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Director, OWCP v. Greenwich Collieries: The End of the True Doubt Rule

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DIRECTOR, OWCP v. GREENWICH COLLIERIES: THE END OF THE TRUE DOUBT RULE

I. INTRODUCTION

Because coal miners are exposed to coal dust over long periods of time,[1] hundreds of thousands of miners have contracted pneumoconiosis (hereinafter *black lung*), a serious, progressive and crippling illness.[2] In response to the horrible effects of black lung disease, Congress enacted the Federal Black Lung Program through several statutory enactments,[3] which are commonly referred to as the Black Lung

1. *See* Mullins Coal Co. v. Director, Office of Workers' Compensation Programs, United States Department of Labor, 484 U.S. 135, 138 (1987).

2. *Id.* (referring to pneumoconiosis as "black lung" disease). Black lung is a "a chronic dust disease of the lung, . . . including respiratory and pulmonary impairments, arising out of coal mine employment." 20 C.F.R. § 718.201 (1994). "This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrasilicosis, massive pulmonary fibrosis, progressive massive fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment." *Id.*

3. Title IV of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 792, 30 U.S.C. § 801-78, amended by the Black Lung Benefits Act of 1972, 86 Stat. 150, 30 U.S.C. § 901-62, the Black Lung Benefits Revenue Act of 1977, 92 Stat. 11, the Black Lung Benefits Reform Act of 1977, 92 Stat. 95, the Black Lung Benefit Amendments of

Benefits Act (hereinafter *BLBA*).[4] The purpose of the BLBA is to compensate coal miners who have contracted black lung disease.[5] It is a humanitarian, remedial statute.[6]

Although the BLBA scheme seems quite complicated,[7] a benefits claimant need only prove that: "(a) he or she is totally disabled, (b) the disability was caused, at least in part, by pneumoconiosis, and (c) the disability arose out of coal mine employment."[8] Also, several statutory presumptions aid the BLBA claimant in establishing his or her entitlement to BLBA benefits.[9]

In anticipation of claims for BLBA benefits, Congress empowered the Department of Labor to administer the benefits available under the BLBA.[10] In adjudicating BLBA claims, the Department of Labor applies the true doubt rule, which shifts the ultimate burden of persuasion

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1981, 95 Stat. 1643, the Black Lung Benefits Revenue Act of 1981, 95 Stat. 1635, 26 U.S.C. § 1 note, and the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, § 13203(a), (d), 100 Stat. 312, 313, 26 U.S.C. § 9501 note, (1988).

4. 30 U.S.C. § 901-62 (1988 & Supp. V 1993). *See* 30 U.S.C. § 901(b) (1988 and Supp. V 1993) ("[t]his title may be cited as the 'Black Lung Benefits Act'"). *See generally* William S. Mattingly, *Federal Black Lung Update*, 96 W.VA. L. REV. 819 (1994)[hereinafter *Mattingly*].

5. 30 U.S.C. § 901(a) (1988 & Supp. V 1993).

6. Skukan v. Consolidated Coal Co., 993 F.2d 1228, 1236 (6th Cir. 1993) (citing S.Rep. No. 743, 92 Cong., 2d Sess. (1972), reprinted in 1972 U.S.C.C.A.N. 2305, 2315, which states that the BLBA "is intended to be a remedial law"); Freeman United Coal Mining Co. v. Office of Workers' Compensation Program, 988 F.2d 706, 709-10 (7th Cir. 1993), *vacated*, 114 S.Ct. 2732 (1994).

7. *Mullins*, 484 U.S. at 138.

8. *Id.* at 141. The Court has recognized that it is difficult for BLBA claimants to prove the elements necessary to establish entitlement. *Id.* at 158.

9. *See, e.g.*, 30 U.S.C. § 921(b) (1988); 20 C.F.R. § 718.203(b) (1994)(if a claimant was employed as a coal miner for 10 years and is suffering from black lung, there is a rebuttable presumption that the disease was caused by the coal mining employment); 20 C.F.R. §§ 718.301 to - .306 (1994); 20 C.F.R. §727.203(a) (1994).

10. 30 U.S.C. § 921(a) (1988).

to the party opposing a benefits claim.[11] Under the true doubt rule, where the evidence is evenly balanced, the benefits claimant wins.[12]

However, the true doubt rule has not gone unchallenged, and it has been argued that the rule conflicts with Section 7(c) of the Administrative Procedure Act (hereinafter *the APA*).[13] In *Director, OWCP v. Greenwich Collieries*,[14] the Supreme Court recently heard an appeal from the Third Circuit concerning this issue and held that the true doubt rule violates Section 7(c).[15] In so holding, the Court invalidated the use of the true doubt rule which, in effect, now prohibits an Administrative Law Judge [hereinafter *ALJ*] from applying it in a BLBA hearing.[16]

Before exploring the main issues, this Comment will discuss the applicable background of the law, the facts of *Greenwich*, the majority opinion and the dissenting opinion. Then, this Comment will analyze whether *Greenwich's* holding was correct. It will then discuss the impact of the case. Finally, it will discuss whether Congress should enact legislation that revives the true doubt rule. Ultimately, this Comment

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11. Mattingly, *supra* note 4, at 820 (citing Lessar v. C.F. & I. Steel Corp., 3 Black Lung Rep. 1-63 (1981); Conley v. Roberts and Schaefer Co., 7 Black Lung Rep. 1-309, 1-312 n.4 (1984); Provance v. United States Steel Corp., 1 Black Lung Rep. 1-483 (1978)). *See also Freeman*, 988 F.2d at 709 (reviewing the decision of an administrative law judge who applied the true doubt rule); *Skukan*, 993 F.2d at 1234 (same).

12. Grizzle v. Pickands Mather and Co., 994 F.2d 1093, 1096 (4th Cir. 1993).

13. 5 U.S.C. § 556(d) (1994). *See, e.g., Freeman*, 988 F.2d at 710-11 (employer argued that the true doubt rule conflicted with Section 7(c) of the APA).

14. 114 S. Ct. 2251 (1994).

15. *Id.* at 2259. Two other issues were also before the Court. *Id.* The first issue was whether the true doubt rule conflicted with the Court's holding in Mullins Coal Co. v. Director, Office of Workers' Compensation Programs, United States Department of Labor, 484 U.S. 135 (1987). *Greenwich*, 114 S. Ct. at 2254. The second issue was whether the true doubt rule conflicted with 20 C.F.R. Section 718.403 (1994) (burden of proof regulation). *Greenwich*, 114 S. Ct. at 2254. However, the Court decided the case on the Section 7(c) issue and avoided passing on whether the true doubt rule violated the *Mullins* holding or Section 718.403. *Id.* at 2259.

