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United Mine Workers of America, International Union
Testimony before the
U.S. Senate Committee on Appropriations
Subcommittee on
Labor, Health and Human Services, Education and Related Agencies**

**Wednesday, September 5, 2007
Hearing Room SD-124
Dirksen Senate Office Building
Washington, D.C.**

Chairman Harkin, Ranking Member Spector, Members of this Subcommittee, as President of the largest Union that represents coal miners, I am honored that you have asked me to offer testimony regarding the August 6, 2007 disaster at Crandall Canyon Mine in Huntington, Utah, and how to prevent future tragedies. It is with a heavy heart that I appear before you to discuss ó yet again, and in far too short a span of time ó the deaths of mine workers. Our hearts and prayers remain with the families of the six miners who remain trapped in the Crandall Canyon mine.

I also wish to express my deep appreciation to everyone who participated in the rescue efforts. During these most trying of times, many brave miners demonstrated extraordinary courage by contributing to the rescue efforts. Unfortunately, three more miners paid the ultimate price as a result of their bravery. We cannot thank them enough, and we will keep their families in our thoughts and prayers, too.

Mr. Chairman, on February 28 of this year I appeared before this Subcommittee. At that time you asked me about what impact the MINER Act of 2006 had already had on the lives of miners in this country. (See attached testimony.) My response in February was that conditions were not much different from last year, and that miners facing a mine fire or explosion or other accident would face most of the same challenges that miners at Sago, Aracoma and Darby faced over one year ago. I am so sorry to say that the Crandall Canyon disaster has proved this to be true.

Just since the Sago explosion, 64 American coal miners have died on the job, and that number does not include the six miners still trapped in Utah. This Committee øs inquiry into the Crandall Canyon Mine Disaster is terribly important to ensuring that minersø health and safety are protected, so that we do not have to confront more needless death and injury.

My most important message to you today is that the Crandall Canyon disaster began on June 3, 2007, not August 6, 2007, because June 3 is the date when the mine operator submitted to MSHA a plan to engage in retreat mining at the Crandall Canyon Mine.

Likewise, MSHA's best chance for saving the miners was on June 15, not August 6th or 7th. But when MSHA approved the Crandall Canyon mining plan on June 15, that chance was lost.

Make no mistake about it, this disaster was not an act of God, but an act of man. It was preventable.

Experiences at Crandall Canyon

All the factors that lead to the recent disaster at Crandall Canyon may not yet be evident. However, it is apparent that the conditions were man-made. The disaster at Crandall Canyon was the result of decisions made by mine management, and plans approved by MSHA. Contrary to what some may say, there is little doubt that this was a man-made disaster.

It was because of *concerns for worker safety*, the prior operator of Crandall Canyon decided not to engage in the type of mining that Mr. Murray's company was engaged in before disaster struck. MSHA should have been aware of those concerns, as it should have known about the bump that occurred a few months prior, which motivated the operator to abandon mining a nearby section.

At the time Mr. Murray purchased the Crandall Canyon Mine the previous owner had partially or completely extracted over 30 coal panels using the longwall mining technique. In essence the only coal remaining in the mine was in the barriers and pillars necessary to support the roof of the Mine's main entries. Because extensive longwall mining had been done on both sides of the main entries there can be no doubt that the mountain over the mine was exerting extreme pressure on the remaining coal, which was supporting the mine roof. Murray Energy was extracting that very coal, using the pillar extraction method, at the time of the catastrophic collapse.

The prior operator, Andalex Resources, filed a document with the Utah Division of Oil, Gas and Mining in which it stated, "Although maximum recovery is a design

criteria, other considerations must be looked at in the final analysis in the extraction of coal. These factors consider the insurance of protection of personnel and the environment. Solid coal barriers will be left to protect the main entries from mined out panels and to guarantee stability of the main entries for the life of the mine.ö

Despite this assessment, Murray Energy submitted the plan to MSHA for approval to mine all the remaining coal reserves including the barrier pillars. The Agency took just seven business days to approve the request.

It is also unfortunate that the management team at this operation has spent so much energy trying to deflect blame in this tragedy. It is equally unfortunate that MSHA, yet again, ignored the will of Congress in its reaction to this disaster.

