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United States General Accounting Office
Washington, DC 20548

Accounting and Information
Management Division

B-285020

August 15, 2000

The Honorable Don Nickles
Assistant Majority Leader
United States Senate

Subject: Financial and Legal Issues Facing the United Mine Workers of America Combined Benefit Fund

Dear Senator Nickles:

In your January 24, 2000 letter, you asked us to review the United Mine Workers of America (UMWA) Combined Benefit Fund (the Fund).[1] As part of your request, you asked that we provide information on (1) the status of the Fund's financial position and its financing mechanism, (2) the impact of major court decisions on the assignment of beneficiaries, and (3) significant litigation and its related costs. In addition, you asked that we provide some general background information on the governance structure, operations, and benefit structure of the Fund.

As you know, in 1992, more than 100,000 UMWA retirees and their dependents were in danger of losing their health benefits. The Congress responded by enacting the Coal Industry Retiree Health Benefit Act (P.L. 102-486), which established the Combined Benefit Fund to pay these health benefits. More recently, the Fund has been experiencing financial difficulties due to rising costs and a financing mechanism that has been negatively affected by recent court decisions. In November 1999, the Congress responded to the Fund's financial difficulties by appropriating to the Fund $68 million in interest from the Abandoned Mine Land Reclamation Fund in the Consolidated Appropriations Act for Fiscal Year 2000 (P.L. 106-113).

To provide the information you requested and address your specific questions, we (1) interviewed fund officials and other affected parties, (2) examined applicable statutes and regulations, (3) reviewed the Fund's audited financial statements and actuarial projections, and (4) obtained and reviewed information from Fund officials on the Fund's significant litigation and its associated costs. We did not independently verify underlying data or compute actuarial projections. As part of our work, we

[1]The Fund is a multi-employer plan as defined by the Financial Accounting Standards Board in Financial Accounting Standard (FAS) 106 and is audited annually by independent auditors, which include actuarial projections of the Fund's unfunded liability.

contacted independent actuaries to review the actuarial projections and assumptions for reasonableness. We obtained oral comments on a draft of our briefing slides from UMWA officials. Their comments have been incorporated where appropriate.

We conducted our work from March 2000 through June 2000 in accordance with generally accepted government auditing standards. On June 28, 2000, we briefed your staff on the results of our work.[2] The purpose of this letter is to summarize the information provided at the briefing. The detailed briefing slides are enclosed.

Results in Brief

Recently, the Fund has been experiencing financial difficulties due to rising costs and a financing mechanism that has been negatively affected by recent court decisions. According to the Fund's September 30, 1999, audited financial statements, the Fund had a cumulative deficit of $12.2 million. The Fund's actuary estimates that the cumulative operating deficit will increase to approximately $513 million by 2008. In addition, the actuarial projection includes borrowing costs of $101 million during the same time frame, which results in a total deficit of $614 million.

The Fund is involved in extensive litigation arising from the Coal Act and normal business operations. Fund officials classified their significant litigation into seven major categories: (1) constitutional cases, (2) *Dixie Fuel* court cases, (3) companies challenging assessments, (4) premium rate cases, (5) bankruptcy cases, (6) successorship cases, and (7) Evergreen cases. *Eastern Enterprises* v. *Apfel (1998)* and *Dixie Fuel Company* v. *Social Security Administration (1999)* are two of the significant cases that have affected or may affect the assignment of beneficiaries. *Eastern* resulted in approximately 8,000 beneficiary reassignments.[3] *Dixie Fuel*, which has not yet been implemented, could potentially result in the reassignment of 10,000 beneficiaries. The Fund has incurred legal costs of over $11 million for all significant cases since its inception.

Background

The Coal Industry Retiree Health Benefit Act established the Fund as of February 1, 1993, by merging two existing UMWA retiree health benefit trusts. The act also established a financing mechanism for the Fund by assessing annual premiums on certain coal companies (and in some cases successor companies) that signed coal wage agreements with UMWA in 1988 or in prior years and are either still in the coal business or in any other business. In addition, the act (1) mandated that up to $70 million annually in interest from the fees in the Abandoned Mine Land Reclamation Fund (the AML Fund) could be used to defray medical premiums of

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[2]We will be providing the remaining information on the Fund's costs that you asked for in your request letter, including a comparison of benefit levels, per capita costs, administrative costs, and utilization rates with other employer-provided health plans, and the implementation of managed care and cost containment measures.

