



Chapter 10

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An Examination of Administrative Issues Under the Coal Industry Retiree Health Benefit Act of 1992 in the Context of Judicial Review: Overton Park, Private Rights and Limits on Informal Agency Authority

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§ 10.01. Introduction.

Relief for coal operators from liability under the Coal Industry Retiree Health Benefit Act of 1992 (the “Coal Act”)¹ is most likely to come from the courts, not from the Coal Act’s abbreviated agency review process. Just the abundance of lawsuits the Coal Act has generated, together with the Supreme Court’s granting certiorari in two Coal Act cases within this relatively obscure law’s brief existence, is telling commentary on how desperately operators have turned to the courts for relief. Congress delegated the beneficiary assignment process (and hence the designation

¹ 26 U.S.C. §§ 9701-9722.

of liability for miners' health benefit premiums) to the Social Security Administration (SSA). Yet the SSA has undertaken a far greater role than Congress ever intended, or else was saddled with more than Congress ever anticipated, under a complicated beneficiary assignment scheme that needed, but made no provision for, formal on-the-record agency adjudication. The Coal Act's assignment and review procedures are ill-suited for the kinds of decisions the agency makes, and the Act's assignment rules are too complex for informal agency action, period. Consequently, and almost by default, courts decide the propriety of assignments — and virtually *de novo* in many cases.

Nonetheless, resort to the courts can be a limited and often disappointing excursion whenever an administrative agency is thrown into the mix. The specter of those two talismatic words can quickly blur the scope of a petitioner's right to thwart agency action (or at least assure it was correct), and nowhere is the difficulty more acute than in judicial review of "informal" agency action. The purpose of this chapter is to review and analyze major administrative law issues that can impede broad judicial review of Coal Act assignments and to argue for, and provide examples of means of obtaining effective review, the broadest of which is *de novo*.

The first section of this chapter outlines pertinent history and provisions of the Coal Act and the problems with the Act's assignment and agency review procedure. Next, because judicial review of Coal Act assignments has typically been treated as a review of informal agency action under the Administrative Procedure Act (APA),² the second section *assumes* the SSA has the "adjudicatory" authority under the Coal Act that triggers the APA's judicial review provisions. The discussion focuses on judicial review of informal agency action in general and then, predominantly, on the Supreme Court's landmark decision in *Citizens to Preserve Overton Park v. Volpe*³ and its progeny, which stake out the

² 5 U.S.C. § 704.

³ *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971).

modern and expanded approach to such review. In addition, associated issues of exhaustion of administrative remedies and issue preclusion are considered against the Court's decisions in *Darby v. Cisneros*⁴ and *Sims v. Apfel*,⁵ respectively.

The third section shifts gears and proposes a better view: that the SSA does not have adjudicatory authority under the Coal Act and, as a consequence, beneficiary assignments are properly tried by the courts *de novo*. In this context, the Coal Act, along with the SSA's role in it, is considered against the Supreme Court's decisions in *Coit Independence v. FSLIC*,⁶ *American Airlines, Inc. v. Wolens*⁷ and *Bank One Chicago v. Midwest Bank & Trust Company*,⁸ which address agency adjudicatory authority (or the lack of it) when "private rights" are involved.

Finally, the fourth section discusses a related question: whether Congress granted the SSA the authority to *interpret* the Coal Act — whether the SSA's view of various provisions of the Act are due deference — a question presented against the Supreme Court's recent decisions in *Christensen v. Harris County*⁹ and *United States v. Mead*¹⁰ and, by illustration, in a brief look at the one Coal Act case now pending before the Supreme Court, *Massanari v. Sigmon Coal, Inc.*¹¹

[1] — The Coal Act.

The Coal Act was Congress's response to a looming financial emergency in two United Mine Workers' of America (UMWA) retiree health benefit funds, the 1950 and 1974 Benefit Funds. The possibility of insolvency arose as more and more UMWA signatory companies dropped

⁴ *Darby v. Cisneros*, 509 U.S. 137 (1993).

⁵ *Sims v. Apfel*, 530 U.S. 103 (2000).

⁶ *Coit Independence v. FSLIC*, 469 U.S. 561 (1989).

⁷ *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995).

⁸ *One Chicago v. Midwest Bank & Trust Co.*, 526 U.S. 264 (1996).

⁹ *Christensen v. Harris County*, 529 U.S. 576 (2000).

¹⁰ *United States v. Mead*, 121 S. Ct. 2164 (2001).

¹¹ *Sigmon Coal Co. v. Apfel*, 226 F.3d 291 (4th Cir. 2000), *cert. granted*, *Massanari v. Sigmon Coal, Inc.*, No. 00-1307 (April 23, 2001).