Michigan Law Review

Volume 99 | Issue 3

2000

Reducing the Overburden: The *Doris Coal* Presumption and Administrative Efficiency Under the Black Lung Benefits Act

Eric R. Olson
University of Michigan Law School

Reducing the Overburden: The *Doris Coal* Presumption and Administrative Efficiency Under the Black Lung Benefits Act

Eric R. Olson

Coal dust build-up prevents many coal miners' lungs from functioning properly.[1] This condition, commonly referred to as black lung or pneumoconiosis, can make common activities nearly impossible.[2] The Black Lung Benefits Act covers the cost of medical treatment for many affected miners, though procedural impediments often prevent miners from receiving care. The miner's current or former employer, when identifiable, must pay for medical care relating to the miner's black lung. Most disputes over miners' claims for medical care arise when the miner has a history of cigarette smoking and the need for medical care could arise from either coal dust or tobacco smoke because both substances affect the same body systems. Coal companies prefer not to pay for medical care arising from cigarettes, while miners do not want their smoking history to prevent coverage of treatment for their occupational disease, especially when causation has not been clearly established. To receive payment for care, miners must prove to the Department of Labor through an often lengthy administrative process that the medical treatment met the eligibility requirements. Specifically, miners must assemble both medical documentation describing the treatment and the justification for the treatment in order to prevail in the administrative hearing.

The current black lung program traces its origin through four major congressional actions. The Federal Coal Mine Health and Safety Act of 1969 ("1969 Act") arose out of frustration with state programs to protect miners and adequately care for those with occupational diseases. The 1969 Act represented the first of many comprehensive legislative efforts to improve the well-being of coal miners. In addition to establishing safety standards and authorizing enforcement mechanisms, the 1969 Act provided a "limited response in the form of emergency assistance" through monthly stipends to miners who suffer from

1. Michael D. Attfield & Gregory R. Wagner, *Respiratory Disease in Coal Miners*, *in* ENVIRONMENTAL AND OCCUPATIONAL MEDICINE 413, 413 (William N. Rom ed., 3d ed. 1998).

2. Black lung describes many distinct diseases arising from prolonged coal dust exposure, though most attention is focused on coal workers pneumoconiosis (CWP). CWP is a disease characterized by the buildup of nodules of coal in the lungs that progressively decreases the ability of the lungs to function. *See id.*

pneumoconiosis.[3] This "limited response" has taken on a life of its own over the past thirty years through four subsequent acts and related regulations greatly extending the black lung benefits program. Courts further complicated this already complex system, often leaving miners' ability to receive benefits highly dependent on the circuit in which they brought their claim.

The 1969 Act created four statutory presumptions to remove some of the impediments facing miners as they sought disability payments.[4] Because many eligible miners still did not receive benefits, Congress passed the Black Lung Benefits Act of 1972 ("1972 Act").[5] The 1972 Act, among other things, covered medical benefits for treating pneumoconiosis in eligible miners. The Black Lung Benefits Reform Act of 1977 further expanded the umbrella of eligibility.[6] The Black Lung Benefits Amendments of 1981 dramatically scaled back the effects of the Acts in response to the increasing cost of the benefits program to the government and industry by removing many of the statutory presumptions and increasing the ability of coal companies to contest the miners' allegations.[7] These reductions in the Act,[8] however, did not undermine its central commitment to providing care for eligible miners. Rather, the changes limited eligibility requirements by limiting the class of miners able to receive care and removing some of the statutory presumptions aiding miners seeking to establish total disability due to pneumoconiosis.[9]

Neither the Act nor the relevant regulations thoroughly describe the required causal nexus between the miner's pneumoconiosis and eligibility for medical benefits. The Fourth Circuit, in *Doris Coal v. Director*,[10] lowered the administrative barrier facing miners by switching the burden of production for eligible miners who seek cov-

3. H.R. REP. NO. 91-563, at 13.1 (1969), *reprinted in* 1969 U.S.C.C.A.N. 2503.

4. 30 U.S.C. § 921 (1994); *see also* Robert L. Ramsey & Robert S. Habermann, *The Federal Black Lung Program — The View from the Top*, 87 W. VA. L. REV. 575, 576-77 (1985).

5. S. REP. NO. 92-743 (1972), *reprinted in* 1972 U.S.C.C.A.N. 2305, 2307 (stating that the rate of denial "suggests strongly that the solution has not been nearly as complete as Congress believed and expected it would be").

6. Pub. L. No. 95-239, 92 Stat. 95 (1978).

7. Many economic and political forces led to the reduction of the benefits program. The Black Lung Disability Trust Fund ran an estimated deficit of $552 million in 1981 and had a cumulative deficit of approximately $1.5 billion. *See* H.R. REP. NO. 97-406, at 13.1 (1981), *reprinted in* 1981 U.S.C.C.A.N. 2671, 2680. The balance of power in the White House and Congress also weakened proponents of the benefits program.

8. "The Act" refers to the currently applicable federal black lung benefits program, most recently altered by the 1981 amendments discussed *supra* note 7 and accompanying text.

9. *See* Ramsey & Habermann, *supra* note 4, at 597 (stating that "[t]he major effect of the 1981 amendments . . . has been to return to the evidentiary format set forth in the original program").

10. 938 F.2d 492 (4th Cir. 1991).

erage for pulmonary care. The *Doris Coal* court held that "when a miner receives treatment for a pulmonary disorder, a presumption arises that the disorder was caused or at least aggravated by the miner's pneumoconiosis."[11] This reduction in the burden faced by miners in the administrative process makes it easier for eligible miners to receive coverage for medical care. The Department of Labor has proposed regulations that expressly adopt the *Doris Coal* presumption to aid miners as they seek coverage for eligible treatment.[12] The Sixth Circuit recently disagreed with the Fourth Circuit, holding the *Doris Coal* presumption invalid and requiring the coal miner seeking coverage for medical treatment to produce evidence demonstrating the connection.[13] This Note argues that the Fourth Circuit's judicial presumption is constitutionally and statutorily permissible and effectively implements the remedial objectives of the Black Lung Benefits Act.

To receive benefits under the Act, miners must first prove that they are "totally disabled" due to pneumoconiosis arising at least in part out of coal mine employment.[14] Miners begin the benefit process by applying for benefits at their Social Security office, and their application is then forwarded to the Department of Labor.[15] Successful claimants receive a monthly benefit check and are eligible for coverage of medical care for their "pneumoconiosis and ancillary pulmonary conditions."[16] These two steps are commonly called stage one, applying for the monthly check, and stage two, applying for the medical benefits.[17] Only once a miner has passed stage one can she seek coverage for the medical benefits under stage two. The Act and accompanying regulations define "total disability" as a legal term of art that includes more miners than those totally disabled in fact by pneumoconiosis.[18] Miners may receive certain presumptions of total disability based on medical evidence and mining history. Miners who pre-

11. *Id.* at 496.

12. *See* Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, 64 Fed. Reg. 54,966, 55,060 (1999) (to be codified at 20 C.F.R. § 725.701(e)) (proposed Oct. 8, 1999). In the discussion of the proposed rule, the Department of Labor "propose[s] a regulatory presumption, based on the Fourth Circuit's approach, that would apply nationwide." *Id.* at 54,970.

13. Glen Coal Co. v. Seals, 147 F.3d 502, 514 (6th Cir. 1998). The Fourth Circuit considered *Glen Coal* in *Gulf & Western Industries v. Ling*, 176 F.3d 226 (4th Cir. 1999), and reaffirmed the *Doris Coal* presumption.

14. Tussey v. Island Creek Coal Co., 982 F.2d 1036, 1039 (6th Cir. 1993).

15. *See* Ramsey & Habermann, *supra* note 4, at 583-84.

16. 20 C.F.R. § 725.701 (2000).

17. *See Glen Coal*, 147 F.3d at 512 ("The Doris Coal presumption states that if a miner proves his entitlement to benefits in stage one, the miner is entitled to a presumption in stage two that the medical bills he presents are related to his pneumoconiosis.").

