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COMMITTEE ON EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

2181 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6100

MAJORITY (202) 225-3725

MINORITY (202) 225-4527

<http://edlabor.house.gov>

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Honorable Michael B. Mukasey  
Attorney General  
U.S. Department of Justice  
10th Street and Constitution Avenue, N.W.  
Washington, D.C. 20530

Dear Attorney General Mukasey:

I write to request that the Department of Justice investigate whether Laine W. Adair, individually or in conspiracy with others, willfully concealed or covered a material fact or made materially false representations in a matter under the jurisdiction of the executive branch, specifically the Mine Safety and Health Administration ("MSHA"), in violation of 18 U.S.C. § 1001.

Adair was the General Manager of Genwal Resources Inc. ("Genwal")<sup>1</sup> during the time period relevant to this referral. Genwal operated the Crandall Canyon Mine (the "Mine"), an underground coal mine located near Huntington, Utah, from 1995<sup>2</sup> until the Mine's closure last year after the deaths of nine individuals at the Mine.

On August 6, 2007, a major structural failure within the Mine – a pillar burst or series of pillar bursts – blocked all entries into the section of the Mine being excavated at the time.<sup>3</sup> This led to

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<sup>1</sup> Genwal has been a wholly-owned, indirect subsidiary of Murray Energy Corp. since August 2006. See Murray Energy Corp., *Murray Energy Corporation Acquires Andalex Resources* (Aug. 9, 2006), UEICONG-K00040571-72. Documents bearing Bates numbering beginning with UEICONG were produced to the Committee on Education and Labor on behalf Murray Energy Corp. or a subsidiary of Murray Energy Corp.

<sup>2</sup> A subsidiary of Murray Energy Corp. owned a fifty percent interest in the output of the Mine, though the Mine is operated entirely by Genwal. Intermountain Power Agency owned the other fifty percent interest in the Mine's output. Utah Division of Oil, Gas and Mining, *CO15032*, available online at <<http://ogm.utah.gov/coal/mines/CO15032.htm>> (visited Apr. 8, 2008).

<sup>3</sup> Mine Safety and Health Administration, *Fatalgrams for the Coal Mine Accident on August 16, 2007 [sic]- Fatality #19-24*, available online at <<http://www.msha.gov/FATALS/2007/FAB07c1924.asp>> (visited Apr. 8, 2008).

the death and entombment of six miners.<sup>4</sup> On August 16, 2007, another event killed three individuals who were part of the effort to rescue the six miners.<sup>5</sup>

The Committee on Education and Labor (the “Committee”) began investigating the Crandall Canyon Mine tragedy shortly after the initial incident. As part of the Committee’s ongoing investigation, the Committee uncovered evidence that, prior to the August disaster, Adair and others in the Mine operator’s management team -- and that of its corporate parent -- were aware of a significant “bump”<sup>6</sup> that occurred within the Mine on or about March 10, 2007.<sup>7</sup> The evidence indicates that this bump, despite causing significant damage within the Mine and stopping production, was not reported as required per 30 CFR § 50.10.<sup>8</sup> In addition, evidence indicates that the operator not only failed to report the bump properly, but that Adair may have significantly downplayed the extent of the March bump in conversations with MSHA staff.

In mid-2006, representatives from the Mine first approached MSHA and the Bureau of Land Management (“BLM”)<sup>9</sup> about retreat mining barrier pillars supporting a section of the Mine, known as Main West, which had been dormant for years.<sup>10</sup> The amount of cover over this part of the Mine made mining there more dangerous than elsewhere in the Mine,<sup>11</sup> and as such, MSHA required that the Mine submit the amendments to the Mine’s roof control plan – the plan that deals with the structural integrity of a mine – in four stages.<sup>12</sup> The first stage was for the

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<sup>4</sup> *Id.*

<sup>5</sup> Mine Safety and Health Administration, *Fatalgrams for the Coal Mine Accident on August 16, 2007- Fatality #15-17*, available online at <<http://www.msha.gov/FATALS/2007/FAB07c1517.asp>> (visited Apr. 8, 2008).

