

# BLACK LUNG BENEFITS RESTORATION ACT

Y 4. L 11/4: S. HRG. 103-514

Black Lung Benefits Restoration Act...

## HEARING OF THE COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

**S. 1781**

TO MAKE IMPROVEMENTS IN THE BLACK LUNG BENEFITS ACT, AND  
FOR OTHER PURPOSES

MARCH 15, 1994

Printed for the use of the Committee on Labor and Human Resources



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# BLACK LUNG BENEFITS RESTORATION ACT

TUESDAY, MARCH 15, 1994

U.S. SENATE,  
COMMITTEE ON LABOR AND HUMAN RESOURCES,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:25 a.m., in room SD-430, Dirksen Senate Office Building, Hon. Paul Simon presiding.

Present: Senators Simon and Wofford.

## OPENING STATEMENT OF SENATOR SIMON

Senator Simon [presiding.] The hearing will come to order.

First of all, my apologies for holding you up, but we had a vote on the floor of the Senate,

Coal miners face special problems. Before I came to Congress, the original black lung legislation was passed for pneumoconiosis. Pneumoconiosis is sometimes inaccurately described as a disease, but it is actually a hardening of the lungs due to the absorption of coal dust.

For a time, very candidly—and I do not think my friend, Rich Trumka, will mind my saying this. Some people received benefits who should not have. It was too easy to get benefits. And then it moved over to the other extreme, and it became impossible to get benefits. At that point, Congressman Carl Perkins and I introduced legislation. I was in the House then. The legislation said that if you have served 25 years in an underground mine, you are eligible for benefits. We would not have to go through all the tests, claims, counterclaims and legal difficulties that we now go through.

Unfortunately, that legislation did not pass. The evidence is overwhelming that anyone who has served in an underground mine for 25 years has pneumoconiosis.

We did get a slight modification, but it is still extremely difficult for coal miners or their widows to get benefits.

We want to mine coal. I live in coal mining territory in deep southern Illinois. I want to see that we use that source of energy. But I do not want to do it at the risk of the health of coalminers, or at the risk of marring the future of the coal miners and their families who give this Nation our energy. We ought to use coal, but we ought to also protect coal miners in the process.

My staff has put together two cases. Let me just read these two cases. On June 4, 1993, Lyndell Laird called my Carbondale office to tell me what is happening to his mother, Sophie Laird, and her husband Elmer's black lung case. I had first been contacted by the

Laird family in regard to Elmer's case 10 years ago. Let me take a moment to tell you about Elmer Laird.

Elmer mined coal underground for 46 years. The evidence is overwhelming that anyone who has been in an underground coal mine for 46 years, no question, has pneumoconiosis. In 1973, the Department of Labor went to where Elmer worked to take chest x-rays of the miners to determine if any of them had black lung. Elmer took the test and was told by the Department that he had the problem. In 1973, however, Elmer was only age 63 and therefore, he worked until retirement at age 67.

Incidentally, for those who say that if we have black lung benefits, people are just going to take advantage of them—the average benefits are about 12 percent of what a coal miner makes. So if a coal miner has a choice between continuing to mine or drawing black lung benefits, he is going to continue to mine. You do not want to receive just 12 percent of the money you earned before.

Elmer then applied for black lung benefits. He was awarded benefits, but the decision was appealed. While the case was on appeal, interim benefits were started in 1976. Elmer's son, Lyndell, called to tell me that his mother had received a letter from the United States Department of Labor stating that she must pay back \$59,210.60 within 30 days. Fifty-nine thousand dollars is 17 years of interim black lung benefits that have been paid to Elmer. Elmer died on April 2, 1993. His black lung case is still being appealed.

Under current law, because Elmer Laird's case was not final, and it cannot be proven that he died of black lung, his widow must return the \$59,000 and is not eligible for survivor benefits. And we have another case that is somewhat similar.

Clearly, we ought to be doing more to protect coal miners and their families. I am not here to say that the legislation that has been introduced is written in stone. We are willing to work out compromises. But we ought to be doing something more to protect the health and the future of miners, and to provide compensation for those who have been breathing that dust.

I have been in coal mines maybe a dozen times in my life, not more. But I know that when I get out, and I blow my nose, I can see that dust in my handkerchief. I know what is happening in terms of what people are breathing in, and that calcifies the lung. That is the problem, and we must do something about it.

I will put my prepared statement and that along with Senator Thurmond in the record at this point.

[The prepared statements of Senators Simon and Thurmond follow:]

#### PREPARED STATEMENT OF SENATOR SIMON

Today the Senate Labor and Human Resources Committee will be hearing testimony in regard to S. 1781, the Black Lung Benefits Restoration Act. I am pleased to be joined by an original cosponsor of the bill, Senator Harris Wofford. I would also like to recognize all the miners and their families who have taken the time to attend the hearing today, and who have written to me about their personal stories.