[3]The Coal Act mandates that beneficiaries must be assigned to employing coal companies. Beneficiaries may be reassigned if the original assignment is voided.

those beneficiaries who could not be assigned to an employing coal company and (2) required the transfer of $210 million from the 1950 Pension Trust Fund to provide initial funding. The act instructed the Social Security Administration (SSA) to assign retired miners and dependents to responsible companies before October 1, 1993.

The Fund's operations are overseen by a seven member Board of Trustees, comprised of (1) two individuals designated by UMWA, (2) one individual designated by the Bituminous Coal Operators Association (BCOA), (3) one individual designated by the three employers who were not signatories to the 1988 National Bituminous Coal Wage Agreement and have the largest number of assigned beneficiaries, and (4) three individuals agreed to by the four designated trustees.

The Fund offers its beneficiaries comprehensive health care coverage including physician services, durable medical supplies, prescription medications, home health services, inpatient hospital services, mental health treatment, preventive care, surgery, treatment of illness or injury, and certain other benefits.

Current and Projected Financial Position and Financing Mechanism

According to the Fund's September 30, 1999, financial statements, the Fund had a cumulative deficit of $12.2 million. Income during fiscal year 1999 of $329.4 million was derived from three major sources: (1) premiums (44 percent), (2) Medicare capitation payments[4] (39 percent), and (3) transfers of interest from the AML trust fund. Expenses for the same period were $366.4 million. Medical benefit costs and administration expenses accounted for approximately 91 percent and 7 percent of the total expenses respectively. In November 1999, the Congress appropriated an additional $68 million in interest from the AML Fund to allow the Fund to meet its fiscal year 2000 commitments. Due to that appropriation, the Fund is expected to have a positive fund balance of approximately $1 million at September 30, 2000.

The financing mechanism for the Fund is mandated by the Coal Act, which requires premiums for both health and death benefits for eligible beneficiaries. The Coal Act attributed responsibility for financing the Fund to coal companies and, in some cases, their successor companies. The Coal Act requires these companies to pay yearly premiums on all beneficiaries assigned to them. In addition to premiums, the Coal Act mandated that interest from fees in the AML Fund would be used to defray the cost of orphan beneficiaries.[5]

SSA calculates health benefit premiums, as prescribed by the Coal Act, using the following factors: (1) a base premium that is calculated using the expenses, federal reimbursements, and beneficiary population of the plan year ending June 30, 1992,

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[4]Rather than reimbursing the Fund as it incurs expenses for Medicare-eligible beneficiaries, Medicare pays the Fund a fixed amount per eligible beneficiary annually for estimated expenses for Medicare-covered services provided to the eligible beneficiaries. This amount is known as a capitation payment.

[5]Orphans are beneficiaries who are unable to be assigned to an employer either because the employer is no longer in business or has been relieved of liability by a legal decision.

and (2) the change in the medical component of the Consumer Price Index (CPI) between the base year, June 30, 1992, and the year being calculated.

Table 1: Top Five Coal Companies With the Largest Number of Beneficiaries Assigned and Their Respective Year 2000 Health Benefit Premiums

Company	Number of beneficiaries	Year 2000 health benefit premium
Consolidation Coal Co.	5,279	$13 million
Island Creek Coal Co.	4,274	$11 million
U.S. Steel Mining Co.	3,450	$ 9 million
LTV Steel Co.	3,141	$ 8 million
BethEnergy Mines, Inc.	2,045	$ 5 million

Source: Officials of the United Mine Workers of America Combined Benefit Fund.

The April 10, 2000, actuarial projection[6] for the Fund shows a cumulative deficit of $614 million ($513 million in accumulated annual deficits and $101 million in borrowing costs) by fiscal year 2008. The projection is based on significant assumptions about the following factors: AML transfers (the amount of interest that will be transferred each year from the AML fund), administrative expenses, premiums, borrowing costs, Medicare capitation payments, investment income, borrowing costs, mortality rates, population projections, economic and health care inflation, and health and death benefit expenses.

