



BLBA BULLETIN NO. 16-03

Issue Date: April 14, 2016

Expiration Date: Indefinite

Subject: James River Coal Company Bankruptcy

Background: In April 2014, James River Coal Company filed for Chapter 11 bankruptcy. On December 29, 2014, James River Coal Company received approval from the bankruptcy court to complete the sale of all remaining operating assets of the company, and on December 31, 2014 the sale was completed. James River Coal Company's West Virginia and Indiana operations were sold to Blackhawk Mining (0109270,) and James River's Kentucky operations were sold to Revelation Energy (0216601), Blackhawk Mining (0109270) and Fortress Resources (0217922); all three of these operators are commercially insured.

James River Coal Company was authorized to self-insure its Kentucky federal black lung liabilities as well as the liabilities of its subsidiary companies. On January 5, 2015, the Division of Coal Mine Workers Compensation (DCMWC) was notified by James River Coal that the company no longer possessed sufficient assets to secure the payment of further benefits, and would make their last payment to beneficiaries effective January 15, 2015. James River Coal Company and their surety bond company reached a settlement agreement with the Office of the Solicitor, and tendered the full penal sum of the surety bond to the Black Lung Trust Fund. Current James River beneficiaries due monthly payments have been converted to the Trust Fund for payment.

Applicability: Appropriate DCMWC Personnel

Purpose: To provide guidance for district office staff in adjudicating claims in which the qualified employment period falls within the period of self-insurance for James River Coal Company.

Action:

Since the full penal sum of the surety bond has been tendered to the Black Lung Trust Fund, when the qualified employment period falls within the period of self-insurance, liability for the payment of any benefits that may become payable in the claim now become the responsibility of the Black Lung Trust Fund (BLTF).

1. Preserve Data in Claims and Payment System (CAPS) “record”

In order to maintain the CAPS “record” of the relationship of a claim to James River Coal Company:

- a. Maintain/enter the values for the appropriate ROID (0004891) and ICID (NR268) number on the Claim Master Screen; it should not be changed for any reason.
- b. Place code 089 in the RMO basis column in the adjudication data set field on the Claim Master Screen.

2. Do not request 725.495(d) statements

Do not request a 20 CFR 725.495(d) statement from the RO Section, since no other prior operator can be named due to James River’s self-insurance status.

3. Procedures for handling new claims and claims pending before the District Director

Convert all James River Coal Company claims to the BLTF unless they are covered by commercial insurance. When converting a claim to the BLTF, ensure step numbers 1a and 1b above are completed.

- a. If the responsible operator (RO) did not submit any medical evidence, treat the claim like any other Trust Fund claim and process accordingly.
- b. If the RO submitted medical evidence, it should be considered by the district director (DD) if it complies with the limitation of evidence stipulated in 20 CFR 725.414, along with the 413(b) exam and any claimant evidence. Issue a Proposed Decision and Order (PDO) on the basis of all the evidence in the file.
- c. If the claim meets the criteria for the Pilot Project as outlined in BLBA Bulletin 14-05, *Creating Stronger PDO's in Living Miner Cases Wherein the 15-Year Presumption May Apply*, and the district director (DD) determines that the claim should be denied on the basis of all the evidence, obtain a supplemental report from the DCMWC 413(b) examining physician. Once the supplemental report is received, consider it, along with all the other evidence in the record and issue a PDO.

4. Procedures for handling cases pending before the Office of the Administrative Law Judges (OALJ)

For cases that are pending before the OALJ, follow the procedures below:

- a. If the PDO decision was an AWARD and no post-PDO RO evidence was submitted, remand the claim to the DD for payment as a Trust Fund claim.
- b. If Post-PDO RO evidence was submitted (including cases in which the record is closed) and the case does not qualify as a Pilot Project claim, consult the Regional Solicitor of Labor (SOL), ask for a review of all the evidence (including claimant's evidence), and a recommendation on how to proceed; whether DCMWC should pay or defend the claim.
- c. If the case is a Pilot Project claim, have SOL review all the evidence (including claimant's evidence) and issue a preliminary determination to either pay or defend the claim.
 - 1. If the preliminary determination is to pay the claim, SOL will make that recommendation to DCMWC.
 - 2. If the preliminary determination is to defend the claim, SOL will ask the DD to request a supplemental report from the 413(b) examiner. Once the supplemental report is received and considered along with all the evidence in the record, SOL will make a recommendation to either pay or defend the claim.
- d. If the PDO decision was a DENIAL, follow the instructions below:
 - 1. If a formal hearing was held, the OALJ will decide the case based on the current record.
 - 2. For all other cases, ask SOL to review all evidence, including claimant's evidence, and issue a recommendation to DCMWC whether to pay or defend the claim.

5. Procedures for handling cases pending before the Benefits Review Board (BRB), U.S. Court of Appeals and the Supreme Court

For cases that are pending before the BRB, U.S. Court of Appeals, and the Supreme Court follow the procedures below:

- a. Remanded to the DD for payment from the Trust Fund all claims that were previously awarded by the DD and that are still in award status. This includes PDO awards that were OALJ awards and are now at the Board; and PDO awards that were denied by an ALJ, but awarded by the Board and now pending before a court of appeals.
- a. All other claims (those not awarded by the DD, or awarded by the DD but not currently an award) will be evaluated by SOL on a case-by-case basis, and recommendation made to DCMWC as to whether the case should be paid, defended, or appealed. This would include: PDO denials that were awarded by an ALJ, or PDO awards that were denied by an ALJ.

Disposition: Retain this Bulletin until further notice or its incorporation into the Black Lung Library.

A handwritten signature in blue ink, appearing to read "Michael A. Chance".

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

Distribution: All DCMWC staff