The Black Lung Benefits Restoration Act should not just be of interest to those from coal producing states. The Black Lung Benefits



Restoration Act should be of interest to anyone interested in equity and fairness.

#### BACKGROUND

Title V of the Federal Coal Mine Health and Safety Act of 1969 established a program of monthly cash payments to eligible coal miners totally disabled by coal workers' pneumoconiosis, or "black lung" disease, and their survivors. Amendments in 1972 and 1977 made changes to the programs' eligibility so that more claimants would qualify for black lung benefits.

The Black Lung program has two components—part B and part C. Under Part B, cash benefits are awarded for miners disabled by black lung, and their dependents and survivors. The beneficiaries are paid from annually appropriated general revenues by the Social Security Administration. Benefits under Part B are only paid only to claim filed before July 1, 1973 (for some survivors the deadline was December 1973). When the period of federal responsibility for claims filed under Part B ends, claims are to be paid under Part C by the "responsible coal operator". If no such operator can be found, then claims are to be by the coal industry as a whole through the Black Lung Disability Trust Fund. The Trust Fund, financed by an excise tax on coal, is to pay benefits when either no responsible coal operator can be identified, or if the operator is in default, or if the claim is based on coal mine employment that ended before January 1, 1970.

In 1981, Congress enacted legislation to eliminate the Trust Fund deficit and debt by increasing the excise tax on coal and strictly limiting the eligibility for black lung benefits for future claimants. The debt reached \$4 billion at the end of last year.

The changes made to the Black Lung Program through the 80's will not eliminate the deficit or the debt. Moreover, the limits on eligibility are not equitable.

The purpose of the Black Lung Benefits Restoration Act is to establish a more objective and equitable process for determining black lung benefits.

Let me share with you two stories about mining families from my state of Illinois.

#### CASE STUDIES

On June 4, 1993, Lyndell Laird called my Carbondale office to tell me what is happening to his mother, Sophie Laird, and her husband, Elmer's, black lung case. I had first been contacted by the Laird family in regard to Elmer's case 10 years ago. Let me take a moment and tell you about Elmer Laird. Elmer mined coal underground for 46 years. In 1973, the Department of Labor came to where he worked to take chest x-rays of the miners to determine if any of the miners had black lung. Elmer took the test and was told by the Department that he had the disease. In 1973, however, Elmer was only aged 63; and therefore worked until retirement at age 67. He then applied for black lung benefits. Elmer was awarded benefits, but the decision was appealed. While the case was on appeal, interim benefits were started in 1976.

Elmer's son, Lyndell, called to tell me that his mother had received a letter from the United States Department of Labor stating that she must pay back \$59,210.60 within 30 days. Fifty-nine thousand, two hundred ten dollars and sixty cents is 17 years of interim black lung benefits that had been paid to Elmer. Elmer died April 2, 1993. His black lung case is still being appealed.

Under current law—because Elmer Laird's case was not final, and it cannot be proved that he died of black lung—his widow must return the \$59,210.60 and is not eligible for survivor benefits.

Fortunately, Mrs. Laird and her husband were frugal and left the interim benefit money in a bank drawing interest. However, most cannot afford to leave the benefit money in a bank. Most need the benefits for their day-today needs and medical expenses.

The Black Lung Benefits Restoration Act would help Mrs. Laird, and others like her in similar situations. Under S. 1781, Mrs. Laird would not have to return the 17 years worth of benefits, she would be eligible for spousal benefits, and it won't take almost 20 years to determine whether or not someone is eligible.

On September 13, 1993, the children of Joan Durbin wrote to me about the difficulty their mother was facing regarding her late husband's black lung benefits. For 18 years Joan, her late husband, Ronald Durbin, and their eight children have been caught in the unrelenting cycle of the black lung benefits program. They were awarded benefits, only then to be denied. Some of the things the Durbins had to go through include: being told in 1985 that they would have to repay ten years of benefits, which came to \$53,000; for 18 years Ronald having to undergo numerous medical examinations and court baffles to prove his claim, which were paid for at his and his family's expense; and the emotional toll the disability and unending benefits baffle took on his family. As the letter says, "Because of this on-again off-again Black Lung claim, over the years, our parents had to mortgage the house they owed for 35 years, cash in various life insurance policies, and have to do without many things. Even after Ronald's death in 1992 and an autopsy confirming a diagnosis of black lung, his widow is still fighting.

Joan was awarded survivor benefits in January of 1993, only to be denied benefits the following July.

Under the Black Lung Benefits Restoration Act the Durbins would not have had to wait 18 years for a decision. Moreover, Joan would be eligible for benefits as Ronald's widow.