According to Fund officials, the population of beneficiaries is declining at an average rate of 7 percent per year. As of June 30, 1999, there were approximately 67,000 beneficiaries covered by the Fund. Eighty-one percent of the Fund's beneficiaries are over the age of 70, 72 percent are female, 91 percent are covered under Medicare, and over 60 percent live in Kentucky, West Virginia, and Pennsylvania.

An actuarial projection of the Fund dated April 10, 2000, predicts annual premiums per beneficiary rising from $2,591 in 2001 to $3,344 in 2008, as indicated in table 2.

Table 2: Projected Annual Health Benefit Premiums for 2001-2008

Year	Premium
2001	$2,591
2002	$2,681
2003	$2,778
2004	$2,881
2005	$2,990
2006	$3,104
2007	$3,222
2008	$3,344

[6]The actuarial projections were developed by King Associates, who were engaged by the Board of Trustees of the Fund to assist in the projection of long-term income and expenses.

The Impact of Court Decisions on the Assignment of Beneficiaries

The following two significant court decisions are among those that have or may affect the assignment of beneficiaries.

The *Eastern* Decision

Eastern Enterprises v. *Apfel* (1998) concerned whether assignments may be made to companies considered "in business" under the Coal Act, but who were not signatories to the 1974 or later National Bituminous Coal Wage Agreements. The Supreme Court ruled that Coal Act assignments to these companies were unconstitutional. One hundred and thirty-two coal companies and approximately 8,000 beneficiaries were affected by this decision as of February 1993.

The *Dixie Fuel* Decision

Dixie Fuel Company v. *Social Security Administration (*1999) concerned the right of the Commissioner of SSA to make assignments of beneficiaries to coal companies after September 30, 1993, which was the date given in the Coal Act. The 6th Circuit Court of Appeals ruled that the assignments of beneficiaries made after September 30, 1993, were invalid.

This ruling has not yet been implemented and is still the subject of litigation. If the ruling is implemented nationwide, Fund officials estimate that 247 coal companies and 10,000 beneficiaries could potentially be affected. In addition, if this ruling is implemented, the Fund may have to refund an estimated net $57 million in premiums to coal companies.

Significant Litigation and Its Related Costs

Fund officials reported significant cases in seven major categories: (1) constitutional cases, (2) *Dixie Fuel* cases, (3) companies challenging assessments, (4) premium rate cases, (5) bankruptcy cases, (6) successorship cases, and (7) Evergreen cases. Fund officials reported legal costs of approximately $11 million since the Fund's inception. In addition, they stated that these costs do not include the $100,000 to $300,000 the Fund has incurred annually for Fund lawyers and local counsel since its inception.

Significant cases were defined as those having a potential material effect on the Fund that would extend beyond the individual cases. Thus, Fund officials did not include 271 individual collection lawsuits and the 57 individual proofs of claim in bankruptcy filed by the Fund since its inception in its list of significant cases. Collection litigation activity has resulted in total payments of approximately $118 million from employers who were delinquent at the time of their litigation.

Constitutional Cases

These cases often involve challenges by coal companies that certain beneficiary assignments under the Coal Act violate the Due Process or Takings clause of the Constitution. The Fund has identified 22 significant cases in this area, including *Eastern.* Fund officials estimated that the cost of outside counsel for these cases was approximately $3.8 million.

***Dixie Fuel* Cases**
Cases in this category involve the validity of the beneficiary assignments made by SSA after September 30, 1993. Fund officials identified 13 significant cases in this category. The Fund was a party to and paid outside counsel in seven of the cases. Fund officials estimated that the cost of outside counsel for these cases was approximately $182,000.

Companies Challenging Assessments
In the case of *Apogee Coal Co.* v. *Holland*, major coal operators sued the Fund over retroactive increases that were made to their first-year premium assessments. The premium increases were a result of the increase in the number of orphans due to SSA's voiding of assignments pursuant to the *Eastern* decision. According to Fund officials, the cost of outside counsel for this case was estimated to be $250,000.