18. *See* John S. Lopatto III, *The Federal Black Lung Program: A 1983 Primer*, 85 W. VA. L. REV. 677 (1983).

sent X-ray evidence of nodules of coal dust in their lung demonstrating complicated pneumoconiosis, also known as progressive massive fibrosis, receive an irrebuttable presumption of total disability.[19] In addition, miners who are diagnosed by other means receive the same irrebuttable presumption if the diagnosis shows a condition that could reasonably be expected to yield evidence of complicated pneumoconiosis.[20] Miners who filed a claim before 1982 received a rebuttable presumption of total disability due to pneumoconiosis if: (1) they mined for at least fifteen years, (2) their chest X-ray was interpreted negatively, and (3) they proffered other evidence that demonstrated the existence of a totally disabling respiratory or pulmonary impairment.[21] A miner who does not meet the requirements of the relevant presumptions can also meet the total disability requirement by demonstrating that "pneumoconiosis prevents him or her from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity and over a substantial period of time."[22] The *Doris Coal* presumption only applies to those miners who have passed the eligibility requirements of stage one by proving total disability due to pneumoconiosis.

The Act requires the miner's former employer, when identifiable, to pay for eligible medical treatment. If the employer seeks to contest eligibility, the dispute enters an administrative hearing. The *Doris Coal* presumption transfers the burden of production from the miner to the contesting former employer. The burden of production, half of the burden often referred to as the burden of proof, is the responsibility of producing enough evidence to raise a claim.[23] The *Doris Coal* presumption does not alter the burden of persuasion, and the miner retains ultimate responsibility for persuading the tribunal that the medical care met the Act's eligibility requirements. By transferring the production requirement, however, the *Doris Coal* presumption greatly eases the procedural burden on miners who seek coverage for pulmonary care and will result in more coverage for eligible care. Miners no longer need to produce extensive documentation to receive coverage for routine care and, because of this reduced hassle, will more likely seek treatment for their pulmonary ailments.

---

19. 20 C.F.R. § 718.304(a) (2000).

20. 20 C.F.R. § 718.304(c) (2000).

21. 20 C.F.R. § 718.305 (2000). Such dated cases are not, unfortunately, merely of historic interest. Noah Stiltner, the *Doris Coal* claimant, originally filed his claim in 1979. *Doris Coal*, 938 F.2d at 492, 494 (4th Cir. 1991).

22. 30 U.S.C. § 902(f)(1)(A) (1994).

23. *See* JOHN J. COUND ET AL., CIVIL PROCEDURE 992 (1997); *see also* Lovilia Coal Co. v. Harvey, 109 F.3d 445, 452 (3d Cir. 1997) (discussing differences between burden of production and burden of persuasion under the Act).

This Note argues that courts should adopt the *Doris Coal* presumption created by the Fourth Circuit. Part I demonstrates that the Black Lung Benefits Act, the Administrative Procedures Act (APA), and the Constitution permit the *Doris Coal* presumption. Part II argues that the *Doris Coal* presumption best fulfills the remedial intent of the Act and results in more efficient administration of the Act. This Note concludes that courts should follow the *Doris Coal* presumption and transfer the burden of production in medical benefit disputes regarding pulmonary care for covered miners.

I. THE *DORIS COAL* PRESUMPTION IS PERMITTED

The *Doris Coal* presumption, like other statutory and regulatory presumptions, helps to further the purpose of the Act. This Part demonstrates that the Act, the APA, and relevant judicial precedent permit the *Doris Coal* presumption. Section I.A demonstrates that the Act does not limit presumptions to those identified only within the Act itself. Section I.B examines judicial review of other presumptions under the Act and concludes that the *Doris Coal* presumption would survive scrutiny under every court's approach to examining extra-statutory presumptions under the Act. Section I.C argues that the judicial origin of the *Doris Coal* presumption does not violate the APA or the Supreme Court's command of judicial deference to administrative procedure. Since neither the Act nor other applicable law prevents the creation of the *Doris Coal* presumption, the presumption is permissible.

A. *Other Presumptions Prohibited*

To ease the burden on miners seeking benefits under the Act, Congress established several statutory presumptions.[24] The Department of Labor, the administrative agency charged with oversight of the black lung benefits program, created other presumptions aiding miners in their applications for benefits.[25] While the Act and accompanying regulations establish certain presumptions, neither the Act nor the regulations expressly prohibit the creation of additional presumptions aiding a miner in proving her claim.

24. *See* Director v. Greenwich Collieries, 512 U.S. 267, 280 (1994) (recognizing that "[i]n part due to Congress's recognition that claims such as those involved here would be difficult to prove, claimants in adjudications under these statutes benefit from certain statutory presumptions easing their burden"); 30 U.S.C. § 921(c) (1994); *see also supra* notes 19-22 and accompanying text.

25. 30 C.F.R. § 718.301-06 (2000); 20 C.F.R. § 727.203(a) (2000).

The Act does not limit presumptions to those contained in the statute itself or regulations.[26] Furthermore, the *Doris Coal* presumption does not override any aspect of the Act or accompanying regulations. The regulations only address the provision of medical benefits briefly, stating that the miner shall receive medical treatment "for such periods as the nature of the miner's pneumoconiosis and ancillary pulmonary conditions and disability require."[27] When a dispute arises over medical benefits, the regulations order the district director[28] to "informally resolve such dispute."[29] If the parties do not reach an informal resolution, the regulations command the district director to refer the case to an Administrative Law Judge.[30] The *Doris Coal* presumption does not contravene any part of the Act or regulations because neither Congress nor the Department of Labor has identified specific procedural rules to govern the procedure used by the district director or the Administrative Law Judge.

The Department of Labor has proposed new regulations that expressly adopt the *Doris Coal* presumption by adding another clause to the medical benefits section creating a rebuttable presumption that a pulmonary disorder in the miner is caused or aggravated by the miner's pneumoconiosis.[31] The proposed regulation expands the regulations and, by implication, demonstrates that the *Doris Coal* presumption does not contradict the Act or current regulations. In other words, the proposed regulations only add, in relevant part, an additional subsection to section 725.701, leaving the existing four subsections unchanged. By adding to the current regulations rather than changing the existing language, the proposed regulations demonstrate that the *Doris Coal* presumption supplements, rather than contravenes, the current regulatory scheme.

B. *Judicial Review of Other Extrastatutory Presumptions*

Changes to the administrative process that shift the burden of persuasion violate the APA, while alterations that move the burden of

26. *See Lovilia Coal*, 109 F.3d at 451; *see also infra* Section II.A, discussing Congress's statement that the statutory presumptions were not meant to be exclusive.

27. 20 C.F.R. § 725.701(b) (2000).

28. A district director is a claims administrator who is charged with specific duties under the Act. 20 C.F.R. § 725.101(a)(11) (2000).

29. 20 C.F.R. § 725.707(a) (2000).

30. 20 C.F.R. § 725.707(b) (2000) (stating that "such hearing shall be scheduled at the earliest possible time and shall take precedence over all other requests for hearing").

31. Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, 64 Fed. Reg. 54,966, 55,060 (1999) (to be codified at 20 C.F.R. § 725.701(e)) (proposed Oct. 8, 1999) ("If a miner receives a medical service or supply, as described in this section, for any pulmonary disorder, there shall be a rebuttable presumption that the disorder is caused or aggravated by the miner's pneumoconiosis.").

production do not. The Supreme Court in *Greenwich Collieries* examined the Department of Labor's "true doubt rule," a rule that enabled the claimant to collect benefits when the evidence is "equally balanced."[32] The Court held that, under the APA, such a rule impermissibly changed the burden of persuasion and that agencies are not free to decide who shall bear the burden of persuasion in proceedings carried out under the APA.[33] In so doing, the Court recognized the appropriateness of other statutory and regulatory presumptions that ease or shift the burdens of production placed on the miner.[34] The "true doubt rule," however, attempted to "go one step further."[35]

Consistent with most other judicial and administrative proceedings, the Act places the burdens of both production and persuasion on the claimant during the initial application for benefits. The *Doris Coal* presumption intervenes to shift the burden of production only after the miner has established total disability and sought medical benefits. Under the *Doris Coal* presumption, the miner retains the burden of persuasion at all times. Even the Sixth Circuit, when it declined to adopt the *Doris Coal* presumption, expressly held that since the *Doris Coal* presumption "merely reallocates the burden of production, and does not affect the burden of proof,"[36] it does not violate the APA or Supreme Court precedent.[37] Because the *Doris Coal* presumption, unlike the presumption at issue in *Greenwich Collieries*, only alters the burden of production, it does not contravene the Court's holding.