## BLACK LUNG BENEFITS RESTORATION ACT

### BENEFIT OVERPAYMENT

Under current law, if a miner receives an interim ruling from the Department of Labor's Deputy Commissioner that he is entitled to benefits, and it is later determined by an administrative law judge that the miner is not entitled to benefits, then the miner must refund all interim benefits received.

There is a significant delay between the Deputy Commissioner's ruling and the Administrative Law Judges' ruling. According to a General Accounting Office report, the Deputy Commissioner's decision takes an average of 2-3 years. In addition, the Administrative Law Judge ruling could take an additional 2-3 years. By this time,

the miner has usually spent the interim benefit. Furthermore, the system is currently weighted in favor of the coal operators.

The Restoration Act would not require the miner, who through no fraud or deception, is awarded benefits prior to the final adjudication of their claim, to return any of the interim benefits if it is later determined that the miner is not entitled to benefits.

In addition, before the final adjudication of a claim, if a miner through no fraud or deception, received an interim benefit and has repaid the interim benefit to the Trust Fund, then the Trust Fund is to refund the repayment to the miner.

If a miner receives interim benefits from an operator, and is later found to be ineligible, the Trust Fund will reimburse the operator.

Last, if the Secretary of Labor makes an initial determination of eligibility, or that particular medical benefits—payable, or an award of benefits are made, then the responsible operator, within 30 days of such determination or award, is to begin payment of monthly benefits. If an operator fails to make any payment required by an initial determination or award in a timely manner, such determination or award shall be considered final as of the date of its issuance.

#### EVIDENCE TO DETERMINE BENEFIT ELIGIBILITY

Under current law, the miner and the opposing party (either the responsible coal operator or the Trust Fund) can require any number of medical examinations, and present any number of medical experts as evidence to determine a miner's eligibility for benefits.

The problem is one of "David v. Goliath". The coal miner is pitted against the resources of the coal operators/industry or the federal government. More often than not, the coal miner is barely able to scrape together enough money to pay for one medical examination.

During the course of all proceedings on a claim, the Restoration Act would limit the number of medical examinations and chest x-rays the miner can use as evidence to support eligibility to three each. In addition, during the course of all proceedings on a claim, the responsible operator or the Trust Fund may require that the miner undergo certain medical examinations, but the responsible coal operator or Trust Fund may not submit or require any more medical examinations than are conducted and submitted during the course of all proceedings by the miner, and may offer into evidence the set results of one chest x-ray for each set offered into evidence by the miner. However, a complete pulmonary evaluation provided each miner, any evaluation developed by the District Director, any record of hospitalization or medical treatment for pulmonary or related disease, and a biopsy or an autopsy, shall be received into evidence without regard to the previous limitations.

Also, in addition to the above medical examinations, each party may submit not more than one interpretive medical opinion. Such an opinion may review other evidence derived from chest x-rays, blood gas studies, or pulmonary function studies contained in the reports offered into evidence.

An administrative law judge may require the miner to submit to a medical examination by a physician assigned by the District Director if the administrative law judge determines that, at any time, there is good cause for requiring such an examination. Good cause

shall exist only when the administrative law judge is unable to determine from existing evidence whether the claimant is entitled to benefits.

A request of modification of a denied claim under section 22 of the Longshore and Harbor Workers' Compensation Act shall be considered as if it were a new claim for the purpose of applying the limitations on the number of medical examinations.

The opinion of the miner's treating physician is to be given substantial weight over other physicians in determining eligibility for benefits, if the treating physician is board certified in a specialty relevant to the diagnosis of total disability or death due to black lung.

#### SURVIVOR BENEFITS

Under the current law, a widow(er) cannot receive survivor benefits unless it is proven that the coal miner died from black lung.

Proving that the cause of death was black lung is extremely difficult. In addition, the widow(er) is usually a senior citizen who is left with limited or no means of support.

The Restoration Act would provide that if an eligible survivor files a claim for benefits and the miner was receiving benefits before the final adjudication, or was totally disabled with black lung at the time of death, it is presumed that he died from black lung—thus entitling the widow(er) to survivor benefits. However, if the miner's death was the result of an event that had no medical connection with black lung, then the widow would not be entitled to benefits. For example, the miner was killed in a car accident.

In addition, a widow(er) who was married to the miner for less than nine months prior to the miner's death is not eligible for survivor benefits, unless children were born as a result of the marriage.

The widow(er) of a miner may not receive survivor benefits if they remarry before attaining the age of 50. In addition, the widow(er) may not receive an augmentation of benefits on any basis arising out of the result of a remarriage.

#### RESPONSIBLE OPERATOR

Under current law, the Department of Labor designates a parade of possible responsible operators.

The numerous designated operators all must incur considerable expense defending themselves against such claims. This process is also time consuming.