16. 114 S. Ct. at 2259. The Court's holding had implications that went beyond the BLBA. *See id.* However, this Comment is limited to analyzing the *Greenwich* decision as it relates to the BLBA and will avoid analyzing the effects on other workers' compensation programs, unless such analysis will shed light on the BLBA.

concludes that the Court was correct in invalidating the true doubt rule. However, the Comment concludes that Congress should revive the rule.

II. BACKGROUND OF THE LAW

Greenwich answers the question of whether the true doubt rule conflicts with Section 7(c) of the APA.[17] Accordingly, it is essential to explore the background of the true doubt rule as well as the background of Section 7(c).

A. The True Doubt Rule

The true doubt rule is a judicial construct that originated over fifty years ago in *Fidelity & Casualty Co. v. Burris*,[18] a case arising under the Longshoreman's and Harbor Workers' Compensation Act [hereinafter *the LHWCA*].[19] In *Burris*, a laborer collapsed and died while at work.[20] His widow filed for benefits, but her application was denied.[21] The *Burris* court overturned the lower court decision and stated that "where there is doubt, it should be resolved in favor of the injured employee or his dependent family."[22] The *Burris* rule eventually developed into the true doubt rule,[23] and the Department of Labor

17. *See supra* note 15 and accompanying text.

18. 59 F.2d 1042 (D.C. Cir. 1932). *See* Stephen Yula, Recent Decision, *Workers' Compensation—Black Lung Benefits Act—The United States Court of Appeals for the Third Circuit Held that the "True Doubt Rule" Was Invalid Because It Allowed Claimants to Prevail without Meeting the Required Burden of Persuasion*, Greenwich Collieries v. Director, Office of Workers' Compensation Programs, 990 F.2d 730 (3rd Cir. 1993), 32 DUQ. L. REV. 361, 366 (1994)[hereinafter "Yula"] (discussing the evolution of the true doubt rule and noting that the true doubt rule originated in *Burris*).

19. 33 U.S.C. §§ 901-50 (1988).

20. 59 F.2d at 1043.

21. *Id.*

22. *Id.* at 1044. The opinion captured the flavor of Mr. Burris's plight, "[t]he day was very hot; [t]he temperature at 8 o' clock . . . was 79 degrees . . . and at 11 o'clock 92 degrees *in the shade*." *Id.* (emphasis added). "About 11 o'clock . . . [Burris] started toward a water barrel and on his way collapsed." *Id.* "He . . . died that evening from heat prostration and sunstroke." *Id.*

23. *See* Yula, *supra* note 18, at 366 (claiming that the true doubt rule "has evolved as a convenient method by some courts and agencies to allocate the burden of persuasion to the employer").

adopted the true doubt rule for use in benefits hearings held under the BLBA.[24]

Functionally, the true doubt rule is simple: where the evidence is evenly balanced on both sides, the BLBA claimant is given the benefit of the doubt and is awarded benefits.[25] Because the true doubt rule allows a BLBA claimant to win where the evidence is equally probative on both sides, BLBA claimants need only prove that they are *as likely as not* to be entitled to benefits.[26] Therefore, under the true doubt rule, a BLBA benefits claimant does not have to prove his claim by a preponderance of the evidence, which would require the BLBA claimant to establish that he is *more likely than not* to be entitled to benefits.[27] Thus, the true doubt rule, in effect, shifts the burden of persuasion to the party opposing the BLBA benefits claim.[28]

B. Section 7(c) of the APA

In contrast to the true doubt rule, Section 7(c) of the APA[29] states, "except as otherwise provided, . . . the proponent of a rule or order has the burden of proof."[30] One interpretation of Section 7(c) is

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24. *See supra* note 11 (authority cited therein supports the proposition that the Department of Labor utilized the true doubt rule in adjudicating BLBA benefits claims).

25. *Freeman*, 988 F.2d at 710; Adkins v. Director, OWCP, 958 F.2d 49, 52 n.4 (4th Cir. 1992).

26. *See Grizzle*, 994 F.2d at 1096 (teaching that under the true doubt rule, the BLBA claimant wins where the evidence is "equally probative").

27. GEORGE E. DIX ET AL., MCCORMICK ON EVIDENCE § 336 (JOHN WILLIAM STRONG ed., 4th ed. 1992). *See* Price Waterhouse v. Hopkins, 490 U.S. 228, 247 n.12 (1988)(discussing the preponderance of the evidence standard).

28. The reason the true doubt rule has the effect of shifting the burden of persuasion is that the preponderance of the evidence standard is recognized as the "rock bottom" of standards of proof. Charleton v. FTC, 543 F.2d 903, 907 (D.C. Cir. 1976).

29. The APA applies to BLBA hearings because it adopts the part of the LHWCA which incorporates the APA. *See* 33 U.S.C. § 919(d) (1988) ("any hearing held under this chapter shall be conducted in accordance with [the APA]"); 30 U.S.C. § 932(a) (1988) (incorporating Section 919(d)). *See also* Brownell v. Tom We Shung, 352 U.S. 180, 185, (1956) (the Court does not lightly presume exemptions to the APA); *Freeman*, 988 F.2d at 710 n.6 ("[u]nquestionably, the APA applies to black lung adjudications").

30. 5 U.S.C. § 556(d) (1994). The full text reads as follows:

> Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agen-

that it places the burden of persuasion on the BLBA claimant because it places the burden of proof on the proponent of an order awarding benefits: a BLBA claimant.[31] However, this argument hinges on the meaning of the term burden of proof, which has two distinct meanings.[32]

First, "burden of proof" can be interpreted as meaning the burden of persuasion.[33] When a party bears the burden of persuasion, he bears the risk of non-persuasion, and loses when the evidence is evenly balanced.[34] Thus, if the term burden of proof in Section 7(c) places the burden of persuasion on the proponent of a rule or order, the true doubt rule is invalid because it relieves the BLBA claimant, the proponent of an order awarding benefits, of the burden of persuasion.[35]

Second, "burden of proof" can be interpreted as meaning the burden of production.[36] When a party bears the burden of production, he merely bears the burden of coming forward with evidence that, if uncontradicted, will suffice to establish his claim.[37] Furthermore, and perhaps most importantly, a burden of production does not impose a burden of persuasion.[38] As such, if Section 7(c)'s burden of proof phrase merely imposes a burden of production, then it does not impose a burden of persuasion on a BLBA claimant and, therefore, does not conflict with the true doubt rule.

> cy as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantive evidence.

Id.

31. *See, e.g., Freeman*, 988 F.2d at 711 (employer argued, unsuccessfully, that the true doubt rule conflicted with Section 7(c)).

32. DIX ET AL., *supra* note 27, at § 336.

33. *Id.*

34. *Id.*

35. *See id. See also supra* notes 26-27 and accompanying text (the true doubt rule merely requires evenly balanced evidence, whereas the lowest burden of persuasion, the preponderance standard, requires the evidence to weigh, even if only slightly, in the favor of the party who bears the burden of persuasion).