The Eighth Circuit in *Lovilia Coal Co. v. Harvey*, the only other court to examine presumptions for black lung claimants under *Greenwich Collieries*, held presumptions that reallocated the burden of production but not the burden of persuasion valid.[38] In *Lovilia*, the Director of the Office of Workers' Compensation Programs urged the court to adopt the Director's "one element standard," a standard enabling a previously denied miner to reopen his claim for benefits upon a showing that "one element" of his condition has changed.[39] The court

32. Director v. Greenwich Collieries, 512 U.S. 267, 269 (1994).

33. *Id.* at 280-81 (holding that the APA was designed to introduce "uniformity of procedure and standardization of administrative practice" and that allowing agencies to alter burden of persuasion defeats that purpose).

34. *Id.* at 280 ("[I]n part due to Congress's recognition that claims such as those involved here would be difficult to prove, claimants in adjudications under these statutes benefit from certain statutory presumptions easing their burden. Similarly, the Department's solicitude for benefits claimants is reflected in the regulations adopting additional presumptions." (citations omitted)).

35. *Id.*

36. Glen Coal Co. v. Seals, 147 F.3d 502, 512 (6th Cir. 1998).

37. *Id.* at 513 (holding "the Doris Coal presumption withstands scrutiny under *Greenwich Collieries*," but invalidating on inconsistency with Sixth Circuit law).

38. Lovilia Coal Co. v. Harvey, 109 F.3d 445, 452 (8th Cir. 1997).

39. *Id.* at 451.

held that the Director's interpretation created a presumption, but equated the presumption to "the statutory and regulatory presumptions which ease a black lung claimant's burden of production, but do not shift the burden of persuasion, as that term is used in *Greenwich Collieries*."[40] The court then held the presumption created by the "one element standard" valid.[41] The *Doris Coal* presumption more closely resembles the burden of production shifting character of the "one element standard" than the burden of persuasion change at issue in *Greenwich Collieries* because it only alters who must produce the evidence and leaves in place the obligation to persuade the tribunal.

C. *Judicial Origin of Presumption*

The *Doris Coal* presumption differs from all other presumptions related to the Act because it arose in the courts, rather than in the Department of Labor or Congress. At first blush, such an origin would seem to conflict with the Supreme Court's clear mandate that courts "are not free to impose upon agencies specific procedural requirements that have no basis in the APA."[42] The *Doris Coal* presumption, however, differs significantly from the type of procedural requirements imposed upon agencies that the Court has struck down. *Doris Coal* does not relate to rulemaking,[43] impose additional requirements on the agency or the adjudicative process,[44] or alter the substantive rights of parties before the agency.[45] Rather, the *Doris Coal* presumption merely changes the burden of production at one step of the administrative process with regard to individual claimants who have already met the procedural requirements and proved their eligibility under the program.

In *Vermont Yankee*, the most definitive statement on the interplay between courts and agencies in determining proper administrative procedures, the Court relied on two prior Federal Communications

40. *Id.* at 452-53.

41. *Id.*

42. Pension Benefit Guar. Corp. v. LTV Corp., 496 U.S. 633, 654 (1990) (summarizing Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc., 435 U.S. 519 (1978)).

43. *See Vermont Yankee*, 435 U.S. at 524 (holding that the APA "established the maximum procedural requirements which Congress was willing to have the courts impose upon agencies in conducting rulemaking procedures" (citing United States v. Florida East Coast Ry. Co., 410 U.S. 224 (1973); United States v. Allegheny-Ludlum Steel Corp., 406 U.S. 742 (1972))).

44. *See Vermont Yankee*, 435 U.S. at 524 (stating that courts are "generally not free to impose" additional procedural rights on the agency). The *Doris Coal* presumption does not create or impose additional procedural rights, rather it transfers one obligation — the burden of production — from the miner to the coal company contesting payment.

45. *See* Director v. Greenwich Collieries, 527 U.S. 267, 271 (1994) (discussing the prohibition against altering the substantive rights of parties before the agency under the Act).

Commission (FCC) decisions to hold that the development of procedures should be left to the discretion of the agencies.[46] Those prior decisions emphasized the congressional determination that the agencies have more familiarity with the industry and problems presented by the regulations and are therefore better positioned to create effective procedures.[47] In *Vermont Yankee*, the Court overturned the D.C. Circuit's invalidation of orders of the Atomic Energy Commission by requiring the agency to include additional information-gathering procedures. In the two FCC decisions relied on by *Vermont Yankee*, the lower courts had ordered the agency to redecide, in essence, a prior decision utilizing different procedural rules.[48] The Court reversed both times.

The Court's strong statements against judicial imposition of additional procedural requirements might seem to include the *Doris Coal* presumption within its broad ban. Such a claim, however, fails to recognize the distinction between imposing additional procedural requirements on the agency and altering procedural requirements of parties before the agency. Unlike the judicial intervention at issue in *Vermont Yankee* and related cases, the *Doris Coal* presumption does not force new or additional procedures on the agency. Rather, the presumption just shifts the burden of production from one party to the other, leaving the entire administrative procedure intact. Eligible miners who seek coverage for medical bills still must persuade the same Administrative Law Judge through the same procedural process as they would without the presumption.

In addition, the *Doris Coal* presumption meets the standards for agency-created presumptions. Presumptions "must rest on a sound factual connection between the proved and inferred facts."[49] As demonstrated in Part II *infra*, the *Doris Coal* presumption arises out of clear, established medical facts. In addition, the *Doris Coal* presumption does not alter the substantive rights or obligations of the parties. Because the *Doris Coal* presumption only affects the burden of production, and not the burden of persuasion, the potential harm created is significantly less than in situations where the presumption changes

46. *Vermont Yankee*, 435 U.S. at 524.

47. FCC v. Schreiber, 381 U.S. 279, 289 (1965).

48. In *Schreiber*, the Ninth Circuit affirmed a district court's ruling that certain documents subpoenaed by the FCC should be held confidential. The Supreme Court rejected such a procedural requirement, holding that "in providing for judicial review of administrative procedural rule-making, Congress has not empowered district courts to substitute their judgment for that of an agency." *Id.* at 290-91. In *FCC v. Pottsville Broadcasting Co.*, the D.C. Circuit ordered the FCC to set aside permits issued using a comparative-basis procedure and repeat the process using an independent procedure. The Court reversed, on the grounds that the "subordinate questions of procedure" were left to the FCC. 309 U.S. 134, 138 (1940).

49. NLRB v. Baptist Hosp., Inc, 442 U.S. 773, 787 (1979); *see also* Mobile, Jackson & Kansas City R.R. Co. v. Turnipseed, 219 U.S. 35, 43 (1910).

the underlying burden of persuasion. The miner still must persuade the Administrative Law Judge that her medical care relates to her pneumoconiosis.

The language of the Act, the tenor of the regulations, and the Supreme Court's express examination of presumptions under the Act demonstrate the appropriateness of the *Doris Coal* presumption. The Department of Labor's proposed regulations expressly adopting the *Doris Coal* presumption further show that the presumption does not overlap with or change the current Act or regulations. In the current regulatory silence, the *Doris Coal* presumption does not override the agency's ability to interpret or administer the Act.

II. THE *DORIS COAL* PRESUMPTION IS THE BEST APPROACH

This Part argues that the *Doris Coal* presumption furthers Congress's intent and promotes efficiency and consistency. Section II.A demonstrates that the remedial nature of the Act supports the *Doris Coal* presumption. Section II.B argues that the *Doris Coal* presumption produces more efficient administration of the Act. Section II.C contends that the presumption results in a consistent and fair application of the Act. These benefits flowing from the *Doris Coal* presumption help reduce administrative costs and increase the number of eligible miners receiving their allotted coverage.

