

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BERWIND CORPORATION	:	
	:	
v.	:	
	:	
KENNETH S. APFEL,	:	
UNITED MINE WORKERS OF AMERICA	:	
COMBINED BENEFIT FUND,	:	
MICHAEL H. HOLLAND, WILLIAM P.	:	
HOBGOOD, MARTY D. HUDSON,	:	CIVIL ACTION
THOMAS O.S. RAND, ELLIOT A.	:	
SEGAL, CARL E. VAN HORN, GAIL	:	NO. 98-5985
R. WILENSKY, as Trustees of	:	
the United Mine Workers of	:	
America Combined Benefit Fund,	:	
THE UNITED STATES OF AMERICA,	:	
THE UNITED MINE WORKERS OF	:	
AMERICA 1992 BENEFIT PLAN and	:	
MICHAEL H. HOLLAND, MARTY D.	:	
HUDSON, ELLIOT A. SEGAL,	:	
A. FRANK DUNHAM, as Trustees	:	
of the United Mine Workers of	:	
American 1992 Benefit Plan	:	

M E M O R A N D U M

WALDMAN, J.

September 15, 2000

Plaintiff challenged its assigned liability under the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act") to fund lifetime health benefits for retired members of the UMWA and certain of their dependents through required premium payments to the UMW Combined Benefit Fund ("Combined Fund") and 1992 Benefit Plan ("1992 Plan").

Plaintiff, the Federal Defendants and the Trustees previously filed motions for summary judgment on some of the

various claims asserted by or against them. By memorandum and order of March 31, 2000, the Court addressed those motions and the claims asserted in Counts I, II, III, IV, V and VII of the Complaint, and in Counts I, II, III and IV of the Counterclaims. The prevailing parties, however, had not all moved for judgment in their favor on some of the respective claims.<sup>1</sup> The parties have now moved for summary judgment on all pending claims and counterclaims, and the court will enter judgment consistent with this memorandum and that of March 31, 2000. In doing so, the court will address briefly only those claims and issues left open in the March 31, 2000 opinion which have now been fully briefed by the parties.

Plaintiff's Tax Refund Claim (Count VIII)

Plaintiff asserted a tax refund claim against the United States pursuant to 26 U.S.C. § 7422 for premiums paid to the Combined Fund from April 4, 1995 until June 30, 1998 when it unilaterally ceased making payments in light of Eastern Enterprises. Plaintiff suggests that the court concluded in its March 31, 2000 opinion that plaintiff is entitled to a tax refund from the United States for those premiums. The court did not do so. The court merely addressed the only argument then advanced by the United States for summary judgment which was that Coal Act premiums are not taxes.

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<sup>1</sup>This appears to have been an oversight as the parties at least implicitly argued entitlement to judgment in their favor in their opposition to those motions filed by an adversary.

The court noted that the Third Circuit has declared that these premiums are "taxes." See Unity Real Estate Co. v. Hudson, 178 F.3d 649, 675 (3d Cir. 1999). The court also recognizes the only circuit court squarely to address the issue has held that a tax refund claim could be maintained against the United States for erroneously assessed Coal Act premiums. See Pittson Co. v. United States, 199 F.3d 694, 702-04 (4th Cir. 1999). In such circumstances, the court cannot conscientiously hold that Coal Act premiums are not "taxes," and is reluctant to hold that they nevertheless are not recoverable under the tax refund statute. The court notes, however, that Congress twice declined to enact tax measures to provide for miners' benefits and that the dissenting opinion in Pittson is far from unpersuasive on the question of Berwind's entitlement to a refund from the United States Treasury.

In any event, the court need not resolve this issue in light of the contingent nature of the claim and the Trustees' concession regarding plaintiff's restitution claim against the Funds.<sup>2</sup>

Plaintiff's Restitution Claim (Count VI)

Plaintiff asserted federal common law claims for restitution against the Funds and the Trustees to recover premiums paid to the Funds since April 4, 1995, and against the United States should plaintiff fail to obtain restitution from

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<sup>2</sup>As explicitly pled, plaintiff sought a refund from the United States only in the event it was unable to recoup the premium payments from the Funds. The Trustees acknowledge in footnote 6 of their brief of August 3, 2000 that to the extent recoupment is required, it should be from the Funds and not from the United States Treasury.

the Funds. As plaintiff is entitled to restitution from the Funds, its claim against the United States is moot.<sup>3</sup>

The Trustees contend that restitution should be denied on grounds of equity since it would impose an undue financial burden on the Funds. They note that the Funds are facing a multitude of lawsuits for refunds as a result of Eastern Enterprises and subsequent court opinions, and that the current ratio of assets to obligations is marginal.

The court is mindful of the very worthy purpose of the Funds. The court, however, cannot conscientiously differentiate plaintiff from Eastern in any regard which was pertinent to the Supreme Court's decision in Eastern Enterprises and concludes that it is not equitable to deny plaintiff recovery. As documented by plaintiff, there remain a significant number of corporations with very substantial net worth which constitutionally remain obligated to absorb premiums for beneficiaries. In a case referenced by the Trustees, a federal court barely a year ago ordered restitution to the plaintiff companies for erroneously assessed premiums in an amount exceeding \$19 million. It is not particularly equitable that some parties entitled to restitution receive it while others do

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<sup>3</sup>Moreover, the United States forcefully argues that it has not in any event waived sovereign immunity for such a claim, and the court notes that the United States has not been unjustly or inequitably benefitted.

not based on the speed with which particular cases are litigated.