36. DIX ET AL., *supra* note 27, at § 336.

37. *Id.*

38. *Id.* at §338.

Notably, the Supreme Court has twice analyzed the meaning of Section 7(c). *Steadman v. SEC*[39] was the first Supreme Court case that analyzed the meaning of Section 7(c). In *Steadman*, the Supreme Court decided whether Section 7(c) requires the SEC to prove a claim by a preponderance of the evidence or by clear and convincing evidence.[40] *Steadman* noted that Section 7(c) requires agency decisions to be made "in accordance with . . . substantial evidence."[41] According to *Steadman*, "substantial" implies a certain weight of evidence,[42] and "in accordance with" implies that the agency must weigh the evidence and make its decision according to the weight of the evidence.[43] Therefore, the *Steadman* court concluded that "agency decision[s] must be made 'in accordance with' the weight of the evidence."[44]

Although *Steadman* found that Section 7(c) requires agency decisions to be made in accordance with the weight of the evidence, the language of Section 7(c) did not reveal exactly what the required weight of the evidence was in making agency decisions.[45] However, the legislative history of the APA clearly indicated that Congress expressly adopted a preponderance of the evidence standard in enacting Section 7(c).[46] Further, the preponderance of the evidence standard is the usual standard in administrative proceedings.[47] Consequently, *Steadman* held that Section 7(c) requires that administrative agencies make their decisions in accordance with the preponderance of the evi-

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39. 450 U.S. 91 (1981)

40. *Id.* at 95.

41. *Id.* at 98 (quoting from Section 7(c)) (emphasis omitted).

42. *Id.*

43. *Id.*

44. 450 U.S. at 98-99.

45. *Id.* at 100.

46. *Id.* at 101. The Court stated, "[a]ny doubt as to the intent of Congress is removed by the House Report, which expressly adopted a preponderance of the evidence standard:

> Where a party having the burden of proceeding has come forward with a prima facie and substantial case, he will prevail unless his evidence is discredited or rebutted. In any case, the agency . . . must weigh . . . [the evidence] and decide in accordance with the preponderance. In short, these provisions require a conscientious and rational judgment on the whole record in accordance with the proofs adduced.

Id., citing H.R.Rep.No. 1980, 79th Cong., 2d Sess., 37 (1946).

47. *See* 450 U.S. at 101-02 n.21.

dence.[48] In other words, *Steadman* interpreted Section 7(c) as requiring the SEC to bear a burden of persuasion by a preponderance of the evidence.[49]

Two years after *Steadman*, in *NLRB v. Transportation Management Corp.*,[50] the Supreme Court summarily stated in a footnote that Section 7(c) merely imposes a burden of production.[51] The Court made no mention of Section 7(c) having anything to do with a preponderance of the evidence standard or a burden of persuasion.[52] Notably, no mention was made of *Steadman* either.[53] In fact, the footnote in *Transportation Management* created a possible point of conflict because it interpreted Section 7(c) as imposing a mere burden of production,[54] whereas *Steadman* interpreted Section 7(c) as requiring decisions to be made in accordance with the preponderance of the evidence, which is a burden of persuasion.[55]

III. STATEMENT OF THE CASE

In *Greenwich*, the Supreme Court reviewed two decisions of the Third Circuit.[56] The first decision involved Andrew Ondecko who had applied for BLBA benefits after working as a coal miner for about thirty-one years.[57] When Ondecko's case was first litigated, an ALJ reached the following conclusions: (1) that Ondecko had black lung disease, (2) that the disease totally disabled him, and (3) that the disease resulted from his having worked as a coal miner.[58]

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48. *Id.* at 102.

49. *See* DIX ET AL., *supra* note 27, at §339 (explaining that the preponderance of the evidence is a standard of proof: a burden of persuasion).

50. 462 U.S. 393 (1983).

51. *Id.* at 403-04 n.7.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Steadman*, 450 U.S. at 103. *See* St. Mary's Honor Center v. Hicks, 113 S. Ct. 2742, 2749 (1993) (referring to the preponderance of the evidence standard as a burden of persuasion).

56. 114 S. Ct. at 2253.

57. *Id.*

58. *Id. See also supra* note 8 and accompanying text (outlining the three elements

In reaching the first two conclusions, the ALJ applied the true doubt rule because the evidence was evenly balanced on both sides concerning such issues.[59] In reaching the third conclusion, the ALJ applied a rebuttable presumption that Ondecko's black lung disease had resulted from coal mining work because he had worked as a coal miner for over ten years.[60] Because the three elements necessary to establish entitlement for BLBA benefits had been satisfied, the ALJ awarded Ondecko benefits.[61]

Greenwich Collieries was Ondecko's final employer[62] and, as such, was liable for the payment of Ondecko's benefits.[63] Consequently, Greenwich Collieries challenged the ALJ's decision to award Ondecko benefits.[64] The Benefits Review Board concluded that the ALJ was correct in finding each side's evidence equally probative concerning the first two elements necessary to establish entitlement to BLBA benefits.[65] Further, the Board held that it was proper for the ALJ to invoke the true doubt rule and resolve those issues in Ondecko's favor.[66] However, the United States Court of Appeals for the Third Circuit vacated this decision and held that the true doubt rule conflicts with the Department of Labor's regulations and with Supreme Court precedent.[67]

The second case reviewed by the Supreme Court involved Michael Santoro who was injured at work and died within months of his injury.[68] His widow applied for benefits under the LHWCA, and an ALJ found that the evidence was equally probative on both sides.[69] There-

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which must be proven in order to establish entitlement to BLBA benefits).

59. 114 S. Ct. at 2253-54.

60. *Id.* at 2254.

61. *Id.* at 2253-54 (noting that Ondecko qualified for the presumption provided for in 20 C.F.R. § 718.203(b) (1993)).

62. Ondecko spent "[t]he last five to six years . . . [employed by] Greenwich Collieries." Yula, *supra* note 18, at 361.

63. 30 U.S.C. §§ 932-34 (1988).

64. *Greenwich*, 114 S. Ct. at 2254.

65. *Id.*

66. *Id.*

67. *Id.* (citing 20 C.F.R. § 718.403 (1994) and *Mullins*, 484 U.S. at 135).