A. *Remedial Nature of the Act*

This Section demonstrates that the *Doris Coal* presumption furthers Congress's remedial goal. First, this Section addresses the context from which the original Act arose. This Section next examines the meaning of "remedial" within the statute. Third, this Section shows that the legislative history supports a broad interpretation of the Act that gives effect to its remedial nature. Finally, this Section examines the Department of Labor regulations and judicial implementation of the Act and finds that the *Doris Coal* presumption aids this remedial goal.

The 1969 Act emerged from an environment in which coal miners faced many problems when they sought aid under state workers' compensation programs for their occupational diseases.[50] The 1969 Act sought to remedy these failures of the state workers' compensation

50. 30 U.S.C. § 901(a) (1994) (stating that "few States provide benefits for death or disability due to [pneumoconiosis] to coal miners"); H.R. REP. NO. 91-563, at 13 (1969), *reprinted in* 1969 U.S.C.C.A.N. 2503, 2516 (describing "the failure of the States to assume compensation responsibilities for the miners covered by this program").

programs, and this remedial purpose continues today.[51] The Act authorizes approved state programs to administer black lung benefits programs; however, the Department of Labor has yet to approve any state workers' compensation program.[52] Thus, the black lung benefits program continues to provide the main remedy for coal miners afflicted with pneumoconiosis.[53]

Congress's characterization of the Act as remedial signifies that it sought to fix the failure of state workers' compensation systems to provide adequately for the needs of coal miners with pneumoconiosis. Congress explicitly stated the problem that it sought to remedy with the Act — "Congress finds . . . that few states provide benefits for death or disability due to [pneumoconiosis]."[54] Traditional state systems did not adequately cover coal miners because of the severe proof problems facing miners seeking coverage for occupational disease.[55] Occupational disease arises over a long period, often exceeding the relevant statute of limitations, and frequently cannot be traced to a specific employer or time of exposure.[56] Congress expressly stated its intention "that the act be construed liberally when improved health or safety to miners will result."[57]

The 1969 Act did not meet the expectations of many of its supporters, leading to the passage of the 1972 Act.[58] The Senate Report to the 1972 Act again clearly expressed its remedial intent:

> The Black Lung Benefits Act of 1972 is intended to be a remedial law — to improve upon the 1969 provisions so that the cases which should be

51. 30 U.S.C. § 901(a) (stating "that few States provide benefits for death or disability due to this disease to coal miners" and that "the purpose of this subchapter [is] to provide benefits" to miners).

52. *See* Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, 62 Fed. Reg. 3337, 3347 (proposed Jan. 22, 1997) (stating "[t]o date, no state law has been approved" under the Act).

53. 20 C.F.R. § 722.152 (2000) (stating that the secretary has not identified any state that "provides adequate coverage for pneumoconiosis"). A few miners qualify for state workers' compensation benefits, but the federal program provides the only coverage in the country that is geared towards the occupational disease of coal miners.

54. 30 U.S.C. § 901(a).

55. Note, *Compensating Victims of Occupational Disease*, 93 HARV. L. REV. 916, 921-25 (1980).

56. *See* W. Kip Viscusi, *Structuring an Effective Occupational Disease Policy: Victim Compensation and Risk Regulation*, 2 YALE J. ON REG. 53, 66-68 (1984); *Compensating Victims of Occupational Disease*, *supra* note 55, at 921-27.

57. H.R. REP. NO. 91-761, at 63 (1969), *reprinted in* 1969 U.S.C.C.A.N. 2578, 2578. The committee continues, "it is the purpose of this title to provide such benefits and to insure that future adequate benefits are provided to coal miners . . . where disability or death occurs from [pneumoconiosis]." 1969 U.S.C.C.A.N. at 2603.

58. S. REP. NO. 92-743, at 1 (1972), *reprinted in* 1972 U.S.C.C.A.N. 2305, 2305 (stating "[t]he Committee fully intends and expects that [the 1972 Act] will more adequately meet the objectives originally sought in [the 1969 Act]").

> compensated, will be compensated. *In the absence of definitive medical conclusions there is a clear need to resolve doubts in favor of the disabled miner or his survivors.*[59]

Congress recognized that many miners faced procedural hurdles that prevented compensation, especially due to disputes over the exact nature of the miner's pulmonary impairment.[60] The 1977 Act also implemented changes that were "remedial in nature" by adding an additional presumption facilitating the collection of benefits by miners who had worked in the mines for many years.[61]

The Department of Labor and courts have recognized the broad remedial purposes of the statute and have applied its benefits provisions generously.[62] In addition, many courts expressly recognize the remedial and compensatory purpose of the Act and hold that they should thus construe the provisions liberally.[63] These holdings make sense given Congress's meaning of remedial: if the Act seeks to remedy overly restrictive denials of benefits, the cure should be more liberal standards for benefits.

The language of the statute reflects this remedial approach in its use of presumptions. Recognizing that many miners would have difficulty establishing entitlement to the benefits offered by the Act, Congress created several statutory presumptions to ease the miners' evidentiary requirements.[64] Congress created the presumptions to reflect their belief that there was a strong statistical likelihood that miners meeting the requirements of the presumption would also meet the required elements of total disability but for the difficulty of establishing definitive medical evidence.[65] From a policy perspective, the presump-

---

59. S. REP. NO. 92-743 (1972), *reprinted in* 1972 U.S.C.C.A.N. 2305, 2315 (emphasis added).

60. See, for example, statement by Senator Robert C. Byrd: "Let us stop quibbling with dying men as to whether their lungs are riddled with black lung or whether they are affected with asthma, or silicosis, or chronic bronchitis." *Id.* at 2314.

61. H. REP. NO. 95-151, at 4 (1977), *reprinted in* 1978 U.S.C.C.A.N. 37, 240.

62. 20 C.F.R. § 718.3(c) (2000) ("Congress intended that claimants be given the benefit of all reasonable doubt as to the existence of total or partial disability or death due to pneumoconiosis.").

63. *See, e.g.*, Sharondale Corp. v. Ross, 42 F.3d 993, 996 (6th Cir. 1994); Wiley v. Consolidation Coal Co., 892 F.2d 498, 503 (6th Cir. 1989); Rose v. Clinchfield Coal Co., 614 F.2d 936, 939 (4th Cir. 1980); Wheatley v. Adler, 407 F.2d 307, 313-14 (D.C. Cir. 1968).

64. *See supra* text accompanying notes 19-22.

65. *See, e.g.*, S. REP. NO. 92-743 (1972), *reprinted in* 1972 U.S.C.C.A.N. 2305, 2317 (quoting testimony by the Surgeon General regarding the fifteen-year presumption that "[f]or work periods greater than 15 years underground, there was a linear increase in the prevalence of the disease"). The state of the medical knowledge at the time of the Acts differs from current knowledge. *See* Mark E. Solomons, *A Critical Analysis of the Legislative History Surrounding the Black Lung Interim Presumption and a Survey of Its Unresolved Issues*, 83 W. VA. L. REV. 869 (1981). The relevant set of knowledge needed to analyze the intent of Congress, however, is the set of knowledge reflecting medical wisdom at the time that Congress passed the Acts.

tions serve to approximate the occurrence of total disability due to pneumoconiosis while resolving uncertain cases in the miners' favor. These statutory presumptions operate during the adjudication of the benefit application.

Since the statute expressly authorizes the Department of Labor to create other presumptions as part of the implementing regulations, the absence of the *Doris Coal* presumption from the statutory scheme does not preclude its later creation. Congress, by delegating much of the regulatory scheme, did not purport to create a definitive list of presumptions in the statute. As discussed *supra*, the Act represented a rare entry into the field of workers' compensation that Congress generally leaves to the states. Congress's unfamiliarity in administering such occupational protection programs counsels against giving great weight to any omission.