Premium Rate Cases
These cases involve actions brought against the Secretary of Health and Human Services to challenge the Secretary's determination of the per beneficiary premium under the Coal Act. The Fund officials identified four significant cases in this category, including *National Coal Association* v. *Chater*. The Fund was a party to and paid outside counsel in three of the four cases. Fund officials estimated the cost of outside counsel to be about $1.6 million.

Bankruptcy Cases
These cases involve the treatment of Coal Act premiums in bankruptcy proceedings. Fund officials have identified eight significant cases under this group. The Fund paid outside counsel in five of the cases. According to Fund officials, the estimated cost of the outside counsel was about $2.7 million.

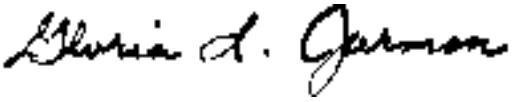
Successorship Cases
These are cases involving the treatment of certain entities as related persons to signatory operators based on such factors as purchase of assets and continuation of operations. Fund officials identified four significant cases in this category. The Fund was a party to and paid outside counsel in two of the cases. According to Fund officials, the estimated cost for the outside counsel was about $311,000.

Evergreen Cases
"Evergreen Clause" refers to the enforcement of the continuing contribution obligation requirements that were included in the National Bituminous Wage Agreements since 1978. The clause does not permit coal companies to stop paying their collectively bargained obligations. According to Fund officials, there have been two significant Evergreen cases that cost the Fund approximately $1.5 million for outside counsel.

We are sending copies of this report and briefing slides to other interested congressional parties and the Fund's Board of Trustees. We will make copies available to others upon request.

We appreciate the opportunity to be of assistance. If you or your staff have any questions regarding the briefing or this letter, or if we can be of further assistance, please contact either me at (202) 512-4476, or Alana Stanfield, Assistant Director, at (202) 512-3197. I may also be reached by e-mail at *jarmong.aimd@gao.gov*. Key contributors to this assignment were Bonnie Derby, Suzanne Lightman, Ogbeide Oniha, and Jeffrey Jacobson.

Sincerely yours,



Gloria L. Jarmon
Director, Health, Education, and
Human Services, Accounting and
Financial Management

Enclosure

Slides From the June 28, 2000, Briefing on the UMWA Combined Benefit Fund

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The United Mine Workers of America (UMWA) Combined Benefit Fund

Financial and Legal Issues Facing the Fund

Assistant Majority Leader, Senator Nickles
June 28, 2000

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Topics to be Discussed

- Objectives
- Scope and Methodology
- Background
- Impact of *Eastern Enterprises v. Apfel (Eastern)* on the assignment of beneficiaries
- Potential impact of *Dixie Fuel Company v. Social Security Administration (Dixie Fuel)* on the assignment of beneficiaries
- Description of current financing mechanism for the Fund
- Significant litigation and related costs
- Next Steps

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Objectives

- Research the governance structure, operations, benefit structure, and current and projected financial position of the UMWA Combined Benefit Fund (the Fund)
- Describe the Fund's current financing structure
- Determine the impact of the *Eastern* decision on the assignment of beneficiaries
- Determine the potential impact on the assignment of beneficiaries due to the *Dixie Fuel* decision
- Identify significant litigation and its related costs

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Scope and Methodology

- Interviewed Fund officials
- Conducted interviews with other affected parties
  - trade association
  - coal companies
  - collective bargaining entity
  - others
- Examined applicable statutes and regulations
- Reviewed audited financial statements, actuarial projections and other related documents
- Did not independently verify underlying data or compute actuarial projections

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Scope and Methodology (cont.)

