



BLBA BULLETIN NO. 15-04

Issue Date: **FEB 04 2015**

Expiration Date: Indefinite

Subject: Trust Fund Liability for Claims Associated with the now liquidated insurer, Kentucky Coal Producers Self-Insurance Fund (KCP)

Background: KCP was a self-insurance fund created pursuant to Kentucky law and in existence from 1981 through 1991. Despite its name, it is not a self-insured entity as described in 20 CFR Part 726, Subpart B, but a commercial insurer. On December 18, 2012, DCMWC was notified that KCP funds would soon be insufficient to meet its obligations. On January 28, 2013, KCP informed DCMWC that it was paying claimants their February benefits, but would not be paying any additional benefits.

Purpose: To provide guidance for District Office staff in adjudicating claims involving a Responsible Operator for whom the miner's last qualifying employment was during a period insured by KCP (NR066).

Applicability: Appropriate DCMWC Personnel.

Action: All claims which were formerly paid by KCP are now being paid by the Black Lung Disability Trust Fund. However, in those claims still pending before the District Office, the District Office personnel will immediately:

- A) If the Proposed Decision and Order has not yet been issued, determine if there is another potential responsible operator that can be identified pursuant to 20 CFR 725.495(a)(3) (previous employer of claimant).¹
 - 1) If a prior operator cannot be identified, place a memo in file stating that: (1) the Responsible Operator (Name the Company) was insured by KCP Self-Insurance Fund, which is now bankrupt and no longer possesses sufficient assets to secure the payment of benefits in this claim; (2) notices cannot be served on the company because there is no valid address where correspondence can be sent; (3) a previous employer cannot be identified in this claim; and (4) therefore, this company is not a potentially liable operator pursuant to 20 CFR 725.494(e)(1), and the claim is considered to be the responsibility of the Trust Fund.

¹ DCMWC has determined that all of the companies that were insured by KCP are defunct and do not have successors.

- a) On Claimant Master, maintain existing ROID and ICID fields.
 - b) Change the RO Determination Field in the Adjudication Data Set to 089.
 - c) Continue with claim development in a normal manner.
- 2) If another Responsible Operator can be identified:
- a) Issue another Notice of Claim.
 - b) Obtain a 20 CFR 725.495(d) statement for the originally named Operator and for KCP (NR066).
 - c) Send a letter to the newly identified Responsible Operator requesting tax records.
 - d) Continue with claim development in a normal manner.
- B) If a Proposed Decision and Order has been issued, convert liability to the Trust Fund and place:
- 1) A 20 CFR 725.495(d) Statement for KCP in the record.
 - 2) A 20 CFR 725.495(d) Statement for the Responsible Operator in the record.
 - 3) Continue in a normal manner.
- C) If the claim that has been remanded to the District Director or a request for modification has been made.
- 1) Convert the claim to a Trust Fund case (another operator cannot be named) and place a 20 CFR 725.495(d) statement for KCP and one for the Responsible Operator in the record.
 - 2) In the case of a remand, place a memo in the file stating that pursuant to 20 CFR 725.407(d), the District Director may not notify additional operators of their potential liability after a case has been referred to the Office of Administrative Law Judges, that the designated Responsible Operator in the claim is no longer in business, and convert liability to the Trust Fund.
 - 3) In the case of a modification, place a memo in the file stating that pursuant to 20 CFR 725.494(e)(1), the District Director may not notify the Responsible Operator of potential liability, and convert liability to the Trust Fund.
 - 4) Process the remand or modification request in a normal manner.

Disposition: Retain this Bulletin until further notice or its incorporation into the Coal Mine (BLBA) Procedural Manual.



Michael A. Chance
Director, Division of Coal Mine Workers' Compensation

Distribution: All DCMWC staff