<sup>6</sup> “A coal mine bump, also known as a bounce or burst, is the sudden outbursts of coal and rock that occur when stresses in a coal pillar, left for support in underground workings, cause the pillar to rupture without warning, sending coal and rock flying with explosive force. On the average, two coal miners are seriously injured each year and a miner is killed every other year due to coal bumps.” National Institute for Occupational Health, *NIOSH Mining Safety and Health Topic: Historic Coal Bump Data*, available online at <<http://www.cdc.gov/niosh/mining/topics/groundcontrol/bumps/bumps.htm>> (visited Apr. 8, 2008).

<sup>7</sup> See Aff. of Luis Payan at 1 (Mar. 7, 2008) (“Payan Aff.”); Depo. Tr. of Steve Falk at 56 (March 7, 2008) (“Falk Depo. Tr.”); Depo. Tr. of Allyn Davis at 55-56 (February 15, 2008) (“Davis Depo. Tr.”); Depo. Tr. of William Reitze at 21 (February 15, 2008) (“Reitze Depo Tr.”); Depo. Tr. of Billy Owens at 58 (February 22, 2008) (Owens Depo. Tr.”); See UEICONG-K000038554 (Mar. 12, 2007) (handwritten note of Murray Energy Corp. CEO Robert Murray acknowledging he was made aware of the March bump). The company also produced photos of the damaged areas of the mine. UEICONG000020829-51.

<sup>8</sup> See Statement of Richard Stickler before the Senate Committee on Health, Education, Labor and Pensions, at 2 (Oct 2, 2007).

<sup>9</sup> BLM leased the rights to mine the sections of the Mine owned by the federal government. Falk Depo. Tr. at 41.

<sup>10</sup> Owens Depo. Tr. at 29-30; Falk Depo. Tr. at 30-31.

<sup>11</sup> Falk Depo. Tr. at 31-32.

<sup>12</sup> Owens Depo. Tr. at 36-37.

operator to “develop”<sup>13</sup> the north barrier pillar.<sup>14</sup> Upon the completion of the development of this section of the Mine, MSHA examined the conditions at the Mine and approved the extraction of pillars in this section, also known as retreat mining.<sup>15</sup> The March bump occurred during the retreat mining of the north barrier.<sup>16</sup>

After the March bump, Genwal ceased mining in the north barrier and, on May 16, 2007, sought approval to develop the south barrier of the West Mains.<sup>17</sup> Upon completion of development in the south barrier, MSHA approved the Mine’s request to retreat mine the south barrier on June 15, 2007.<sup>18</sup> Genwal began retreat mining the south barrier in July 2007.<sup>19</sup>

That Genwal ceased mining in the north barrier and sought to move to the south barrier as a direct result of the March bump is well established.<sup>20</sup> Adair, however, minimized the severity of the March bump in his conversations with MSHA representatives to a degree that appears inconsistent with other evidence.<sup>21</sup> Specifically, during the Committee’s deposition of Allyn Davis, the MSHA District 9 supervisor, Davis was asked about photos of the affected areas of the Mine after the March bump. Referring to his conversations with Adair about the March bump and the photos of the damage it caused in the Mine, Davis noted: “The photos that I saw and the description I got from Laine Adair don’t match.”<sup>22</sup>

Genwal management invited a representative from BLM into the Mine just days after the March bump (though after the mine was at least partially cleaned up)<sup>23</sup> specifically to examine the damage caused by the bump.<sup>24</sup> Genwal did not relay the same urgency to its MSHA contacts.<sup>25</sup> It is possible that, had MSHA known the full severity of the March bump, MSHA would not have approved the subsequent development and retreat mining of the south barrier. Adair and others at Genwal may have purposely misled MSHA on the severity of the March event fearing MSHA would close the Mine and continued to adhere to the mischaracterization after the August incidents in an effort to downplay the foreseeability of the August incident.

