

CIRCUIT COURT OUTLINE

INTRODUCTION

At the outset, the reader should consider the guidance provided by the Sixth Circuit in **Director, OWCP v. Bivens**, 757 F.2d 781 (6th Cir. 1985):

That so much ink must be spilled before the issue can be cogently stated illustrates the complexity of the statutory scheme which we must interpret. Many Courts which have grappled with procedural aspects of the Black Lung Benefits Act have concluded, to put it kindly, that the Act does not represent the work of Congress at its most lucid. See **Black Diamond**, 598 F.2d at 948 ("[t]he statutory tangle is intricate and exhibits some disregard for the usual rules of syntax, let alone clarity"); **South East Coal**, 598 F.2d at 1049 (Trust Fund is liable for attorneys' fees through an "extremely convoluted process"); **U.S. Pipe and Foundry Co. v. Webb**, 595 F.2d 264, 265, 273 n.9 (5th Cir. 1979) (referring to the "legislative morass" and the "clumsy drafting"); **Republic Steel**, 590 F.2d at 79 (referring to the "complexities of this convoluted process and the confusion it provokes"); **Director, Office of Workers' Compensation Programs v. Alabama By-Products Corp.**, 560 F.2d 710, 712, 720 (5th Cir. 1977)(referring to the "labyrinthine statutory provisions" and the "statutory thicket" of the Act); **Krolick Contracting Corp. v. Benefits Review Board**, 588 F.2d 685, 686 (3d Cir. 1977) (referring to the "statutory muddle"); **Director, Office of Workers' Compensation Programs v. Peabody Coal Co.**, 554 F.2d 310, 313, 339 (7th Cir. 1977)(referring to "statutory shambles" and "abysmally inept drafting").

Our quoting of these criticisms is not a mere idle expression of frustration. Rather, it explains, in part, our approach to this case. Although we rely on the "plain" language and the legislative history of the attorneys' fee provision in reaching our conclusion, we also find it highly appropriate to rely on the Secretary's regulations when construing a statutory scheme with such a byzantine structure.

Id. at 785; see also **Collins v. Old Ben Coal Co.**, 861 F.2d 481 (7th Cir. 1988) where the Seventh Circuit expressed the "... need to unravel the intricate, some might say convoluted, interweaving of the statutory and regulatory provisions concerning black lung benefits."

In **Ingram v. Califano**, 547 F.2d 904 (5th Cir. 1977), *reh'g denied* (1977), the Fifth Circuit set forth its view regarding how successful claims are paid:

Under Part B of the Black Lung Act the program established by Congress is administered by the Secretary of Health, Education and Welfare. 30 U.S.C. §921-925. The United States government pays lifetime benefits to the claimants who file before June 30, 1973, and establish permanent disability existed prior to that date. 30 U.S.C. §§923(a) and 924(b). These same claimants may take advantage of the interim presumptions of disability made available to them in 20 C.F.R. §410.490. Part B is only an interim program. For claims filed after January 1, 1974, we must look to Part C. The claims under Part C are filed with the Secretary of Labor pursuant to applicable state workmen's compensation laws where the Secretary of Labor finds that these state laws provide adequate coverage for the miners. 30 U.S.C. §931. Where there is not adequate coverage under state law the mining companies must pay the benefits. 30 U.S.C. §933(a). For the period between June 30, 1973, and January 1, 1974, the Secretary of Labor was required to administer the claims filed. 30 U.S.C. §925. The United States government would pay these claims until December 31, 1973, (30 U.S.C. §§924(b) and 925(a)(1) at which time the claims would be paid by the mine owners or the states under certified workmen's compensation programs as mentioned above.

Id. at 906.

The Black Lung Act has a long and curious history. For information relevant to that history, the reader is referred to: ***Director, OWCP v. Greenwich Collieries*** [***Ondecko***], 512 U.S. 267, 18 BLR 2A-1 (1994); ***Pittston Coal Group v. Sebben***, 488 U.S. 105, 12 BLR 2-89 (1988); ***Mullins Coal Company, Inc. of Virginia v. Director, OWCP***, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied*, 484 U.S. 1047 (1988); ***Usery v. Turner Elkhorn Mining Co.***, 428 U.S. 1 (1976); ***Helen Mining Co. v. Director, OWCP***, [***Burnsworth***] 924 F.2d 1269, 14 BLR 2-145 (3d Cir. 1991); ***Clark v. Crown Construction Co.***, 887 F.2d 149, 11 BRB 2-46 (8th Cir. 1989); ***Saginaw Mining Company v. Ferda***, 879 F.2d 198, 12 BLR 2-376 (6th Cir. 1989); ***Taft v. Alabama By-Products Corp.***, 733 F.2d 1518 (11th Cir. 1984); ***Underhill v. Peabody Coal Co.***, 687 F.2d 217 (7th Cir. 1982); ***Moore v. Harris***, 623 F.2d 908 (4th Cir. 1980); ***Bozwich v. Mathews***, 558 F.2d 475 (9th Cir. 1977); ***Talley v. Mathews***, 550 F.2d 911 (4th Cir. 1977); and ***Wilson v. Weinberger***, 401 F.Supp 276 (E.D. Tenn. 1975); **see also** Prunty & Solomons, The Federal Black Lung Program: Its Evaluation and Current Issues, 91 West Va. L. Rev. 665 (1989); Ramsey & Habermann, The Federal Black Lung Program: The View From The Top, 87 W. Va. L. Rev. 575 (1985); Smith & Newman, The Basics of Federal Black Lung Litigation, 83 W. Va. L. Rev. 763 (1981); Lapp, A Lawyer's Medical Guide to Black Lung Litigation, 83 W. Va. L. Rev. 721 (1981); Lopatto, The Federal Black Lung Program: A 1983 Primer, 85 W. Va. L. Rev. 677 (1983); Solomons, A Critical Analysis of the Legislative History Surrounding the Black Lung Interim Presumption and a Survey of Its Unresolved Issues, 83 W. Va. L. Rev. 869 (1981); Millstone & Codinach, The Survivors' 25-Year Presumption Under the Black Lung Benefits Reform Act of 1977: A Case for Its Unconstitutionality, 82 W. Va. L. Rev. 1079

(1980); Gellhorn, The "Black Lung" Act: An Analysis of the Legal Issues Raised Under The Benefit Program Created by the Federal Coal Mine Health and Safety Act of 1969 (As Amended), Federal Judicial Center (1981).