsen

PREPARED STATEMENT OF RICHARD L. TRUMKA

Mr. Chairman and members of the subcommittee it is an honor to appear before you today to discuss the crisis in retiree health care in the U.S. coal industry. I appear before you as the representative of over 120,000 retired miners and their dependents whose health benefits are in jeopardy. These beneficiaries have worked all their lives to provide America with energy, often in dangerous and unhealthful conditions that most Americans would find appalling. Now they are in the twilight of their lives. While they have received a promise of life-time benefits, the ability to finance that promise is eroding because of a lack of enforceable legal underpinnings. As you may recall, coal miner retiree health care was the subject of congressional legislation in the previous Congress and was examined by a Federal Commission appointed by the U.S. Secretary of Labor in 1990. The Commission issued its report late last year and made several recommendations that will require action by Congress.

To briefly state the UMWA's position, it is absolutely essential for Congress to take expeditious action on the Commission's recommendations to avoid a disastrous cut-off of retiree benefits in the near future. Collective bargaining is failing as a means to protect the retired miners. The recommendations of the Dole Commission represent a fair and equitable solution to a problem that can no longer be resolved in private collective bargaining. The consequences of non-action may well be a ruinous confrontation at the expiration of the current national bituminous coal wage agreement (NBCWA) that will besmirch the reputation of the U.S. coal industry and, most importantly, leave over 120,000 retirees and their dependents without health benefits at the most fragile point in their lives.

Before going into detail about the Commission's report and recommendations, it may be beneficial to review briefly the history of retiree health care in the coal industry and the circumstances that led to the creation of the Dole Commission.

THE FEDERAL GOVERNMENT AND THE UMWA FUNDS

The UMWA health and retirement funds are a unique institution in the history of American industrial and labor relations. They were created in the White House some 45 years ago in an extraordinary contract between the Federal Government and the United Mine Workers of America. This occurred at a time of government seizure of the Nation's coal mines pursuant to the Smith-Connally Act, also known as the War Labor Disputes Act.

Throughout the years of World War II, a top priority of the UMWA in negotiations with the coal industry was the elimination of the company doctor system that prevailed in the coal fields and the creation of a welfare and retirement fund. Because of concerns about coal production necessary for the war effort, the union did not push the proposal to the point of long strikes during the war. When the war ended, however, UMWA negotiators were intent on achieving their long-standing goals. As the National Bituminous Wage Conference convened in 1946, a health and welfare fund was again placed on the table as the union's top priority. The coal operators rejected the proposal, as they had in the past, and the miners walked off the job on April 1, 1946. Negotiations under the auspices of the U.S. Department of Labor continued throughout April. With no progress in sight, President Truman summoned the chief negotiators for the UMWA and the coal operators to the White House for a conference. The stalemate appeared to break when the White House announced that the operators had agreed in principle to a health and welfare fund. Despite the announcement by the White House, however, the operators would not agree to the creation of a fund. Another conference with the President at the White House failed to resolve the differences and the negotiations again collapsed.

Faced with the prospect of a long strike, President Truman signed an executive order directing the Secretary of the Interior to take possession of all bituminous mines in the country and to negotiate with the workers "appropriate changes in the terms and conditions of employment." Secretary of the Interior Julius Krug seized the mines the following day and ordered the miners to return to work. The miners refused to end the strike and negotiations between the UMWA and the Federal Government continued, first at the Interior Department and then at the White House with President Truman participating in several conferences.

After a week of extraordinary negotiations, the historic Krug-Lewis agreement was announced. The contract, signed in the Oval Office with the President in attendance, ended the strike and began a long involvement and interest of the Federal Government in the provision of retiree health care in the coal industry.

The role of the Federal Government did not end with the creation of the UMWA health and retirement funds; the functions of the fund and the programs it would

implement were shaped by the Federal Government. The Krug-Lewis agreement established a Federal Commission to undertake "a comprehensive survey and study of the hospital and medical facilities, medical treatment, sanitary, and housing conditions in coal mining areas." The expressed purpose was to determine what improvements were necessary to bring health care in the coal field communities into conformity with "recognized American standards." The Secretary chose Rear Admiral Joel T. Boone of the United States Navy medical corps to conduct the study. Medical specialists from the Federal Government spent nearly a year surveying the conditions in the coal fields. In its historic report—*A Medical Survey of the Bituminous Coal Industry*—the Boone Commission found that, in coal field communities "provisions for health range from excellent . . . to very poor, their tolerance a disgrace to a nation to which the world looks for pattern and guidance." The survey team discovered that "three-fourths of the hospitals are inadequate with regard to one or more of the following: surgical rooms, delivery rooms, labor rooms, nurseries and x-ray facilities." The study concluded that "the present practice of medicine in the coal fields on a contract basis cannot be supported. They are synonymous with many abuses. They are undesirable and in many instances deplorable." The Boone report became a guiding force and a touchstone for the UMWA funds as it attempted to accomplish its mission. When the UMWA funds got into full operation, many of its key decision makers came from the U.S. public health service and the Social Security Administration.

Prior to the government seizure and during the government negotiations, the coal operators took the position that they would not agree to the creation of a health and welfare fund; they asserted that this was a public problem and should be addressed by Congress, not in collective bargaining. When the mines were returned to private control one of the understandings was that the parties would continue the welfare and retirement fund that the government had agreed to and that was such a point of contention in the 1946 negotiations.

Unfortunately, the problems did not end immediately, and neither did the role of the Federal Government. However, this time it would be the legislative branch that would intervene to assure that the promise of the Krug-Lewis agreement would be fulfilled. The neutral trustee appointed by the Secretary had resigned and the UMWA and operator trustees could not agree on a formula for the pension program. Because of their distrust, they also could not agree on a new neutral trustee to break the deadlock—each feared that acceptance of a neutral trustee suggested by the other would mean, in reality, acquiescence to the other's pension formula. The continuing failure to initiate the pension payments caused miners to walk out of the mines once again in march of 1948. Recognizing that the trustees were hopelessly deadlocked, the Speaker of the U.S. House of Representatives, Joseph Martin, asked the UMWA and coal industry trustees to a meeting in the U.S. Capitol. Speaker Martin suggested Senator Styles Bridges of New Hampshire as a neutral trustee and both sides accepted his suggestion. With the appointment of Senator Bridges, the pension program began paying retirement benefits and the miners returned to work.

After several years of nagging disputes after the Krug-Lewis agreement, the parties settled their differences in 1950 by signing an agreement that laid the foundation for decades of unprecedented labor-management cooperation. Many observers believe that the NBCWA of 1950 permitted the coal industry to survive in a time of fierce inter-fuel competition. In other words, the retirees who are in jeopardy today made it possible for the coal industry to survive its greatest challenge. What they got in exchange was a promise of life-time health care benefits for their families when they retired. Today that promise—which started in the White House—is in jeopardy of being broken.

THE GENESIS OF THE DOLE COMMISSION

The Dole Commission arose out of the settlement of the UMWA strike against the Pittston Company. As you will recall, Mr. Chairman, Pittston withdrew from the Bituminous Coal Operators' Association (BCOA) in 1987 and indicated that it wished to bargain separately with the union. When the 1984 contract expired in February of 1988, the miners at Pittston continued to work under the terms and conditions of the expired agreement while negotiations for a successor agreement ensued. Pittston, however, took the position that it was no longer responsible for retiree health benefits; it ceased making payments to the UMWA health and retirement funds and terminated benefits to approximately 1,700 retirees for whom Pittston directly paid health care benefits. This was one of the primary issues in the dispute, and certainly was the key issue that galvanized the emotions of the miners and their supporters. The miners eventually began an unfair labor practice strike against Pittston in

April of 1989. At one point, coal miners throughout the United States laid down their tools in protest of the treatment of Pittston strikers. Primarily as a result of the retiree health care issue, world-wide attention was focused on the Pittston strike. Thousands of UMWA supporters, including labor, religious and civil rights leaders, were arrested in peaceful civil resistance to Pittston's cut-off of health benefits.

U.S. Secretary of Labor Elizabeth Dole became involved in the Pittston strike in the fall of 1989 when she visited the coal fields of Virginia and met with striking miners and retirees who had lost health care benefits. Upon her return to Washington, she met with both sides and announced that she would appoint a "super mediator" to attempt to resolve the dispute. She chose former Secretary of Labor Bill Usery to take on the task. During the subsequent negotiations it became apparent to all of us that the problems related to the funds could no longer be resolved satisfactorily in collective bargaining. While we eventually reached an agreement with Pittston, we did not satisfactorily resolve the underlying issues related to the UMWA health and retirement funds. In recognition of this fact, Secretary Dole announced her intention to appoint a Federal Commission to examine issues related to retiree health care in the coal industry. In announcing the creation of the Commission, Secretary Dole said "the issue of health care benefits for retirees affects the entire industry . . . a comprehensive, industrywide solution is desperately needed."

What the Dole Commission Found

The Dole Commission began its work in the spring of 1990 with a directive from the Secretary to complete its work in six months. The Commission's charter required the members to "focus on issues arising from the 1950 and 1974 UMWA benefits plans and the effect of resolving those issues on the coal industry as a whole." The members chosen to sit on the Commission represented a broad range of expertise and interests, including coal, health insurance, law, medicine, academia and government. They came to the Commission with diverse interests and philosophies. After six months of meetings, hearings and requests for public comment the Commission issued its report in November of 1990, calling for Federal legislation to assure the long-term financial solvency of the UMWA funds and the continuation of retiree health benefits in the coal industry. The Commission made a number of recommendations in its report, but the basis for all of the recommendations can be found in the introduction to the Commission report:

> **Retired coal miners have legitimate expectations of health care benefits for life; That is the promise they received during their working lives and that is how they planned their retirement years. That commitment should be honored.**

That is a powerful conclusion that should frame the congressional debate on this issue. It echoes what the courts have said and what miners have always believed—that upon retirement they are entitled to health care for life. Once the Commission came to that important conclusion, the only question was how to best ensure that the commitment would, in fact, be honored. The Commission reached a consensus on several important points:

- A statutory obligation to contribute should be imposed on current and former signatories to the National Bituminous Coal Wage Agreement.
- Mechanisms should be enacted to prevent future dumping of retiree health obligations.
- The parties should be permitted to utilize excess pension assets to reduce health care deficits.
- State-of-the-art managed care techniques should be implemented to reduce costs without the loss of benefits.
- Any financing package must extend beyond 1993.

The principal point on which the Commission did not reach consensus was whether the entire coal industry should be required to contribute to the resolution of the problem of orphan retirees. A majority of Commission members supported the enactment of a small health care fee on all coal producers to pay for retirees who have no company to provide such benefits. Some commissioners, however, felt that only current and past signatories to the NBCWA should be held responsible. To implement its recommendations, the majority proposed that:

- Congress should authorize the creation of a new entity called the coal industry retiree benefit fund to provide health care to orphan retirees.
- A new UMWA 1991 benefit fund should be created to provide benefits to retirees of current and past signatories of the NBCWA that remain in business.

WHAT CONGRESS SHOULD DO NOW

The UMWA urges this Committee, the Congress and the President to join together to resolve this problem before the beneficiaries are irrevocably harmed by a continuation of the current crisis. We fully support the recommendations of the majority of the Dole Commission. We believe that every coal company should be required to pay for the cost of its retirees' health care. Virtually every company with which we bargain maintains it is willing to pay the cost of those who worked for them. However, virtually every one also maintains that is unwilling to pay the cost of orphan retirees. To resolve this problem, where we cannot identify the entity for whom the retiree worked, or where that entity no longer exists, we believe that the cost of providing those necessary, life-saving benefits should be the responsibility of the entire coal industry.

Why should the entire coal industry be held responsible for orphan retirees?

This is not the first instance where Congress has looked to today's coal industry to resolve a problem left over from yesterday's coal industry. When Congress adopted the abandoned mine lands provision of the Surface Mining Act, it logically was concluding that the coal industry of today is the successor of the coal industry of the past. It designed a system that would allocate responsibilities and costs prospectively on individual employers, but the costs of the past would be a joint industry responsibility. Congress came to the same logical conclusion when it required the entire industry to assume the obligation of providing black lung benefits to miners for whom no responsible employer could be identified. The same principle should be applied in this instance, especially since these beneficiaries were part of an industry-wide health plan that was initiated by the Federal Government. When orphans—whether it be lands, black lung victims or retired miners—are supported by the entire industry, the burden of the past and its cost is tenable; when that responsibility is concentrated on a shrinking segment of an industry, however, it reaches a point where the remaining signatories will seek to walk away from that historical legacy.

Why can't this problem be resolved in collective bargaining?