- Actuarial projections and assumptions were reviewed by independent actuaries for reasonableness
- Obtained and reviewed information from Fund officials on significant litigation
  - information reviewed was received through a letter dated April 25, 2000
  - significant litigation is defined as cases having a potential material effect upon the Fund that would extend beyond the individual cases
- Conducted our work from March 2000 through June 2000 in accordance with generally accepted government auditing standards

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Background - The UMWA Combined Benefit Fund

- Governance structure of the Fund was created by the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act) to provide health benefits for retired coal miners and their dependents who were covered by two previously existing funds. The Coal Act
  - attributed funding responsibility to coal companies and, in some cases, their successor companies, and required them to pay yearly premiums on all beneficiaries assigned to them,
  - mandated that interest from fees in the Abandoned Mine Land Reclamation (AML) trust fund would be used to defray the premium cost of those beneficiaries who could not be assigned to an employing coal company,
  - required the transfer of $210 million from the 1950 Pension Trust Fund to provide initial funding,

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Background - The UMWA Combined Benefit Fund (cont.)

- instructed the Social Security Administration (SSA) to assign retired miners and dependents to responsible companies before October 1, 1993.

- Operations of the Fund are overseen by 7 trustees appointed as follows:
  - 2 individuals designated by UMWA
  - 1 individual designated by Bituminous Coal Operators Association (BCOA)
  - 1 individual designated by the three companies who
    - were not signatories to the 1988 National Bituminous Coal Wage Agreement, and
    - have the largest number of assigned beneficiaries
  - 3 individuals agreed to by the 4 designated trustees

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Background - The UMWA Combined Benefit Fund (cont.)

- The Fund is a multi-employer plan as defined by the Financial Accounting Standards Board in Financial Accounting Standard (FAS) 106 and:
  - has annual audits by independent auditors
  - produces annual actuarial projections of unfunded liability
- The Commissioner of SSA calculates the health benefit premium as prescribed by the Coal Act utilizing:
  - a base premium, calculated using the expenses, federal reimbursements and beneficiary population of the plan year ending June 30, 1992
  - the change in the medical component of the Consumer Price Index (CPI) between the base year (ending June 30, 1992) and the year being calculated

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Background - The UMWA Combined Benefit Fund (cont.)

- The beneficiary population of the Fund is limited to those miners and their dependents who were receiving benefits from the two pre-existing benefit funds at the time the funds were merged under the Coal Act to form the Combined Benefit Fund. According to Fund officials, the population is declining at an average rate of 7 percent per year.
- As of June 30, 1999, there were approximately 67,000 beneficiaries of which:
    - 81 percent are over the age of 70
    - 72 percent are female
    - 91 percent are covered by Medicare
    - over 60 percent live in Kentucky, West Virginia and Pennsylvania

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Background - The UMWA Combined Benefit Fund (cont.)

- The Fund offers comprehensive health care coverage which includes:
  - physician services
  - durable medical supplies
  - prescription medications
  - home health services
  - inpatient hospital services
  - mental health treatment
  - preventive care
  - surgery
  - treatment of illness or injury
  - certain other benefits

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Background - The UMWA Combined Benefit Fund (cont.)

- Summary of the current financial position of the Fund according to the fiscal year 1999 audited financial statements:
  - Income for fiscal year ended September 30, 1999 amounted to $329.4 million. Income is derived from three major sources namely premiums (44 percent), Medicare (39 percent) and AML fund transfers (14 percent).
  - Expenses for the same period amounted to $366.4 million. Medical benefit cost and administration expenses accounted for approximately 91 percent and 7 percent of the expenses respectively.

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Background - The UMWA Combined Benefit Fund (cont.)

- The Fund's September 30, 1999 audited financial statements show a $12.2 million cumulative deficit. In addition to the AML Trust Fund transfer to cover "Orphan" beneficiary expenses, in November 1999, Congress appropriated an additional $68 million in AML Trust Fund interest to allow the Fund to meet its fiscal year 2000 commitments.
- Orphans are beneficiaries who are unable to be assigned to an employer either because the employer is no longer in business or has been relieved of liability by a legal decision.
- Due to that appropriation, the Fund is projected to have a positive fund balance of approximately $1 million at September 30, 2000.

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Background - The UMWA Combined Benefit Fund (cont.)

- King Associates' Actuarial Projection dated April 10, 2000, projects annual operating income, expenses and cumulative deficits (dollars in millions) of:

Fiscal Year	Income	Expenses	Cumulative Deficits
• 2001	$300	$357	$ 56
• 2002	280	342	117
• 2003	262	326	182
• 2004	243	309	249
• 2005	204	293	338
• 2006	187	277	428
• 2007	167	259	520
• 2008	149	243	614

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Background - The UMWA Combined Benefit Fund (cont.)

