

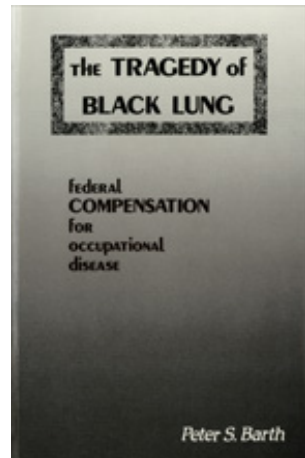
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# The Development of the Black Lung Act

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## **The Development of the Black Lung Act**

Until early in the twentieth century, an employer's liability for compensating an employee who was disabled as a result of a workplace injury was determined in a civil action.<sup>1</sup> Similarly, the survivor of an employee killed on the job was entitled to compensation from the employer only as a result of winning a law suit. In either case, it was the claimant's burden to prove that the employer had been negligent, thereby causing the disability or death of the worker. Demonstrating negligence was no simple matter, as employers could rely on several potent lines of defense. Delays of several years in reaching some final judgment were commonplace, legal expenses were perceived as substantial, and decisions often appeared to be capricious. Even as claimants began winning more judgments at the turn of the century, a few large awards were made to some claimants while others received nothing.

Considerable pressure for reform grew during the first decade of the twentieth century. Rather than seek to modify the system of tort law, proposals started to build on a relatively new approach to compensating injured workers and survivors that had recently spread across much of industrialized Europe. Known as workmen's compensation,<sup>2</sup> the system appeared to represent a significant improvement for workers—and possibly for employers as well—in Germany, England and some other western European nations.

## 2 Development of the Act

Beginning with Wisconsin and New York State in 1911, the various states began to adopt their own workers' compensation laws, thereby replacing the existing tort approach.

As each state enacted such a law, considerable variation appeared in terms of the administration of the system, coverage, benefits, insurance arrangements and so on. All the laws seemed to conform, more or less, to certain underlying principles, however. First, each system operated on a no-fault basis so that claimants no longer needed to prove employer negligence. Benefits were to be paid for disability or death "arising out of and in the course of employment," a phrase found in all of the state laws and closely mimicking language in the various European states. The no-fault feature of the laws led to the hope that compensation would be paid swiftly and with little or no controversy and litigation. Benefits were to be paid in proportion to the wages earned by the employee prior to disability or death. As a kind of *quid pro quo*, each of the state laws made workers' compensation the "exclusive remedy" of workers or survivors against their employers. Thus, employers became obligated to provide benefits under this new scheme, but they freed themselves of the threat of possible law suits by injured employees or their survivors.

As the states administered their workers' compensation laws, a number of difficulties emerged in the matter of claims for occupational diseases.<sup>3</sup> A common problem was the need to establish the cause of the disease that disabled or killed a worker. Another cause of dispute between claimants and defendants often involved the question of whether or not disease was even present. Contention could arise also over the identification of the disease itself, since the presence of one disease rather than another might be more likely to be found compensable by those administering the compensation system.

Until 1969, the compensation of workers or their survivors for industrial injuries or diseases had been left entirely to state governments in the United States.<sup>4</sup> Since the federal government played virtually no direct role in the employer-employee relationship at the time states began enacting these laws, there was no question that if workers' compensation laws were to be developed, they would be left in the hands of the states. Federal legislation in this area prior to the mid-1930s would almost certainly have been declared unconstitutional. As each state refined its own unique system of compensation, and as various interests arose that depended upon that system, any potential role for the federal government seemed to diminish. Yet despite its historic inactivity, in 1969 the federal government shifted from its historic position and passed legislation to provide compensation to a specific class of workers—coal miners—for a single specific occupational disease. The purpose of this chapter is to explain how that change occurred.

### *The Nature of the Coal Mining Industry*

Several factors set coal mining apart from other industries as a source of employment. These differences are due to a variety of special circumstances surrounding this work. One of coal mining's special, though not unique, characteristics is the physical risk of harm associated with it. The industry has been widely regarded as dangerous. Best known perhaps are the large-scale disasters where scores of miners have died in a single accidental occurrence. Yet the nature of the work also contributes to smaller scale or individual incidents that lead to death or disability. For example, in the period 1926-30, the fatality rate in coal mining was almost 2 per million man-hours of work.<sup>5</sup> Assuming a 2,000 hour work year, about 1 worker in 250 would die in a mining accident each year. Though the rate had fallen to 0.84 fatalities per 1 million man-hours by 1969, the rate was still high—about 1 fatality

annually for every 600 miners employed full time, or a rate 7-9 times greater than that for the entire employed workforce.<sup>6</sup> Recognition of the dangers was widespread.

A second characteristic of mining is its isolation, both geographically and culturally, from other areas of the nation. Coal is mined, generally, in remote regions that are rarely, if ever, seen by people from the more populated parts of the country. This implies that coal mining is more than simply an occupation. Instead, it represents a form of society that was not touched by developments in the balance of the nation for much of this century. Set apart in this way, miners have often been subject to different treatment and standards by government.