The *Doris Coal* presumption operates in a similar manner to the statutory presumptions, but during the second stage of the benefit application process. Observing that most pulmonary care provided to miners who have established total disability due to pneumoconiosis will relate to their pneumoconiosis, the *Doris Coal* court created an evidentiary presumption that best reflected that relationship.[66] Of course, the pulmonary care will not always relate to the miner's pneumoconiosis, so the presumption is rebuttable.[67] The rebuttable nature of the presumption also balances concerns that the remedial nature of the Act does not improperly enlarge the Act beyond its legislative mandate. If the remedial nature of the Act has justified expansive coverage with regard to the stage one monthly pension, courts should apply similarly expansive standards for medical benefits.[68] That such an approach results in an overbroad pool of eligible miners cannot be used to criticize the awards, as the very point of the Act was to err on the side of overinclusion, not underinclusion.[69]

---

66. The court expressly linked the observation that "most pulmonary disorders are going to be related or at least aggravated by the presence of pneumoconiosis" to the burden of production shifting presumption that in such cases, "the disorder was caused or at least aggravated by the miner's pneumoconiosis." Doris Coal v. Director, 938 F.2d 492, 492, 496 (4th Cir. 1991).

67. While the *Doris Coal* court does not use the word rebuttable, their description of the presumption coupled with judicial and agency interpretation clearly establish its rebuttable nature. *See* Island Creek Coal Co. v. Director, No. 95-2244, 1996 WL 405222, at *1 (4th Cir. July 19, 1996) (finding evidence presented "insufficient as a matter of law to establish rebuttal."); Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, 64 Fed. Reg. 54,966, 55,003 (proposed Oct. 8, 1999) (to be codified at 20 C.F.R. § 725.701) (creating a "rebuttable presumption").

68. *See, e.g.*, Robbins v. Cyprus Cumberland Coal Co., 146 F.3d 425, 427 (6th Cir. 1998).

69. Although the 1981 Amendments limited the eligibility requirements for the Act, they did not alter the overinclusive definition of pneumoconiosis. The 1981 Amendments limited eligibility in other ways, such as by removing presumptions based purely on amount of time spent working as a miner. Because the definition of pneumoconiosis remained unchanged, this overinclusive intent survived the 1981 Amendments.

The Sixth Circuit in *Glen Coal* based its holding on the claim that by not establishing any statutory presumptions in the medical benefits phase of the Act, Congress "intended for there to be no such presumption."[70] This assertion improperly imputes intent from congressional inaction[71] and fails to recognize the manner in which the medical benefits portion of the Act arose. Entitlement to medical benefits for eligible miners did not arise until the 1972 Act when Congress merely imported the current medical benefits structure of the Longshore and Harbor Workers' Compensation Act (LHWCA).[72] Rather than create a separate process and associated presumptions for medical benefits, Congress adopted wholesale a preexisting statutory and regulatory framework created primarily for the compensation of occupational injury rather than occupational disease.[73] This failure to address the difference between injury and disease calls into question the Sixth Circuit's assertion that Congress had a clear intent about presumptions on this issue at all. Indeed, the LHWCA contains statutory presumptions inapplicable to occupational disease such as presumptions that the injury was not caused "solely by the intoxication of the injured employee" or by "the willful intention of the injured employee to injure or kill himself."[74]

Furthermore, failing to create a presumption effectively leaves the medical benefits sections as a traditional workers' compensation program like those run by the states plagued by the same tendency to undercompensate occupational disease because of the procedural hurdles faced by potential claimants. At the time that Congress added the medical benefits provision of the Act, however, it was well aware of the different success rates of compensation programs with regard to injury and disease.[75] Given that the creation of the whole black lung benefits program arose in part because of the failure of state workers' compensation systems to compensate adequately those afflicted with the occupational diseases of coal mining, imputing to Congress an intent to adopt a workers' compensation system to govern medical benefits seems problematic. At most, Congress's express statements re-

70. Glen Coal Co. v. Seals, 147 F.3d 502, 513-14 (6th Cir. 1998).

71. *See, e.g.*, Schweiker v. Chilicky, 487 U.S. 412, 440 (1988) (Brennan, J., dissenting) ("Inaction, we have repeatedly stated, is a notoriously poor indication of congressional intent. . . ."); Bob Jones Univ. v. United States, 461 U.S. 574, 600 (1983).

72. 30 U.S.C. § 932(a) (1994).

73. *See supra* text accompanying notes 55-57. The problems of compensating for injury and disease differ greatly. Indeed, the Act came about because the state workers' compensation programs that were designed to cover occupational injury neglected to fully cover occupational disease. *See supra* text accompanying note 3.

74. 33 U.S.C. § 920(c)-(d) (1994).

75. *See Compensating Victims of Occupational Disease*, *supra* note 55; Elinor P. Schroeder, *Legislative and Judicial Responses to the Inadequacy of Compensation for Occupational Disease*, 49 LAW & CONTEMP. PROBS., Autumn 1986, at 151 (1986).

garding the failures of workers' compensation systems indicate that it did not intend the LHWCA provisions to work in a similar manner to the failed programs they sought to replace.[76] At a minimum, congressional intent is not obvious, as claimed by the Sixth Circuit.[77]

An alternative intent likely could have motivated Congress's actions and the Act's express delegation of presumption-creating authority to the Department of Labor calls the Sixth Circuit's conclusion into doubt. The LHWCA was one of the few areas where the federal government ran a program similar to the compensation system operated by the states.[78] Congress could have envisioned the LHWCA and its attendant up and running administrative staff as one of the few examples of functioning programs at the federal level and sought to emulate its success. Finally, the delegation of presumption-making authority to the Department of Labor prohibits interpreting congressional silence as a prohibition on presumptions in general.[79]

B. *Uniform Application of the Act*

This Section describes how the *Doris Coal* presumption results in a more uniform application of the Act. Miners claiming medical benefits under the Act start the process by filing a medical fee dispute claim with the District Director of the Office of Workers' Compensation Programs of the Department of Labor.[80] A claims examiner at the Department of Labor makes an initial determination, which, if contested, continues to an informal conference and then on to a hearing in front of an Administrative Law Judge if requested by one of the parties.[81] Appeals then continue to the Benefits Review Board, and then, if necessary, on to the Federal Courts of Appeals.[82] The Department of Labor includes the *Doris Coal* presumption in its *Judge's Benchbook of the Black Lung Benefits Act*, a resource that as-

76. *See supra* text accompanying notes 50-54.

77. *See supra* text accompanying note 70.

78. *See* Joan T. A. Gabel, *Escalating Inefficiency in Workers' Compensation Systems: Is Federal Reform the Answer?*, 34 WAKE FOREST L. REV. 1083, 1086-90 (1999) (discussing the origin of state workers' compensation systems and the limited nature of federal involvement).

79. *See supra* notes 24-25 and accompanying text; *see also* 30 U.S.C. § 921(b) (1994) ("The Commissioner of Social Security shall by regulation prescribe standards for determining . . . whether a miner is totally disabled due to pneumoconiosis. . . .").

80. Robert L. Ramsey & Robert S. Habermann, *The Federal Black Lung Program — The View from the Top*, 87 W. VA. L. REV. 575, 584 (1985).

81. *Id.* at 584-85. The claims examiner often requests an independent medical review of disputed treatment.

82. *Id.* at 590-95.

sists judges adjudicating claims.[83] The Benchbook states the *general* rule that "it is the claimant's burden to provide documentation," but then exempts the case of pulmonary care by referencing the *Doris Coal* decision.[84] The *Judge's Benchbook*, however, recognizes the circuit split and, therefore, provides for different procedural burdens in the Sixth Circuit and all other Circuits.

As the only appellate court decision regarding medical benefits disputes prior to *Glen Coal*, the *Doris Coal* decision established persuasive authority that the Department of Labor used in its administrative materials as well as its proposed regulations.[85] The Sixth Circuit abandoned this accepted approach in *Glen Coal*. It justified its express renunciation of the *Doris Coal* presumption on the grounds that any judicially crafted presumption would lead to inconsistent application of the Act.[86] In actuality, however, the holding itself created an inconsistent application of the Act by forcing similarly situated miners in different jurisdictions to bear different burdens of production.[87] The Sixth Circuit stated that judicial presumptions, in general, lead to inconsistent application of the Act, and, therefore, the court should not support the *Doris Coal* presumption regardless of the inconsistent application created by their holding.[88] If uniformity was a paramount goal, as claimed by the Sixth Circuit, then the measuring stick should have been the status quo, not some hypothetical world where other circuit's prior decisions do not receive great weight.