68. *Id.*

69. *Greenwich*, 114 S. Ct. at 2254.

fore, he applied the true doubt rule and gave the claimant (Santoro's widow) the benefit of the doubt concerning such evidence.[70] As a result of the application of the true doubt rule, Santoro's widow was awarded benefits.[71]

The Benefits Review Board affirmed because it found no error in the ALJ's application of the true doubt rule.[72] However, the Third Circuit Court of Appeals again reversed the Board's decision and held that the true doubt rule conflicts with Section 7(c).[73] After the Third Circuit decided the two cases, the Supreme Court granted certiorari to decide whether the Third Circuit was correct in its decision to invalidate the true doubt rule on the grounds that it conflicted with Section 7(c).[74]

IV. THE MAJORITY OPINION

In a six to three decision delivered by Justice O'Connor, the Supreme Court concluded that Section 7(c) imposes a burden of persuasion on BLBA benefits claimants[75] and that the true doubt rule relieves a BLBA benefits claimant of this burden.[76] Because the true doubt rule relieves BLBA benefits claimants of the burden of persuasion imposed by Section 7(c), the majority held that the true doubt rule is invalid as applied in BLBA adjudications.[77]

As the majority began its analysis, it stated that the case turned on the meaning of the term burden of proof in Section 7(c).[78] If burden of proof meant a burden of persuasion was imposed by Section 7(c),

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70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. 114 S. Ct. 751 (1994). Again, other issues were presented to the Court but it avoided such issues because it decided the case under Section 7(c). *See supra* note 15.

75. *Greenwich*, 114 S. Ct. at 2257-58.

76. *Id.* at 2253. As a preliminary matter, the majority concluded that the APA, and, therefore, Section 7(c) applies to BLBA adjudications. *Id.* at 2254 (noting that the BLBA incorporates provisions in the LHWCA that adopt the APA).

77. *Id.* at 2259.

78. *Id.* at 2255.

the true doubt rule would be invalid because it relieves BLBA claimants of the burden of persuasion.[79] On the other hand, if burden of proof in Section 7(c) merely meant the burden of production, there would be no conflict between Section 7(c) and the true doubt rule.[80]

Under existing rules of statutory construction, the meaning of Section 7(c) could be derived from (1) a definition found within the APA, (2) the language of the statute, or (3) precedent interpreting the meaning of Section 7(c).[81] First, the majority searched the APA for a definition of burden of proof, but unfortunately burden of proof was not defined by the APA.[82] Second, the majority turned to the language Section 7(c).[83] Before beginning this analysis, it explained that statutory language is construed in accordance with its common and ordinary meaning in the legal community at the time the statute was enacted.[84] Therefore, the majority searched for the meaning of the term burden of proof in 1946, the year the APA was enacted.[85]

The phrase burden of proof had been ambiguous for many years because it was used to describe the burden of persuasion, and also used to describe the burden of production.[86] However, the majority stated that the ambiguity in burden of proof had been eliminated in *Hill v. Smith*,[87] a decision rendered about twenty years before the enactment of the APA.[88] Further, in the "two decades after *Hill*, . . . [the Court's] opinions consistently distinguished between burden of

79. *Id.* *See supra* note 28 and accompanying text (the true doubt rule relieves BLBA claimants of the burden of persuasion).

80. *Greenwich*, 114 S. Ct. at 2255.

81. *Id.* at 2255-57. The majority could also have used the legislative history of the APA to interpret the meaning of Section 7(c). *Id.* at 2258. However, it found the legislative history to be vague and "only marginally relevant." *Id.* at 2258-59.

82. *Id.* at 2255.

83. *Id.*

84. *Id.* (citing Smith v. United States, 113 S. Ct. 2050, 2055 (1993)).

85. *Greenwich*, 114 S. Ct. at 2255.

86. *Id.* (the burden of production is different from the burden of persuasion because the former merely imposes the burden of producing evidence while the latter imposes the risk of non-persuasion).

87. 260 U.S. 592 (1923). In *Hill*, Justice Holmes stated that "[t]he distinction [between the burden of proof and the burden of producing evidence] is now very generally accepted, although often blurred by careless speech." *Id.* at 594.

88. *Greenwich*, 114 S. Ct. at 2255.

proof, . . . defined as burden of persuasion, and an alternative concept, . . . increasingly referred to as the burden of production. . . ."[89] Moreover, the majority referred to the emerging consensus concerning the meaning of burden of proof among commentators by the time the APA was enacted.[90] Because of *Hill* and the emerging consensus of the commentators, the majority concluded that Congress, in enacting the APA, used burden of proof in Section 7(c) to mean the burden of persuasion.[91]

Third, the majority addressed its own precedent which had analyzed Section 7(c).[92] It admitted that *Transportation Management* had stated that Section 7(c) imposes a mere burden of production, which was contrary to its own conclusion.[93] However, the majority dismissed *Transportation Management* as too cursory to withstand scrutiny because the analysis in that case was "ancillary" and "largely unbriefed."[94] Therefore, the footnote in *Transportation Management* did not warrant the same level of deference typically given to precedent.[95]

Furthermore, the majority noted that *Steadman* interpreted Section 7(c) as requiring administrative decisions to be made in accordance with the preponderance of the evidence.[96] According to the majority, *Steadman* "strongly implied" that Section 7(c) imposes a burden of persuasion.[97] The *Steadman* court had assumed that Section 7(c) im-

89. *Id. See, e.g.,* Webre Steib Co. v. Commissioner, 324 U.S. 164, 171 (1945); Commercial Molasses Corp. v. New York Tank Barge Corp., 314 U.S. 104, 111 (1941); Radio Corp. of America v. Radio Engineering Laboratories, Inc., 293 U.S. 1, 7-8 (1934) (if a party bears the burden of proof, he "bears a heavy burden of persuasion"); Brosnan v. Brosnan, 263 U.S. 345, 349 (1923) (finding that burden of proof imposes a burden of persuasion, not the mere burden of establishing a prima facie case).

90. *Greenwich,* 114 S. Ct. at 2255.

91. *Id.* at 2257.

92. *Id.*

93. *Id.*

94. *Id.* at 2257.

95. *Greenwich,* 114 S. Ct. at 2255. The court further reasoned that *Transportation Management* did not refer to *Steadman,* its "principal decision interpreting the meaning of . . . [Section] 7(c)." *Id.*

96. *Id.*

97. *Id.*

poses a burden of persuasion when it held that such a burden was met by the preponderance of the evidence standard.[98] The majority reasoned that "[a] standard of proof, such as preponderance of the evidence, can apply only to a burden of persuasion, not to a burden of production."[99]

Based on *Steadman* and the language of Section 7(c), the majority stated that "[u]nder . . . [Section] 7(c), . . . when the evidence is evenly balanced, the benefits claimant must lose."[100] As a result, it held that the true doubt rule violates Section 7(c) by placing the risk of non-persuasion on the party opposing a benefits award.[101] The true doubt rule, of course, may no longer be used in BLBA adjudications.[102]

In its holding, the majority was faithful to *Steadman* while expanding the Court's holding in that case in two ways. First, the majority's holding expressly stated that Section 7(c) imposes a burden of persuasion which is met by the preponderance standard established in *Steadman*.[103] Second, it concluded that Section 7(c) requires BLBA benefits claimants to bear this burden of persuasion.[104]

V. THE DISSENT

Justice Souter, joined by Justice Blackmun and Justice Stevens, dissented from the majority opinion.[105] The dissent attacked the majority opinion on three grounds. First, it asserted that the majority misinterpreted the commonly accepted meaning of the term burden of proof in 1946, the year that the APA was enacted.[106] Next, it asserted

98. *Id.*

99. *Id.* The majority noted that it did not slight the importance of precedent in statutory interpretation, but explained that the Supreme Court precedent concerning Section 7(c) was "in tension." *Id.*

100. *Id.* at 2259.