The Restoration Act would require the Secretary of Labor, prior to issuing an initial determination of eligibility and after investigation, notice, and a hearing, to determine whether an operator meets the Secretary's criteria for liability as a responsible operator. If a hearing concerning the question of liability is requested in a timely manner, then the decision of the administrative law judge conducting the hearing shall be issued no later than 120 days after such request and is not subject to further appellate review.

If the administrative law judge determines that an operator's request for a hearing on the question of liability was made without

reasonable grounds, the administrative law judge may assess the operator for the costs of the proceeding (not to exceed \$750).

#### ATTORNEY FEES

It is often difficult to get a lawyer to take on black lung cases as the cases are often difficult, expensive, and time consuming. You'll recall that Mr. Baird came to me with his case 10 years ago.

Under the Restoration Act, if a miner is to be awarded benefits, the miner is entitled to reasonable attorney's fees and expert witness fees that are to be paid by the responsible operator or if there is no responsible operator, then by the Trust Fund. However, the determination of what is reasonable must be made within 60 days of the miner submitting a petition outlining the costs. Furthermore, the attorneys must be paid within 45 days of the notice of determination, unless a motion to reconsider the amounts or the liability is pending.

If the claim is denied, and the miner is not to be awarded benefits, the Trust Fund will pay the responsible operator's reasonable attorney's fees.

The awarding of reasonable attorney's fees shall apply only to those claims that are filed for the first time after the date of enactment of this Act.

#### APPEALS

Under the Restoration Act, no appeal of an order in a proceeding under the Black Lung Benefits Act may be made by a miner or responsible operator to the Benefits Review Board unless such order has been made by an administrative law judge.

In addition, the Secretary of Labor may not delegate the authority to refuse to acquiesce in a decision of a Federal court.

#### REFILING

The Restoration Act would allow any claim that was filed under the Black Lung Benefits Act after January 1, 1982, but before the date of enactment of the Black Lung Restoration Act, to be refiled for a de novo review on the merits.

#### DEFINITION

Coke ovens are included to be covered by this Act.

#### BENEFITS REVIEW BOARD AND EMPLOYEE COMPENSATION APPEALS BOARD

At the request of the Administration, the Black Lung Benefits Restoration Act would allow the Secretary of Labor to appoint and fix the compensation of the Benefits Review Board and Employee Compensation Appeals Board members, but the rate of compensation shall not exceed the daily equivalent of the maximum rate specified in section 5376 of title 5, U.S.C.

#### CONCLUSION

S. 1871 is a step in the right direction toward providing a more equitable process. In drafting S. 1781, comments were received

from the National Black Lung Association, the National Coal Association, and the Department of Labor. Many of the comments were constructive and incorporated into the introduced bill. As the Committee moves forward on S. 1781, I look forward to continuing to work constructively with interested and parties.

I look forward to the testimony that will be presented this morning. Our first panel today will share their personal stories with Committee. Stories that are similar to the Durbin and Laird family's.

#### PREPARED STATEMENT OF SENATOR STROM THURMOND

Mr. Chairman, it is a pleasure to be here this morning to receive testimony concerning S. 1781, the "Black Lung Benefits Restoration Act." I would like to join my colleagues in welcoming our witnesses here today.

As you know, S. 1781 would amend various provisions of the Black Lung Benefits Act and the Black Lung Benefits Revenue Act of 1977.

The Black Lung Benefits Act provides monthly cash payments to current and former coal miners who are disabled by coalworkers' pneumoconiosis, also known as black lung disease. Their survivors and dependents are also eligible for benefits.

The Black Lung Benefits Revenue Act of 1977 created the Black Lung Disability Trust Fund, which is financed by an excise tax on coal mined and sold in the U.S. The Trust Fund was created because none of the States had adequate compensation programs in place and the Department of Labor was unable to identify a majority of the responsible operators. The Trust Fund is currently \$3.6 billion in debt.

Mr. Chairman, this measure will greatly expand the benefits of black lung claimants with limited or no discernible disability. It will also restrict the ability of an operator to properly defend itself.

First, a claimant will not have to return any of the benefits received if they are found ineligible upon final determination. The current system has been established so that a claimant, with a reasonable chance of success, may begin to receive benefits before the final adjudication of their claim. I agree that this system addresses the need for claimants to receive benefits during the often drawn out adjudicatory process. However, S. 1781 will make the responsible operator begin benefit payments within 30 days of initial eligibility determination. It will not allow him to recoup the benefits bestowed if further proceedings determine that the claimant was not properly eligible for those benefits. It also mandates that if benefits are not given within 30 days of the initial eligibility determination the benefits award will be considered final.