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<sup>13</sup> The Department of the Interior defines “development work” as “Work undertaken to open up ore bodies as distinguished from the work of actual ore extraction. Sometimes development work is distinguished from exploratory work on the one hand and from stope preparation on the other”. Department of the Interior, *A Dictionary of Mining, Mineral and Related Terms* (1968); see also Owens Depo. Tr. at 40.

<sup>14</sup> Owens Depo. Tr. at 39-40; Owens Depo. Ex. 5.

<sup>15</sup> Owens Depo. Tr. at 41; Owens Depo. Ex. 5.

<sup>16</sup> Payan Aff. at 2.

<sup>17</sup> Davis Depo. Ex. 13.

<sup>18</sup> *Id.*

<sup>19</sup> See UEICONG-K000008851 at 51 & 59 (Aug. 3, 2007) (weekly status report).

<sup>20</sup> Reitze Depo. Tr. at 24-25; Falk Depo. Tr. at 58-59; Davis Depo. Tr. at 56; Owens Depo. Tr. at 60.

<sup>21</sup> Davis Depo. Tr. at 80-81.

<sup>22</sup> Davis Depo. Tr. at 81; Davis Aff. at 1.

<sup>23</sup> Compare Payan Aff. at 2 and Falk Depo. at 70-71.

<sup>24</sup> Falk Depo. Tr. at 70.

<sup>25</sup> Davis Depo. Tr. at 81; Owens Depo. Tr. at 61.

Committee staff requested that Mr. Adair testify at a deposition to be taken by Committee counsel pursuant to the authority granted to the Committee by the House to investigate this matter.<sup>26</sup> Counsel representing Adair asserted to the Committee in a letter that “Mr. Adair has earned an impeccable reputation in the mining industry as a hard-working, straightforward person devoted above all to the safety of miners and fairness in his treatment of others.”<sup>27</sup> Despite his attorney’s assertion, Adair submitted an affidavit to the Committee in which Adair swore: “I would invoke my constitutional right to remain silent and decline to provide testimony in response to all questions relating to the matter under investigation.”<sup>28</sup> In light of Adair’s invocation of his Fifth Amendment right against self-incrimination, the Committee excused Adair’s personal appearance at the scheduled deposition. Regrettably, Adair refused to tell his side of the story under oath.

I believe it is incumbent upon me as Chairman of this Committee to request that the Department of Justice further investigate whether Adair willfully made materially false representations on his own accord or as part of a conspiracy to do the same, and if so, to bring appropriate charges. The Committee has subpoenaed other officials of Murray Energy Corporation and its subsidiaries, including Murray Energy CEO Robert Murray, to appear for depositions. All of them have invoked their Fifth Amendment rights against self-incrimination and refused to answer any questions.<sup>29</sup>

If you have any questions regarding this referral, please contact me or direct your staff to contact the Committee’s Chief Investigative Counsel, Michael Zola, or Investigative Counsel, Patrick Findlay, who may be reached at (202) [REDACTED]. I appreciate your attention to this matter.

Sincerely,



**GEORGE MILLER**

Chairman

Committee on Education and Labor

Enclosures

cc: Senior Republican Member Howard “Buck” McKeon

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<sup>26</sup> See H. Res. 836 (110th Congr.).

<sup>27</sup> Ltr. from G. Poe to P. Findlay at 2 (Jan. 23, 2008).

<sup>28</sup> Aff. of Laine Adair at 1 (Jan. 23, 2008).

<sup>29</sup> Aff. of Robert Murray (Mar. 18, 2008) (CEO of Murray Energy Corp.); Aff. of Bruce Hill (March 3, 2008) (CEO of UtahAmerican Energy Corp., a subsidiary of Murray Energy Corp. and corporate parent of Genwal); Aff. of Gary Peacock (January 31, 2008) (Mine Superintendent at Crandall Canyon Mine); Aff. of Jim Poulson (January 28, 2008) (Safety Manager at Crandall Canyon Mine).