101. *Greenwich*, 114 S. Ct. at 2259.

102. *See id.*

103. *See id.*

104. *Id.* at 2258-59.

105. *Id.* at 2259.

106. *Greenwich*, 114 S. Ct. at 2260.

that the majority should have placed more weight on the legislative history of the APA.[107] Finally, it asserted that the majority misinterpreted the Supreme Court precedent which construes Section 7(c).[108]

First, contrary to the majority's conclusion that the meaning of the term burden of proof was settled by 1946, the year the APA was enacted, the dissent argued that the term burden of proof was still used to refer to both the burden of persuasion and the burden of production in 1946.[109] For example, a mere nine years after *Hill*, the case which had supposedly settled the meaning of the term burden of proof, the Supreme Court "reverted to using the phrase in its burden of production sense" in *Heiner v. Donnan*.[110] The dissent was likewise unimpressed by the majority's conclusion that the commentators were in consensus about the meaning of the term burden of proof.[111] In fact, the dissent asserted that, in 1946, many commentators believed that the term burden of proof was still used to refer to both the burden of persuasion and the burden of production.[112] Based on *Heiner* and the lack of consensus among the commentators, the dissent concluded that there was no single meaning attached to the term burden of proof at the time that the APA was enacted.[113]

Next, although the majority dismissed the legislative history of the APA as being unimportant, the dissent concluded that it established that Congress had indeed given a meaning to Section 7(c)'s burden of proof provision: the burden of production.[114] It noted that both the Senate and the House of Representatives had specified that Section 7(c) imposes a burden of production.[115] Because Congress had expressly

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107. *Id.* at 2261.

108. *Id.* at 2262-63.

109. *Id.* at 2260.

110. *Id.* (citing 285 U.S. 312, 329 (1932)).

111. *Greenwich*, 114 S. Ct. at 2261.

112. *Id.* (citing *e.g.*, 9 J. WIGMORE, EVIDENCE § 2485-86 (J. CHADBOURN REV. ED. 1981)).

113. *Greenwich*, 114 S. Ct. at 2261.

114. *Id.*

115. *Id.* The dissent quoted the following material from the Senate and the House of Representative discussions of Section 7(c):

> That the proponent of a rule or order has the burden of proof means not only that the party initiating the proceeding has the general burden of coming forward with

stated that Section 7(c) imposes a burden of production and had said nothing about a burden of persuasion, the dissent concluded that "the strong probability is that Congress meant to use 'burden of proof' to mean burden of coming forward and not burden of persuasion. . . ."[116]

Finally, the dissent believed that the majority position betrayed the conclusion reached in *Transportation Management*, which interpreted Section 7(c) as imposing a mere burden of production.[117] According to the dissent, abandoning *Transportation Management* was a mistake which put "the Court at odds with that fundamental principal of precedent that '[c]onsiderations of stare decisis have special force in the area of statutory interpretation, for . . . Congress remains free to alter what . . . [the Court has] done.'"[118]

Furthermore, the dissent contended that *Steadman* did not conflict with the conclusion reached in *Transportation Management*.[119] In fact, it asserted that the two cases analyzed separate issues.[120] The dissent noted that *Steadman* merely "holds that the party with the burden of persuasion must satisfy it by a preponderance, but [*Steadman*] does not purport to define 'burden of proof' . . . or to decide who bears the burden of persuasion. . . ."[121] Conversely, *Transportation Management*, according to the dissent, clearly concluded that Section 7(c)

> a prima facie case but that other parties, who are proponents of some different result, also for that purpose have a burden to maintain. Similarly the requirement that no sanction be imposed or rule or order be issued except upon evidence of the kind specified means that the proponents of a denial of relief must sustain such denial by that kind of evidence. . . .

S.Rep. No. 752, 79th Cong., 1st Sess., 22 (1945), reprinted in Legislative History of the Administrative Procedure Act, S.Doc. No. 248, 79th Cong., 2d Sess., 208 (1946); H.R.Rep. No. 1980, 79th Cong., 2d Sess. 36-37 (1946), Leg.Hist. 270-271. *See also Greenwich*, 114 S. Ct. at 2261 (quoting the material above).

116. *Greenwich*, 114 S. Ct. at 2262.

117. *Id.* at 2262-63.

118. *Id.* at 2263 (quoting Patterson v. McLean Credit Union, 491 U.S. 164, 172-173 (1989)).

119. *Greenwich*, 114 S. Ct. at 2263.

120. *Id.*

121. *Id.* at 2264.

imposes only a burden of production and not a burden of persuasion.[122]

In summary, the dissent determined that the majority (1) misinterpreted the commonly accepted meaning of the term burden of proof in 1946, the year that the APA was enacted; (2) should have placed more weight on the legislative history of the APA; and (3) misinterpreted the Supreme Court precedent which interprets Section 7(c).[123] Based on these determinations, which were contrary to the conclusions reached by the majority, the dissent concluded that Section 7(c) imposes a mere burden of production, and, as such, does not conflict with the true doubt rule.[124] Consequently, the dissent refused to join the majority opinion.[125]

VI. ANALYSIS

The majority opinion in *Greenwich* holds that the true doubt rule is invalid because it improperly relieves BLBA claimants of the burden of persuasion imposed by Section 7(c).[126] The majority's opinion is convincing because *Steadman* interprets Section 7(c) as imposing a preponderance of the evidence standard,[127] which is a burden of persuasion.[128]

The *Greenwich* decision has the effect of shifting the burden of persuasion to BLBA claimants because they now lose when the evidence is evenly balanced,[129] although it remains to be seen whether *Greenwich* will have an impact on the number of BLBA claimants who receive benefits. Notwithstanding the majority's convincing analysis and the possible impact of *Greenwich*, Congress intended for all doubtful questions of fact to be resolved in favor of BLBA claimants.[130]

122. *Id.*
123. *See supra* notes 105-22 and accompanying text.
124. *Greenwich*, 114 S. Ct. at 2263-64.
125. *Id.* at 2267.
126. *See supra* notes 100-01 and accompanying text.
127. *See supra* note 48 and accompanying text.
128. *See supra* note 49.
129. *See supra* notes 102-04 and accompanying text.
130. *See* 20 C.F.R. § 718.3 (1994) (interpreting the intent of Congress).