Second, this measure will impose a strict limit on the defendant's ability to introduce evidence. It also gives a "substantial" preference to the evidence presented by the claimant. I am concerned with the constitutional issues raised by this limitation on one party's evidentiary rights. I am also concerned with the imbalance created by the preference given to one party over another. I believe that a court or Administrative Law Judge should be presumed impartial and allowed to make determinations based on the evidence.

Third, this measure would create a presumption that a miner died of black lung if they died while receiving benefits, even before final adjudication. This greatly expands the ability of survivors to receive benefits without a determination of harm due to black lung. We must question whether we are compensating a survivor for the loss of a loved one because of a resulting disease due to their employment or simply allowing a pension to go to a survivor of a person employed in a particular field of work.

Fourth, this measure will greatly liberalize the granting of an award of attorney's fees and expert witness fees. It will make the operator responsible for these fees if the claimant is awarded any benefits. However, it will not make the claimant responsible for the fees of the operator if the claimant does not receive benefits. It allows the operator to be reimbursed by the trust fund, which is funded by taxes on the operator.

Fifth, this measure will permit the refiling of any claim filed after January 1, 1982, for a de novo review on the merits. Currently, claimants have unrestricted filing authority as long as they show a change in condition. This provision will simply create a judicial nightmare of new claims.

Finally, this measure will expand the number of new claimants to include coke oven workers even though their respiratory impairment may not be related to long term exposure of coal mine dust. We must question how many new cases this could involve.

I would again like to welcome our witnesses here today, and I look forward to their testimony.

Senator SIMON. I will call our first panel to the witness table, please. Jackie Fraley of Lebanon, VA; Calvin Dunford of Bandy, VA; Jean Varney of Shelbiana, KY; and Lawrence Zornes of Knox, IN.

We will start with you, Ms. Fraley, if you do not mind.

**STATEMENTS OF JACKIE FRALEY, LEBANON, VA; CALVIN DUNFORD, BANDY, VA; JEAN VARNEY, SHELBIANA, KY; AND LAWRENCE ZORNES, KNOX, IN**

Ms. FRALEY. My name is Jackie Fraley, and I am here to represent my father because he is so disabled he is not able to come and give his own personal testimony.

My father worked in the coal mines for 22 years. He was an equipment repairman for the mines. His job was to daily blow the coal dust from the filters of the air compressors. He cared for approximately 10 compressors a day. Sometimes, Dad said the dust would be so bad that he would have to lie down on the ground in order to breathe.

Dad was a very dedicated miner for the company. Many times, he would work 7 days a week, and we as a family knew that his work came first and then his family.

After working in the mines for 16 years, father started having breathing problems and pneumonia. His doctor said that his lungs were weak because he had black lung. Afterward, Dad was diagnosed by a lung specialist, a B reader in x-rays, to have black lung.

Father continued to work in the mines because he had a family to support, and he had three children to put through school and, hopefully, college. Since black lung is a progressive disease, al-

though Dad was having lung problems, he was still able to work and wanted to work as long as he could.

He worked on until July 1978, when he was in a mining accident and was paralyzed from his waist down and had to quit. He then applied for his black lung benefits and was passed by the doctors represented by the Labor Department. He then began drawing his black lung benefits.

Dad drew black lung benefits for close to 10 years. During these years, though, Dad's lung condition was continuing to get worse. Then, 1 day, Dad and Mom received in the mail a letter, as you were stating, Senator Simon, in reference to the other gentleman's testimony, that said they had 30 days to pay back close to \$70,000.

Our whole family was devastated. We could not believe it was happening, but it was happening—not to just him, but to hundreds of other miners.

Going back through the court system to prove again that he had black lung started. This time, taking Dad to doctors, to B readers of x-rays, and hospitals for breathing tests was much harder. He was disabled in two ways. His black lung had worsened, and his paralysis made it extremely difficult each time we would go to court.

Dad had to pay out large amounts of money each time to go to court. If he had six x-rays, the coal company would have five or maybe ten times more. Why? It is very simple. The coal companies have more money to be able to pay out for readings. Since the law states that there needs to be a preponderance of evidence, and the coal companies can afford more evidence, Dad would always lose his case. No matter how many readings he would have or how much testimony from doctors who had checked him, the company always had more.

My father's case is just one of thousands like it coming from the coal fields. These miners would give their benefits up tomorrow if they could go back to work. But being disabled, a miner wants what is due him.

A miner is used to hard work, but if his lungs are weak from black lung, so weak that he cannot walk to the mailbox, as my father is now, or cannot walk around the house without stopping to get, as he calls it, a good breath, he is not able to work.

Through the Virginia Black Lung Association, I have seen first-hand many miners who have black lung so bad that they must have oxygen to breathe—such as the gentleman that I see here in this room, in the audience—and they are denied because, by a preponderance of evidence from the coal company, they do not have black lung.

This is a terrible injustice that our country is doing to them.