A third characteristic of mining is the secular decline that gripped the mining economy during the 1960s. Coal production that had been at 631 million tons in 1947 fell to below 500 million tons per year during the early 1960s and had not exceeded 560 million tons per year by 1969. Moreover, in the later years of this period, less coal was being taken from the more labor-intensive underground mines and, instead, was surface-mined. Surface mining was found primarily in the middle west and western states, meaning that mining in Appalachia was even more adversely affected. The price of domestic coal, measured in constant dollars, fell in most years from 1947 to 1969, and by 39 percent overall during this period.<sup>7</sup>

The changing sources of coal, along with its displacement by other forms of energy, had a tremendous impact on employment in the industry. Between 1950 and 1970, employment in coal mining declined by 70 percent, from 483,000 to 144,000.<sup>8</sup> In addition to the decline in the quantity of coal demanded and the relative shift to surface-mined coal, the sharp increase in labor productivity in below-ground mines contributed to the drop in employment (see table 1-1).

**Table 1.1**  
**Historical Trends in Bituminous Coal Mining**

	<b>Production (million tons)</b>	<b>Employment</b>	<b>Productivity (tons/workday)</b>
1950	516.3	415,582	6.77
1951	533.7	372,897	7.04
1952	466.8	335,217	7.47
1953	457.3	293,106	8.17
1954	391.7	227,397	9.47
1955	464.6	225,093	9.84
1956	500.9	228,163	10.28
1957	492.7	228,635	10.59
1958	410.4	197,402	11.33
1959	412.0	179,636	12.22
1960	415.5	169,400	12.83
1961	403.0	150,474	13.87
1962	422.1	143,822	14.72
1963	458.9	141,646	15.83
1964	487.0	128,698	16.84
1965	512.1	133,732	17.52
1966	533.9	131,752	18.52
1967	552.6	131,523	19.17
1968	545.2	127,984	19.37
1969	560.5	124,532	19.90

SOURCE: The President's Commission on Coal, Staff Findings, March 1980, p. 47.

One of the results of all this change in the economics of coal mining was the severity of conditions for miners and their families. With little or no other employment alternatives in the coal mining areas, long-term unemployment and poverty were endemic there. The economic deterioration of the coal mine regions created a sense that a great injustice had been perpetrated against the miners. The difficulty that many of these workers had in being able to relocate into totally different types of employment resulted in very slow rates of mobility out of these depressed regions. Those persons who remained behind but had no work were those with the greatest handicaps in the labor market: limited skills, advanced age, or health problems.

The economic difficulties of both the individual miners and the regions created financial difficulties for unions also. Since the United Mine Workers' Welfare and Retirement Fund was largely financed by a royalty based on coal tonnage paid by the mine owners, revenues were inadequate to meet the growing demands placed upon them by increasing health care costs and increasing retirement rates. Consequently, the fund was forced to reduce or eliminate certain benefits during the 1950s and 1960s, including some that were formerly provided to disabled miners or to survivors of miners.<sup>9</sup>

### *The Federal Role in Coal Mine Health and Safety*

It has been observed here already that one of the things that sets coal mining apart from other industries is its physical dangers. What role has government, at any level, played in attempting to reduce the risks of coal mine employment?

As early as 1865, a bill was introduced in Congress to create a Federal Mining Bureau. However, it was only after a series of disasters that the Bureau of Mines was created

within the U.S. Department of the Interior in July of 1910.<sup>10</sup> The Bureau was charged with “. . .diligent investigation of the methods of mining, especially in relation to the safety of miners. . . .”<sup>11</sup> The act did not provide the Bureau any inspection authority. Indeed, the law explicitly denied all Bureau employees any right or authority in connection with the inspection or supervision of mines. Part of the Bureau’s difficulty was remedied in Title I of the Federal Coal Mine Safety Act of 1941, which authorized the Bureau to make inspections and publicize its findings and recommendations. The Bureau was unable, however, to set safety standards, an area previously left to the states.

During a period of serious labor-management strife in 1946-47, the federal government operated a substantial portion of the country’s coal mines. The government used its opportunity as an employer during this period to have Interior Secretary Krug reach an agreement with United Mine Workers president John L. Lewis on a federal Mine Safety Code. When the industry was returned to private ownership in 1947, the code became a guideline (but not a standard) for federal inspectors. Operators were free to comply or not. Mine operators and state mine agencies were asked (in 1947 in PL 328) by the federal government simply to report on the extent of compliance with the guidelines. Seventeen of the coal mining states cooperated fully in reporting, two others responded partially, and seven states did not cooperate to any extent.

In December 1951, an explosion in a coal mine in West Frankfort, Illinois, killed 119 miners. In the wake of the disaster, President Truman signed PL 552 in 1952, which made compliance with the Mine Safety Code mandatory in mines employing 15 workers or more. Federal inspectors were given the right to shut down dangerous mines. Subsequently, several efforts were made both to tighten up mine



safety provisions and to eliminate the exclusion from coverage of the smaller mines (14 or fewer miners), including a bill that passed in the Senate but not in the House in 1960. It was only in 1966 that PL 89-376 accomplished these goals.

The shared responsibilities of federal and state inspectors created obvious administrative problems. The federal role was aimed at averting large-scale disasters. The states' safety responsibilities dealt more with practices and conditions that could involve injury or death to individual miners. Aside from federal-state differences, substantial interstate variations existed in inspection policies and standards.

### *Workers' Compensation for Coal Miners*

For an industry with the great physical risks of coal mining, it is not surprising that workers' compensation has always been an important issue. With the enactment of the state laws, miners injured or killed in mine accidents had recourse to state workers' compensation programs in order to secure some indemnity and health care benefits. While benefits may have been short of generous, they were not different systematically from those available to workers in other industries.<sup>12</sup> However, the widely shared perception was that workers who were disabled or the survivors of those killed by dust diseases had little or no access to workers' compensation benefits.