The NBCWA contains a commitment to those who worked a lifetime in the coal mines. In essence the Federal Government, the coal industry and the union have promised that "in your old age, after facing hazards to your life and health, you will have health care for the remainder of your life and your survivors will have health care upon your death." The UMWA has attempted with all its resources to enforce this contractual and moral commitment. unfortunately, court decisions have misconstrued the NBCWA in a way that has fueled employer efforts to evade their responsibilities to deliver lifetime health care benefits to their retired employees. In a series of decisions, the Fourth Circuit Court of Appeals correctly acknowledged the collective bargaining agreement's promise to deliver health care for life, but drew a road map for employers to avoid backing up that promise financially.

In two cases involving retired miners from Royal Coal Company, whose health care benefits were abruptly cancelled, the Fourth Circuit, conceding that Royal's pensioners were entitled to health care for life, imposed the concurrent financial obligation to finance those benefits on the UMWA 1974 benefit plan, and thus the remaining signatory operators. The court held that, although the benefits were for life, the operator's obligation to its pensioners expired with the contract. By the device of refusing to sign a successor agreement with the union, the employer could legally dump its pensioners on the 1974 benefit plan.

After the *royal* cases, certain employers had case law sanction for dumping responsibility for their retirees on other employers. these misconstructions of the agreement set the stage for Pittston and others to push the UMWA to the wall in negotiations and have placed the UMWA in an untenable position. These decisions have created a climate which has made employers willing to destroy the union in order to dump their retirees. In that adverse climate, the union could only attempt to keep employers in the plans and expended all its resources to do so. To protect the retirees, the UMWA has walked into the direct path of this storm, facing injunctions, jailings, multi-million dollar fines and a hostile national labor relations board. We have not always completely prevailed in this harsh climate. No one can say, however, that we have not risked all to try—our members have gone without wages, our supporters have gone to jail and our retirees have gone without benefits in an effort to preserve the promise that was made in the white house 45 years ago.

With erroneous court decisions, an indifferent NLRB, corporate shell games, employers willing to hold retirees hostage and overactive courts that are quick to issue labor injunctions whenever workers conduct an effective strike, collective bargain-

ing for retiree health care simply is not working. The original promise is being evaded, with courts writing the script for employers to evade their obligations. Congress, as it did in enacting the multi-employer pension plan amendments, must act to override these erroneous court decisions and to enforce the promise of lifetime health care for retired miners.

Mr. Chairman, the retired miners are entitled to the benefits that were promised them. In order to ensure that promise, they are willing to be a responsible part of the solution. Although they don't owe a dime of the current deficits in the UMWA benefit plans, they will contribute significant amounts of their excess pension assets—monies that legally belong to them—to eliminate those deficits and provide start-up capital to the new orphan corporation recommended by the Dole Commission. They are also willing to participate aggressively in state-of-the-art managed care initiatives that are designed to improve quality and lower the cost of health care.

What the retirees ask in return is that the coal industry also act responsibly. Every company still in existence with assets to pay for the promise should step forward and say it is willing to pay for the cost of providing health care to its retirees. Where we cannot identify the last employer of the retiree, the coal industry should jointly share the cost of providing the promised benefits. There is no way for private parties to achieve these ends. We need congressional intervention to fulfill the promise that began so many years ago in the oval office.

The UMWA believes that passage of the Dole Commission recommendations will result in a permanent and fair solution to the problem of retiree health care in the coal industry. Retirees will be secure in the knowledge that the promise will be kept, and that they and their families will never again be held hostage to a system from which they are—by law—disenfranchised. Employers will know that they must live up to the promises made to their retired employees and that they will not be required to subsidize competitors who remain in business. The recommendations represent a sound solution to a problem that will only get worse over time if we do not act. Let us act responsibly now, before the crisis breaks full upon us and we are forced to pick up the pieces of a shattered health care structure and a permanently damaged coal industry.

RESPONSES OF MR. TRUMKA TO QUESTIONS SUBMITTED BY SENATOR DAVID L. BOREN

Question No. 1. The 1988 NBCWA resulted in a reduction of payments to the Funds of about 50% from prior agreements. The UHWA blames BCOA's knowing agreement to a new contribution formula and its failure to honor its guarantee commitment for their current underfunding, does it not?

Answer. The 1988 NBCWA did *not* reduce contributions to the retiree benefit plans. Health care contributions are up about 40% from the previous contract. The UMWA did believe that the rates would need to be increased under the guarantee clause, something that the BCOA has done on several occasions with regard to both the 1974 and 1950 Benefit Funds. That issue continues to be litigated. However, focus on the deficits completely misses the point. We are not asking *anyone* else to pay for the accumulated deficits—that will be accomplished by utilizing excess pension assets in the over-funded UMWA 1950 Pension Plan.

Question No. 2. What did the UMWA gain in 1988 bargaining in exchange for deliberately and knowingly allowing BCOA to underfund these retiree plans?

Answer. The UMWA did not "deliberately and knowingly" allow BCOA to underfund the UMWA 1950 and 1974 Benefit Plans. We did believe that the rates would have to be adjusted upward under the guarantee clause, as they have been. What the UMWA got was an agreement that allowed coal to be produced to supply the nation's needs.

Question No. 3. Do you know the amount of signatory tonnage and productivity levels for 1990? How about 1980? The tonnage has indeed remained fairly constant at 300 million tons, hasn't it? Production has escalated. Thus, a change from a tonnage to hours contribution formula would necessarily result in lower overall payments. Isn't this the primary contributor to the deficits?

Answer. NBCWA production in 1980 was approximately 370 million tons. In 1990, production under the National Agreement had dropped to a about 300 million tons, a decline of 19% in a decade. The contribution method is irrelevant to the trust funds so long as sufficient income is generated. The UMWA believes that the guarantee clause is designed to ensure sufficient income. The method may be of importance to individual employers depending on their productivity rates, but it is irrelevant to the trusts as long as a guarantee is in place.

Again, I would point out that the deficits are not the underlying problem, but merely a symptom of a much more serious problem—how to continue to provide benefits to 120,000 elderly Americans who were promised lifetime health benefits. We have the money to pay off the deficits if Congress will allow us to use it. We cannot ensure a future funding base without Congressional intervention because federal courts have issued contradictory rulings that provide a road map for employers to dump their pensioners and foist the cost onto a shrinking group of employers who want to act responsibly.

Question No. 4. What is the UMWA's understanding of the guarantee clause? Have the BCOA companies abided by this contractual commitment? What has the UMWA done to force follow through by BCOA?

Answer. The guarantee means what it says, benefits are fully guaranteed even if it means increasing the rate of contribution. The BCOA effectuated the guarantee on several occasions during the term of the 1988 NBCWA, but has refused to increase the rates further. The UMWA-appointed trustees voted to bring legal action against the BCOA to enforce the guarantee. A temporary injunction increased the rates in late-1990 and the UMWA was able to convince the BCOA to extend the increased rates beyond the expiration of the injunction. The issue continues in litigation and the UMWA has moved to intervene in the case. The motion is pending.

Question No. 5. Why should Congress provide an antitrust shield to BCOA and the UMWA, imposing health costs on BCOA's competitors?

Answer. We are not asking Congress to impose BCOA's costs on BCOA's competitors. In fact, NBCWA companies are currently subsidizing the retiree costs of many of their competitors who have dumped thousands of retirees into the UMWA 1974 Benefit Fund and continue to compete in the coal industry. Under the legislation recommended by the Pole Commission and subsequently introduced by Senator Rockefeller, every coal industry employer still in existence would be required to pay the full cost of its retirees. This would include current contributing signatories and those companies that have walked away from their pensioner obligations. The orphan population cannot be identified with an existing employer; they worked for thousands of companies that no longer exist. We agree with the Pole Commission that the orphans are an industry-wide problem that requires an industry-wide solution.

Question No. 6. Regarding government involvement:

(a) You aren't saying, are you, that the federal government ever promised UMWA miners that they would have 100% lifetime health care benefits after they retired?

(b) In fact, isn't the 1974 labor agreement the first time that any UMWA contract even referred to lifetime retiree health care?

Answer. The Krug-Lewis agreement, signed in the White House under the watchful eye of President Truman, created the UMWA Funds. The trustees of that fund, including the federal government's trustee, began the process of implementing medical and hospital care for retirees during the period of government seizure of the coal industry, as was intended in the negotiations between the coal miners and the government. A federal commission (the Boone Commission) helped shape the programs and the focus of the Funds in its early years. When the government agreed to the creation of a health and retirement fund, it was doing so for the entire coal industry. The industry reluctantly agreed to continue the program after the mines were returned to private ownership. The Supreme Court of the United States recognized that this was an industry-wide fund and represented a long-term commitment to retirees (see Lewis v. Benedict). When the Krug-Lewis agreement was signed, over 80% of the coal industry was involved in the financing mechanism; today the financing for an industry-wide fund falls on about 30% of the industry. The orphans, who worked for many coal companies (union and non-union) throughout the industry, are an historic legacy of that federal government/industry-wide commitment. The entire industry should contribute to this industry problem.

It is true that the 1974 agreement was the first agreement to explicitly use the words "for life." However, this was always the understanding of the miners who worked in the industry. The Pole Commission examined this question and found that *"retired miners have legitimate expectations of health care benefits for life; that a is the promise they received during their working lives and that is how they planned their retirement—years"* (emphasis added). The federal courts, the Supreme Court and, most recently, the Pole Commission all agree that the promise was for life.

Question No. 7. Isn't it fair to say that you and the members of your union have always viewed comprehensive health care coverage for working and retired miners as one of your highest priorities?

(a) In view of escalating health care costs and the general alarm that is being sounded by virtually all employers in this regard, are you prepared to cooperate with coal industry employers to introduce significant changes such as co-insurance and managed care into UMWA Plans?

Answer. The UMWA has been concerned about health care costs for many years. The 1984 NBCWA instituted serious cost containment efforts by the UMWA Funds. Among the Funds cost containment initiatives are:

- Accredited and participating hospitals
- Negotiated hospital discounts
- Hospital pre-certification
- Concurrent review
- Discharge planning
- Retroactive hospital bill auditing
- Cooperating physician program
- Select surgeon program
- Model treatment program
- Computerized utilization review
- Cooperating pharmacy program
- Generic drug program
- Chronic drug mailout program
- Drug utilization review
- Pharmacy audit program
- Catastrophic case management
- Beneficiary communications program

These and other programs have reduced the rate of growth in health care costs. We are willing to continue to seek ways to provide quality care at a lower cost, and S. 1989 does that. Where we differ is with regard to who should be the focus of cost containment efforts. We believe that the focus must be on the provider community. We do not support cost shifting efforts that are disguised as cost containment. The Dole Commission looked at the health care plans of similar retired industrial workers and concluded that, in light of their meager pension incomes, retired miners and widows are financially incapable of bearing the expense of efforts to shift costs to them. That will not solve the problem of escalating costs. The only real way to provide necessary care at a lower cost is for the UMWA Funds, the UMWA and the coal industry to work together to control the providers.

Question No. 8. What is your response to these ideas:

(a) Imposing an obligation on BCOA and all other current signatories to bargain with the Union in the future about the individuals who are left in the orphan" plan?

(b) Requiring current signatories and their affiliates and control groups to contribute to the "orphan" plan on all tons they produce irrespective of whether it is covered by a UMWA labor agreement?

(c) Transferring excess assets from the 1950 Pension Plan to the "orphan" plan?

Answer. The ideas you proffer are embodied in the Dole Commission report and in S. 1989. All signatory companies will be fully responsible for their own retirees and will share in the cost of providing for the orphans. Operations of signatory companies that are not covered currently by a collective bargaining agreement will also participate in the financing of the orphan problem, through the industry-wide fee. The legislation will permit the transfer of excess assets from the 1950 Pension Fund to eliminate all accumulated deficits in the Benefit Plans. It also provides for the transfer of $50 million from the 1950 Pension Fund to the statutorily-created Coal Industry Retiree Benefit Fund as start-up capital.

Question No. 9. If a reallocation of contributions had been made from the pension to benefit plans when the 1950 Pension Plan became fully funded in 1987, there would not be a deficit at all in the benefit plans, isn't that true? In fact, do you know the amount by which the benefit plans would now be overfunded? Yet you did not insist on this reallocation.

Answer. In effect, the legislation will accomplish such a reallocation. S. 1989 contemplates a transfer of excess pension assets to retire all accumulated deficits and to provide $50 million as start-up capital to the Orphan Corporation. At the risk of belaboring the point, the deficits are not the fundamental problem. We will take care of the deficits as soon as Congress grants us the authorization to do so. No one is being asked toe for the deficits except the UMWA retirees. We are asking for Congress to ensure that the cost of the orphans is equitably distributed among the entire industry, as it should be.

Question No. 10. If BCOA or the UMWA talks about the potential for a strike or labor unrest then ask the following: The use of economic pressure is fundamental to the U.S. labor laws, it does not seem right or just that the threat of a strike in a segment of American industry should bring Congress to the point of legislating a solution to what should be a collective bargaining negotiation issue. In fact, Congress is not supposed to harken to private interest, although that is precisely what BCOA and the UMWA are advocating. If you can come together with a unified position to urge that your financial obligations be thrust on others, I suggest that you can come together with a unified position to resolve the problems which you alone have crafted through what has heretofore been mutually satisfying collective bargaining.