Section 7 of the MINER Act states that MSHA öshall serve as the primary communicator with the operator, minersøfamilies, the press and the public.ö Nevertheless, in Utah MSHA surrendered its role as chief communicator. As a result, a great deal of inaccurate and misleading statements and information was allowed to get out over the airwaves. The effect has been that millions of Americans were given incorrect and misleading information right from the start of this disaster, and MSHA allowed it to happen. Here are some examples:

- 1) From the very beginning, Murray Energy's Owner and Chief Operating Officer, Robert Murray, asserted that "an act of God" in the form of a natural earthquake caused this catastrophe. He suggested that the "seismic activity" at the mine is uncontrollable and unrelated to his company's activity. However, from tapes made of calls to the local Sheriff's office that same morning, it is apparent that from the time it occurred, University of Utah seismologists believed the activity was the result of coal mining.
- 2) Time and time again Mr. Murray emphatically stated that he knew exactly where the trapped miners were. Yet many weeks and many boreholes later he still has not been able to locate the miners.
- 3) Mr. Murray also strenuously objected to reports that miners were performing a final method of mining referred to by the media as "retreat mining." Again, he was not giving true information: from the approved mining plan it is evident that this mine was in the process of "pulling pillars." It is important to note this distinction: There has been a great deal of reporting about Crandall Canyon performing "retreat mining." The term retreat mining has different meanings to different people. In fact, this operation was performing a method of mining known in the industry as "pillar mining" or "pillar extraction."
- 4) Mr. Murray claimed that the mine was perfectly safe when he invited non-essential personnel from the media and families to tour the underground rescue work. However, not only did they experience a "bump" while they were underground, but it was in the same vicinity where nine rescuers were injured and killed just days later.
- 5) Mr. Murray stated that he had not had any major accidents at any of his mines prior to this. The truth is that four miners have been killed at Mr. Murray's mines. Any time a miner is killed, that constitutes a major accident.
- 6) Mr. Murray continually said that the UMWA was trying to organize the Crandall Canyon mine, and that somehow meant that nothing we had to say about this incident could be trusted. While we strongly believe that all miners should have the benefits of a union contractó not the least of which is the enhanced safety language written into our contractsówe were not engaged in an organizing campaign at that

mine at the time of the incident there, nor had there been any organizing activity at that mine for years.

- 7) Mr. Murray also claimed that the UMWA was responsible for the stories about the company intending to reopen a part of the mine to production, when in fact it was his own Murray Energy Vice President who made those statements to reporters.

These are but some examples of the inaccurate and misleading statements Mr. Murray made that met with no contradiction from MSHA's statements that were seen by many as having an "official" stamp of approval since in most cases they were made with MSHA officials looking on, making no attempt to correct him.

What is so astounding about the press conferences at Crandall Canyon is that the conduct of Mr. Murray, and MSHA's indulgence of him, were directly contrary to Section 7 of the MINER Act, which Congress expressly added to prevent the kind of misinformation debacle that occurred at the Sago mine. There, the families were first told their loved ones were alive and were leaving the mine, whereas the reality was that only one of the thirteen survived; it was hours before the misinformation was corrected.

Regardless of whether Mr. Murray may have wanted to convene and conduct press conferences, there is no reason, requirement or benefit to the miners, their families or the public for MSHA to participate in the events he, as the private operator, staged. As the federal Agency affirmatively charged with communicating with the families and press, MSHA should have exercised its power and conducted independent press conferences to provide objective reports of developments at the disaster site. Instead MSHA representatives yielded their authority; at best they stood in the shadows as the coal operator spun his story, at worst they cowered out of view refusing to correct the half truths and misstatements. Further, it has been widely reported that Mr. Murray's attitude was abrasive and demeaning to these grieving individuals. MSHA's responsibility to serve as the liaison should have protected the families from him.

Has the MINER Act changed the post-accident situation?

Miners working today do not have many of the health and safety benefits that Congress demanded through the MINER Act in 2006. The additional

oxygen devices you insisted be available to underground miners are still on back order, effective wireless communication or tracking devices have not been installed, and MSHA has approved Emergency Response Plans (ERPs) that do not require operators to provide the safety and health protections Congress expected.