The two states with sizable populations of miners that did provide compensation for coal mine dust diseases before 1969 were Pennsylvania and Alabama. In the former, benefits were provided under a distinct program for miners with pneumoconiosis and were lower and less favorable in several respects than benefits available under the regular workers' compensation law. A benefit ceiling of \$75/month was set on the program. Under the special program enacted in Pennsylvania, about 25,000 miners received some com-

compensation for coal workers' pneumoconiosis from January 1966 through early in 1969.<sup>13</sup> In Alabama, 1,318 cases of coal workers' pneumoconiosis were compensated between 1962 and 1966.<sup>14</sup> It was very difficult for coal miners to receive workers' compensation benefits for dust diseases in West Virginia, though some did for silicosis. Only in 1969 was the workers' compensation law there liberalized for dust diseases in coal workers.

In the late 1960s, little interest in workers' compensation programs had surfaced at a national level.<sup>15</sup> Concerns regarding state programs were not evident, especially in regard to the arcane matter of compensation for occupational disease. This was not the case, however, at the state level, particularly in West Virginia, which was in a state of ferment. A grass roots movement that began to coalesce among the miners in 1968 had begun to move for (better) compensation for dust diseases suffered by coal miners. A series of resolutions was introduced at the United Mine Workers of America (UMWA) convention in 1968 by various local unions. They won endorsement easily from the convention. The issue had been given high visibility in West Virginia, particularly through the efforts of three physicians who worked closely with the miners there: Isadore Buff, a cardiologist; Donald Rasmussen of the Appalachian Regional Hospital in Beckley, West Virginia; and H. A. Wells.

Following the convention, negotiations occurred between the UMWA and the customary coalition of mine operators over a new labor-management contract. In early October 1968, the first nationwide strike in 16 years was called by the union, and an agreement followed on October 14, 1968. The new contract provided a number of improvements in wages and fringe benefits over the three years of the new contract, but it did not contain any new language regarding either safety or compensation for occupational disease. The 1968

contract was consistent in this respect with a long history of UMWA contracts that had concentrated on wages and fringe benefits of working miners, but showed little concern with issues of safety or occupational health. The “business as usual” practice by the union displayed some insensitivity to concerns regarding compensation and safety on the heels of the interest demonstrated by the membership at their convention less than five weeks prior to the signing of the new collective bargaining agreement. The issues of safety and health might have disappeared or been forgotten except that the Farmington disaster followed so closely on the heels of this new contract.

Concern about dust diseases and compensation for them was generated by the three West Virginia doctors and also by Ralph Nader. At the local level, interest was also stimulated and spread by young activists who had been drawn to Appalachia as VISTA workers (Volunteers in Service to America), or in a variety of Great Society antipoverty programs established primarily under the Office of Economic Opportunity. Believing that economic and social injustice had led first to disease and then to economic deprivation owing to the lack of compensation, these young persons provided both the energy and organizational skills that allowed local Black Lung Associations to be formed and to grow. The union was not considered an ally. Instead, it was perceived as a part of the same establishment that paid little or no attention to the plight of sick miners or their survivors. The black lung movement during 1968 must be understood to have been driven by a dynamic that was more than independent of the UMWA; in large measure it was hostile to the union and seen as a source of political threat to the union leadership.

The three physicians appeared in coal mining communities throughout West Virginia. Dr. Buff warned his audience

that they all had black lung disease and that they would die from it.<sup>16</sup> Buff traveled with a pair of lungs that he showed to his audiences. Dr. Wells would participate in the same program, holding up dried, black tissue sections that he claimed were “. . . a slice of your brother’s lungs.”<sup>17</sup>

In January of 1969, a large rally was held by black lung advocates at the Charleston Civic Center to focus attention on the issue. In addition to the trio of physicians, Congressman Ken Hechler (D-W. Va.) spoke to the group and read a long letter sent by Ralph Nader. The targets for much of the rally were the mine operators, the medical establishment that did not acknowledge black lung as a disease, and the union, for its apparent lack of interest in issues of health and safety and compensation. The breach between much of the union’s leadership and the miner activists of the black lung movement can be understood in terms of the political divisions that were operative in the UMWA at this time and the eventual challenge to the Tony Boyle presidency.<sup>18</sup>

Although black lung legislation had been proposed in the West Virginia legislature that session, by February 1969 no action had been taken. At this time a series of wildcat strikes in southern West Virginia had spread quickly through other mine fields in the state. The original causes of the strike are in dispute but the issue that prompted its widening was the demand by miners for black lung legislation. As the strike spread, miners traveled to Charleston to let state legislators know that they wanted an improved compensation law. Bringing enormous pressure on the governor and state legislators, the miners marched through the city, ringed the legislature, threatened continued shutdowns of the mines and eventually pushed through legislation that liberalized workers’ compensation for coal miners with dust diseases. Only after Governor Arch Moore signed the legislation did most of the state’s coal mines reopen in early March 1969.

The role played by the UMWA in the West Virginia black lung strike was a passive one at best, and actually was seen as less than supportive by the activists in the black lung movement. One reason given by the UMWA for its role was that it had sought federal rather than state legislation to deal with problems of safety, health and compensation. By being an inactive party in the black lung strike in West Virginia, the union unwittingly had allowed a dissident group to emerge that could challenge its leadership. Thus the UMWA was forced into a more active role in the development of federal legislation.