Answer. Collective bargaining cannot resolve this problem. Secretary Elizabeth Dole came to that conclusion when she intervened in the Pittston strike; that is why she appointed a blue-ribbon federal commission to recommend a comprehensive solution. Former Secretary of Labor William Usery, one of the premier labor mediators in the country, has stated repeatedly that the issue of retiree health care in the coal industry is too big for the bargaining table. Finally, the Dole Commission concluded that collective bargaining is no longer appropriate as a mechanism to protect the retirees in the coal industry.

I agree with you that this "should be a collective bargaining negotiation issue," but the U.S. Supreme Court has ruled that retiree benefits are not a mandatory subject of bargaining. The Union cannot insist to impasse that an employer negotiate over retirees. Further, federal courts have written a road map for employers to walk away from their retirees and dump their costs on others. In many cases, the parties who now insist that this can be resolved in collective bargaining are the very same people who refused to bargain over the retirees when they had the opportunity. Collective bargaining cannot work when companies do not exist, or when employers exercise a legal right to refuse to bargain over retirees. It is a cynical and hypocritical ruse to argue that collective bargaining can fulfill the promise that was made to these retirees in the White House.

PREPARED STATEMENT OF W. J. USERY, JR.

Mr. Chairman and Members of the Subcommittee. My name is Bill Usery. I am currently president of a national labor-relations consulting firm, located here in Washington, D.C. My company, Bill Usery Associates, has spent the last 14 years promoting sound, responsible, and cooperative labor relations, both in the United States and abroad. Our clients have included some of the largest and most important unionized employers in the world.

As some of you may know, prior to creating this firm, I served in a number of policy-making positions in the Federal Government. I was Assistant Secretary of Labor for Labor-Management Relations from 1969 to 1973, and National Director of the Federal Mediation and Conciliation Service from 1973 to 1976. I served as Special Assistant to the President for Labor-Management Relations under Presidents Nixon and Ford. Finally, from 1976 to 1977, I held the office of Secretary of Labor. During my period of government service, and since then, I have tried to always frame my actions and recommendations in the field of labor relations in the broadest possible terms—the good of the country as a whole—rather than simply as a reflection of the narrow interests of one "side" or the other.

It was in this spirit that I agreed to serve as chairman of the Coal Commission, appointed last year by then-Secretary of Labor Elizabeth Dole, to study "health care issues arising from the 1950 and 1974 UMWA Benefit Plans and the effects of resolving these issues on the coal industry as a whole." I knew that I was stepping into a minefield, but I reluctantly accepted this role, at Secretary Dole's urging, because I believed that the U.S. government had a responsibility to deal with this very serious issue, and the Secretary had convinced me that they sincerely wanted to do something.

The Commission completed its report late last year, and I am very pleased with it. In keeping with the understanding I had with Secretary Dole when I assumed the role of chairman, I would be the first to admit that the Commission's work is only the beginning of what will undoubtedly be a long and difficult task. The issue of health care for retirees in the coal industry is only one facet of the problem we are all facing, as a Nation: how to make sure all our citizens get decent and affordable health care.

I'm not going to try to delve into all the complexities of national health care policy. There are certainly many people here who are better qualified than me to do that.

Instead, I want to concentrate on a subject on which I *do* consider myself an expert: **the role of free collective bargaining in resolving this crisis.**

I approach these hearings as one who has spent virtually his entire working life promoting our national policy of collective bargaining between companies and unions as the best way to reduce industrial conflict and solve workplace problems. In other circumstances, I would probably feel confident in saying that free collective bargaining alone can lead us out of the health care mess the coal industry faces today.

But that would be a disservice to the industry, to its workers and unions, and to the country. **We must face reality**, as hard as that may be. No matter how conscientiously they try, no matter how much good will they bring to the process, **companies and unions simply can't do it alone.** It is unsettling for me to admit this, but I believe that, in this case, collective bargaining has reached the absolute limit of its competence to address the problem. The Federal Government, which was one of the parties to the creation of the existing health care apparatus in the coal industry, must take action—through legislation and executive action, if necessary,—to prevent widespread human dislocation and misery.

Let me provide a little background for the concerns I've just expressed. Although the need for this commission arose years ago, its formation in 1990 was precipitated by a long and bitter strike by UMWA miners at the Pittston Company mines in West Virginia, Virginia, and Kentucky. Secretary Dole asked me to use my knowledge and experience in the field of mediation to bring an end to that very serious and sometimes violent dispute. She did so after long and careful consideration of the issues, and after having visited the communities involved in the strike and meeting with the leaders of the UMWA and Pittston. To understand the mine-worker retiree health care issue fully, I think it is of value to re-examine briefly that strike.

Pittston had been a part of national bargaining in the coal industry since the inception of the UMWA Health and Retirement Funds. In 1987, the company concluded that it was no longer in its interest, for sound business reasons, to remain a member of the Bituminous Coal Operators' Association (BCOA). As a number of other companies have done, Pittston withdrew from that group, choosing to bargain individually with the Union. There were a number of issues that separated the two parties, but the most important and contentious issue was how to pay for retiree health care.

As part of its decision to bargain individually, the company ceased paying into the multi-employer UMWA Funds. These Funds provide health benefits to current and retired miners and their dependents. Since 1978, Pittston, like virtually every other company in the coal industry, has had its own retiree health plan, which covers post-1978 retirees. The company was willing to bargain over the terms and conditions of that plan. It was also willing to bargain over benefits for those who had worked for the company, but had retired prior to 1978, and were covered by the multi-employer Fund.

However, the most critical point in the negotiations was the proper allocation of the burden of financing health care for the so-called "orphans" of the UMWA Funds. (By "orphans," I mean those people who retired prior to 1978 and whose former companies, for reasons such as bankruptcy, merger, or refusal to pay, either no longer exist or are no longer contributing to the funds.)

The UMWA argued that coal companies have a historical obligation, based on collective agreements negotiated 45 years ago, to pay for those benefits, even if the specific workers involved never actually worked for the contributing company. If the union agreed to carve out the retirees who worked for a particular company, thus allowing each company to "take care of its own," the result would be a large group of retired beneficiaries for whom no company could be found to pay for benefits.

There was obviously no easy way out of this disagreement. The fact is that **both sides were right.** No company should be penalized because its competitors went out of business or failed to live up to their obligations. On the other hand, workers who relied on promises of retirement benefits, negotiated freely by their companies and unions, should have those promises fulfilled. Unfortunately, in this case, the disagreement led to a costly strike.

In the end, although we managed to work out an agreement on these issues, so that the miners went back to work, the trustees of the Funds were not satisfied that the agreement met the actuarial requirements for continuing the Funds' operations on a sound basis. Thus, although the system of collective bargaining seemed to work for the two parties in this case, it would be inaccurate to say that the problem was

truly resolved. I believe we must think in broader (and more realistic) terms about the potential effectiveness of collective bargaining in future disputes on this issue.

As I tried to convey earlier, Mr. Chairman, I don't think there is anyone who believes as fervently in, or has worked as hard to promote, the process of collective bargaining in the United States, as Bill Usery. I have done my best to support the will of Congress, as it was written into our basic labor laws over 50 years ago. That legislation institutionalized collective bargaining as our national policy for handling industrial disputes. Although many people these days seem to disagree with this approach, I believe collective bargaining is essential in a free democratic society.

However, in recent years, my mediation activities, across a variety of companies and industries, have convinced me that health care is an especially complex and troublesome issue. As I said, I have been forced to the conclusion that, under certain circumstances, collective bargaining may not be capable of resolving the very difficult issue of providing and paying for health care benefits. Although this is a problem throughout the economy, it is dramatically evident in coal mining, which has to work in an environment of great complexity and rapid change.

When the retiree health care fund was created in the 1940s, it was an industry-wide fund covering the vast majority of coal miners and coal employers in the Nation's bituminous coal industry. It represented a compact between the miners and their employers that resolved some long-standing issues that divided the parties in the industry. It allowed labor and management to go about the business of keeping an essential basic industry alive at a time of fierce competition from other fuels. Because it was an industry-wide fund, the industry could finance the benefits without fear of competitive disadvantage in the coal marketplace.

Today, the situation has changed. Those changes have serious implications, not only for future bargaining in the coal industry, but also for the well-being of over 100,000 beneficiaries who spent their working lives providing energy to our Nation. In the Coal Commission Report, you will find a more detailed discussion of these changes, the history and nature of the problems the Funds are facing, and some proposed solutions.

I hope the members of the Subcommittee will be able to examine the Report quite carefully. I'm very proud of it, and of the people who prepared it. The Commission was composed of a very talented and dedicated group of distinguished professionals, with diverse backgrounds and philosophies. They put in nine months of hard work on this issues, without compensation, and deserve commendation for the service they have done for the coal industry, for the coal miners and retirees, and for the nation as a whole.

Let me elaborate on that last element—the service they've done for the Nation as a whole—for two reasons. First, the history of the Funds has, from the start, been intimately tied to actions taken at the highest levels of our government. The Funds were created in the White House, in a contract between the Federal Government and the miners during government seizure of the mines. The agreement was further shaped by a Federal commission (the Boone Commission) charged with examining health care in the Nation's coal field communities. We saw that throughout its history, the Funds have been recognized by specific legislative treatment, reshaped by numerous Federal court decisions, and sustained in times of peril by government intervention in the collective bargaining process. I know of no other multi-employer fund that has been so shaped by Federal public policy.

The second reason I consider this issue to be particularly important to the future of our Nation is that it offers us an opportunity to deal, in a limited fashion, with a problem which will eventually affect us all—national health care policy. The situation in the coal industry is not unlike that which many industries and workers are coming to experience. Indeed, based on what I have seen in the last few years, the cost of providing health care is rapidly becoming the most serious issue over which companies and unions will be fighting for the foreseeable future. It is hard to see how the need for action for health care reform at the national level can be ignored.

For example, the Commission concluded that retired miners have legitimate expectations of health care benefits for life. As the report states, that is the promise they received during their working lives, and that is the basis upon which they planned their retirement years. The only question that remains after you come to that conclusion is how to finance that commitment.

As you know, the Commission found that the central problem was how to finance benefits for the "orphan" retirees, whose companies have gone out of business or ceased paying for health care benefits. We heard repeatedly that signatory coal operators are willing to pay for the cost of health care for retirees that worked for their companies, but they are increasingly unwilling to shoulder the burden of

paying for the orphans of the industry. The similarity of these conditions to the issues surrounding the broader national health care debate should be obvious.

We also became convinced that this is a highly charged emotional issue for the miners and the retirees, no only because of the promise of health care benefits for life, but also because, over the years, coal miners in their collective bargaining agreements have accepted lower pensions in exchange for better health care benefits. The prospect of termination of those benefits at the expiration of the current agreement creates a potential for serious conflict that could affect not only the signatory operators, but the entire U.S. coal industry.

It would be well to remember that, during the Pittston strike, over 50,000 coal miners walked off the job, from all over the country, even though the dispute involved only about 1,700 retirees in three States. Imagine the bitterness and strife that might follow if over 100,000 retirees from every state in the country were left without benefits which they believed were theirs for life.

Aside from the direct human costs that would be involved, such conflict would create troubling problems for the industry's long-term competitive position. One of the bright spots in the future of coal marketing is the prospect of increased coal sales abroad, especially with the reduction of subsidies to the coal industries in Europe. If America hopes to capture a significant share of this growing market, it must be viewed as a reliable supplier. Needless to say, a long and bitter strike over retiree health care will not improve the image of the U.S. coal industry.

Perhaps most important in this issue is the fate of over 100,000 retirees and their dependents. We found that the average age of the beneficiaries in the 1950 Benefit Fund is about 76 years. These folks are at the most fragile stage of their lives and many of them have chronic diseases that require extensive medical treatment. We must not forget that the real issue here is people, who worked hard in dangerous and unhealthful conditions, and are entitled to the health benefits they were promised.

As I've said, Mr. Chairman, I recognize that the coal industry is not alone in struggling to deal with health care issues. Many industries and employers are facing rising costs. But I do believe that this situation is unique because of the historical involvement of the Federal government in creating and shaping this particular fund. I also think it is unique because we have a broad agreement from the industry and its workers that they need the assistance of Congress and the American people to fulfill the promises that began in the collective bargaining process nearly 50 years ago in the White House. The very heart of collective bargaining is dealing in good faith, and it is the responsibility of the parties not only to bargain in that manner, but also to live up to the commitments that they make through bargaining.

Although members of the Commission did not agree on all the particulars of a specific solution, a consensus was reached on ten important points. I won't go into all of them right now, but I would like to draw your attention to pages 58 and 59 of the Commission report, on which these ten points appear. After agreement by all Commission members on these points, two alternative sets of action recommendations were developed.