- King Associates was engaged by the Board of Trustees of the Fund to assist in the projection of long-term income and expenses.
- In developing the actuarial projections, King Associates made significant assumptions about the following factors:
  - AML Transfer
  - Premiums
  - Medicare Capitation
  - Mortality
  - Administrative Expenses
  - Borrowing Cost
  - Investment Income
  - Population Projections
  - Economic and Health Care Inflation Assumption
  - Health and Death Benefit Expenses

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Premium Structure and Funding Mechanism

- Premiums are mandated by the Coal Act to finance health and death benefits for eligible beneficiaries.
- There are three components of the premium structure
  - Health Benefit Premium
  - Death Benefit Premium
  - Unassigned Beneficiary Premium
- SSA calculates premiums as prescribed by the Coal Act, using the following factors:
    - a base premium, calculated using the expenses, federal reimbursements and beneficiary population of the plan year ending June 30, 1992
    - the change in the medical component of the Consumer Price Index (CPI) between the base year (ending June 30, 1992) and the year being calculated

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Premium Structure and Funding Mechanism (cont.)

- Premiums are paid annually by coal companies and are determined by SSA. The premium for calendar year 2000 is $2,503 per beneficiary. The actuarially projected annual premiums per beneficiary through 2008 are as follows:

  - 2001 - $2,591
  - 2002 - $2,681
  - 2003 - $2,778
  - 2004 - $2,881
  - 2005 - $2,990
  - 2006 - $3,104
  - 2007 - $3,222
  - 2008 - $3,344

- For fiscal year 2000, approximately 340 coal companies were assessed premiums.

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Premium Structure and Funding Mechanism (cont.)

- According to Fund officials, the top five coal companies with the largest number of beneficiaries assigned, and their respective premiums, are:

Company	Beneficiaries	Premiums
Consolidation Coal Co.	5,279	$13 million
Island Creek Coal Co.	4,274	$11 million
U.S. Steel Mining Co.	3,450	$ 9 million
LTV Steel Co.	3,141	$ 8 million
Beth Energy Mines, Inc.	2,045	$ 5 million

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Impact of *Eastern* Decision on Assignment of Beneficiaries

- Two significant court decisions have or may affect the assignment of beneficiaries:
  - *Eastern Enterprises v. Apfel (Eastern)* (1998) concerned whether assignments may be made to companies, considered “in business” under Coal Act, but who were not signatories to the 1974 or later National Bituminous Coal Wage Agreements. The Supreme Court ruled that Coal Act assignments to these companies were unconstitutional. One hundred and thirty-two coal companies and approximately 8,000 beneficiaries were affected by the decision as of February 1993.

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Impact of *Dixie Fuel* on the Assignment of Beneficiaries

- *Dixie Fuel Company v. Social Security Administration (Dixie Fuel)* (1999) concerned the right of the Commissioner of SSA to make assignments of beneficiaries to coal companies after the deadline for assignments given in the Coal Act. The 6th Circuit Court of Appeal ruled that assignments of beneficiaries made after September 30,1993, were invalid.
    - However, this ruling has not yet been implemented and is still the subject of litigation.
    - This ruling could potentially affect 247 coal companies and 10,000 beneficiaries.
    - If this ruling is implemented, the Fund may have to refund an estimated net $57 million in premiums to coal companies.

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Significant Litigation and Related Costs

- According to the Fund officials,
  - the Fund reported seven significant case categories
    - Constitutional cases
    - *Dixie Fuel cases*
    - Companies challenging assessments
    - Premium rate cases
    - Bankruptcy cases
    - Successorship cases
    - Evergreen cases

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Significant Litigation and Related Costs (cont.)

- Significant cases reported do not include 271 collection lawsuits and 57 proofs of claim in bankruptcy since its inception that the Fund has filed.
- Collection litigation activity has resulted in total payments of approximately $118 million from employers who were delinquent at the time of their litigation.
- The Fund has incurred $100,000 to $300,000 per year for Fund lawyers and local counsel since the inception of the Fund.