We have knowledge of miners who have received letters of overpayment to pay back, and it has been such a trauma to them that they have committed suicide because it was too much for them to handle. My father fought in World War II to protect our country and the rights of its people, only to find out that big business controls people's rights with money.

I ask you, Senators, to please consider this injustice that is being done to the coal miner every day and change this law to be a fair law to these people, who have worked so hard in the coal produc-



tion industry of our country. Please vote for S. 1781 to help restore justice to our coal fields.

In closing, I would like to say to you that before leaving to come on this trip, there was a group of older miners and their families who gathered together in prayer. It was touching to me to see their weakened and broken and disabled bodies, praying that the Lord would help explain to you, through me, what is wrong and that what has been done to them is wrong, so that you could see that they only want what is just and right for them.

Senators, their prayer is in your hands, and you can answer that prayer for them.

Thank you.

Senator SIMON. I thank you very, very much, Ms. Fraley, and please extend our greetings to your father.

I am pleased to be joined by Senator Harris Wofford, who has shown a real interest in this whole problem of black lung that coal miners face. And I might add that Senator Wellstone has to be at another meeting for a mark-up and otherwise would be here; he has shown a real interest, also.

Senator Wofford.

Senator WOFFORD. Are you at a point where you should turn to me, or should we finish the statements?

Senator SIMON. If you wish to make an opening statement of any kind now, you may; otherwise, we will hear from the rest of the witnesses.

Senator WOFFORD. Let me make my opening statement after they finish. I do not want to interrupt them; they are who we are here to hear.

Senator SIMON. Mr. Dunford.

Mr. DUNFORD. My name is Calvin Dunford, for the record, and I live at H.C. Box 48, Bandy, VA 24602.

I am a disabled coal miner with 35 years of underground coal mining. In 1979, I was totally disabled from black lung. I was told to sign up on black lung disability by Dr. Buddington; I have got his name here. He was the first to tell me that I could not do my regular coal mining work anymore.

I signed up, and in 3 months, I received black lung benefits. I drew it for 4 years under the Labor Department. Then I got a letter from the Labor Department saying that they would no longer be paying me, that they had found my responsible operator.

They gave them 30 days to start paying me. Instead of paying, they started sending me to more doctors. I went to about four or five doctors. One of the doctors the company sent me to said that my lungs were clear. And right immediately, I went on vacation, and I passed out on the beach. Come to find out, I had lung cancer, after just leaving the doctor.

When I went for surgery, the doctor told my wife that my lung was full of black lung. They took out over one lobe of my right lung because it was filled with black lung and cancer.

Then the company started sending my x-rays all over the State of Virginia, and they got about 66 readings. Then, when we had the hearing, the judge ruled in the company's favor, because they had the most evidence, and I could not afford to get that many readings. I just had five or six for myself.

There is a stack of evidence they had against me. I had aimed to bring them inside, but they are about two feet high, and I could not carry them in here, so I left them out on the bus. These are my files from over the years that the company has accumulated against me in order to beat me.

Then the Labor Department wanted back the so-called overpayment of a little over \$17,000. They wanted that back within 30 days, and would not accept a personal check. How do they expect a man to pay back \$17,000 within a month, when he had spent it over a 4-year period to buy groceries with? It would be pretty hard to come up with \$17,000 overnight to send back to the Labor Department, I would think—in my case, it would.

I appealed the decision to the Benefits Review Board and the Fourth Circuit Court of Appeals. My claim was finally denied this past October.

Senators, we need S. 1781 so it will stop some of these medical reports, which the working people really cannot afford, and it will stop these overpayments that cause people to commit suicide.

There was a boy who lived by me who set his house on fire, and he stayed in it until he burned himself up, because he owed the Labor Department \$25,000. And there was another guy who shot himself, who belonged to our Virginia Black Lung Association, because he got an overpayment of \$30,000. He shot himself and is paralyzed on one side.

Another reason why we need S. 1781 is for our widows. If they could get their black lung benefits which are due them, they could get off welfare and food stamps. We have widows who are due black lung benefits and kids, orphans, who have to sign up on welfare and food stamps to make a living, and they cannot get what is rightfully theirs.

Thank you.

Senator SIMON. We thank you, Mr. Dunford.

Ms. Varney.

Ms. VARNEY. Good morning, Senators and everyone. My name is Jean Varney. I am proud to be here today to testify on behalf of my late husband, Billy Varney, who was a coal miner for some 30 years.

I am a member and volunteer with the Kentucky Black Lung Association in Pikeville, KY. Our president is Mrs. Susie Davis.

During my husband's life in the coal mines, I saw him come in with his clothes literally frozen to his body from working out in the extreme cold. He and another guy were closed up in the mines; we thought they had no way out, and as we stood, praying, they knew an escape route, and had belly-crawled out to safety.