The majority of the Commission recommended that we create a new fund to provide benefits to orphans for whom no former employer could be identified. This would be financed by a small fee on all coal producers and coal imports. For those retirees who can be identified with an employer, using well-understood ERISA control group definitions, the Commission majority recommended that those employers be required to finance health care benefits. In other words, where we can identify a responsible employer, that employer pays. Where we cannot identify a responsible entity, the entire industry pays.

The alternative recommendation involved a somewhat different financing approach. Under this plan, there would be no obligations placed on those employers who were never a part of the multiemployer group to start with, but that there would be a "reachback" to those who had once been members but had withdrawn.

Sound arguments can be advanced for either plan, but I would like to emphasize the common elements.

First, they will require legislation at the national level to be implemented; neither can rely on collective bargaining alone.

Second, that legislation must extend the obligation for contributing to the Funds beyond the current signatory group.

Third, any plan for funding must be coupled with rigorous efforts at cost control and managed. care.

Several of my colleagues from the Commission are scheduled to testify at the hearing, and I will leave further discussion of the technical aspects of the plans to them. In conclusion, however, let me say that I believe that the recommendations of

the Coal Commission are reasonable and equitable, and I strongly urge the Congress to use them as the foundation for resolving this matter.

PREPARED STATEMENT OF DIXIE WOOLUM

Mr. Chairman and members of the subcommittee, my name is Dixie Woolum and I'm a coal miner's widow from Cinderella, West Virginia. Please listen to my story and do whatever you can to make sure that no other family has to go through what we've been through.

My husband Jimmy worked in the mines for the same coal company for 45 years. He died when he was 60 years old, three months after his last working day. He had pneumoconiosis, the last stage, then it developed into cancer. Between that and cancer, that's what killed him. He gave his life in the mines.

I packed his dinner bucket and I got him off to work every day for 45 years. Then to show me how much they cared, Massey coal took my insurance away in 1984. Finally, after years without health benefits, the funds picked up my coverage.

I was born in a coal-company house. We raised our family in a company house and I remember before we got the UMWA funds. We went to company doctors, and when the men were sick, they'd give them a little old bag of pills and then send them back to work. Before the funds, I had my first babies at home. Then, after we got the funds, I had my three boys in the hospital.

After we got the funds, Jimmy always said to me, "Dixie, if anything would ever happen to me, you and the kids will be taken care of." That's what they promised him. That's what we planned on and what we believed.

Then, after Jimmy died, the company took my insurance away from me when I really needed it. It was a blow to me. It tore me to pieces and I didn't even know what to do. I thought my world had come to an end.

I still had our 12 year old daughter Tammy at home. And I did any kind of work I could find to make it. I was 60, but I cleaned houses, I ironed, I scrubbed floors. Anything I could do to make it.

Before Massey took my health card away, and before my husband passed away, Tammy had stomach problems. The first doctor couldn't find anything, but thanks to the health benefits, we could get Tammy a specialist. He found two cysts the size of grapefruits in her stomach, and they were about to burst. She's fine now, but if Tammy had gotten sick a couple of years later after Massey took my benefits, I couldn't have afforded medical care for her. And then I don't know what would have happened.

My husband was a devoted man to his work. He worked in bad conditions, but he never missed a day. And when he came home he was so tired that he'd sleep for two hours before he would eat. He gave his life in the mines so that I could have something, so Tammy could have something too.

It's a blow in the face to think some day you've got health coverage and the next you've got nothing. I feel secure again because of the funds and I treasure those health benefits that jimmy gave his life for. But it's not right that someone can take these benefits away from his family after he spent 45 years working for the coal industry. I'm not an educated person, but I do know what's right and what's wrong. I hope that through your work, this won't ever happen again to anyone else.

Thank you.

STATEMENT OF THE ARCH MINERAL CORP.

Arch Mineral Corporation is among the Nation's 12 largest producers of coal. Headquartered in St. Louis, we mine and market coal through wholly-owned subsidiaries in four States. Arch Mineral provided testimony last year before the Dole Commission on the issue of reforming health care benefits for retired members of the United Mine Workers of America. We are pleased to provide the following comments regarding the single most important public policy issue now confronting the American coal industry.

Arch Mineral Corporation occupies an unusual, if not unique, position within the domestic coal industry. We are among a handful of companies that mine coal in all of the major coal production regions—Central Appalachia, the Midwest, and the West—in the United States. Our mining is conducted both by underground and surface methods. Neither Arch Mineral nor its subsidiaries are members of the Bituminous Coal Operators of America (BCOA). Nevertheless, four of our active subsidiary operations in Illinois, Kentucky and West Virginia are signatories to the 1988 National Bituminous Coal Wage Agreement. Of our company's total coal production in 1990, approximately 63 percent of our tons were produced by employees who are represented by the UMWA. Therefore, we have a significant interest in the outcome of the question before the Committee.

Arch Mineral is a microcosm of America's coal mining industry. For this reason, we have attempted to take a farsighted view of the problem of health benefits for retired UMWA miners. Because of our diverse operations and markets, our company cannot afford to be parochial about public policy matters. Instead, we advocate those policies which we believe advance generally the interests of American coal. We do not pretend to represent the view of any group within the domestic coal industry. In formulating our position, however, we have struggled with many of the same concerns which will be presented to you by the industry at large.

In evaluating the health care needs of America's retired coal miners, this Committee is confronted with two distinct problems: first, the social and economic problem of how to deliver health care benefits, and second, the political problem of how this solution is fashioned. As a company competing with coal producers around the world, we have some insight about the first of these issues. We hope this might contribute to a constructive resolution to an admittedly difficult political problem.

By this time, the Committee is familiar with the present system which provides health care benefits to the Nation's retired UMWA miners. Two funds—The 1950 and 1974 Health Benefit Trusts—administer health benefits. All companies which have signed the current National Bituminous Coal Wage Agreement make contributions to these funds. For miners who retired prior to January 1, 1976, health care costs are paid by the 1950 Trust. For miners who retired after January 1, 1976, health care costs are supported directly by the company which employed the miner upon his retirement. The 1974 Trust provides benefits for retirees whose last employer, for whatever reason, is no longer in business, or is no longer obligated contractually to provide health care benefits. The level of health care benefits provided to active and retired miners is determined under the contract negotiated between the UMWA and the BCOA. The current National Bituminous Coal Wage Agreement probably provides the most generous health benefits enjoyed by any union members in the United States today.

The rising cost of health care for Americans is of genuine concern to the coal industry. It is a major cost which must be built into the price of the product that we mine and sell. For the coal produced by our UMWA represented employees, we pay

to the 1950 and 1974 Health Benefit Trusts, $2.50 [1] for each hour worked by UMWA represented employees. Despite the fact that more than 30 percent of the Nation's coal is mined by UMWA represented labor, the 1950 and 1974 Health Benefit Trusts are in serious financial difficulty. By the end of March of next year, these funds may technically become bankrupt. At that time, production hours under the remaining life of the National Bituminous Coal Wage Agreement will be insufficient to generate contributions which can meet anticipated claims over the life of the contract.

Companies which make contributions to the 1950 and 1974 Funds recognize that they are at a substantial competitive disadvantage with those companies that do not make such contributions. The UMWA, however much it may deny this, also recognizes that its contract places coal producers at a competitive disadvantage. For this reason, and in order to secure other advantages in its collective bargaining agreements, the UMWA has frequently entered into non-conforming labor agreements with certain coal companies which have relieved those companies of contributing money to the 1950 Health Benefit Trust. We know this to be true because one of our operations in Illinois is the successor to this type of agreement. It is also well-known that other companies in our industry have occasionally secured this advantage.

Given this crisis in funding these nearly bankrupt multiemployer health trusts, what should our industry do? It is important to remember who the retirees are. These people, most of whom are now in their middle 70's, built the industrial and economic power of this Nation. These miners have labored for most of their lives in conditions that would be unappealing to the vast majority of Americans. As Gene Samples, Arch Mineral Chairman and Chief Executive Officer stated last October before the Dole Commission, "however much I have disagreed with the leadership of the UMWA over my career, I am genuinely moved and concerned by the plight of the retired UMWA coal miner." The American coal industry can and should respond to the health care needs of the retirees. Moreover, Congress can address this issue with minimal disruption to the competitive equilibrium at which now exists within the American industry.

Last fall, Arch Mineral proposed a solution which represented an economically sound resolution of this problem. Basically, it consists of three parts. First, the UMWA must be willing to revise the health care benefits received by its retirees. This does not necessarily mean that the level of benefits must be reduced. Many of these individuals live on fixed incomes. Requiring them to pay a significant share of health care costs could impose a financial burden beyond their ability to meet. Nevertheless, there are many ways, some of which have already been suggested by the Dole Commission in its final report, to reduce the cost of providing health care benefits to UMWA retirees. Part of this solution clearly requires the maximum transfer possible of money from the overfunded 1950 Pension Trust into the existing health benefit trust. Until the UMWA is serious about taking affirmative steps to contain and manage health care costs, there is little reason to expect that the industry will reach a consensus on this problem. Regrettably, there is little evidence to suggest that the present leadership of the UMWA is prepared to address this problem.

The second part of our proposal was that coal companies which now or previously participated in the multlemployer health benefit plans need to assume the greatest responsibility for resolving this problem. These are the companies which at one time or another negotiated the provisions which are now onerous. It would be highly inequitable to spread the burden of providing health care benefits equally among all current producers in the coal industry. Instead, we have proposed that the burden fall most heavily on those companies which have created the problem.

Our proposal calls for current UMWA retirees who can be assigned to existing coal producers to have their benefits, and those of their spouses and dependents, paid directly by these coal producers. In apportioning the current population of the 1950 and 1974 Funds, we would also propose that companies that were previous signatories of the National Bituminous Coal Wage Agreement be assigned those beneficiaries who retired from those companies. Some of these companies vehemently deny any responsibility for retiree health care costs. Most of these companies have done nothing more than exercise their legal rights under Federal labor law in relieving themselves of these liabilities. Some suffered protracted and sometimes bitter strikes in an effort to end their affiliation with the UMWA. Understandably,

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[1] An additional $.77 per hour is paid to the 1974 Pension Trust. The total contribution to these three multiemployer plans—$3.27 per hour—help explain why coal operations are reluctant to open new mines with UMWA labor. Nevertheless, because the 1974 Pension Trust is funded on an actuarially sound basis, unlike the 1950 and 1974 Health Benefit Trust which represents a "pay-as-you-go" approach, payments from this fund are not at risk.

these same companies are now unwilling to reassume this burden. Nevertheless, some of these same companies have provoked this crisis by dumping their retiree costs into the 1974 Health Fund. This was done for the simple economic expedient of making the companies which have signed the national agreement bear this burden. Accordingly, if Congress acts to provide health benefits to the current retirees, some reachback to previous signatories should be part of this solution.

Third and finally, there are many retirees who cannot be attributed to a current existing employer. Since the advent of the first UMWA health fund in the late 1940's, many companies have ceased mining coal. As many as 40 to 50 percent of the individuals in the 1950 Health Benefits Trust may have been employed by companies in this category. The majority of people in the 1974 Fund fall into this category. These retirees, frequently referred to as "orphans," are people whose health care should be paid under the mechanism of a nationwide excise or fee.

The portion of the coal industry which has never participated in the multiemployer health funds opposes any imposition of a nationwide fee. While this opposition is understandable, its origin arises principally from the economic inequity which it imposes on many producers, particularly those in the Powder River Basin of Wyoming and Montana. As stated last year before the Dole Commission, a solution exists for this problem. The Abandoned Mine Lands fee imposed under Title IV of the Federal surface Mining Control and Reclamation Act should be repealed. If reclamation problems remain in selected States, those States could impose their own internal excises. The elimination of the AML fee would more than offset the imposition of a new nationwide excise to fund health care benefits for the UMWA orphans. In order to guarantee that such a fee would be of limited duration, participation in such a fund should be limited to beneficiaries under the current national agreement. This would send a clear message to coal producers that they could no longer impose retiree health care liabilities on the rest of the industry.

Regrettably, neither the UMWA nor the BCOA has yet displayed the serious resolve necessary to address the issue of retiree health care. The UMWA, despite words to the contrary, shows no interest in containing health care costs. A recent example illustrates this criticism.

Earlier this year Arch Mineral adopted a policy for all employees regarding payment for elective, non-emergency surgery. In those situations, our employees were instructed to notify our company's third party administrator (TPA). The TPA would review the proposed procedure to determine if it was consistent with other treatments for the employee's condition. If appropriate, the employee would be asked to obtain a second opinion from another physician. The consequence of failing to follow this procedure was the refusal to pay for the treatment.

Arch Mineral did not intend to deny needed health care to its employees. Instead, we sought to make our employees intelligent consumers of health care. It also represented a modest attempt to manage rising health care costs for all of our employees. In response, the UMWA challenged this policy as it pertained to its membership. An arbitrator recently upheld the union. Regardless of its rights under the collective bargaining agreement, it is clear that the UMWA has no interest in promoting programs which could contain the rising cost of health care.