### ***The Development of the Coal Mine Health and Safety Act of 1969***

On November 20, 1968 an explosion occurred in a huge mine (subsequently described by some as the size of Manhattan Island) owned by the Consolidation Coal Company at Farmington, West Virginia. In a year that recorded 309 fatalities in the coal mines in 13 different states, 150 of which were in West Virginia alone, two things made Farmington different. First, the magnitude of the toll from a single accident exceeded anything that had occurred since the West Frankfort, Illinois disaster in 1961. Of the 99 miners underground at the time of the explosion, 78 were entombed when the mine was sealed 10 days after the blast. Second, the prolonged process of search and rescue lent itself to massive media coverage. Farmington became subject to nightly reporting on the network news. Very extensive coverage was given to the story in *The New York Times* and other national press. Coal mine safety was not simply an issue for the coal mining states any longer. A strong sense developed, spurred by the attention given to this community, that something had to be done for the miners to assure their safety in the workplace.

There is little dispute that the Farmington disaster was the catalyst that moved Congress to act. A widely shared goal in the Congress was to enact improved coal mine safety legislation within a year of the date of the Farmington explosion. The political environment guaranteed that the public's revulsion regarding the death toll in the mines would have to be assuaged. Lyndon Johnson's administration had proposed stricter mine safety legislation prior to this disaster. Farmington assured that something would be done. The physical danger of coal mining combined with a sense of economic hardship, if not injustice, assured that some federal action would be forthcoming.

In speaking on the floor of the Senate, the feeling was well summarized by Senator Williams:

The active miner of today who toils manfully deep in the bowels of the earth to produce about 15 tons of coal per day was, until recently, the forgotten man, but the tragedies of the past year and one-half have raised him high in the eye of the public. The people of this Nation have been shocked by these unfortunate events and have demanded, on his behalf, that government and industry do a great deal more—not just half-way measures—to improve his lot. The active miner of today is feeling the wonderful benefits that an aroused public can bestow on him. The bill before the Senate today (S.2917) is a tribute to this public awareness.<sup>19</sup>

The legislation that eventually emerged as the federal Coal Mine Health and Safety Act of 1969 (PL 91-173) was directed at improving the safety of coal mining by enlarging the role of the federal government in setting standards and inspections. The tragedy at Farmington was treated as the last straw that compelled the federal government to extend its jurisdiction into areas previously left to the states. Early

versions of the legislation that was to work its way through the Congress made no mention of occupational disease, compensation or pensions for disabled miners or widows of miners. By all accounts, the portion of the law that dealt with these matters arose as an afterthought by some, in the process of drafting and redrafting the health and safety law.

Within three months of the Farmington disaster the Subcommittee on Labor of the Senate's Committee on Labor and Public Welfare opened hearings on coal mine health and safety legislation. Harrison Williams of New Jersey introduced a bill that embodied the views of the United Mine Workers. Senator Javits of New York proposed a bill that had support from the Nixon administration. Jennings Randolph of West Virginia also put forward a proposal. On July 31, 1969, a bill that earlier had been reported out of the subcommittee won approval of the Committee. The bill's focus was on prevention and contained no mention of compensation.

The obvious response by the Congress to Farmington was to legislate tighter safety standards and possibly deal with health issues as well. Any dissatisfaction with compensation, an area administered traditionally by a state government, was not a federal concern. Yet the success of the black lung movement in West Virginia would be harder to replicate in the other coal-producing states. The mood in Congress was one of seeking to demonstrate some sensitivity to the plight of the miners and their families. The UMWA leadership needed some legislative victories to validate its tactics to its own rank-and-file.

In September 1969, S 2917 was brought to the floor of the U.S. Senate by Senator Williams. It contained no reference to compensation. The first person to raise the issue publicly on the Senate floor was Senator Byrd (D-W. Virginia). Senator Williams responded that a "short-term program"

could be handled “temporarily” by amending the bill directly on the Senate floor. The two senators agreed that a study of the matter could be conducted at the time that a temporary program might be put into place. Their exchange helps to convey the spirit of that time:

Mr. Byrd of West Virginia: Mr. President, I would like to ask the able Senator from New Jersey a question as to what consideration, if any, was given to the possibility of having provisions included in the bill which would provide compensation for miners suffering from black lung who do not qualify for compensation under State law.

The reason I ask the question is that I have been very interested in legislation which would provide for compensation to miners suffering from pulmonary diseases who are not covered by State statute. In West Virginia there are many miners suffering from black lung and other pulmonary diseases who do not qualify under State statutes for compensation.

With this in mind, I gave considerable time to the development of proposed legislation which would provide Federal assistance in this area. I was able to work with Washington headquarters of the United Mineworkers of America in developing a proposed bill which would provide Federal assistance over a period of 20 years, with the Federal assistance decreasing, I believe, in the amount of 5 percent a year and the States picking up the additional costs annually, but with no cost to the coal industry. I have felt that if the Federal Government could provide assistance along this line, without additional cost to the industry, we would not incur the opposition of the industry, which is already heavily



burdened with overhead costs: but, at the same time, the Federal Government would be assuming some responsibility in this area, and I think it should assume such responsibility.

So it was with the advice and counsel and assistance of Mr. George Titler, vice president, and other officials of the United Mineworkers of America, that I was able to prepare the proposed legislation, and my senior colleagues, Senator Randolph, and I joined in co-sponsoring it.

As the able Senator from New Jersey will recall, I appeared before his subcommittee and testified in support of this measure. My first question, therefore, is, Was consideration given in the subcommittee deliberations to adding provisions dealing with compensation?