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Significant Litigation and Related Costs (cont.)

- The seven major categories are:
  - Constitutional Cases
    - These cases often involve challenges by coal companies that certain beneficiary assignments under the Coal Act violated the Due Process or Takings clause of the Constitution.
    - The Fund has identified 22 significant cases in this category, including *Eastern Enterprises* v. *Apfel*, 118 S.Ct. 2131(1998) .
    - According to Fund officials, the cost of outside counsel was estimated to be approximately $3.8 million.

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Significant Litigation and Related Costs (cont.)

- *Dixie Fuel Cases*
  - Cases in this category involve the validity of beneficiary assignments made by SSA after September 30, 1993.
  - The Fund has identified 13 significant cases in this category.The Fund was a party and paid outside counsel in 7 of the cases. According to Fund officials, the cost of outside counsel was estimated to be approximately $182,000.
  - These cases stemmed from *Dixie Fuel Company* v. *SSA*, 171 F.3d 1052 (6th Cir.1999).

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Significant Litigation and Related Costs (cont.)

- Companies Challenging Assessments
  - In the *Apogee Coal Co* v. *Holland*, C.A.98-C-2858-S (N.D. Ala. Filed Nov.13, 1998) case, major operators sued the Fund over retroactive increases that were made to their first year premium assessments. The premium increases were a result of the increase in the number of "orphans" due to SSA's voiding of assignments pursuant to the *Eastern Enterprises* decision.
  - According to Fund officials, the cost of outside counsel was estimated to be approximately $250,000.

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Significant Litigation and Related Costs (cont.)

- Premium Rate Cases
  - These cases involve actions brought by coal companies against the Secretary of Health and Human Services to challenge the Secretary's determination of the per beneficiary premium under the act.
  - The Fund has identified 4 significant cases in this category, including *National Coal Association* v. *Chater*, 81 F.3d 1077(11th Cir.1996). The Fund was a party and paid outside counsel in 3 of the cases.
  - According to Fund officials, the cost of outside counsel was estimated to be approximately $1.6 million.

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Significant Litigation and Related Costs (cont.)

- Bankruptcy Cases
  - These are cases involving the treatment of Coal Act premiums in bankruptcy proceedings.
  - The Fund has identified 8 significant cases under this group, including *In re Chateaugay*, 53 F. 3d 478 (*2d Cir.), cert. Denied sub norm., LTV Steel Co. v Shalala*, 516 U.S. 913 (1995), *In re Adventure Resources*, 137 F.3d 786(4th Cir. 1998) and *In re Westmoreland Coal Co*., C.A. 96-26092 (MSK) (D.Colo.).
  - The Fund paid outside counsel in 5 of the cases.
  - According to Fund officials, the cost of outside counsel was estimated to be approximately $2.7 million.

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Significant Litigation and Related Costs (cont.)

- Successorship Cases
  - These are cases involving the treatment of certain entities as related persons to signatory operators based on such factors as purchase of assets and continuation of operations.
  - The Fund has identified 4 significant cases in this category. The Fund was a party and paid outside counsel in two of the cases.
  - According to Fund officials, the cost of outside counsel was estimated to be approximately $311,000.

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Significant Litigation and Related Costs (cont.)

- Evergreen Cases
  - "Evergreen Clause" refers to the enforcement of the continuing contribution obligation requirements (coal companies were not permitted to stop paying their collectively bargained obligations) that were included in the National Bituminous Coal Wage Agreements since 1978.
  - The Fund identified 2 significant cases, including *UMWA 1974 Pension Trust, et al. v. The Pittston Company, et al.*, 984 F.2d 469(D.C. Cir.1993).
  - According to Fund officials, the cost of outside counsel was estimated to be approximately $1.5 million.

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Next Steps

- Further research on the Fund was requested. The information requested includes:
  - benefit levels, per capita costs, and utilization rates
  - comparison with other employer-provided health plans
  - implementation of managed care and cost containment options
  - recommendations on optimizing the efficiency and effectiveness of the Fund
- Final product containing all requested information is forthcoming.

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