Regrettably the BCOA has exhibited no more leadership than the UMWA in resolving the issue of retiree health care. Two years ago in S. 1708, the BCOA and the UMWA joined together in seeking a legislative solution to the problem of health care funding. Part of the solution embodied in that legislation was a transfer of excess pension funds from the 1950 Pension Trust to the 1950 and 1974 Health Benefit Trust. At that time, it was estimated that perhaps as much as $180 million might be available to help support these funds. Much of this money has now been squandered.

Historically, individual companies which had signed a national contract were required to pay a death benefit upon the death of a retiree. This obligation has now been placed on the 1950 Pension Fund. In February, the BCOA and the UMWA reached an agreement under the terms of a limited reopener provision of the 1988 contract. Two significant decisions were made about the death benefit. First, its amount was increased from $3,500 to $5,000. More significantly, the obligation to pay this death benefit was transferred from the individual companies to the 1950 Pension Fund. Second, as a reward for reaching a quick resolution of the reopener provisions, a "signing bonus" ranging from $275 to $500 was paid to each retiree, disabled retiree and widow. This bonus coincided with the imposition of a dues increase on UMWA retirees. Although the precise amount of these benefits is difficult to calculate, it represents the looting of millions of dollars in the pension account which could have been devoted to the resolution of the health care crises.

Finally, those companies which have no historic ties to the multiemployer health plans seek a solution which excludes them. Their justification is that they did not create this problem and therefore should not be required to fix It. Their reluctance to be involved in a legislative solution is entirely understandable. Nevertheless, they too have a strong economic motive for their position.

The non-union coal industry well recognizes that if a solution is not found to this problem, the result will likely be a difficult and prolonged strike at the time that the current contract expires in 1993. Many non-union companies perceive that such a strike would be in their benefit as it would present an opportunity to capture markets now served by companies which have signed the current national agreement. This assumption may be correct, but it represents a shortsighted view of the interests of the American industry and a hard hearted view of the needs of the UMWA retirees.

Arch Mineral perceives that the American coal industry is poised to benefit from significantly increased international trade in coal in the 1990's. The Europeans will abandon the subsidization of their internal industries in 1993. The American coal industry is more productive than a decade ago. For these and other reasons, American coal should penetrate markets in Europe in this decade. Arch Mineral has anticipated this opportunity by opening an office In Europe. The investment by German and British companies in some of America's largest coal producers is a positive sign that Europeans also recognize the benefit of securing a diverse and reliable source of supply in the United States.

Should the UMWA embark on a strike in 1993, the potential for this increase in trade could be lost, perhaps permanently. There is ample historic precedent from the late 1970's and early 1980's for substantial disruption in labor relations to discourage foreign purchases of American coal. The United States is not the only country in the world which produces coal. More than any other country, however, we can fail to seize the opportunity for increased trade by failing to address the critical social issue of health care benefits for UMWA retirees.

In conclusion, each segment of the coal industry in its own way has contributed to this problem. Arch Mineral's proposal can resolve this problem. Everyone is asked to sacrifice: the UMWA, in adopting stringent measures recommended by the Dole Commission to manage health care costs and by endorsing the transfer of funds from the 1950 Pension Trust to the health benefit trusts; current and former signatory companies in shouldering the largest burden by directly paying the health care of their former employees; and the entire industry by paying a national fee to provide health care for the established class of UMWA orphans. By fashioning a solution along these lines, Congress will meet the needs of the UMWA retiree. Equally important, it will promote the long tern economic interests of the American coal industry.

Statement of the Association of Private Pension and Welfare Plans (APPWP)

The Association of Private Pension & Welfare Plans (APPWP) wishes to comment on the issues surrounding the financing of benefits for certain "orphaned" coal industry retirees, and on the final report issued by the Advisory Commission on United Mine Workers of America Retirees Health Benefits (Advisory Commission), released in 1990. The APPWP is a national trade association representing sponsors and providers of employee benefit plans. Overall, our members either directly sponsor or provide services to pension and health plans covering more than 100 million Americans.

Because of the significant implications inherent in many of the Advisory Commission's recommendations, and because many companies that would be affected by some of the more onerous recommendations are APPWP members, the APPWP believes that it is important and relevant for us to comment.

The proposal calling for an industry-wide tax on coal companies to pay for health care benefits of retirees, regardless of whether the companies were parties to earlier trust fund agreements, would establish a regrettable precedent in collective bargaining, as well as in the provision of health care generally by employers. We ask that you and the Administration reject this proposal.

Such a tax would undermine current labor agreements established through collective bargaining with respect to the provision and design of health care benefits. The health care financing problems should be resolved through bargaining between the United Mine Workers (UMWA) and the Bituminous Coal Operators Association (BCOA). The government has no legal standing to intervene in this process.

As the Nation has commenced on an important and lengthy debate on national health care policy and the role of government and employers, it would be unwise to short circuit part of the debate through this unwise Commission proposal. Should the Administration or Congress—and there are many members of Congress ready to legislate in this area—support this unfair and unwise tax, they would be indicating support for a more dangerous legislative onslaught into the area of employer mandates, a policy that this Association strongly opposes. Mandated benefits would result in huge job losses, and would diminish in many ways employer benefit programs. It is ill-advised to remove the coal industry from the national debate on health care.

Finally, there are also some provisions we wish to endorse. Managed health care in the private sector is showing great promise toward improving the quality of health care services and at the same time making great strides toward reducing the high cost associated with unnecessary and wasteful health care. The APPWP strongly supports incorporating managed care principles in all health care programs as a critical way to reduce the Nation's overall health care bill.

The APPWP has also generally supported responsible proposals that would permit employers to transfer certain funds from overfunded pension plans to funds for retiree health care. Therefore, we urge support for some form of transfer provision so as to better fund promised retiree benefits. We also endorse the principle that future "dumping" of liabilities on the funds should be prohibited.

The APPWP believes that whatever is finally decided with respect to the resolution of this complex problem in the coal industry, that it be consistent with and supportive of sound principles of labor law and collective bargaining, and does not foreclose any issues in the Nation's debate on health care policy.

STATEMENT OF THE NORTH AMERICAN COAL CORP.

THE COAL COMMISSION'S PROPOSED RETROACTIVE "REACHBACK" LEGISLATION WOULD BE AN UNWARRANTED INTRUSION INTO THE COLLECTIVE BARGAINING PROCESS

The North American Coal Corporation [1] strongly believes that the retroactive retiree health benefits assessment proposal recommended in the Report of the Secretary of Labor's Commission on United Mine Workers of America Retiree Health Benefits (the "Coal Commission Report") should be rejected as an unwarranted, inequitable and unprecedented legislative intrusion into purely private contractual matters. The proposal would cause the current deficit of the 1950 and 1974 United Mine Workers of America Benefit Plans (the "Plans") to be extinguished, in part, through extraordinary "bailout" legislation requiring retroactive and prospective contributions from employers that no longer have any contractual obligation to fund the Plans. This so-called "reachback" scheme would, in effect, completely rewrite the obligations contained in current and prior collective bargaining agreements. It would assign tens of millions of dollars of new, non-bargained for liabilities to domestic coal companies that already have honored and fully satisfied the retiree benefits promises they made in collective bargaining or otherwise.

THE COAL COMMISSION'S PROPOSED RETROACTIVE REACHBACK WOULD CONSTITUTE A LEGISLATIVE BAILOUT OF FOREIGN-CONTROLLED COAL COMPANIES

While the purported intent of this proposal is to ensure the continued funding of comprehensive health care benefits for retired miners and their families, the real beneficiaries of this retroactive assessment scheme are a select group of the nation's largest, and most profitable, coal companies. These companies, which produce only one-third of the coal mined in the United States, are the members of the Bituminous Coal Operators Association ("BCOA"). BCOA members are the architects of, and signatories to, the current National Bituminous Coal Wage Agreement of 1988 ("1988 NBCWA") with the United Mine Workers of America ("UMWA"). Pursuant to the reachback proposal, BCOA members would shift a substantial portion of the funding deficit they themselves created to their competitors—to domestic coal companies that were at one time members of the BCOA but lawfully withdrew from

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[1] The North American Coal Corporation ("NAC") is headquartered in Dallas, Texas, and is engaged in the production and marketing of lignite coal. An affiliate of NAC formerly operated bituminous coal mines and was a member of the Bituminous Coal Operators Association, but is not a signatory to the current National Bituminous Coal Wage Agreement and has not operated bituminous coal mines since 1983.

membership at a time when the Plans were solvent and the funding provisions of the NBCWA adequate to maintain their continued solvency.

Also of deep concern to NAC is the fact that the companies that negotiated the fiscally irresponsible contribution scheme in the 1988 NBCWA and that are now asking to be rescued from their own agreement by a small number of domestic coal companies, are dominated by foreign interests with, apparently, little concern for the promises and guarantees of fully funded health and pension benefits made to this Nation's coal miners and their families.

As noted above, the BCOA is responsible for negotiating the NBCWA with the UMWA. The BCOA is currently comprised of 15 member companies but has been dominated for many years by Peabody Holding Group, Consolidation Coal Company and AMAX Coal Industries, Inc., three of the largest coal companies in the world. These companies have effective voting control over every BCOA decision.[2] Two of these companies—Peabody and Consolidation—are foreign owned or controlled. The largest producer, Peabody, which accounts for approximately 9% of the total coal produced in the United States, is wholly-owned by Hanson Industries, PLC, a UK company, and the second largest producer, Consolidation Coal, is soon to be 50% owned by Germany's Rheinbraun AG, in addition to the 25% current ownership by the Bronfman family of Canada. *See* Chart re Total 1989 Coal Tonnage Exhibit 1 depicting percentage of foreign ownership or control of the top three BCOA producers who control the 1988 contract negotiations. Under the Coal Commission's reach-back proposal, these large foreign interests would reap enormous benefits at the expense of smaller domestic coal companies.

In short, NAC believes that the retroactive assessment scheme is an anti-competitive attempt by the largest and most profitable coal companies in the bituminous coal industry to legislate a way out of their own collective bargaining agreement—an agreement providing extremely generous retiree health care benefits and a woefully inadequate mechanism for funding them—at the expense of the few remaining BCOA prior signatory companies. The BCOA member companies are highly profitable and fully capable of rectifying the funding deficiency. Congressional support for a "bailout" of them by companies that are not signatories to the 1988 NBCWA and no longer bound by the outcome of BCOA negotiations with the UMWA is unwarranted and inequitable. Moreover, it risks establishing a dangerous precedent for the steel, railroad and other unionized industries facing costly retiree benefit obligations.

LEGISLATIVE INTERVENTION IS TOTALLY UNWARRANTED

The present funding controversy is currently in litigation. NAC believes that that is where it should be resolved.

At issue in various pending cases are the interpretation of Article XX, Section (h), of the NBCWA (the "guarantee clause"), and the applicability of the so-called "evergreen clause," contained in the Plan and Trust documents.

In its findings and recommendations, the Coal Commission ignored the effect of several cases in which Federal courts have (i) held that under the "guarantee clause," retirees are entitled to receive their benefits from the 1974 Plan and not from prior signatories (the *Royal* and *Nobel* cases); and (ii) enjoined the BCOA to increase contribution rates of member employers or seek alternative sources of revenue to fully fund current benefits. Instead, the Coal Commission relies upon a dubious interpretation of the evergreen clause found in the 1950 and 1974 benefit plan Trust documents—but not in the 1988 NBCWA—to justify imposing new and continuing obligations on current and former NBCWA signatories.

The scope of the evergreen clause, like the meaning of guarantee clause, is a matter of contract interpretation which the courts should resolve. Indeed, the evergreen clause currently is the subject of litigation which will address all the critical issues regarding the allocation of liabilities among the current, and former, NBCWA signatories. *United Mine Workers of America 1974 Pension Trust, et al.* v. *A & E*

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[2] In addition to the BCOA members, a number of smaller coal companies (many of which are contractors for the BCOA companies) have signed so-called "me too agreements" in which they have agreed to be bound by the terms of the 1988 NBCWA. However, because these companies are not members of the BCOA, they have no say in the negotiation of the agreement. There also are a number of other companies which have separate agreements with the UMWA, many of which are substandard and provide for reduced levels of contributions into the Funds, while at the same time increasing the Funds' obligations by granting service credit to the employees of the employers who are the beneficiaries of the agreements. These practices of the BCOA and UMWA—over which the non-signatory companies have no control or influence—also have exacerbated the funding deficit.

Coal Company, Inc. et al., Civil Action No. 88-1126 (D.D.C.); *United Mine Workers of America 1974 Pension Trust, et al* v. *The Pittston Company, et al.*, Civil Action No. 88-0969 (D.D.C.); *United Mine Workers of America Benefit Plan and Trust, et al.* v. *Pittsburg & Midway Coal Mining Co.*, Civil Action No. 88-3716 (D.D.C.).