My husband did not just decide to quit work. In 1980, the Department of Labor had its mobile x-ray unit visit the mines he was working in at the time. Some days later, we received a letter, telling him to get in touch with our family doctor, which we did, and after tests and x-rays, we were told that he had black lung disease and that he should not be around where there was as much as one percent dust.

So our battle to survive began. It took us 2 years to recover his compensation and Social Security. During this time, we had no insurance. We could not afford to buy the medication that he so badly

needed. In his compensation award, it stated that they would pay for any medical bills that pertained to his lungs, that were caused by his lungs. When I called and asked for this help, they told me that they no longer honored that part of the compensation award.

My husband coughed continually, spitting up large amounts of phlegm, mixed with black coal dust and sometimes blood. Wherever he sat, wherever he was at, we had to keep a special lined container for him to spit up in. He labored so hard to breathe that you could hear him throughout the house.

I saw him on different occasions, as the gentleman here beside me just testified, pass out. He broke his nose at one time; tore the flesh from his face, from his arms, from his legs. More than once, he passed out and did this. The sole cause of his sickness was his lungs. He had nothing else wrong with him.

He had also filed for his black lung benefits at this time, but was advised by his lawyer to put it on hold. In March of 1991, he was diagnosed with lung cancer caused by black lung disease. It was already in the advanced stage.

They did surgery, removing the left lung, first four ribs and muscle tissue from his left arm. After surgery, the doctor came out and told myself and the family that his lung was like a petrified rock; that it was as black as coal. The cancer was already in his lymph nodes. He went into the hospital a 210-pound man and came home 140 pounds.

We turned our living room into a mini hospital, and our vigil began. I slept on the couch for the remainder of his life, where I could watch and take care of him. He was never the same man after that. He went through periods of not knowing anyone, being very confused, having seizures. It was so hard to accept the fact that he had been handed a death sentence caused by the work he had done most of his life to support his family.

Once again, we filed for black lung benefits. As days and months passed, trips to the hospital, after sitting for hours, filling out papers, sending in information for our black lung claim, he was denied, then denied again, which our lawyer appealed.

By this time, my husband had accepted the fact that he was dying, and we started to prepare as best we could for my future. At the time of his illness, I was working and also owned my own business. Since the time he became ill, I had to quit my job to take care of him; I was forced to sell my business to help pay our medical bills and buy medication for him.

He was totally bed-confined the latter part of his life. We got a letter from the Department of Labor, asking him to go to Lexington, KY for a black lung exam. There was no way; he had to have help to get to the bathroom. Our doctor wrote the Department of Labor and asked them to send us to a doctor who was closer by. So they sent us to Birmingham, AL, at which time we did live in Alabama.

One of my husband's death wishes was that he would get his black lung award before he died. This letter came in April of 1992. I will never forget him sitting up in his hospital bed there in the living room, crying, because he was so thankful. He was so worried about me once he had to leave; he thought I would receive that income when he was gone. The letter stated he would receive no

funds because of the compensation offset, but told the amount I would receive from the award as a widow. He was so happy his prayers had been answered and his wish had come true.

Then he became worse. He started bleeding from his lungs. I had to keep him suctioned out. He was now too weak to cough the coal dust and blood up by himself. As I did this, I stood and cried as I watched the black coal dust come through the tubing into the machine.

It is so awful for our men to die such a horrible death—so unfair. But to the system, they are only numbers on paper. But I want to tell you people today that to us widows, their families, and their orphaned children that they leave behind, they are our lives.

As time grew close for my husband, our friends, family, neighbors and church stood by us, helping us to pay for the medication; he was on straight morphine. On the morning of October the 10th, 1992, my husband expired. The cancer and black lung had claimed his life. It is ironic that what was once our livelihood had now caused him his life.

For me, my world had ended, but I was beginning to find out what a cruel and hard world we live in. I applied for my widow's black lung and was denied. I had an informal hearing and once more was denied. Then one of the hardest things to understand was that 8 months after my husband's death, the Department of Labor sent me a letter stating that the award for black lung that they had sent in April for my husband was now null and void. He had been dead 8 months at this time.

I beg you, tell me, how can you take something away from our dead? It plainly states on his death certificate that lung cancer with the contributing cause of black lung disease was what killed him.

The doctor states that had he not had the black lung that caused the cancer, he would have lived 7 more years. I feel that I have been cheated by the black lung disease causing his premature death and by the system by recalling his award that he had gotten in April before he died, and by the compensation award that was supposed to pay medical and hospital bills and buy his medication that he needed so badly, which all pertained to his lungs.

My husband's illness caused by this disease cost us our life savings. Now I carry the burden of thousands of dollars in medical bills to be paid out of my set income. But most of all, he paid the ultimate price—his life—because of the black lung disease.