My second question is, What are the prospects for such legislation at this point being added by way of an amendment to this bill?

My third question is, If such prospects are not good, what encouragement or assurance could the able Senator give to the Senator from West Virginia as to the prospects for such legislation in the near future?

Mr. Williams of New Jersey: First, the committee did not have before it any proposed legislation dealing exclusively with workmen's compensation for black lung disease, pneumoconiosis. One of the bills, S. 1094, although it included provisions on this subject, had health and safety as its major thrust, I believe I am accurate when I state by recollection that the first time the attention of the committee was directly drawn to the need for com-

pensation for men disabled by black lung disease was by the junior Senator from West Virginia (Mr. Byrd). Of course, it was my personal feeling as chairman of the subcommittee that this certainly should receive careful attention and, so far as the chairman was concerned, most sympathetic consideration.

As we continued our hearings and deliberations on the safety and health measure, we did not deal in any comprehensive way with this particular approach of compensation for the disease. As necessary as it is, it was not dealt with at that point to the extent that we were able to include it in the pending bill.

So far as amendments here are concerned, it would seem to me that it is now established that this disease, without preadventure, is associated with the dust in the coal mining process, that it is disabling, and that it should be a compensable disease.

I would believe that our committee responsibility should be to consider it in depth. In the meantime, if there were a way to deal with this temporarily through a measure to bring disability payments to men disabled by the disease, certainly I would try to find, even now, a way to deal with the emergency in a temporary fashion looking toward a comprehensive long-range program of compensation for men disabled by pneumoconiosis.

Mr. Byrd of West Virginia: Mr. President I thank the able Senator for his response. I understand his answer to be that it is quite possible that consideration might be given on the floor of the Senate to language which would establish a short-

term program to assist coal miners who suffer from pulmonary diseases and who do not qualify under State statutes. Am I correct?

Mr. Williams of New Jersey: That is what I tried to convey to the Senator, yes.<sup>20</sup>

The following day, the two senators from W. Virginia met with the very powerful chairman of the House Committee on Education and Labor, Representative Carl Perkins of Kentucky. The senior Senator, Randolph, introduced amendments to S 2917, co-sponsored by Senator Byrd. One of these (Amendment #211), extended a federal workers' compensation law, the Longshoremen's and Harbor Workers' Compensation Act to coal miners not covered by a state workers' compensation law. The law was to become effective two years after the 31st day of December that followed the enactment of the law. It would provide compensation to miners who were disabled or died as a result of "respiratory disease," and whose state workers' compensation law did not "contain provisions substantially the same" as those contained in the Longshore Act. Benefits would be paid by the mine operators under insurance arrangements; however, where this was not done, the Secretary of Labor would make payments from an Employees' Benefit Fund (Sec. 714). The fund would be repaid by having the Secretary of Labor obtain the money from "the employer of the injured employee," but the amendment also provided for funding through general revenues (Sec. 714 (F) (4)).

This amendment also called for the Employees' Benefit Fund to pay benefits in cases where the miner or survivor had not received compensation previously, but would have been able to if the provisions in the amended Longshore Act had applied at the time. Thus, "old" cases were to be covered under this amendment, though compensation was to be paid only for the period of time after the effective date of the law.

Senators Randolph, Byrd, Javits, Williams and Yarborough co-sponsored Amendment #212, introduced at the same time as #211. It represented a significant compromise from 211 and in several ways showed the imprint of Senator Javits, one of whose goals was to keep temporary any federal benefits program for black lung. This amendment called for the states to administer a black lung program with funds provided from the federal trust fund established in the proposed law. The states would receive and adjudicate claims based on standards issued by the Secretary of Health, Education and Welfare. Benefits were to be paid to either of two types of claimants. First, benefits were to be paid to "any coal miner who is totally disabled and unable to be gainfully employed on the date of enactment of this Act due to complicated pneumoconiosis which arises out of, or in the course of, his employment in one or more of the Nation's coal mines." (Sec. 106) The second category of potential beneficiaries was "widows and children of any miner who, at the time of his death, was totally disabled and unable to be gainfully employed due to complicated pneumoconiosis arising out of, or in the course of, such employment." (Sec. 106)

Amendment 212 described the time horizon for this program as "a temporary and limited basis, interim emergency health disability benefits. . . ." (Sec. 106) Several elements stand out in this proposal. First, benefits were limited to old cases only, that is, where disability had already occurred prior to the enactment of the law. Benefits would cease to be paid by the federal Trust Fund by June 30, 1972 at the latest, with the states taking responsibility thereafter. The terms *temporary*, *limited* and *emergency* are sprinkled throughout the amendment. Death benefits were to be paid regardless of the cause of death, so long as the miner was totally disabled and unable to be gainfully employed at the time of death and was suffering from complicated pneumoconiosis. Similarly, benefits for living miners also were limited to the relatively

few persons who were unable to work and were totally disabled due to complicated pneumoconiosis. Of note also is the terminology used, “arising out of or in the course of employment,” a phrase that appears in every state’s workers’ compensation law. (In virtually every state, however, the word *and* appears in place of the word *or*.) This clearly tagged the law as a piece of workers’ compensation legislation.

After a series of further amendments, compromises and a resolution of the major issue that delayed matters in the Senate, i.e., its authority to legislate a revenue-raising measure not initiated by the House of Representatives, the Senate passed a black lung amendment on September 30, 1969. The vote was 91-0 in favor of the amendment, which carried Senator Randolph’s name, with nine senators not voting. This Senate version was Title V, Interim Emergency Coal Mine Health Disability Benefits, and was incorporated in the act that passed the Senate unanimously on October 2, 1969.