The Coal Commission has urged Congress to ignore the ongoing litigation and instead enact sweeping retroactive legislation designed to impose a new and continuing contribution obligation on former signatories. At a minimum, Congress should defer consideration of drastic, retroactive subsidy legislation until the courts have had an opportunity to decide the scope of the BCOA member companies' obligation under the guarantee clause and the extent of non-signatory companies' liability, if any, under the evergreen clause. The legislative resolution advocated by the Coal Commission would simply allow one party to litigation to renege on its negotiated for responsibilities and shift that party's responsibility to companies that not only had no involvement in the 1988 contract negotiations but also are engaged in staunch competition with the elite minority of companies.

The fundamental unfairness of the Coal Commission's position is underscored by the fact that in NAC's view, there can be little doubt that the 1988 NBCWA signatories are contractually obligated to guarantee full benefits to retirees through February 1, 1993, regardless of the cost. In *UMWA* v. *Nobel*, 720 F. Supp. 1169 (W.D. Pa. 1989), *aff'd without opinion*, 902 F.2d 1558 (3d Cir. 1990), the court found that while negotiating the 1988 NBCWA:

> The union negotiators had projected that contributions in the range of 18 to 22 cents per hour would be necessary to provide benefits to the potential beneficiaries and maintain the corpus of the trust at the end of the contract. They expressed skepticism that eight cents would be sufficient to provide benefits to the potential beneficiaries over the term of the agreement. The BCOA responded that, *since they were guaranteeing the benefits, the UMWA should not be concerned about the contribution rate, and that additional money would be forthcoming if necessary.* The BCOA preferred to maximize cost savings by minimizing the initial contribution rate, and providing additional funding under the guarantee clause if necessary. 720 F. Supp. at 1178 (Emphasis added).

Thus, if the current signatory companies' contribution rate must be increased in order to ensure full benefits through early 1993, the BCOA through its member companies is both empowered and required to do so.

Those who support such legislation argue that former signatories to one of the NBCWAs that have not signed successor NBCWAs, including even those companies which are no longer mining coal, have "walked away" from their supposed obligation to pay into the Benefit Plans. This so-called "abandonment" of obligations, they argue, leaves the Plans in a deficit situation from which they cannot recover absent Congressional intervention. This simply is not so. The withdrawal of former signatories from the ranks of the BCOA is not the cause of the current deficit. Indeed, most former signatories, including NAC, contributed far more to the 1974 fund than any retiree obligation they created for the fund. Thus, during the years it was a signatory to the NBCWA, NAC contributed approximately $50 million to the cost of caring for retired miners whose companies are no longer in business. Far more to the point is that the current signatories are well able to satisfy their contractual liabilities. For NAC, which has not operated a bituminous coal mine since 1983, the future flow of funding for the new liabilities would greatly exceed all profits generated from the mines in question from 1959 to 1983. Indeed, Robert Quenon, president of Peabody Coal and a supporter of the "reachback" provision, has stated publicly that contributions from former signatories would not solve the underfunding problem.

Since contributions from former signatories would not even come close to solving the underfunding problem, the reachback recommendations can have only a punitive purpose—a vehicle to punish friviously those coal companies that had the common sense to lawfully disassociate themselves from the irresponsible bargaining practices of the BCOA.

As noted above, the issue of whether former signatories can be compelled to resume and perpetually continue contributions to the Plans is currently in litigation. In a series of cases filed by the Plans in the Federal district court in the District of Columbia, the Trustees sued various employers who had been signatories to the 1984 NBCWA, which expired on January 31, 1988. The suits allege that these employers are required to make contributions to the Plans, according to the terms of the 1988 and subsequent collective bargaining agreements between the UMWA and BCOA, even though these employers were not parties to the 1988 agreement.

The Trustees' theory is that there exists in the trust agreements themselves a so-called "evergreen" clause.

According to the imaginative argument of the Trustees, the so-called "evergreen" clause requires any employer who once contributed to the Plans to perpetually continue to make such contributions into the future, even though that employer is no longer signatory to the collective bargaining agreements which support the trusts. *United Mine Workers of America 1974 Pension Trust, et al.* v. *A & E Coal Company, Inc. et al.,* Civil Action No. 88-1126 (D.D.C.); *United Mine Workers of America 1974 Pension Trust, et al* v. *The Pittston Company, et al.,* Civil Action No. 88-0969 (D.D.C.); *United Mine Workers of America Benefit Plan and Trust, et al.* v. *Pittsburg & Midway Coal Mining Co.,* Civil Action No. 88-3716 (D.D.C.).

This litigation, in and of itself, belies the necessity for proposed legislation. If, as is alleged in the suits, former signatories are required to continue to contribute to the Plans as if they had never withdrawn from the BCOA, then the legislation is unnecessary. If, on the other hand, the courts hold that the employers have no obligation to contribute to the Plans, then it is clear that they have not failed to fulfill any obligations in the first place.[3]

NAC also firmly believes that before companies which are no longer signatories to the NBCWA are required by Congress to assume the extravagant labor costs contracted for by the BCOA member companies, the BCOA and UMWA should first attempt to resolve the funding deficit issue through collective bargaining. It is universally recognized that the benefit scheme the BCOA companies seek to have others fund is one of the most generous in the country, even when measured against the benefit levels found in the auto and steel industries. As the Coal Commission concluded, "a comparison of the health care benefits received by UMWA members with those received by members of the United Auto Workers (UAW) and the United Steelworkers of America (USWA) reveals similarities and some differences. On the whole, the health care benefits received by members are far more comprehensive than health care benefits received by UAW and USWA members; nor does the UMWA plan require deduction or coinsurance." Coal Commission Report at 32. Needless to say, the BCOA/UMWA health benefit levels greatly exceed average American industry levels.

For example, in examining the UMWA plan, the Coal Commission found no deductibles of any significance and none of the customary cost-containment features, e.g., 80/20 co-payment requirement for major medical coverage, which exist in a majority of health plans in existence today. Due to the generosity of the benefits received by the UMWA, and the absence of any attempt at cost-containment, the expense of providing health care to the UMWA retired miners and their dependents has risen even more dramatically than for retirees in other industries. At a time when the private sector, government officials (including Senator Rockefeller) and health care experts around the country are struggling to develop innovative methods to contain the cost of health care, it is indeed ironic that the BCOA is now seeking a legislative bailout to preserve and perpetuate an extravagant health care plan badly in need of reform.

After 1992, the future of the UMWA health benefit Funds can be assured only through negotiations that result in the establishment of actuarially sound contribution rates and realistic cost-containment and cost sharing benefit features. The BCOA member companies that will be parties to the 1993 NBCWA and ultimately responsible for the financial condition of the Funds should be encouraged, if not required by law, to negotiate funding and benefit schemes with these key features. Indeed, a legislative solution at this stage simply allows the BCOA and UMWA to continue bargaining health benefits as if there were no tomorrow.

THE SELF-CREATED DEFICIT: CURRENT BCOA MEMBERS CAUSED AND SHOULD BE HELD ACCOUNTABLE FOR THE FUNDING DEFICIT

The inequitability of imposing new and continuing liabilities on companies that are no longer signatories to the NBCWA is underscored by the fact that today's so-called funding "crisis" has been manufactured entirely by the BCOA. The BCOA accomplished this by (1) slashing by more than half the level of contributions to the Funds in the face of overwhelming evidence that rising health care costs, coupled

[3] It is worth noting that while the UMWA has supported an evergreen feature in its proposal "because long and counterproductive delays can be expected in attempts to enforce this obligation through litigation" (Commission Report at p. 63), the UMWA is in fact opposing the Trusts' efforts to enforce the so-called "evergreen" clause in the above-referenced Pittston and P&M cases.

with the substantially lower contribution levels, would inevitably lead to the current deficit position, and (2) effectively eliminating contributions to the overfunded 1950 Pension Plan, rather than shifting excess contributions to the 1950 or 1974 Benefit Plans in order to relieve the certain funding shortfall.[4]

The BCOA's Negotiating Committee—Peabody Holding Group, Consolidation Coal Company and AMAX Coal Industries, Inc.—negotiated in the 1988 NBCWA a shift in the contribution basis from a combination of per ton and per hour charges to a pure per-hour-worked charge—an arrangement which served the special interests of large tonnage producers with fewer hours worked per ton of coal than many of the smaller coal companies. The 1988 NBCWA also was negotiated on the utterly indefensible assumption that productivity would remain at the 1986 level over the term of the agreement. In fact, productivity rates of the large signatory companies had already increased significantly above 1986 levels by the time the 1988 NBCWA was negotiated and have shown further dramatic improvement. The net effect, of course, was a substantial reduction in the level of contributions required, which in turn resulted in enormous windfalls to these companies and their foreign owners.[5]

Also, despite the perceived "crisis" in the 1950 and 1974 Benefit Plans, the BCOA and the UMWA, in their February 1991 Reopener Agreement negotiations, agreed to immediately obligate at least $135 million of the available $235 million in excess 1950 Pension Plan funds to (i) fund a one-time cash payment to all pensioners and (ii) shift the individual BCOA member companies' death benefit obligations onto the Pension Funds in 1991, thereby saving the companies approximately $100 million. This action was taken despite the view already expressed at that time by the Coal Commission that monies from the overfunded Pension Funds could be used to solve the Benefit Fund deficit, provided Congress would enact legislation authorizing the transfer.

In short, in 1991—after the Coal Commission's Report—hundreds of millions of dollars that could have been contributed to the Benefit Plans went instead into the corporate coffers of the BCOA member companies or otherwise were spent or dedicated to fund new benefits. The BCOA member companies, which were aware of the certain consequences of their contractual arrangements, should presently be held responsible for seeking a permanent, negotiated solution to the funding deficit problem before any consideration is given to a legislative rescue—a rescue which would absolve the current BCOA member companies of their contractual responsibilities and create new and virtually incalculable retroactive liabilities for their competitors.

CONCLUSION

The BCOA can resolve the deficit problem the same way it created the problem—through collective bargaining negotiations. Other deficit solution possibilities include the expansion of recent court-imposed contributions and the transferring of excess monies, with the approval of Congress, from the Pension Funds to the Benefit Funds. The adequacy of future funding of the Plans likewise can be secured by the BCOA through these actions and by restoring contribution levels to an actuarially sound basis. A legislative bailout will only encourage the BCOA and the UMWA to conduct business as usual. It is difficult to imagine a less satisfactory result.

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[4] Contributions to the 1950 and 1974 Benefit and Pension Funds were approximately $640.3 million in 1987, as compared with $255.5 million in 1989 under the revised contribution scheme. The 1950 Pension Fund received $321.1 million in 1987 and no contributions in 1989, although the Fund received $7.9 million in claim settlements. None of this reduction was reallocated to either of the Benefit Plans to alleviate the shortfall which was certain to occur.

[5] The contribution per ton for signatory companies was reduced from the 1987 contribution level of $2.20 per ton on a per tonnage basis to approximately $.90 per ton in 1989 when calculated on an hourly basis. *(The Facts Behind the Declining Contributions to the UMWA Benefit Trusts and the Financial Capabilities of the Signatory Companies,* Chart 3 (Energy Ventures Analysis, Inc., Jan. 18, 1991).

BCOA NEGOTIATING TEAM

(Peabody, Consolidation, AMAX)

TOTAL 1989 COAL TONNAGE

178.6 million tons

EXHIBIT 1

STATEMENT OF THE PITTSTON COAL CO.

My name is Joseph C. Farrell. I am President and Chairman elect of The Pittston Company ("Pittston"). Through its various subsidiaries, Pittston has coal operations in Virginia, West Virginia and Kentucky. Most of those subsidiaries, known generally as the Pittston Coal Group Companies ("PCG Companies"), are signatories to a collective bargaining agreement with the United Mine Workers of America (the "1990 PCG/UMWA Labor Agreement").

I present this testimony today to urge Congress to preserve the sanctity of collectively bargained agreements such as the 1990 PCG/UMWA Labor Agreement, and with it the stability of labor-management relations. I urge Congress not to take any action which would interfere with rights and obligations freely bargained and freely entered into by management and labor.

The agreement between the PCG Companies and the UMWA was achieved only after intervention by former Secretary of Labor Elizabeth Dole. At the time the Secretary became involved, the parties had been negotiating for almost 2 years. A bitter strike by the UMWA was in its eighth month. After 2 months of intensive efforts by all concerned and compromise by both sides, an agreement was finally achieved. Since reaching agreement in early 1990, labor-management relations have steadily improved. Indeed, as a direct result of these improved relations, another Pittston subsidiary, Heartland Coal Company, recently chose to enter into a collective bargaining agreement with the UMWA covering employees at a new surface mine in West Virginia, further increasing employment for UMWA miners in the region.

Contrary to what some individuals would have Congress believe, therefore, this is not a labor-management issue Rather, the dispute is one between two different groups of coal companies. One group is associated with the Bituminous Coal Operators Association ("BCOA") which includes the two largest coal companies in the U.S., each having more than three times the annual coal sales of my company. This Subcommittee must consider whether the BCOA group of larger coal companies should be allowed to use the legislative process to impose its obligations upon other, smaller companies not associated with the BCOA. It must further consider whether to enact legislation which will disrupt established contractual obligations and expectations, as well as labor-management relations throughout the industry.

