

December 5, 1996

CIRCUIT COURT OUTLINE

Prepared By
Office of General Counsel

This outline is intended to be a reference guide only and, due to the rapidly changing law, may not represent the current status of the law in a particular circuit. This outline also includes several published decisions of the Benefits Review Board that interpret and apply the case law of the United States Courts of Appeals or are relevant to issues addressed by Court decisions listed herein. This outline, however, is not intended to necessarily represent the position of the Benefits Review Board on any particular issue of law, except as noted. For further discussion of case law developed by the Benefits Review Board, the Black Lung Desk Book may be consulted.

Pronouncements recently issued by the Courts that are included in this edition of the Circuit Court Outline are listed in order following the revised table of contents for this outline as follows:

PART I

Part I.H. - Definitions:

Responsible Operator: *Northern Coal Co. v. Director, OWCP [Pickup]*, 100 F.3d 871, No. 95-9524 (10th Cir., Nov. 18, 1996).

PART II

Part II.E.1. - Procedural Issues:

Viability of Claims/Abandonment: *Freeman United Coal Mining Co. v. Director, OWCP [Tasky]*, 94 F.3d 384, 20 BLR 2- (7th Cir. 1996).

Part II.E.2.a. - Procedural Issues:

****Duplicate Claims/SOL: *Wyoming Fuel Co. v. Director, OWCP [Brandolino]*, 90 F.3d 1502, 20 BLR 2-302 (10th Cir. 1996).**

****Duplicate Claims/Tenth Circuit Approach: *Wyoming Fuel Co. v. Director, OWCP***

[*Brandolino*], 90 F.3d 1502, 20 BLR 2-302 (10th Cir. 1996).

Part II.H.2 - Procedural Issues:

++Please note that *Consolidation Coal Co. v. Filer*, 20 BLR 2-187 (4th Cir. 1996) has been designated as UNPUBLISHED by the Fourth Circuit. The digest has therefore been removed from the Circuit Court Outline.++

PART III

Part III.C.1.d. - Administrative Processing of Claims:

****Cause of Disability and Pneumoconiosis/erroneous premise: *Stiltner v. Island Creek Coal Co.*, F.3d , 20 BLR 2-246 (4th Cir. 1996)(Williams, J., dissenting).**

****{no F.3d cite yet available}****

PART IV

Part IV.E. - Part 718:

Section 718.204(b): *Black Diamond Coal Mining Co. v. Director, OWCP [Marcum]*, 95 F.3d 1079, 20 BLR 2- (11th Cir. 1996).

Part IV.F. - Part 718:

Section 718.205(c): *Kirk v. Director, OWCP*, 86 F.3d 1151, 20 BLR 2-276 (4th Cir. 1996)(Williams, J., concurring).

Section 718.205(c): *Bethenergy Mines, Inc. v. Director, OWCP [Rowan]*, 92 F.3d 1176, 20 BLR 2-289 (4th Cir. 1996)(Hall, J., dissenting).

Section 718.205(c): *Northern Coal Co. v. Director, OWCP [Pickup]*, 100 F.3d 871, No. 95-9524 (10th Cir., Nov. 18, 1996).

PART VI

Part VI.B.2.b. - Section 727.203(b)(3) Rebuttal:

****Section 727.203(b)(3)/Fourth Circuit: *Stiltner v. Island Creek Coal Co.*, F.3d , 20 BLR 2-246 (4th Cir. 1996)(Williams, J., dissenting).**

****{no F.3d cite yet available}****

Section 727.203(b)(3)/Fourth Circuit: *Badger Coal Co. v. Director, OWCP [Kittle]*, 83 F.3d 414, 20 BLR 2-265 (4th Cir. 1996).

PART VII

Part VII.D. - Survivors' Claims:

++Please note that *Riddle v. Director, OWCP*, 20 BLR 2-138 (4th Cir. 1996) has been designated as UNPUBLISHED by the Fourth Circuit. The digest has therefore been removed from the Circuit Court Outline.++

****** Included in Forward to indicate an updated site.

Any comments, additions, deletions or changes are welcomed and may be directed to Lisa Lahrman, Office of the General Counsel, Benefits Review Board.