Therefore, if Congress still intends to give BLBA claimants the benefit of the doubt, it should enact legislation which revives the true doubt rule because there is no better example of a doubtful question of fact than when the evidence is evenly balanced.

A. The Majority's Holding in Greenwich is Convincing

The majority's holding is convincing because a logical extension of *Steadman* proves that the true doubt rule conflicts with Section 7(c). In holding that Section 7(c) imposes a burden of persuasion, the majority relied on *Steadman*, which interpreted Section 7(c) as imposing a preponderance of the evidence standard.[131] From *Steadman's* interpretation of Section 7(c), the majority inferred that the preponderance standard implicitly establishes that Section 7(c) imposes a burden of persuasion as well.[132]

This inference is sound because *Steadman's* holding necessarily implies that Section 7(c) imposes a burden of persuasion. The preponderance standard is a standard of proof which one party must meet in order to prevail.[133] In other words, the preponderance standard is a burden which one party must meet: the burden of persuasion.[134] Therefore, because *Steadman* holds that Section 7(c) imposes a preponderance of the evidence standard, it also holds, by implication, that Section 7(c) imposes a burden of persuasion.[135] Thus, when the majority interpreted Section 7(c) as imposing a burden of persuasion, it simply expressed the inference which necessarily follows from *Steadman.*

Admittedly, *Steadman* does not expressly state who must bear this burden of persuasion imposed by Section 7(c).[136] However, it is normal for the party who initiates the litigation and asks the court to

131. *See supra* note 96 and accompanying text.

132. *See supra* notes 97-99 and accompanying text.

133. DIX ET AL., *supra* note 27, at § 339.

134. *Id.*

135. *See id. See also Greenwich*, 114 S. Ct. at 2258 (the majority opinion reached the same conclusion).

136. *See Steadman*, 450 U.S. at 100-02.

invoke its power to bear the burden of persuasion.[137] In BLBA litigation, the BLBA claimant is the party who initiates the litigation and asks the court to invoke its power to award BLBA benefits.[138] Therefore, the majority logically concluded that Section 7(c) imposes its burden of persuasion on BLBA claimants. From this analysis, the majority's adherence to the normal rule dictating which party bears the burden of persuasion and reliance on *Steadman's* interpretation of Section 7(c) justifies its decision to invalidate the true doubt rule.

On the other hand, *Transportation Management* reached a conclusion that is contrary to the majority's interpretation of Section 7(c).[139] Indeed, *Transportation Management* expressly stated that Section 7(c) imposes only a "burden of going forward, not the burden of persuasion."[140] Therefore, the only question is whether *Transportation Management* carries weight as precedent.

The majority convincingly asserts that *Transportation Management* should not carry weight as precedent because the conclusion about Section 7(c) in that case was too brief and too cursory to be of precedential value.[141] At the very least, *Transportation Management* does not deserve the same precedential value as *Steadman.* The *Steadman* analysis of Section 7(c) was thoughtful and in-depth,[142] while *Transportation Management* merely glossed over an argument

137. DIX ET AL., *supra* note 27, at § 337. "The burdens of pleading and proof . . . have been and should be assigned to the plaintiff who generally seeks to change the present state of affairs and who therefore naturally should be expected to bear the risk of failure of proof or persuasion." *Id.*

138. *See, e.g., Grizzle,* 994 F.2d at 1093 (BLBA claimant initiated the litigation and asked the court to award benefits); Old Ben Coal Co. v. Battram, 7 F.3d 1273, 1275 (7th Cir. 1993).

139. *See supra* note 51 and accompanying text (according to *Transportation Management,* Section 7(c) imposes a mere burden of production). *See also supra* note 93 and accompanying text (the majority recognized that its interpretation of Section 7(c) conflicts with the conclusion reached in *Transportation Management*). *But see supra* notes 119-20 and accompanying text (the dissenting opinion argued that *Transportation Management* and *Steadman* do not conflict).

140. *See* 462 U.S. at 393 n.7.

141. *See infra* notes 144-45 and accompanying text.

142. 450 U.S. at 98-104 (analyzing the language of Section 7(c), applicable case law and legislative history).

concerning Section 7(c) in a footnote.[143] Moreover, *Transportation Management* paid little attention to the meaning of Section 7(c), and did not even mention *Steadman.*[144] Although the dissent argued that the outcome of *Transportation Management* may have been different if the footnote had turned the other way,[145] it seems more logical to infer that the *Transportation Management* court either ignored *Steadman* or failed to make the connection that Steadman necessarily implies that Section 7(c) imposes a burden of persuasion.[146] From this analysis, the majority properly disregarded *Transportation Management* and properly relied on *Steadman.*

Although the majority properly relied on *Steadman*, its conclusion that the common and ordinary meaning of burden of proof referred to the burden of persuasion is problematic. *Heiner*, which was cited by the dissent, is a clear example of how the term burden of proof was used to refer to the burden of production as well as the burden of persuasion at the time the APA was enacted.[147] Furthermore, the majority's assertion that the commentators were in consensus about the meaning of the term burden of proof is in dispute. Commentators have noted that burden of proof has traditionally been used to refer to both the burden of persuasion and the burden of production.[148] From this analysis, the majority was perhaps misguided in its belief that commentators were unanimous and, therefore, mistakenly asserted that the definition of burden of proof was settled as meaning the burden of persuasion by the time the APA was enacted.

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143. 462 U.S. at 403 n.7.

144. *Id.*

145. *Greenwich*, 114 S. Ct. at 2263 (explaining that if the *Transportation Management* court had concluded that Section 7(c) imposed a burden of persuasion, then Section 7(c) would have been an "impediment" to the National Labor Relations Board's rule which imposes the burden of persuasion on the party opposing the claim).

146. *But cf. Greenwich*, 114 S. Ct. at 2263-64. The dissent asserted that in *Steadman* "it was uncontested . . . that the burden of persuasion was on the Government [while] . . . *Transportation Management* . . . holds that 'burden of proof' in . . . [Section] 7(c) means burden of production. *Id.* at 2264. "The question left open by each decision is who bears the burden of persuasion." *Id.*

147. *See supra* note 110 and accompanying text.

148. *See, e.g.*, DIX ET AL., *supra* note 27, at § 336.

However, the majority's misguided belief does not mean that the definition of burden of proof was the burden of production at the time the APA was enacted. Instead, the mistaken assertion means only that the burden of proof provision in Section 7(c) could have meant either a burden of production or a burden of persuasion at the time the APA was enacted.[149] Moreover, because the majority properly relied on *Steadman* about the meaning of Section 7(c),[150] the possible mistake concerning the meaning of burden of proof at the time the APA was enacted is irrelevant.