Uniformly applying the Act best effectuates its remedial nature. Congress passed the Act in response to problems with miners receiving benefits everywhere, not just in isolated states. Because the Department of Labor has yet to approve any state's black lung program, the Act applies with equal force everywhere. Inconsistent application of the Act undercuts the remedial protections it provides.

---

83. Office of Administrative Law Judges, Department of Labor, Judge's Benchbook of the Black Lung Benefits Act (Jan. 1997), *available at* <http://www.oalj.dol.gov/public/blalung/refrnc/bbbcon.htm>.

84. *Id.* at Ch. 19.

85. *See id.*; Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, 64 Fed. Reg. 54,966, 54,970 (proposed Oct. 8, 1999) (to be codified at 20 C.F.R. § 725.701(e)).

86. Glen Coal Co. v. Seals, 147 F.3d 502, 513 (6th Cir. 1998) (stating "[i]f we were to [allow the presumption], then the door will be opened to the creation of other judicial presumptions in this Circuit and thereby destroy the desired uniformity of application of the Black Lung Benefits Act").

87. *See* 64 Fed. Reg. 54,966, 54,970 (stating "the Department believes that black lung benefit claims adjudication should vary as little as possible from circuit to circuit, and consequently continues to propose a regulatory presumption, based on the Fourth Circuit's approach, that would apply nationwide").

88. *Glen Coal*, 147 F.3d at 513-14.

C. *Efficient Administration of Act*

This Section asserts that the *Doris Coal* presumption results in a more efficient administration of the Act. This Section demonstrates that the *Doris Coal* presumption has a sound medical basis and thus helps decisionmakers reach accurate outcomes more quickly. Subsection C.1 shows that the Act's definition of pneumoconiosis is more expansive than the ordinary medical definition of pneumoconiosis. Subsection C.2 illustrates that in miners who have met stage one burdens of proving total disability due to pneumoconiosis, most pulmonary disorders relate to or are aggravated by their pneumoconiosis. Subsection C.3 contends that the *Doris Coal* presumption reduces error and administrative costs more than other alternative systems of dispute resolution. Subsection C.4 illustrates that the *Doris Coal* presumption does not affect the number of fraudulent claims, a concern voiced by the Sixth Circuit.

1. *The Act's Expansive Definition of Pneumoconiosis*

The Act's expansive definition of pneumoconiosis reinforces the *Doris Coal* presumption that pulmonary care relates to the miner's pneumoconiosis. Congress broadly defined the diseases compensable under the Act by including an extensive list of diseases in its definition of pneumoconiosis. Congress stated that the purpose of the Act is to provide benefits "to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such disease."[89] The Act defines pneumoconiosis as "a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment."[90] A medical definition of coal workers' pneumoconiosis (CWP) refers to "a well-defined medical entity resulting from the deposition of coal mine dust in the lung and from the reaction to the deposited dust resulting in coal macules, coal nodules, and progressive massive fibrosis."[91] CWP displays a characteristic pathological feature of coal dust laden macrophages (large cells that ingest foreign materials).[92] As the amount of coal dust in the lung increases, CWP inhibits the lung's ability to exchange carbon dioxide and oxygen.[93] Significant impair-

89. 30 U.S.C. § 901(a) (1994).

90. 30 U.S.C. § 902(b).

91. Attfield & Wagner, *supra* note 1, at 413.

92. Jerome Kleinerman et al., *Pathology Standards for Coal Workers' Pneumoconiosis*, 103 ARCHIVES OF PATHOLOGY LABORATORY MED. 375, 376 (1979).

93. Ronald G. Crystal, *Interstitial Lung Disease*, *in* CECIL TEXTBOOK OF MEDICINE 396, 398 (James B. Wyngaarden ed., 1992).

ment of the lung by CWP does not occur until advanced stages of CWP, known as complicated CWP or progressive massive fibrosis.[94]

The Act's definition does not reference medical definitions, specific symptoms, or indicators of pneumoconiosis. Courts recognize that the legal definition of pneumoconiosis is broader than the medical definition.[95] Legal pneumoconiosis is distinct from clinical pneumoconiosis in two ways: (1) legal pneumoconiosis covers more diseases than clinical pneumoconiosis and (2) legal pneumoconiosis requires less proof to establish than clinical pneumoconiosis. Indeed, courts have specifically examined diseases other than pneumoconiosis with very different disease mechanisms and determined their fit under the legal definition of pneumoconiosis.[96] The regulations reiterate the Act's broad definition of legal pneumoconiosis.[97]

The methods of diagnosis permitted under the Department of Labor regulations support the inclusion of other diseases under the rubric of legal pneumoconiosis. The current regulations outline four ways that miners can establish pneumoconiosis: (1) a chest X-ray; (2) a biopsy or autopsy; (3) a statutory presumption, if applicable; and (4) a physician exercising sound medical judgment.[98] Clinical pneumoconiosis can only be diagnosed through an X-ray or biopsy, thus the recognition that the diagnosis of a physician exercising sound medical judgment or even qualification via presumption allows for the diagnosis of a disease that qualifies as legal pneumoconiosis, even though it may not qualify as clinical pneumoconiosis.[99] The regulations bolster

94. CECIL TEXTBOOK OF MEDICINE 2338 (James B. Wyngaarden ed., 1992) ("Simple coal workers' pneumoconiosis most often consists of radiographic abnormalities without symptoms.").

95. "Although 'coal workers' pneumoconiosis' may be used synonymously with pneumoconiosis in medical circles, the two terms are distinct legally. First, § 718.201 includes coal workers' pneumoconiosis as only one of several possible ailments which could satisfy the legal definition of pneumoconiosis. Furthermore, the comparative breadth of the legal definition contained in § 718.201 is indicated by its inclusion of certain disorders which medically are different from pneumoconiosis. . . . Clearly, the legal definition contained in § 718.201 is significantly broader than the medical definition of coal workers' pneumoconiosis." Hobbs v. Clinchfield Coal Co., 45 F.3d 819, 821 (4th Cir. 1995) (citations omitted); *see also* Cornett v. Benham Coal, Inc., 227 F.3d 569 (6th Cir. 2000).

96. *Compare* Littlepage v. Director, 890 F.2d 416 (6th Cir. 1989) (per curiam) (holding that pulmonary fibrosis without other supporting medical evidence to establish a significant relationship to coal mine dust does not fall within the Act's definition of pneumoconiosis), *with* Warth v. Southern Ohio Coal Co., 60 F.3d 173, 175 (4th Cir. 1995) (stating that Chronic Obstructive Lung Disease is encompassed within the definition of pneumoconiosis for the purposes of entitlement to black lung benefits).

97. 20 C.F.R. § 718.201 (2000) (stating "[t]his definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, progressive massive fibrosis, silicosis or silicotuberculosis").

98. 20 C.F.R. § 718.202 (2000).

99. James L. Weeks & Gregory R. Wagner, *Commentary: Compensation for Occupational Disease with Multiple Causes: The Case of Coal Miners' Respiratory Diseases*, 76 AM. J. OF PUB. HEALTH 58, 58-59 (1986) (stating "CWP is diagnosed by the examination of lung

the conclusion that CWP is but one of many diseases that qualify as legal pneumoconiosis.[100] A report reviewing the black lung benefits program by the General Accounting Office supports this distinction, stating that "in most cases, medical evidence was not adequate to establish a coal miner's disability or death from black lung," however, even where medical evidence was lacking, the award of benefits was "legal under existing legislation."[101] The report expressly recognized the broad definition of pneumoconiosis under the Act and regulations.