For example, in most instances tracking of miners is still being done today the same way it was done before the Sago disaster: operators rely on their dispatcher, and only know in which zone a miner is assigned to work. As we all know from Crandall Canyon, despite assurances that the operator knew exactly where the trapped miners could be found, without reliable tracking devices, rescue efforts are delayed and mis-directed.

As Crandall Canyon has revealed, miners caught underground have little better chance of survival than did the miners at Sago, Aracoma and Darby in 2006 – or even those who perished in the disaster at Farmington in 1968. Although we have advanced the calendar some 40 years since the Farmington disaster, in many instances miners are caught in a time warp, still trying to adapt the health and safety technology of the 1960's into today's mining environment. For example, Congress directed MSHA to consider safety chambers in the 1969 Mine Act, but they still remain largely absent from our mines. Moreover, the regulation MSHA implemented requires operators to provide supplies to build a barrier after an accident occurs. This was required before the MINER Act, though since the MINER Act operators now must provide breathable air and other requirements to sustain life. However, having supplies available for *construction* of a safe haven *after* an accident will often be too late: the post-accident atmosphere can be toxic and so smoky that miners cannot even see their own hands, and they may well be disoriented, making it impossible for miners to *then* construct a safe haven.

After the three high-profile disasters last year that claimed 19 lives, Congress passed the MINER Act. That historic legislation was the first miners' safety and health legislation in 30 years. It placed new requirements on mine owners and operators to improve miners' safety. Some, like directional lifelines, additional self-contained self-rescuers (SCSRs) and Emergency Response Plans (ERPs) were required immediately. Others, including advanced wireless communication and tracking devices were to be phased in over 3 years as they become available. We said then and still

believe that the MINER Act represented a good "first step," but so much more is required.

As the MINER Act is being implemented, MSHA has been too tolerant of operator delay. While directional lifelines require no new technology, and could be immediately placed into use to guide miners out of a mine during an emergency, MSHA is allowing some operators to set their own time frames for meeting this requirement. As for the miners' need to have supplemental oxygen, though the MINER Act required operators to store additional supplies for miners' use if trapped, MSHA's regulation permits the supplies to be stored in a location that is too remote. Based on the existing regulation, if the Crandall Canyon miners survived the initial event, they would not have been able to access what oxygen *should* have been stored because it would have been too far away, on the other side of the collapsed area of the mine. Moreover, though the MINER Act required operators to submit their ERPs by August 2006, the Crandall Canyon ERP was only approved in June, 2007 and the supplemental oxygen need only to have been in place 60 days later...*after* the miners were trapped on August 6. Why the operator was given 60 days to provide the oxygen is puzzling, as the oxygen canisters should be readily available and there was no good reason for the delay.

Some of the MINER Act requirements, including advanced wireless communication and tracking devices were to be phased in within 3 years, as they become available. However, rather than demanding that operators quickly utilize improved equipment and technology *as soon as* it becomes available, MSHA is allowing operators to wait out the clock until the 3-year deadline comes to a close.

You probably recall the stories last year of the Polish miner pulled from wreckage after he was located through use of a tracking device, and that of the Canadian miners trapped underground but safely retrieved from the safety chamber to which they had retreated. The Crandall Canyon miners did not have these advantages. However, if other countries' miners can survive and escape these disasters, then so should American miners. We need change, and we need it now.

We wish to note that some operators have gone beyond the minimum requirements to protect miners, but many more meet only MSHA's minimum standards. MSHA could and *should* be pushing operators to utilize the *best* available technology to better communicate with and track miners.

We believe that was what Congress expected when it enacted the MINER Act last year. Crandall Canyon graphically demonstrates the consequences of operators' and MSHA's intervening complacency.

Cultural problems at the top of MSHA

The problems within MSHA begin at its highest levels. Indeed, there has developed at MSHA a culture of cooperation rather than enforcement. When then-Assistant Secretary of Labor for MSHA, David Lauriski, initiated a new "compliance assistance" plan, he sanctioned a different way of pursuing the Agency's mission. That new program chilled enforcement efforts at the mine level and allowed operators to essentially negotiate workplace health and safety matters.