I. THE 1990 PCG COMPANIES/UMWA AGREEMENT

A. Background

In 1987 various PCG Companies which were signatories to the 1984 National Bituminous Coal Wage Agreement and which were members of the BCOA decided to negotiate independently with the UMWA for—new collective bargaining agreement covering their employees. Accordingly, these companies withdrew their membership from the BCOA, indicating in accordance with established law that they would not be bound by any agreement negotiated between the BCOA and UMWA.

The BCOA is a multiemployer association dominated by large foreign-owned coal producers. These companies sell the majority of their coal in the steam coal market. Their steam coal is produced from mines which are generally less labor-intensive and, for the most part, is sold to domestic utilities. By contrast, the PCG Companies sell approximately 65 percent of their coal in the metallurgical market. Their metallurgical coal is mined in more labor-intensive underground mines and is sold primarily in the export market.

It became apparent to Pittston (as it has to other former BCOA members) that it was no longer in the best interests of the PCG Companies for the dominant BCOA companies to represent them in bargaining with the UMWA. They sought independent negotiations to achieve a contract which would recognize the specific needs of the PCG companies and would also address the competitive realities of the worldwide market in which they were operating.

That the BCOA did not represent the PCG Companies interests was evident when the terms of the 1988 National Bituminous Coal Wage Agreement (the "1988 NBCWA") were disclosed. The BCOA had negotiated a change in the formula for contributions to the UMWA Funds, from a per ton to a per hour rate. This greatly benefited the larger, less labor-intensive companies representing the BCOA in bargaining as it decreased their per ton cost at the expense of smaller producers such as the PCG Companies. In addition, the 1988 NBCWA failed to establish any responsible cost containment measures for medical benefits. It continued the 100% first-dollar coverage and unusually generous eligibility rules, notwithstanding that the cost of this coverage is far above the national average and far in excess of any pro-

posed for a national health care plan. For these and other reasons, the 1988 NBCWA was not acceptable to the PCG Companies.

Independent negotiations between the PCG Companies and the UMWA revealed major areas of disagreement with respect to medical and pension benefits, operational flexibility and job security. For two years the parties struggled with these issues, unable to reach an agreement. In April 1989 the UMWA commenced a strike. It was to be one of the most bitter strikes in recent labor history.

After intervention by Secretary Dole in late 1989, the parties were able to resolve their differences. The agreement was hailed as a victory for the collective bargaining process. Employees returned to work and an unprecedented spirit of cooperation between labor and management commenced and has continued.

B. The Relevant Provisions—An Integrated Package

The Agreement reflects the give and take of the collective bargaining process. The Agreement is a total package; each term is an integral component of the whole. Salient provisions of this package include:

1. UMWA members have greatly expanded job security and opportunities with the PCG Companies, with their contractors and with other Pittston coal subsidiaries.

2. Medical benefits for employees, retirees and their eligible dependents are provided at the same level but with certain new cost containment provisions designed to increase cost consciousness of participating families, to include: (a) a $500 payment by the Companies to each participating family every 6 months—any amount of the $500 payment not used for medical expenses is retained as additional compensation; (b) an Approved Provider List; and (c) a generic drug program.

3. With respect to participation in and contributions to the UMWA Funds, the Agreement provides that, subject to acceptance by the UMWA Funds' trustees, the PCG Companies: (a) would make a $10 Million lump sum payment to the UMWA 1950 Benefit Plan and (b) would continue to participate in and make specified contributions to the 1974 Plans.

4. The parties further recognized that certain proposed Federal legislation supported by the BCOA would significantly and adversely impact the Agreement. Accordingly, a fundamental part of the Agreement, entitled "Memorandum on Retiree Health Care Legislation," was negotiated wherein the UMWA committed that "it will no longer seek, and will actively oppose, any legislation that has the purpose or effect of Part B of S. 1708." Part B of that bill, which was introduced in Congress in 1989, would have imposed obligations on former BCOA members and interfered with pending court cases.

5. The PCG Companies have increased operational flexibility, including the right to establish flextime schedules.

II. BCOA EFFORTS TO SHIFT OBLIGATIONS

The efforts of dominant BCOA companies to shift their obligations and costs to smaller coal companies has taken several forms over the last several years. As was the case with S1708 in 1989, the BCOA's legislative agenda is but one of the means employed by our competitors to achieve their goals.

A. The 1988 NBCWA

The 1988 NBCWA is itself evidence of the BCOA's intentions. As I indicated previously, the BCOA negotiators, all representatives of the large, dominant coal companies, negotiated a change to the contribution formula for the UMWA Funds, from a per ton to a per hour contribution, giving these companies an additional competitive advantage over smaller coal companies. The change in contribution formula also resulted in greatly reduced overall contributions without providing any cost containment measures. This action assured that the current "crisis" would result.

Indeed, under these new contribution provisions, between 1987 and 1989 there was a 60% reduction in overall contributions to the UMWA Funds, resulting in a savings of approximately $385 million dollars to signatory companies, notwithstanding that tonnage remained fairly static during this period.

At the same time as it was negotiating a reduction in contributions and while fully aware that the rates it was negotiating would not be adequate to fund promised benefits, the BCOA voluntarily agreed to guarantee the benefits to be provided by the UMWA Funds, just as it had in previous NBCWAs. The BCOA has not, however, lived up to its commitment. It has refused to increase the contribution rates sufficiently to eliminate the deficit as required by the "guarantee clause. " Only after litigation were the rates increased and then only for a short period of time.

Despite its position that a "crisis" exists, the BCOA has chosen to reduce rates to levels in effect prior to the court ordered increases in utter defiance of its contractual obligation under the guarantee clause. It is important to note that the BCOA does not claim, nor can it claim, financial inability to comply with its contractual commitment. It is simply choosing not to provide adequate funding to create the erroneous impression that retiree medical benefits will be lost without Congressional intervention.

This alleged "crisis" was exacerbated by the BCOA during the 1990 reopener to the 1988 NBCWA. With full knowledge that a transfer of surplus assets from the 1950 Pension Fund was a preferred means for remedying any alleged difficulties, the BCOA agreed to benefit increases which eliminated the substantial surplus existing in the 1950 Pension Plan. The BCOA transferred certain obligations from the 1950 Benefit Fund to the 1950 Pension Fund. Furthermore, the BCOA increased the 1950 Pension Fund's liabilities by granting a one-time payment to pensioners and surviving spouses. The impact of these changes was a $100 Million reduction in the surplus.

In another raid on pension plan assets, the BCOA companies transferred their obligations to provide life insurance to pensioners to the 1974 Pension Fund. This was done without providing any increase in contributions to the Fund. Moreover, this raid only benefited signatory companies; non-BCOA companies must still pay for life insurance benefits directly.

B. Judicial Efforts

The BCOA's attempt to avoid its contractual obligations and to shift its costs to its competitors is likewise evident in the litigation currently pending in the Federal courts. This litigation, which has been referred to as the "evergreen" cases, was commenced by the UMWA Funds; the BCOA is participating as amicus curiae. The UMWA Funds' trustees and BCOA asserted for the first time in 1988 that by signing any one or more of the 1978, 1981 and 1984 NBCWAs, the PCG Companies and others had agreed to contribute to the UMWA Funds in perpetuity at the rates established in the 1988 NBCWA and all future NBCWAs, notwithstanding that these companies are not signatories to those agreements. Success in this litigation would permit the BCOA to achieve the same result it seeks from Congress, *i.e.*, to shift its obligations to its competitors' disadvantage.

A hearing is scheduled for late September. Clearly, it is, and should be, the courts that ultimately decide the issue, not Congress. Moreover, the *UMWA supports Pittston's position* that its case should be dismissed. Both Pittston and the UMWA agree that freely negotiated collective bargaining agreements, including the 1990 PCG/UMWA Agreement, must be given effect. Please refer to the Appendix at the end of my statement.

C. Proposed Legislation

While voluntarily accepting obligations at the bargaining table to provide a generous level of benefits and guaranteeing the funding for such benefits in exchange for other concessions and the avoidance of a strike, the BCOA now comes to Congress seeking a legislative solution to problems of its own making. Its solution would allow the BCOA to escape obligations under its freely bargained agreement, shift costs to smaller companies and penalize companies which lawfully withdrew from the BCOA by assuring that these companies cannot enjoy the fruits of their agreements with the UMWA.

We are in possession of certain draft legislative proposals which are designed to accomplish the BCOA's objectives. Proposals such as these, if enacted, raise serious questions about the continued viability of the 1990 PCG/UMWA Agreement and threaten tremendous instability in labor management relations, not only for the PCG Companies, but for all coal industry employers adversely impacted. The draft proposals are not only bad industrial policy; they are also inconsistent with national health care reform since the promise of care is not coupled with effective cost containment.

Highlights of the draft legislation which I have reviewed are as follows:

1. A new government corporation to be known as the Coal Industry Retiree Health Benefit Corporation (the "Corporation") would be created. Obligations of the 1974 and 1950 Benefit Plans to provide medical benefits to all current and future "orphans" would be transferred to the Corporation, thereby relieving the BCOA companies of their contractual obligations.

2. Funding for the Corporation would come from two sources: (a) an industry-wide excise tax (referred to as "premiums") on all coal produced in or imported to the U.S. and (b) a "reachback" provision imposing an additional excise tax on compa-

nies which were signatories to prior NBCWAs, but which are not signatories to the 1988 NBCWA.

3. Benefits to be provided by the Corporation would be the same as currently provided under the 1988 NBCWA. Although the proposals purport to permit changes in benefits aimed. at cost containment, no change is permitted which would reduce the level of benefits. Contribution rates would be established by the Corporation.

4. The Board of Directors of the Corporation would be appointed by the Secretary of Labor. One member must, however be from a BCOA company, notwithstanding that BCOA companies have no obligation to pay any additional excise tax.

5. A new fund would be created to provide benefits to the BCOA companies' retirees, to be known as the UMWA 1991 Benefit plan ("1991 plan"). The benefits to be provided and contribution rates would be the subject of bargaining and could, therefore, presumably be reduced.

6. Whatever remains of the surplus assets of the 1950 Pension Plan would be authorized for transfer to the 1991 Plan, with a set portion to go to the Corporation.

As noted, this legislation would, if enacted, achieve the BCOA's goals. It shifts to other coal producers the cost of providing benefits to UMWA plan participants that it promised to provide in the 1988 NBCWA. It assures that non-BCOA companies are forever deprived of the right to negotiate with the UMWA regarding retiree medical benefits and the costs thereof, while securing for itself the right to continue to bargain about such issues and potentially further reduce its obligations and costs in the future. It assures that companies such as Pittston do not obtain the fruits of their agreement with the UMWA. Finally, it assures that the BCOA can impose its will on the coal industry, all to the great competitive advantage of the dominant BCOA companies.

CONCLUSION

The PCG Companies and the UMWA struggled long and hard to come to terms on a collective bargaining agreement and to establish a spirit of cooperation and communication which has allowed the parties to work together to resolve day-to-day issues and to continue to explore new job opportunities for UMWA members. The 1990 PCG/UMWA Agreement provides for medical and pension benefits for retirees. It provides expanded job opportunities for UMWA members and operational flexibility for the Companies to better compete in the world market. Each of those provisions is an essential component of the Agreement. Congressional action which interferes with any one of the Agreement's provision will disrupt the entire Agreement. The inevitable consequence will be a tremendous strain on labor-management relations.

BCOA itself has created the alleged "crisis" in the UMWA Funds. BCOA itself has guaranteed the benefits to be provided by the UMWA Funds and is financially able to do so. Given this, there should be no threat that retirees will lose the benefits promised them in the 1988 NBCWA. BCOA must be required to live up to its contractual commitments.

Congress must preserve the sanctity of collective bargaining agreements and long-established Federal labor policy favoring collective bargaining. Any action which undermines this process and mandates changes in parties' contractual expectations should be rejected. As the UMWA has stated, "the parties should be permitted to enjoy the fruits of the bargaining process, free from outside interference."

Thank you for your time and attention.

APPENDIX

In memoranda submitted by the UMWA in support of certain coal companies in analogous cases to Pittston's (all of which have been expressly adopted by the UMWA in the Pittston case), the UMWA has stated that:

> " . . . [I]t is well settled that parties to a collective bargaining agreement are free to execute new agreements, specifically involving matters related to employee benefit plans, following expiration and/or termination of prior contracts. The parties are even free to amend existing agreements. [citations omitted.] In the face of these precedents, the Trustees blithely contend that the 1984 North River Agreement binds P&M forever because it incorporated a dubious provision of the Trust document. They assert that this interminable bondage continues, notwithstanding the fact that the parties to the North River Agreement have now bargained and agreed to a new contract with different terms . ."