Courts differ on the required causal nexus between legal pneumoconiosis and the miner's disability. All base their analysis on the regulations established by the Department of Labor, but come to divergent conclusions. Under the broadest standard, currently advocated by the Sixth Circuit, the miner must prove that her disability was caused "at least in part" by pneumoconiosis.[102] Other circuits require that pneumoconiosis must be "at least a contributing cause" of the miner's disability to merit benefits.[103] The Third and Eleventh Circuits require the most restrictive causal nexus between pneumoconiosis and the miner's disability, holding that the pneumoconiosis must be a "substantial contributing factor."[104]

Under the "substantial contributing factor" test, a smaller subset of miners who suffer from pneumoconiosis and other pulmonary impairments will receive benefits under stage one of the Act than under the broader "at least in part" or "contributing cause" test. Thus, if medical science supports the *Doris Coal* presumption for miners whose pneumoconiosis "at least in part" caused them to be totally disabled, the presumption will draw even stronger support for miners whose pneumoconiosis is a "substantial contributing factor" in their disability. This Note, therefore, examines the relationship between

---

tissue from biopsy or autopsy specimens or by the findings on a chest x-ray film" and that "[t]he key difference between the medical and Congressional definitions is that the Congressional term does not imply exclusive reliance on a single diagnostic procedure").

100. *See supra* note 97.

101. GENERAL ACCOUNTING OFFICE, LEGISLATION ALLOWS BLACK LUNG BENEFITS TO BE AWARDED WITHOUT ADEQUATE EVIDENCE OF DISABILITY iii (1980).

102. Adams v. Director, 886 F.2d 818, 825 (6th Cir. 1989) (holding that miner must show totally disabling respiratory impairment due at least in part to his pneumoconiosis and adopting the language in 20 C.F.R. § 718.203(a)). The Sixth Circuit later elaborated, stating that a miner must prove more than a de minimis or infinitesimal contribution by pneumoconiosis to his total disability. Peabody Coal Co. v. Smith, 127 F.3d 504, 507 (6th Cir. 1997).

103. *See* Robinson v. Pickands Mather & Co., 914 F.2d 35, 38 (4th Cir. 1990); Shelton v. Director, 899 F.2d 690, 693 (7th Cir. 1990); Mangus v. Director, 882 F.2d 1527, 1531-32 (10th Cir. 1989).

104. Lollar v. Alabama By-Products Corp., 893 F.2d 1258, 1265 (11th Cir. 1990) (holding black lung claimant must "establish that his pneumoconiosis was a substantial contributing factor in the causation of his total pulmonary disability"); Bonessa v. United States Steel Corp., 884 F.2d 726, 734 (3d Cir. 1989) (holding that miner must show that pneumoconiosis is a "substantial contributor" to his disability).

medical science and the *Doris Coal* presumption in miners whose pneumoconiosis "at least in part" caused their total disability.

2. *Pulmonary Disorders Likely Have Sufficient Relationship to Pneumoconiosis*

Miners enter stage two of the application process when they seek coverage for medical benefits.[105] They will have already established that they are totally disabled due to pneumoconiosis under one of the three standards identified above.[106] The most controversy arises when miners who smoke or used to smoke attempt to claim benefits under the Act.[107] Even in these difficult cases, medical science supports the *Doris Coal* presumption because most pulmonary care received by miners who have met the stage one burden of proving total disability will "relate to or be aggravated by" their pneumoconiosis. Thus, under the *Doris Coal* presumption, miners seeking coverage for pulmonary care do not have to carry the burden of production, significantly reducing the procedural hurdles faced by the miner.

Coal miners have elevated death rates due to numerous lung diseases: CWP, emphysema, influenza, asthma, tuberculosis, chronic obstructive pulmonary disease, and chronic bronchitis.[108] In addition to higher prevalence of respiratory diseases among the mining population, studies causally link coal mining to specific diseases. Exposure to respirable coal dust can cause emphysema.[109] Research also links the incidence of bronchitis directly with the amount of inhaled dust.[110]

---

105. *See supra* note 17 (discussing stage one and stage two).

106. Thus, the question becomes: with miners who are totally disabled due to pneumoconiosis (that is, miners whose pneumoconiosis is "at least in part" a factor in their total disability) are most pulmonary disorders related to or at least aggravated by their pneumoconiosis?

107. *See, e.g.*, Pauley v. BethEnergy Mines, Inc., 501 U.S. 680, 690 (1991) (discussing the proper regulations to apply to a miner who smoked for thirty-four years); Glen Coal Co. v. Seals, 147 F.3d 502, 507 (6th Cir. 1998) (denying benefits to miner who smoked for thirty-five years). *See generally, e.g.*, W.K.C. Morgan, *On Dust, Disability, and Death*, 134 AM. REV. RESPIRATORY DISEASE 639 (1986); Thomas M. Roy et al., *Variability in the Evaluation of the Federal Black Lung Benefits Claimant*, 29 J. OCCUPATIONAL MED. 937 (1987); Weeks & Wagner, *supra* note 99.

108. Attfield & Wagner, *supra* note 1, at 425; B.G. Miller & M. Jacobsen, *Dust Exposure, Pneumoconiosis, and Mortality of Coalminers*, 42 BRIT. J. INDUS. MED. 723, 730 (1985).

109. *See* Leigh et al., *Quantitative Relation Between Emphysema and Lung Mineral Content in Coalworkers*, 51 OCCUPATIONAL & ENVTL. MED. 400, 404 (1994); V. Anne Ruckley et al., *Emphysema and Dust Exposure in a Group of Coal Workers*, 129 AM. REV. RESPIRATORY DISEASE 528, 528 (1984) (concluding that "the association observed between exposure to respirable coal dust and emphysema in coal miners indicates a causal relationship"); G. Worth, *Editorial: Emphysema in Coal Workers*, 6 AM. J. INDUS. MED. 401, 403 (1984) (stating "very often the [coal] dust causes pulmonary emphysema").

110. S. Rae et al., *Chronic Bronchitis and Dust Exposure in British Coalminers*, *in* INHALED PARTICLES, III 883, 893 (W.H. Dalton ed., 1971). *But see* Leigh et al., *supra* note

Unlike CWP, however, miners with emphysema and bronchitis resulting from coal mine dust exposure do not have distinctive lesions that identify the occupational cause.[111] In addition, emphysema and bronchitis have other non-occupational causes such as smoking.

Smoking does not affect the development of simple CWP.[112] Disputes remain, however, about how lungs react to tobacco smoke and coal dust. Some researchers find that no synergistic effect occurs between smoking and coal dust exposure,[113] but others find that smoking is more of a factor than coal dust exposure in the development of pulmonary impairment.[114] Smoking can add additional impairment of lung function significantly in miners who have CWP so that they meet the "total disability" test described in the regulations.[115] In other words, of two miners, a smoker and nonsmoker with identical development of CWP, the smoker may qualify for benefits while the nonsmoker may not be sufficiently disabled to meet the total disability test. This bias is only reflected, however, when diagnosis occurs through the use of objective evidence other than the chest radiograph to diagnose CWP, since the chest x-ray allows accurate determination of the extent of CWP.[116] The regulations allow miners whose diagnosis reflects both damage from coal dust and tobacco smoke to qualify for benefits, as they expressly state that a miner with a negative chest x-ray may still receive benefits if a doctor using sound medical judgment declares the miner to have pneumoconiosis.[117]

---

109 (noting that bronchitis observed at autopsy is not associated with years of work at the coal face).

111. *See* Attfield & Wagner, *supra* note 1, at 413.

112. *See* M. Jacobsen et al., *Smoking and Coalworkers' Simple Pneumoconiosis*, *in* INHALED PARTICLES IV 759, 759 (W.H. Walton ed., 1977) (concluding "the main variable determining the development of simple pneumoconiosis is exposure to airborne dust, and that this effect is not modified appreciably by whether or not coal miners smoke").

113. Michael D. Attfield & Thomas K. Hodous, *Pulmonary Function of U.S. Coal Miners Related to Dust Exposure Estimates*, 145 AM. REV. OF RESPIRATORY DISEASE 605, 607-08 (1992) (finding that the combined effect of smoking and dust exposure was not worse than the additive effect of each, as measured by pulmonary function).

114. S. Rae found that for most age groups and overall the prevalence of symptoms of bronchitis is more than doubled in smokers compared with nonsmokers, suggesting that smoking is more likely than coal mining to contribute to bronchitis. Rae, *supra* note 110, at 892.

115. Another researcher demonstrated that cigarette smoking emerged as the primary variable associated with pulmonary impairment severe enough to warrant a financial award under present legislation. Thomas M. Roy et al., *Cigarette Smoking and Federal Black Lung Benefits in Bituminous Coal Miners*, 31 J. OCCUPATIONAL MED. 98, 98 (1989).