As the dissent points out, however, the majority also dismissed the legislative history of the APA.[151] The applicable legislative history explains that Section 7(c) imposes a burden of production and says nothing about Section 7(c) imposing a burden of persuasion.[152] Thus, because the applicable legislative history indicates that Section 7(c) imposes a mere burden of production but is silent about whether it imposes a persuasion, the majority's dismissal of the legislative history appears questionable.

Nevertheless, the *Steadman* holding justifies the majority's decision to dismiss the legislative history of the APA. If Section 7(c) did not impose a burden of persuasion, it would not require decisions to be made in accordance with the preponderance of the evidence, which is a burden of persuasion.[153] Further, because *Steadman* interprets Section 7(c) as imposing the preponderance standard, Section 7(c) imposes a burden of persuasion, even if the legislative history indicates that Section 7(c) imposes a burden of production as well.[154]

149. *See supra* note 32 and accompanying text.
150. *See supra* notes 133-38 and accompanying text.
151. *See supra* note 81 and accompanying text.
152. *See supra* note 115 (the material therein contains the applicable legislative history).
153. *See supra* note 96 and accompanying text.
154. *See supra* notes 97-99 and accompanying text.

B. *The Impact of Greenwich*

The most obvious impact of *Greenwich* is that the true doubt rule is no longer permitted to be used in BLBA adjudications.[155] Therefore, when the evidence is evenly balanced on both sides, the BLBA claimant loses.[156] Thus, *Greenwich* has the effect of shifting the burden of persuasion from the employer who opposes a benefits award to the BLBA claimant.[157]

Whether shifting the burden of persuasion to BLBA claimants will result in a lower percentage of successful benefits claims remains to be seen. On one hand, it is difficult for a coal miner to prove that he is entitled to BLBA benefits.[158] Therefore, forcing the BLBA claimant to bear the risk of non-persuasion about whether his disability has totally disabled him and the other prerequisites to entitlement may result in a lower percentage of benefits awards.[159]

On the other hand, the true doubt rule can be invoked only when the evidence is equally probative,[160] which is a rare situation.[161] Indeed, "[v]ery seldom will the evidence . . . be equally probative. . . ."[162] Thus, it may be that *Greenwich's* invalidation of the true doubt rule will not have an impact on the number of BLBA claimants who receive benefits.[163]

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155. *See supra* note 102 and accompanying text.

156. *See supra* note 100 and accompanying text.

157. *See id.*

158. *See supra* note 8.

159. *See Grizzle*, 994 F.2d at 1101 (Hall, J., dissenting). Judge Hall noted that the true doubt rule would occasionally allow a BLBA claimant to win even though he was not in fact entitled to benefits. *Id.* Judge Hall's statement was an admission that the true doubt rule serves to slightly increase the number of claimants who receive benefits. *See id.* Therefore, it can be inferred that, in the absence of the true doubt rule, the number of successful BLBA claimants, will decrease slightly.

160. *See supra* note 26.

161. *See Grizzle*, 994 F.2d at 1097.

162. *Id. Grizzle* also states that "it would seem to be the unusual case in which, an ALJ intent on properly weighing the competing evidence, will come to the conclusion that neither side's evidence was even slightly more convincing than the other's." *Id.*

163. *See id.* at 1101 (Hall, J., dissenting)(the true doubt rule only has an "occasional" impact on BLBA litigation).

Beyond the question of whether the *Greenwich* decision will have an impact on the number of coal miners who receive BLBA benefits, the decision may be a message about the Court's attitude concerning interpretation of the BLBA. The true doubt rule was a judicial construct implicitly authorized by the BLBA.[164] *Greenwich*, however, invalidated the true doubt rule.[165] Therefore, the Court may have meant to send a message that it will invalidate judicial theories that go beyond the express language of the BLBA, even though the general policy of the BLBA is to resolve doubts in favor of claimants.[166] If this is the message, it evidences a conservative outlook toward interpretation of the BLBA.

Greenwich may also be a message to Congress. The Court is unlikely to reverse *Greenwich* because it rarely reverses its own precedent, and especially precedent that interprets a statute.[167] Consequently, if Congress wishes for BLBA claimants to win when the evidence is evenly balanced, the responsibility now rests with Congress to enact legislation which exempts the BLBA from Section 7(c) and revives the true doubt rule.[168]

C. *Congress Should Revive the True Doubt Rule*

Congress should enact legislation which revives the true doubt rule because of the policy underlying the BLBA.[169] *Greenwich* is a strict interpretation of the BLBA because it refuses to uphold a judicial practice that is not expressly authorized in the language of the BLBA.[170] However, Congress did not intend for the BLBA to be strictly con-

164. *See supra* notes 18-19 and accompanying text; *Grizzle*, 994 F.2d at 1096 n.3 (the justification for the true doubt rule is implicit in the principles underlying the BLBA).

165. *See supra* notes 101-02 and accompanying text.

166. *See Greenwich*, 114 S. Ct. at 2254-55 (the true doubt rule is not authorized by the express language of the BLBA).

167. *See* Patterson v. McLean Credit Union, 491 U.S. 164, 172-73 (1989).

168. *See id.* at 172-73 (explaining that Congress may enact legislation which overrules a Supreme Court holding).

169. Congress would not have to overrule *Greenwich* in order to revive the true doubt rule, and instead could merely except the BLBA from Section 7(c). *See supra* note 30 (Section 7(c) applies "[e]xcept as otherwise provided by statute . . . ").

170. *See supra* note 166.

strued and, instead, intended for courts to construe the BLBA liberally in favor of BLBA claimants.[171]

Indeed, in enacting the BLBA, Congress recognized that it is difficult for BLBA claimants to prove that they are entitled to benefits.[172] Moreover, Congress was sympathetic towards coal miners for the pain and suffering they endured upon contracting black lung.[173] Based on the difficulty of proving entitlement to BLBA benefits and congressional sympathy towards the plight of coal miners, Congress intended for doubtful questions of fact to be resolved in favor of BLBA claimants.[174] Thus, if Congress truly intends to give BLBA claimants the benefit of the doubt, it should revive the true doubt rule because the true doubt rule applies when the evidence is equally balanced, which is a perfect example of a doubtful question of fact.[175]

Furthermore, Congress had a valid reason for adopting the policy of resolving doubts in favor of BLBA claimants. Coal miners who contract black lung endure the horrible effects of a painful and crippling disease.[176] On top of the horrible effects of black lung disease, these coal miners must meet the difficult task of proving that they are entitled to BLBA benefits.[177] Thus, the horrible effects inflicted by black lung disease, when coupled with the difficulty of proving enti-

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171. *See Freeman*, 988 F.2d at 709-10 (noting that "[t]he true doubt rule is a judicial construct designed to effectuate *Congress's intent* that the . . . [BLBA] be *liberally construed* to ensure payment to deserving claimants")(emphasis added).