[*Pierce, et. al.* v. *UMWA 1950 Benefit Plan and Trust,* UMWA Memorandum In Support of Plaintiffs' Motion for Summary Judgment, at pp. 10-12.]

In another Memorandum, the UMWA, referring to various court decisions, states that:

> "These decisions reflect the general principle that a labor union and an employer must be free to respond to changing conditions and other unforeseen contingencies. In the instant case, the UMWA and P&M, after a prolonged strike and lengthy negotiations, have done no more than respond to these difficult conditions by entering into the P&M Agreement.
>
> "In sum, the Court should defer to the agreement reached between the parties in free collective bargaining. Those parties should be permitted to enjoy the fruits of the bargaining process, free from outside interference, in the manner intended by Congress."

[*UMWA 1950 Benefit Plan and Trust* v. *Pittsburgh & Midway Coal Company* ("P&M"), UMWA Supplemental Memoranda In Support of Defendant's Motion for Summary Judgment, at p. 11.]

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BusinessWeek

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PITTSTON SHOULD STAND BY ITS PROMISES

Stung by the soaring cost of providing medical benefits to employees, many companies are shifting more of the burden to their workers. Although such steps are often unavoidable, they are most distressing when promises to retired workers are abrogated—particularly when those promises were made in exchange for concessions by the very people whose benefits are threatened.

That, in fact, is the root cause of the extraordinarily bitter strike now being waged by the United Mine Workers against Pittston Co. in Virginia, West Virginia, and Kentucky. Back in 1950, the UMW, led by John L. Lewis, negotiated a milestone labor pact with major coal companies, including Pittston. The industry agreed to make royalty payments on each ton of coal produced to provide pensions and lifelong medical benefits for all miners with 20 years of service. In return, Lewis encouraged the operators to mechanize, confident that the new funds would give old-age protection to the thousands who lost their pick-and-shovel jobs.

The upshot was a period of labor stability during which coal operators, with the UMW's blessing, achieved enormous productivity gains by adopting labor-saving machinery and eliminating some 300,000 jobs in Appalachia. Now, however, Pittston, citing competitive pressures in world coal markets, refuses to make contributions to a health care fund covering some 118,000 pre-1974 pensioners and their spouses and widows—a shrinking group whose average age is 76. Other coal operators are still contributing but indicate they will also withdraw from the funds if Pittston gets its way. If that happens, active UMW members will undoubtedly launch a protracted, industrywide work stoppage.

The UMW itself has undermined the financial condition of the fund by engaging in wildcat strikes in recent years. But that doesn't absolve Pittston—which does not claim to be in financial straits—from its moral obligation. If it needs to cut labor costs, it should make its case forthrightly. And rather than turn its back on retirees, it should seek to secure efficient work practices and other cost savings from labor.

STATEMENT OF THE RITE AID CORP.

Rite Aid Corporation is a publicly held corporation headquartered in Shiremanstown, Pennsylvania which owns and operates retail pharmacies. According to officials of the United Mine Workers of America Health & Retirement Funds (hereinafter "the Funds"), Rite Aid is the largest provider of prescription drug services to Fund beneficiaries. Rite Aid dispenses over 10,200 prescriptions per week, 45,000 prescriptions per month, and approximately 540,000 prescriptions per year to these individuals.

The large volume of prescriptions dispensed to Fund beneficiaries through Rite Aid pharmacies is directly attributable to the fact that many of our drugstores are located in remote and isolated areas of the coal regions. Specifically, Rite Aid operates 110 pharmacies in West Virginia, 94 pharmacies in Kentucky, 177 pharmacies in Virginia, 35 pharmacies in Tennessee, and 344 pharmacies in Pennsylvania. Rite Aid accounts for about fifteen percent of the Fund prescription drug expenditures. In the State of West Virginia, Rite Aid may dispense as much as one half of all medication obtained by Fund beneficiaries.

The deteriorating financial condition of the Funds is having an extremely negative impact on Rite Aid Corporation. Rite Aid is currently owed more than $4.0 million by the Funds for prescription drugs dispensed to its beneficiaries. This debt represents more than 114 days of sales. The situation has worsened in recent days. In September, Rite Aid received less than 55 percent of its billed charges to the Funds for prescriptions provided to its beneficiaries. Rite Aid's receivable is escalating by over $100,000 per week.

Absent swift congressional action to implement the majority recommendations of the Dole Commission, Rite Aid Corporation will have to cease participating as a provider for the Funds. In that unfortunate event, many beneficiaries would be forced to travel substantial distances (25 miles or more), often over impassable roads during the winter, to find another participating pharmacy. It is worth noting that as Fund payments to pharmacies have declined as a percentage of billed charges, more and more pharmacies are dropping out of the program. Consequently, there is the growing likelihood that beneficiaries may be unable to locate an accessible participating pharmacy if Rite Aid refuses service. Moreover, the decline in business which we anticipate as a result of a withdrawal from the Funds program will undoubtedly lead to the closing of a number of our pharmacies which are dependent upon Funds' business. These closures will deprive many communities of their only pharmacy and a valued health care provider.

BENEFICIARIES WILL FACE SERIOUS HARDSHIP IF RITE AID CORPORATION WITHDRAWS FROM THE FUNDS PRESCRIPTION DRUG PROGRAM

We estimate that well over 50,000 beneficiaries and their dependents have obtained their prescriptions at Rite Aid pharmacies over the past year. While we would like to believe that all of these individuals prefer to obtain their prescriptions at Rite Aid, we recognize that many come to our stores out of necessity because Rite Aid pharmacies are the only ones within a convenient distance of their homes, work places, or physicians' offices.

Rite Aid's withdrawal from the program will delay and may even prevent many beneficiaries from obtaining needed medication. These delays will be more than just an inconvenience. It will be tantamount to a denial of treatment. As a result, many beneficiaries may fail to comply with their prescribed drug therapies. It is well documented that lack of access to medication or compliance with a prescribed treatment may lead to heightened severity of illness, hospitalization, and death for these individuals. Congress' failure to respond promptly will indeed lead to serious consequences.

It is important to note that while Fund officials have moved aggressively over the past several years to corral the costs of the Fund's prescription drug program, their failure to pay providers on a timely basis threatens the very existence of retail pharmacies in coal mining communities. The reductions in reimbursement implemented by the Funds has eroded the profit margins for participating pharmacy providers to the point where they are now substantially below industry average. These slimmer margins, coupled with the failure of the Funds to pay providers promptly for goods and services delivered, have made the Funds a losing proposition for Rite Aid. Without a swift resolution of these payment problems, Rite Aid will have no choice but to leave the program.

In conclusion, it is essential that the Dole Commission recommendations be enacted into law. Providers cannot continue to operate if they are not paid within a reasonable time frame. If payments are not forthcoming, providers will have no

choice but to cease participation and Fund beneficiaries will soon find themselves without access to physicians, hospitals, or pharmacies.

For further information, contact Joel F. Feldman, Esg., Vice President of Managed Care Services at Rite Aid Corporation, P.O. Box 3165, Harrisburg, Pennsylvania 17105.

STATEMENT OF THE WESTERN REGIONAL COUNCIL

The Western Regional Council (WRC) is pleased to have this opportunity to submit testimony on the Department of Labor's Coal Commission report dealing with various options to resolve the deficit in the 1950 and 1974 Bituminous Coal Operators Association (BCOA) collective bargaining agreements. Specifically, we are very concerned about any base-broadening measures that may be considered that would include payments by Western coal producers (and those consumers of Western energy) which are not signatory obligees to the negotiated contract between BCOA and the United Mine Works of America (UMWA).

The Western Regional Council is an organization of chief executive officers of about fifty companies with significant business activities in the Western United States, including financial, transportation, engineering, forest products, mining, utility, accounting, energy, manufacturing and other enterprises. The Council recommends policies to enhance the quality of life in the West, recognizing the need for a safe and clean environment as well as a healthy and active economy.

WRC supports many of the conclusions reached by the Coal Commission in its report. However, we are concerned that the Department of Labor has not come forth making with legislative recommendations and that individual members of Congress may be considering inappropriate base-broadening measures that would require employers with no signatory obligation to the National Bituminous Coal Wage Agreement (NBCWA). The vast majority of coal producers in the West have never been members of the BCOA and were not signatory to UMWA contracts. Western coal companies and consumers of electricity produced by the utilities using Western coal should not bear the burden of ill-advised collective bargaining agreements between UMWA and the BCOA. If the UMWA health care plans have a funding problem—and it is certain that they do—it is attributable to actions taken by the UMWA and the present and past participants in the BCOA.

For example, the 1988 UMWA collective bargaining contract allowed BCOA companies to reduce their contributions to the UMWA trust by approximately 59%. This equates to approximately a $1.29 per ton reduction in their contribution rate, thus, realizing a savings of approximately 1.5 billion dollars during the term of the 1988 contract.

Western Regional Council is adamantly opposed to any base-broadening measures that would require non-signators to the BCOA/UMWA collective bargaining agreement to participate in and provide funds necessary to alleviate the existing deficit in the 1950 and 1974 health trust.

WRC supports many of the specific conclusions reached by the Coal Commission. For example, previous signators to the UMWA/BCOA collective bargaining agreement should be sought and statutorily forced to honor their responsibility of providing health and benefits for former employees. WRC supports the concept of a "Reach Back" to signatorily require those companies who have created "orphans" to provide the necessary funds to meet the needs of the Trusts. We also support the concept of statutorily preventing companies from creating orphans in the future.

WRC feels, with the increasing costs of providing health care, that the concept of a "Managed Care Benefit Trust" would go a long way to avoid future problems and reduce the overall financial liability of members of the BCOA contract agreement. An effective managed care program that seeks to minimize escalating costs can reduce the financial hardship faced by many orphans.

WRC also supports the Coal Commission conclusion that a transfer of capital from the 1950 Pension Plan to the 1950 and 1974 Benefit Trust is appropriate and would alleviate the short term deficit. Such a transfer would put the money to a higher and better use and would go along way in providing improved coverage.

WRC is strongly opposed to any base-broadening measures that would require unaffiliated, union free companies to pay for benefits negotiated in a union contract by other people. Such an action would promote, not discourage, irresponsibility in future collective bargaining in this country. The issue of providing health care coverage is a serious problem to the entire private sector of this country. Providing adequate health care is not just limited to the unionized coal industry. It extends throughout the mining, manufacturing, and other sectors of our economy. WRC

views the establishment of any base-broadening measure, health fee, or national tax, to resolve the deficit in the 1950 and 1974 Benefit Trust as a terrible precedent for Congress to consider.

The issue isn't whether the union health care trusts are in trouble, nor whether something should be done to help retired workers get the benefits they were promised through the collective bargaining agreement. WRC supports providing the benefits promised to members of the United Mine Workers of America. However, it is inappropriate to assume that Western coal producers and the users of the energy produced through the combustion of Western coals should be liable to pay for and subsidize collective bargaining agreements in which they were not prior parties nor signators. Any industry-wide tax would only contribute to the existing disproportionate burden on Western coal to provide reclamation, black lung fees and royalties which indirectly subsidize Eastern coal. For example, the abandoned mine land (AML) fees are calculated on a per ton produced basis. The AML fee represents a transfer of revenue of approximately 100 million dollars from the West to the East annually. This transfer of funds, because of the AML fee, is further compounded by the fact that the West has either cleaned up all previous abandoned coal mine lands or has already budgeted the necessary funds to do the reclamation within the next couple of years.

The Black Lung program, which is also partially based on a flat fee per ton, is also providing a subsidy to the East in the amount of over 150 million dollars per year. The majority of coal mining in the West is surface mining and those underground coal mines in operation were built after strict requirements on mine safety were imposed to prevent black lung. So again, the Black Lung fee is an additional burden on Western coal producers and consumers.

In addition to the AML & Black Lung fees, the WRC has serious concerns and problems regarding the manner in which the Minerals Management Service (MMS) of the Department of Interior requires Western coal producers to calculate and pay Federal coal royalties. The current method of royalty calculation could include as value any Benefits Trust tax or fee. So, not only would Western coal producers on Federal lands be required to pay the tax, but the tax itself would also be included in the base as value for royalty calculation purposes. The West would then be double taxed for a problem for which Western coal producers and consumers are not responsible.

In conclusion, WRC supports the transfer of funds from the 1950 Pension Trust to the Benefit Trusts to alleviate the immediate deficit. WRC supports the concept that all employers which formerly were members of BCOA, but who have now ceased to be signator parties, should be required to assume the responsibility for covering shortfalls in health coverage to their former employees and their dependents. Such a reach back would appear to be more equitable to the remaining BCOA members. WRC also supports the concept of Managed Care Benefit Plans. A strong managed care program will not necessarily decrease the existing financial responsibility of providing health benefits, but will go a long way toward managing the escalating increases in the future.

Finally, WRC is strongly opposed to any base-broadening measures that would include payments by Western coal industry employers with no signatory obligation with the National Bituminous Coal Wage Agreement.

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