116. Roscoe C. Young, Jr. & Raylinda E. Rachal, *Pulmonary Disability in Former Appalachian Coal Miners*, 88 J. OF THE NAT'L MED. ASS'N 517, 518 (1996). *See also* Roy et al., *supra* note 115, at 98 (concluding "the present federal legislation intended to identify and remunerate those who suffer lung impairment from chronic occupational exposure to coal dust is biased in favor of those who sustain additional damage to their ventilatory capacity by smoking cigarettes").

117. 20 C.F.R. § 718.202 (2000).

Thus, even if both smoking and pneumoconiosis contribute to a miner's pulmonary disability, coverage for pulmonary care is appropriate. Complications from smoking and pneumoconiosis often interact to create health problems that neither one would bring about on its own.[118] Where the two elements (smoking and coal mining) work together to create greater medical problems, the Act and regulations mandate that such medical problems shall be covered.[119] Not only do the regulations allow such a miner to prove disability, they sanction such an award by stating that the miner shall receive treatment for such conditions as her "pneumoconiosis and *ancillary pulmonary conditions and disability* require[s]."[120] Given the miner described above, the portion of the miner's disability related to smoking is an ancillary disability compensable under the Act.

It is very hard for medical examination to determine which part of the disability comes from coal dust exposure or smoking in a particular miner.[121] Thus, policymakers must attempt to extrapolate results of group studies of causation and effect down to the level of the individual.[122] While such a practice is a crude tool fraught with error with regard to the individual, the net error diminishes when such information is used in public policy decision-making. The *Doris Coal* presumption may not accurately reflect the medical condition or treatment of an individual miner, but by creating a presumption that is more likely than not to reflect the situation in the case at issue, it reduces net error in resolving miner's claims. Again, in the clearly false individual cases, the coal company can rebut the presumption by showing that the treatment at issue did not fall within the scope of coverage of the Act.

3. *Reduced Error and Administrative Costs*

The *Doris Coal* presumption shifts the burden of production to approximate actual probabilities. As shown above, eligible miners seeking medical care will, more likely than not, qualify for treatment under the Act. As such, the burden-shifting presumption better reflects the actual situation of a population as a whole and saves administrative costs. This population-level accuracy does not mean that those miners who seek coverage for ineligible medical benefits should

118. *See supra* notes 112-115.

119. 20 C.F.R. § 725.701(b) (2000).

120. 20 C.F.R. § 725.701(b) (2000) (emphasis added).

121. Weeks & Wagner, *supra* note 99, at 59-60 (concluding that "[w]hen discussing compensation policy, the problem with considering these other conditions caused by or aggravated by exposure to coal mine dust is that causes can be assessed qualitatively but cannot be precisely apportioned in an individual").

122. *See* SIR AUSTIN BRADFORD HILL, A SHORT TEXTBOOK OF MEDICAL STATISTICS 288-96 (1976).

automatically receive coverage in the name of administrative efficiency. Rather, the rebuttable nature of the presumption encourages the coal company or the government to produce information demonstrating the ineligibility of the medical services.[123]

By switching the burden of production, the *Doris Coal* presumption best fulfills the remedial nature of the Act while placing proper incentives on parties to produce relevant information. In a system with a bimodal choice of outcomes — coverage for the disputed medical treatment or no coverage — an allocation system that initially apportions liability based on the best guess as determined by medical probability will result in the most correct outcomes.[124] Imagine the situation in which a miner's pulmonary impairment arises either from complications from smoking or pneumoconiosis. There, traditional preponderance of the evidence analysis tells us that if the miner can establish with more than a 0.5 probability that the condition is due to pneumoconiosis, she should receive full coverage. Alternatively, if the miner can establish only a 0.4 probability, then she should not receive coverage. In such a situation, where the probability is greater than 0.5, a presumption of coverage most effectively approximates the likely outcome and reduces costs to the miner and administrative system. A system that consistently created inaccurate results would not have high administrative costs if practical or legal obstacles prevented parties from correcting those mistakes. Such a system, however, would not fulfill the requirements of the enabling statute. In a system that values correct outcomes, a process that creates the most number of accurate results at first will have lower administrative costs than one that requires extensive administrative procedures to correct erroneous initial determinations.

The Act and regulations mandate coverage both for conditions caused by pneumoconiosis *and* for ancillary conditions, effectively including the situation arising when both smoking and pneumoconiosis contribute the pulmonary impairment.[125] As the Sixth Circuit described in *Glen Coal*, "this definition could be met by simple synergy (i.e., another pulmonary disease that combines with pneumoconiosis to cause a sum of disease greater than the two parts), or by relatedness (i.e., another pulmonary disease that would be either absent or signifi-

123. The responsible party receives information about the requested treatment when the miner requests coverage. If the responsible party seeks to contest eligibility, normal discovery procedures allow them full access to the miner's medical file. For a typical discussion of how responsible parties can rebut the *Doris Coal* presumption, see *Glen Coal Co. v. Seals*, 147 F.3d 502, 508 (6th Cir. 1998) (reversing opinion of Administrative Law Judge that applied the *Doris Coal* presumption).

124. For a general discussion of the comparative accuracy rates of the preponderance of evidence rule, see Saul Levmore, *Probabilistic Recoveries, Restitution, and Recurring Wrongs*, 19 J. LEGAL STUD. 691, 703-04 (1990).

125. 20 C.F.R. § 725.701(b) (2000).

cantly less virulent but for the pneumoconiosis)."[126] Frequently, smoking and coal dust exposure interact to cause synergistic or related diseases, thus meeting the required causal nexus.

4. *Fraud*

The Sixth Circuit stated that the *Doris Coal* presumption would free doctors of the requirement of showing the "relation between the treatment and the pneumoconiosis" and thus greatly increase the opportunity for fraud.[127] The court dismissed the employer's ability to rebut the presumption by saying that the "employer is not in as good a position to obtain such evidence as is the treating doctor."[128] The doctor, the argument goes, would not have anyone looking over her shoulder to ensure that she doesn't receive payment for noneligible (or nonexistent) care. The court based this argument on erroneous assumptions about incentives and opportunities facing doctors.

Under the *Doris Coal* presumption, claimants still only receive coverage for eligible medical benefits, and the opportunity for fraud does not increase. The miners just receive a presumption that pulmonary care sufficiently relates to their pneumoconiosis.[129] The presumption does not change the underlying burden of persuasion, but merely reallocates the burden of production. Employers remain free to rebut the miner's evidence through a variety of means and the miner must ultimately convince the factfinder that the care met the eligibility requirements. Regardless of the *Doris Coal* presumption, the burden of production is never on the doctor, nor is she a party to the claim.

By claiming that the employer is not in as good a position to obtain evidence as the treating doctor, the Sixth Circuit, by implication, claims that the doctor is in the best position to produce information about the miner's treatment. This doctor-as-best-problem-solver argument, however, fails to recognize that the claimant's doctor plays the same role regardless of the presumption. Under both regimes, the doctor can fraudulently prepare medical bills for unrelated treatment. The best-problem-solver argument loses its charm when it is precisely the fraudulent behavior of the best problem solver that the court seeks to monitor. In addition, other mechanisms for the reduction of fraud in the black lung benefits program better serve to police behavior.[130]

---

126. *Glen Coal*, 147 F.3d at 514.

127. *Id.*

128. *Id.*

129. *Id.*

130. Examples of other mechanisms include greater administrative monitoring, more severe sanctions for violations, and expanded incentives for miners and medical providers to report fraud.

CONCLUSION

The *Doris Coal* court injected a common-sense presumption into the adjudication process for already-eligible miners seeking coverage for medical care. This change is consistent with the Act, current strictures covering the relationship between agencies and courts, and the agency's existing presumptions. The burden-shifting presumption also increases the accuracy and efficiency of the black lung benefits program while maintaining an opportunity for coal companies to contest payments for ineligible care. Universal adoption of the *Doris Coal* presumption will help to reduce the role of geography in providing medical coverage for eligible miners and ensure that the black lung benefits system is administered in a more fair and equitable manner.