On September 23, Congressmen Dent, Perkins, Burton and 22 others introduced HR 13950, their proposed version of the Coal Mine Health and Safety Act. It followed months of work and debate within the House Labor Subcommittee. By October 3, 1969, the bill emerged from the House Committee on Education and Labor without amendment and had 83 sponsors. Section 112 of this bill dealt with compensation for death or total disability due to complicated pneumoconiosis.

Basically, it provided that general revenues would be provided by the U.S. Treasury to fund either grants to states or direct payments to beneficiaries by the Secretary of Labor where no agreement was made with a state. Payments were to be for retroactive cases and not for prospective ones. The compensation provision passed in committee by a vote of 25

to 9. In reporting on the bill, the committee made a point of describing section 112 as follows:

This program of payment . . . is not a workmen's compensation plan. It is not intended to be so and it contains none of the characteristic features which mark any workmen's compensation plan. Moreover, it is clearly not intended to establish a federal prerogative or precedent in the area of payments for the death, injury or illness of workers. These provisions of the bill are a limited response in the form of emergency assistance to the miners who suffer from, and the widows of those who have died with, complicated pneumoconiosis.<sup>21</sup>

Yet, in justifying the section the committee appeared to contradict itself:

One of the compelling reasons the committee found it necessary to include this program was the failure of the States to assume compensation responsibilities for the miners covered by this program. State laws are generally remiss in providing compensation for individuals who suffer an occupational disease as it is, and only one state—Pennsylvania—provides retroactive benefits to individuals disabled by pneumoconiosis.<sup>22</sup>

The House version used the traditional workers' compensation phraseology, “. . . arising out of or in the course of employment.” (Sec. 112 (G) (1)) In that sense, the section looked something like a compensation act.

The bill was explicitly limited to workers employed in underground mines. It contained a rebuttable presumption that if a worker with complicated pneumoconiosis is or was employed for 10 years or longer in a coal mine, then the

disease arose out of or in the course of employment. Moreover, all persons with complicated pneumoconiosis were deemed to be totally disabled.

Ten members of the Committee dissented from the majority's position on the bill. (Actually 12 did, but 2 of these supported section 112.) Several reasons for their dissatisfaction with the compensation provision were given. The core of their argument, however, was that such legislation represented a threat to state workers' compensation laws by providing a federal program where none had existed before. "We believe that the long-standing and ever improving State system of workmen's compensation will be in serious danger of ultimate reduction to a mere subordinate appendage of a federalized system of workmen's compensation or even of complete elimination."<sup>23</sup>

In one dissent, a compensation administrator from Maine who had testified earlier on the bill for the association of state workers' compensation administrators, the International Association of Industrial Accident Boards and Commissions (IAIABC), was quoted as saying:

The bills under consideration call for abandonment of our 55 year-old workmen's compensation system. (And,) The health, safety, and well-being of all workers, with few exceptions, is a matter of state concern. Workmen's compensation administration is a professional specialty demanding experience and dedication and an intimate knowledge of local problems. This proposed legislation would replace local control with a centralized administration impairing development in the various regions of this country.<sup>24</sup>

That opposition to black lung legislation arose over the mere creation of a new compensation program was not sur-

prising. Workers' compensation programs in the states provided the livelihood for many persons in the legal and health professions, for segments of the insurance industry and for state administrators. A growing federal involvement posed a legitimate threat to these groups at a time when federal programs were rapidly expanding into a host of areas once left to the states. It is a testimonial to the strength of these interest groups that so much of the opposition to the Coal Mine Health and Safety Act was directed at this one small piece of the proposed law, and that it was directed at the principle of compensation much more than at the details of it. As stated on the floor of the House by Congressman Scherle of Iowa in seeking to rid the bill of Section 112, the compensation provision, "If this section is not struck, it will be the first step toward the ultimate federalization of all workmen's compensation."<sup>25</sup>

One of the specifics in the law that did occupy lawmakers was the bill's funding. Several issues were critical for them. The difficulties of the coal industry in the years preceding 1969 were certainly well known to senators and congressmen from coal mining areas. Consequently, they hoped to avoid putting much of the burden of financing the benefits section of the law on the industry, especially at a time where the health and safety aspects of the law were certain to drive up production costs and reduce productivity in mines. Since black lung was thought to be exclusively a problem of the underground mines, a tax levied on coal production would shift some of the cost burden onto the surface mines, thereby relieving some of the potential costs to the underground sector. It would mean also that less of a competitive edge would be given to the surface mines *vis-a-vis* the underground mines. However, many of the black lung supporters in the Congress from states such as Kentucky, Pennsylvania and West Virginia were eager to have benefits paid out of general revenues of the U.S. Treasury.



On October 29, 1969, HR 13950 was debated on the floor of the House. Congressman Scherle of Iowa sought to amend it by dropping the compensation provision, Section 112. After that failed by a voice vote, he moved to have the bill recommitted, however that effort failed also. This led immediately to a vote on the bill, which passed 389-4. In an editorial, *The New York Times* applauded the action of the House and then predicted, "The Conference Committee should have a relatively easy task of reconciling the two versions now that both chambers have made clear their refusal to be sidetracked by the once omnipotent industry lobbyists."<sup>26</sup> This proved to be one of many predictions made about the program that later proved to be completely wrong.