The notion that MSHA should foster compliance assistance when its first priority is supposed to be miners' health and safety is preposterous. In MSHA's internal reviews of the three major disasters in 2006 it found plan reviews to be an area where better oversight is required. This lack of oversight and accountability played out to dire consequences at Crandall Canyon: the mine plan that was submitted should never have been submitted; and MSHA should not have approved it.

The UMWA argued strenuously against MSHA's policy of compliance assistance ever since its inception. Our objections to the culture of cooperation have been dismissed by the Agency's highest officials. It is no consolation to sit before this Committee and remind you of our continuing assertion that MSHA's effectiveness is compromised. The disasters at Sago, Aracoma, Darby and now Crandall Canyon represent the consequences of Agency misdirection and inaction.

Lessons learned from decade after decade of miners' injuries, illnesses and deaths teach that strict enforcement is needed to protect miners' health and safety. These facts were reinforced by MSHA's own internal reviews of the tragedies at Sago, Aracoma and Darby. In each instance, the Agency discovered significant problems of non-accountability and lack of oversight.

There is a culture at the highest levels of Agency that not only ignores the needs of miners, but the input and expertise of longtime MSHA field employees and specialists. MSHA's inspectors and specialists have years of practical experience, they work in the same conditions as do miners they

seek to protect, they know the laws and regulations, and they strive to perform their jobs. However, to successfully protect miners' health and safety, inspectors must receive uniform direction and support from their superiors. If we are to achieve the health and safety improvements anticipated by the Mine Act and the MINER Act, there must first be a cultural change within the Mine Safety and Health Administration. I submit to you that the reality of this situation is stark. If we fail to force a cultural change at MSHA it will continue to decline and eventually implode. We cannot allow that to happen.

This Congress possesses the power to make vital changes to restore the direction of MSHA and ultimately offer miners the health and safety protections they deserve. Congress must require MSHA to focus first and foremost on the health and safety of miners. We urge this Congress to move swiftly to require immediate action on the mandates contained in the MINER Act and to be prepared to demand through appropriate legislative initiatives the *next* level of protections.

Families facing a mine disaster deserve better

Just last year Congress moved to ensure that families facing mining disasters would be treated with the dignity they deserve and would be kept abreast of the most accurate information available. This did not happen for the families of the trapped miners at Crandall Canyon. Like the Sago families in January of 2006, they were held almost as captives, awaiting any bits of information (or misinformation) delivered by the coal operator.

How is it possible that MSHA could get it so wrong in Utah? How could it ignore the mandates of Congress, which requires the Agency to take charge of such accidents and serve as the liaison with the families and press? By allowing this mine owner to take center stage, MSHA ignored the directives of the MINER Act. In so doing, it failed the families at Crandall Canyon. They deserved ó and still deserve ó much better. If the leadership of MSHA is not willing or able to limit the activity of a single mine operator in the face of express authority to take such control, how can we expect them to effectively lead the Agency that is charged with regulating an entire industry?

On behalf of their loved ones, the families of those trapped at Crandall Canyon asked the UMWA to serve as their miners' representative. This

would ensure that their designated representative would be able to participate in the accident investigation. However, MSHA has rejected their request, claiming that it would have to first verify that the miners themselves made the designations. Obviously, a trapped miner cannot provide that assurance. Yet, in denying the families the right to make such a designation *for* their trapped miners, MSHA has prevented those most affected by the tragedy to have a voice at the table during the investigation.

MSHA's spokesperson has criticized the UMWA for attempting to serve as the trapped miners' designated representative, claiming that we "are trying to use a law enforcement investigation for its own purposes." We will confirm that the UMWA *does* want to participate in this matter. The reason is simple: we want honest and complete information about everything that happened -- from before the latest mining plan got prepared, submitted and approved. We want to make sure no more miners' lives are lost. The UMWA is the **ONLY** organization in this country that is dedicated to advocating for miners' health and safety. We are proud of advancements that have been made at our urging, and we don't plan to stop anytime soon.

So yes, the UMWA does have a purpose of our own here: to fight for and improve mine safety in America. We invite MSHA to join us in that endeavor, instead of casting veiled aspersions on our efforts on behalf of coal miners and their families.