Plaintiff's request for payment of interest, however, is another matter. The court does not believe that plaintiff is entitled to such a payment under the federal common law of restitution. See National Mining Ass'n v. Apfel, 97 F. Supp. 2d 1070, 1083 & n.18 (N.D. Ala. 1999).

Plaintiff's Request for Injunctive Relief

In connection with its APA claim, plaintiff seeks an order requiring the Commissioner to void assignments made to plaintiff after Eastern Enterprises. This relief is consistent with the remedies available under the APA and an order to this effect will be entered. Plaintiff also seeks a court order barring the Commissioner from reassigning any of these beneficiaries to it or to a related entity. The court will not enter such a broad order as it is not clear that none of these beneficiaries may properly be so reassigned.<sup>4</sup>

Counterclaims of the Funds and Trustees (Counts II and IV)

In Count II of their Counterclaims, the Funds and Trustees seek to recover from Berwind unpaid premiums for assigned Combined Fund beneficiaries since July 1998, and in Count IV they seek payment of current assessed premiums and an order requiring future payments for assigned beneficiaries. The

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<sup>4</sup>Plaintiff, of course, may challenge any particular subsequent assignment actually made to it if it has a legitimate basis to do so.

court previously denied the motion of the Trustees and Funds for summary judgment on these Counterclaims without prejudice to renew as to those beneficiaries who were employed by or are dependents of those employed by Reitz, a "related person" to Berwind under the Coal Act.

It is uncontroverted that plaintiff is responsible and owes unpaid premiums for two Reitz assignees, Thomas Barber and Margaret Novatni, as well as Helen Walters to the time of her death on September 9, 1998. Plaintiff does not contest liability for these assignees and has agreed to pay \$10,352.49 plus interest to the Combined Fund for unpaid premiums attributable to them. An order to this effect will be entered.

Cross-Claim of the United States

On August 1, 2000, the United States filed a cross-claim against the Combined Fund and its trustees for indemnification of any amounts the United States is required to refund to plaintiff for premiums paid. This contingent cross-claim is now moot and will be dismissed.

An appropriate order will be entered consistent with the foregoing and the court's memorandum and order of March 31, 2000.

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ORDER and JUDGMENT

AND NOW, this                    day of September, 2000, upon consideration of plaintiff's Motion for Summary Judgment (Doc. #26), the Motion of defendant Apfel and the United States for Summary Judgment (Doc. #28) and the cross-Motion of the United Mine Workers Combined Benefit Fund, 1992 Benefit Plan and their Trustees for Summary Judgment (Doc. #30), consistent with the accompanying memorandum and with the Court's memorandum and order of March 31, 2000, **IT IS HEREBY ORDERED** that plaintiff's Motion is **GRANTED** as to the claims in Counts V and VI against the Funds

and Trustees, and as to the Counterclaims in Counts I, II, III and IV except as to the claims for payment in Counts II and IV for assignees who worked or are dependents of those who worked for Reitz; the Motion of defendant Apfel and the United States is **GRANTED** as to the claims in Count VI and VII; and, the Motion of the United Mine Workers Combined Benefit Fund, 1992 Benefit Plan and their Trustees is **GRANTED** as to the claims for payment in Counterclaim Counts II and IV for Reitz assignees and is otherwise **DENIED**; and accordingly, **JUDGMENT** is **ENTERED** in the above action for the defendants and against plaintiff on the claims in Counts I, II, III, IV and VII; for plaintiff and against defendant Apfel on the APA claim in Count V, and the Commissioner shall thus void the challenged assignments to plaintiff; for defendant United States and against plaintiff on the restitution claim in Count VI; for plaintiff and against the Combined Fund and its Trustees on the restitution claim in Count VI in the amount of \$14,389,103.87; for plaintiff and against the 1992 Benefit Plan and its Trustees on the restitution claim in Count VI in the amount of \$35,597.12; for defendant United States and against plaintiff on the tax refund claim in Count VIII; for Counterclaim defendant Berwind and against Counterclaim plaintiff Funds and Trustees on the Counterclaims in Counts I and III; and, for Counterclaim plaintiff Combined Benefit Fund and its Trustees on the Counterclaims in Counts II and IV, as they relate to the assignment of Reitz beneficiaries, in the amount of \$10,352.49

plus prejudgment interest at the legal rate; and, as all of the various claims and counterclaims have now been resolved, this case is closed.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**

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O R D E R

AND NOW, this                      day of September, 2000, as the  
Cross-Claim for indemnification asserted by the United States  
(Doc. #29) was contingent and is now moot in view of the court's  
memorandum and order of this date, **IT IS HEREBY ORDERED** that the  
Cross-Claim Complaint filed by the United States herein is  
**DISMISSED.**

BY THE COURT:

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JAY C. WALDMAN, J.