In November of 1969, conferees from the House and Senate met in order to reconcile the differences in the bills passed by each house. What emerged was S 2917, a version that looked significantly different from either of the versions that had earlier passed in both chambers. Indeed, the differences were great enough for John Erlenborn, the ranking Republican in the House Committee that fashioned the bill, to ask on a point of order for the Speaker of the House to rule that the conference report not be accepted. The grounds for such a decision would have been that the final version of the law amended matters that had not been in disagreement in the House and Senate versions. Erlenborn's point of order was overruled, thereby setting up the vote in the House on the conferees' version of the bill.

Erlenborn's position had been a difficult one. His work on the Coal Mine Health and Safety law had been substantial and had led to a number of compromises by the majority. In exchange for that, Erlenborn had supported the bill including the black lung compensation provisions (Section 112). However, from his perspective the bill which was

returned from conference to the House of Representatives had been substantially undermined. According to him, the conference made at least seven changes in areas where the two versions previously passed were not in conflict and that changed the law substantially. Foremost among these, although both houses had provided only for the compensation of *complicated pneumoconiosis*, the conference stipulated that benefits were for the far broader coverage of "diseases of the lung caused by dust." Thus compensation could be paid, presumably, for a wide range of diseases including simple pneumoconiosis, a condition that was far more prevalent than complicated pneumoconiosis.

Another important change was to obligate the coal mine operator to pay disability benefits where there was either no appropriate coverage under the state's compensation law, or where the Secretary of Labor had not approved the provisions of the state's law. It also added an obligation on mine operators to be covered under an insurance arrangement for such claims.

The conferee's bill also required the Secretary of Labor to pay for compensation where the mine operator was not insured or if the mine operator was no longer in business. A mine operator would be liable to the U.S. Government in a civil action for recovery of these funds.

The anger expressed by Erlenborn toward the conference and its report as dictated by the majority Democrats emerges clearly in the record of the floor debate. Using terms like "underhanded," "travesty" and "behind scenes dealing," he and fellow Republicans, such as Steiger and Esch, who had previously supported the House black lung provisions in committee and in the House vote, demonstrated their sense of having been sandbagged by House Democrats such as Perkins, Dent and Burton. Unable to win on the point of order, Erlenborn moved to recommit the bill but lost by

258-83, essentially guaranteeing the acceptance of the conference version of the bill. All of the controversy was directed at the black lung compensation portion of the law.

As the debate about the integrity of the conference wound down, the remaining discussion focused on the cost of the bill. The Nixon administration had promised to provide its thinking on the legislation, but had never developed a coherent position on it. Only after the two chambers of the Congress had passed their bills did the administration begin to play an active role. Strong threats emerged that the president might veto the legislation, partly on the matter of cost. Well after the Conference Committee had begun its work, and only four days before its final report was issued, Secretary of Interior Hickel wrote to Senator Javits, providing him with estimates of the cost of the benefits provision of the law. Based on the disability criteria used to determine eligibility, the Interior Department estimated that black lung legislation would cost between \$155 million and \$384 million in the first full year of the program, and between \$1.2 billion and \$3.0 billion cumulatively for 20 years.<sup>27</sup> Hickel's estimates were ridiculed by Carl Perkins on the grounds that they were provided hopelessly late in the legislative process, and for being excessively high, presumably for political reasons. Further, Perkins asserted that ". . .this legislation transcends petty arguments over costs."<sup>28</sup>

Additional criticism of the administration's stance was expressed by Congressman Dent: "At one point a senator came before us (the Senate-House Conference Committee) and told us that the cost would be as much as \$180 million. Gentlemen, if you took every miner in these United States and if you paid him \$5,000 a year and bought his wife a chinchilla coat, you would not spend that much money. Finally, after a little bit of fact finding, he came down to \$154 million

and yesterday he came down to \$124 million.”<sup>29</sup> Dent estimated that compensation for living miners could not conceivably exceed \$32.3 million.

Hickel’s estimates were attacked by another of the legislation’s primary movers, Congressman Phillip Burton. He charged that the last minute cost figures were “. . . politically motivated and White House dictated . . . an ignoble effort to deny any meaningful help to black lung widows and miners. . . .”<sup>30</sup>

The administration provided virtually no support for Erlenborn and others who were fearful that the compensation provision had been carried too far. Ultimately, the Nixon White House argued simply that workers’ compensation was a matter to be left for the states. In the absence of any leadership from the White House, the final bill was a creature of the Democratic majority in both Houses. The conference report was easily accepted in the House by a vote of 333-12 on December 17, 1969.

On December 18, the Senate took up the Conference Committee’s report. Unlike the House, there was no disagreement voiced by members of the Senate. Senator Javits explained how the compromises had been reached with the House members of the conference. All of the discussion was centered on the black lung provisions. Senator Williams indicated that he anticipated that 50,000 claimants would receive federal benefits under the law.<sup>31</sup> Javits asserted that Secretary Hickel’s cost estimates were wrong and that he estimated the cost of the program would be between \$80 and \$100 million and “certainly no more than \$120 million per year.”<sup>32</sup> The conference report was approved in the Senate without a roll call vote. It was signed by President Nixon, despite his previous threat to veto it, on December 23 and became law on December 30, 1969.