To the extent that MSHA feels current law does not allow it to recognize the UMWA as a miners' representative absent proof that the miners themselves have made the designations ó something the trapped miners obviously cannot satisfy ó we urge Congress to change the law. Family members of those trapped or killed in a mine accident should have the right to designate a trusted representative to participate in the accident investigation.

Further, and as we have written to you, the UMWA feels that it is imperative that there be an *independent* investigation of this tragedy. (Letter attached.) Otherwise, MSHA and the operator will simply be investigating what they themselves did. That is not the best way to ask the hard questions or to get the full truth. Our goal must be to learn from what went wrong at Crandall Canyon so that no more families will suffer such needless loss of life.

Control of a mine post-accident

Since 1977 MSHA has had the right to control all activity at the mine when disasters occur. By issuing a Section 103(j) Order, MSHA could have secured this control. Yet, with but one exception at Scotia, MSHA chooses to utilize its authority under Section 103(k) which permits the operator greater latitude in directing a rescue operation.

Under a (k) order, the operator prepares plans and submits them to MSHA, which must approve each component before it can then be implemented. That is the procedure that must have transpired when, just days before the rescuers were killed and injured, the operator proposed and MSHA approved a plan that permitted non-essential personnel (that is, press and family members) to travel underground with Mr. Murray to observe the rescue.

We understand the curiosity of some within the media and the dire concern of family members, however the conditions at the mine were so unstable that some workers engaged in the rescue effort requested work away from the mining operation. There is no reasonable explanation for allowing non-essential personnel to be subjected to such dangerous conditions. They easily could have confused and hindered the rescue had the bump they did experience been larger in scale. While we thank God that there was only a minor mountain bump while these individuals were underground, we also recognize the situation could have become much more disastrous. They could have suffered the same tragic result that rescuers experienced when the large bump caused a cave-in, claiming the lives of three rescuers and injuring six others. Mr. Murray should not have submitted a plan to take guest travelers into the mine, and MSHA certainly should have known better than to permit it. That incident represented an extraordinary amount of poor judgment by both key parties to this rescue and recovery effort.

MSHA should have brought to the site at a much earlier date experts who could address the unique geological conditions to help develop a safe procedure for rescuing the trapped miners. We recommend that there be designated a variety of mine emergency response experts who could be immediately called upon to service mining emergencies like those at Crandall Canyon, Sago, Aracoma, and Quecreek. Even now, we call upon Congress to consult with a variety of geological, engineering, and other experts, public and private, to determine if the trapped miners can be safely recovered. The families deserve to have their loved ones back if that can be accomplished without sacrificing any more lives.

We also seek an independent investigative body to analyze the rescue process to report on how that procedure could have been improved. At the end of the day, the most important thing we can take away from such a tragic experience is to learn from the mistakes so they will not be repeated. Only an independent investigation can hope to uncover the needed truths.

Since the MINER Act was passed last year, we have heard a lot of operators complain about how much money they have to spend to comply with it. However, let me suggest that it is better to invest up front. Mining disasters are very costly - first and foremost in lost lives and the destruction of families. But accidents also consume huge amounts of time and energy on the part of the particular operator, not to mention federal and state governments, too: first the rescue and recovery efforts are expensive, and then the investigation takes another substantial commitment of capital. Wouldn't we all be so much better served if these resources would be dedicated to protecting miners from the problems in the first place? I am certain that was your intent when you enacted the MINER Act. Unfortunately, this goal has not yet been adequately realized.

Conclusion

How many times must we demand that MSHA's practices change only to be ignored? How many more times will mine owners and MSHA thumb their nose at your mandates? Something must be done to change the status quo. Leaders must be held accountable for their actions and inactions. Just as mine operators cannot self-regulate, MSHA cannot function without being subject to the routine scrutiny of Congress and appropriate sanctions when necessary.

The miners of this nation can no longer be asked to sacrifice their safety when their employers are focused on monetary profit with little regard to their employees' well being. It is time to place effective measures in place so that a miner may engage in his primary job of mining, without jeopardizing his life.

I thank you for this opportunity to share our on-going concerns about the state of miners' health and safety in this country. I urge you to do all that you can to ensure that the investigation of the Crandall Canyon disaster is full and independent and that the families of trapped miners get all the answers they want and deserve.