Of course, it may be argued that the Greenwich majority should not have ignored the general policy of the BLBA which requires doubt to be resolved in favor of BLBA claimants. However, as was aptly stated by the majority, the "ambiguous [BLBA] regulation [interpreting congressional intent] does not overcome the presumption that . . . adjudications under the BLBA are subject to . . . [Section] 7(c)'s burden of proof provision." 114 S. Ct. at 2255.

172. *See Mullins*, 484 U.S. at 158 ("[a]s a matter of policy, Congress was aware that it is difficult for coal miners . . . to prove" that they are entitled to BLBA benefits). *But see id.* (arguing that if a coal miner has not shown that he is suffering from black lung, he has not shown that he belongs to the group Congress was concerned about: coal miners with black lung disease).

173. *See supra* notes 3-4 and accompanying text.

174. *See Freeman*, 988 F.2d at 710.

175. *See supra* note 25 and accompanying text.

176. *See supra* note 2 and accompanying text.

177. *See supra* note 8.

tlement to BLBA benefits, creates a need to resolve doubts in favor of the BLBA claimant.

In all fairness, there are some reasons against Congress adopting the true doubt rule. The true doubt rule makes it easier for BLBA claimants to receive benefits because it places the risk of non persuasion on the party opposing a BLBA benefits award.[178] Therefore, a revival of the true doubt rule could lead to a larger amount of money being paid out in BLBA benefits,[179] which would have an impact on the two sources of funding from which the money for BLBA benefits is taken.

The first source of funding is the coal companies.[180] BLBA claims filed after December 31, 1973 are, if approved, paid by the claimant's former employer.[181] If coal mining companies must pay out more money in benefits, their profitability could be effected.[182] Lower profits could, of course, have an impact on the overall economic well-being of the coal industry.[183] The second source of funding for BLBA benefits is the Black Lung Disability Trust Fund (hereinafter *BLDTF*).[184] Benefits are paid from this fund when the benefit money cannot be obtained from the coal company that is liable.[185] Notably, this fund is already operating at a deficit.[186] Therefore, any further strain on the BLDTF, however small, would likely increase the deficit that already exists.

However, there is no proof that reviving the true doubt rule would have any noticeable impact on the amount of BLBA benefits paid out

178. *See supra* note 28 and accompanying text.

179. *See Grizzle*, 994 F.2d at 1100-01 (a BLBA claimant "wins all ties").

180. 30 U.S.C. §§ 932-34 (1988).

181. *Id. See* Allen R. Prunty and Mark E. Solomons, *The Federal Black Lung Program: Its Evolution and Current Issues*, 91 W. VA. L. REV. 665, 669 n.9 (1989) [hereinafter "Prunty"].

182. *See* Prunty, *supra* note 181, at 669 (explaining that the coal industry, which has "more than its share of . . . problems," objects to being singled out to bear the cost of the BLBA).

183. *See id.* at 668 (discussing the declining fortunes of the coal industry).

184. 30 U.S.C. § 934 (1988).

185. *Id. See* Prunty, *supra* note 181, at 683.

186. Prunty, *supra* note 181, at 669 n.9.

by the coal mining companies and the BLDTF. Indeed, as previously discussed, the true doubt rule only applies in the rare situation where the evidence concerning entitlement to BLBA benefits is equally balanced on both sides.[187] From this analysis, it appears that the cost implications of reviving the true doubt rule are probably negligible and, therefore, not a valid argument against reviving it.

In addition, if the revived true doubt rule did begin to have a noticeable impact on the amount of money which coal mining companies were forced to pay out, it would not be a signal that the true doubt rule should be discarded, but instead it would be a signal that ALJs were applying the true doubt rule incorrectly.[188] As mentioned, the true doubt rule only applies if the evidence is actually in equipoise.[189] It does not apply when there is merely some evidence supporting the BLBA claim and overwhelming evidence against the claim.[190] Thus, the true doubt rule, when properly applied, is not a frequently used doctrine.[191] In the end, the true doubt rule is a policy question which asks whether the BLBA claimant should bear the risk of non-persuasion or whether the party opposing the benefits should bear it. Given the policy behind the BLBA and the rarity of situations in which the true doubt rule applies, Congress should revive the true doubt rule.

VII. CONCLUSION

The majority's holding in *Greenwich* is more convincing than the dissent's analysis because a logical extension of *Steadman* proves that the true doubt rule conflicts with Section 7(c). *Steadman* interprets Section 7(c) as imposing a preponderance of the evidence standard. The preponderance standard is a burden which one party must meet: the burden of persuasion. Therefore, because *Steadman* holds that Section 7(c) imposes a preponderance of the evidence standard, it also

187. *See supra* notes 163-64 and accompanying text.

188. *See supra* notes 160-62 and accompanying text (the true doubt rule applies only in the rare situations where the evidence is equally balanced).

189. *See supra* note 162 and accompanying text.

190. *See Grizzle*, 994 F.2d at 1097-98.

191. *See supra* notes 162-64 and accompanying text.

holds, by implication, that the statute imposes a burden of persuasion. Thus, when the majority interpreted Section 7(c) as imposing a burden of persuasion, it simply expressed the inference which necessarily follows from *Steadman.*

The majority properly disregarded *Transportation Management* because the analysis was too cursory and brief to carry weight as precedent. Further, the majority was correct in placing the burden of persuasion imposed by Section 7(c) on BLBA claimants because the burden of persuasion is generally placed on the party who initiates the litigation and seeks to invoke the court's power. Under *Greenwich*, the true doubt rule may no longer be used in BLBA adjudications and, therefore, when the evidence is evenly balanced on both sides, the BLBA claimant now loses. Thus, *Greenwich* has the effect of shifting the burden of persuasion from the employer who opposes a benefits award to the BLBA claimant. However, whether shifting the burden of persuasion to BLBA claimants will result in a lower percentage of successful benefits claims remains to be seen.

Greenwich may be interpreted as a message to Congress. The Court is unlikely to reverse its own precedent, especially precedent which interprets a statute, so it is unlikely that the Court will overrule *Greenwich.* Thus, the fate of the true doubt rule now rests with Congress, which has the power to codify the true doubt rule and overrule *Greenwich.*

Congress should enact legislation that revives the true doubt rule because of the policy underlying the BLBA. In enacting the BLBA, Congress recognized that it is difficult for coal miners to prove that they are entitled to BLBA benefits. Furthermore, Congress recognized the effect black lung has on its victims.

Therefore, Congress, in enacting the BLBA, intended for all doubtful questions of fact to be decided in favor of BLBA claimants. If Congress truly did intend for BLBA claimants the benefit of all doubts, it should legislate the validity of the true doubt rule because there is no better example of a doubtful question of fact than when the evidence is equally balanced.

Allan W. Brown