The passage of Title IV of the Coal Mine Health and Safety Act was a tribute to the legislative prowess and doggedness of a few key members of Congress. None played a more significant role in shaping the final outcome than did Carl Perkins of Kentucky. While the legislation's most fervent supporters came from coal mining areas, there were at least three prominent exceptions, Congressman Phillip Burton of California, Senator Harrison Williams of New Jersey, and Senator Jacob Javits of New York did not represent such areas. Support for Title IV was helped by the very prominent positions in the Congress held by certain senators and congressmen from the coal mining areas. Senator Jennings Randolph, who sat on the Subcommittee on Labor along with Schweiker (R-Pennsylvania) and Taft (R-Ohio), had been chairman of the Senate Public Works Committee, earning for himself the sobriquet, the "Prince of Pork." The ranking Republican on the committee was John Sherman Cooper of Kentucky. Senator Byrd of West Virginia also served on the Appropriations Committee, and at that time had begun to climb the ladder of his party's hierarchy, serving as secretary of the Senate Democratic Conference.

In the House, the key Education and Labor Committee was headed by Perkins, who had served in the House since 1948. Congressman Daniel Flood, representing the anthracite districts in Pennsylvania, was chairman of the Appropriations Committee for the Labor Department and Health, Education and Welfare and was the speaker pro tempore. Congressman Hechler, a Columbia University Ph.D., was chairman of the Subcommittee on Advanced Research and Technology. John Dent of Pennsylvania held no special position of influence in the House, but his previous experience as an attorney, a former coal company executive, and a local union president (United Rubber Workers #1875) was helpful. Ultimately, there was little reason to expect much opposition to a bill that was pushed

by such Congressional heavyweights and that appeared to be relatively cheap, if not innocuous.

### *Summary*

The arguments introduced above are directed at showing the special place that mining occupied in the public perception. A combination of very high physical risk, growing dissatisfaction with state safety regulations, and economic deterioration in the industry meant that federal policy providing special treatment for the miners was not a surprising development by the end of the 1960s. In addition, this willingness to give the miners some assistance or support must also be viewed against the backdrop of Lyndon Johnson's Great Society.

Beginning in 1964 and extending through the balance of that decade, a very broad range of public programs of cash, health care and other services and in-kind assistance was provided to specific clusters within the country. Targeted at groups from the unborn to the aged, at veterans, ex-offenders, the handicapped, Indians, inner-city residents, the rural poor and myriad other populations, the prevalent view appeared to be that government support could right all of the past ills of the society. By the late 1960s, miners were simply one group that had not yet shared much of this federal largess. Apparent shortcomings in state workers' compensation programs that uniquely impacted coal miners provided a potential opportunity, fortuitously, for Congress to demonstrate its beneficence. The federal government had an established history of enacting coal mine safety legislation after major mining disasters. Hence, it was hardly surprising that there was a major bill passed in 1969, following the Farmington explosion. It proved to be a convenient vehicle for doing something that provided income to the coal miner community. The presumed need of the law arose from inade-

quacies that were evident in state administered programs, both in terms of workplace safety and health, and in workers' compensation programs for occupational diseases.

## NOTES

1. For a general background on workers' compensation systems and their development, see *Compendium on Workers' Compensation*, prepared by C. Arthur Williams, Jr. and Peter S. Barth, National Commission on State Workmen's Compensation Laws, Washington, D.C., 1973.
2. By the late 1970s, workers' compensation had become the more widely used term.
3. The issues are described in Peter S. Barth with H. Allan Hunt, *Workers' Compensation and Work-Related Illnesses and Diseases* (Cambridge: MIT Press, 1980).
4. Two exceptions need to be noted, though they hardly undermine this statement: a compensation law for federal government employees and one for persons employed in longshore work.
5. Data from *Coal Data Book*, the Mine Safety and Health Administration, the President's Commission on Coal, February 1980, p. 139.
6. A rich set of data on injuries and fatalities in coal mining from 1870 to 1966 is reproduced in *Legislative History of the Federal Coal Mine Health and Safety Act of 1969*, Part 1, prepared for the Subcommittee on Labor, U.S. Senate, August 1975, pp. 535-578.
7. *Coal Data Book*, p. 99.
8. *Ibid.*, p. 127.
9. A description of this and the response in the mining communities can be found in Barbara Ellen Smith, *Digging Our Own Graves: Coal Miners and the Struggle Over Black Lung Disease*, doctoral dissertation, Brandeis University, 1981, pp. 225-242.
10. See *Legislative History*, Part 1.
11. *Ibid.*, p. 129.

12. For an overall assessment of the quality of workers' compensation programs in the late 1960s and beginning of the 1970s, see *The Report of the National Commission on State Workmen's Compensation Laws*, U.S. Government Printing Office, Washington, D.C., 1971.
13. The cost of the program was \$32 million in (fiscal year) 1968.
14. *Legislative History*, Part 1, p. 523.
15. An exception, as in so many matters, was Senator Jacob Javits, R-NY, who was responsible for the insertion of section 27 in the Occupational Safety and Health Act (1970), thereby creating a national commission to evaluate the state programs.
16. See Smith, *Digging Our Own Graves*, pp. 324-325.
17. Ibid.
18. Ibid. These issues are described at length in Smith's dissertation.
19. *Legislative History*, Part 1, pp. 511-512.
20. Ibid., pp. 348-350.
21. Ibid., p. 1043.
22. Ibid.
23. Ibid., p. 1101.
24. Ibid.
25. Ibid., p. 1267.
26. October 31, 1969.
27. See *Legislative History*, pp. 1575-1577.
28. Ibid., p. 1550.
29. Ibid., p. 1560.
30. Ibid., p. 1575.
31. Ibid., p. 1598.
32. Ibid., p. 1631.