Please vote yes on the upcoming bill. Save other miners and their families from living through this nightmare.

I thank you, Senators. I thank everyone here today for this opportunity, and I thank God for the opportunity of getting a chance to speak out.

Thank you.

Senator SIMON. And we thank you for speaking out, Ms. Varney.

Mr. Zornes.

Mr. ZORNES. My name is Lawrence Zornes. After working in the mines in West Virginia for 16 years, I migrated to the Chicago area, where I organized the Chicago Area Black Lung Association.

I suffer from black lung disease and received benefits 8 long years after filing my claim. My testimony today is based not only

on my experience as a disabled miner, but on my knowledge of hundreds of other miners and widows.

I want to congratulate Senator Simon and the others who have introduced S. 1781. It addresses many of the main problems we have found in getting justice.

It is now your responsibility to make sure that black lung reform passes this year, without further delay. Miners and widows have been driven to their graves by the cruel mistreatment they have received under this program, which is supposed to help them. So you must not let another year go by without passing a reform bill.

It is my responsibility as one who has lived with the problem to tell you that this shot we have at getting some justice has to be on target. We have to make sure that the legislation will do the things it is supposed to do and will not be twisted around. So I want to make a few comments on the bill.

First, concerning Section 3. This is our chance to put an end to the lopsided battle that the miner can never win because the coal companies buy thousands of dollars worth of negative opinions and x-ray readings. The intention is good. The weakness is that if you look carefully at how the program works, the part of the section that deals with examinations could create unnecessary confusion and could be unfair to the miners.

The fact is that the real problem with the current program is too many second opinions or "interpretative" opinions and x-ray re-readings, much more than exams. The current rules limit the operator to one exam, and the current rules allow the DOL to order an extra exam if it is needed to resolve a medical issue. But the current rules place no limit on the "interpretative" opinions on x-ray re-readings. So the bill should focus on the real problem. Therefore, subsections (m)(1)(A) through (E) ought to be eliminated, except for the paragraph that limits the number of x-ray readings.

Subsections (m)(2), (3) and (4) go to the heart of the problem, and they should stay. But subsection (4) should spell out that if the miner's treating doctor is board-certified in internal medicine, then the treating doctor's report should get more weight.

Also, subsection (4) should spell out that the miner can submit his treating doctor's report plus one "interpretive" report, allowed by subsection (2).

Concerning section 4, widows, plainly and simply, it is unjust to say that a widow who can prove her husband was disabled by black lung disease cannot get benefits unless she also proves that the miner died of black lung. It needs to simply say that if the miner was drawing black lung benefits, or if the widow proves that he was disabled by black lung, then the widow should be paid.

The way section 4 is now written really will not make things any better, and for technical reasons, could make it worse for some people.

Finally, concerning Section 6, attorney's fees, I agree that there is now a problem that miners cannot get attorneys to represent them. But I am also a little worried that if a lawyer is guaranteed payment as soon as he wins an approval, even if the other wise appeals, some lawyers may then take the money and drop the case. That would leave the miner facing the coal operator lawyer on appeal with no one to represent him.

We need to encourage good lawyers to represent claimants all the way through, and we need to encourage coal companies to settle cases without dragging every case through Federal court.

So you might want to add to this section that the operator should have to pay extra fees as a penalty for dragging out the appeals process when the claimant winds up finally winning, again.

Thank you for introducing this bill. The current situation is causing great suffering. A bill must pass this year, and you must make sure that it will work. While we appreciate your good intentions, we have to have results this year.

I thank you very much.

[Additional material is retained in the committee files.]

Senator SIMON. We thank you.

Let me call on my colleague, Senator Wofford.

#### OPENING STATEMENT OF SENATOR WOFFORD

Senator WOFFORD. Thank you, Mr. Chairman, for calling this committee hearing and taking the lead on this bill, the need for which we just heard from these strong people. You have to get beyond the printed page and behind the statistics to the human dimension, the human faces, the personal voices. So it was very important for me to hear you, and I am sorry, Jackie Fraley, I missed the first part of your remarks, jogging here from our Senate vote; the chairman was a little faster than I was today.

This problem, for decades, has been with us. For decades, Pennsylvania's miners have provided the fuel that powered our factories, put electricity in our homes, and spread our prosperity. In return for those decades of hard, dangerous work, many miners are being mistreated by the very system that was created to help them, as you have just pointed out so powerfully.

As if the physical pain that they have endured, that some of you have endured, and people in this room who look so concerned and have come here have endured, or their families have endured, as if that pain were not enough to have suffered from black lung. They have had this terrible hard time collecting the benefits they deserve. They are often faced with these needless delays, so that a miner's claim so often becomes a widow's claim.

Last November, when you, Mr. Chairman, Senator Robb, Senator Rockefeller and I introduced the Black Lung Benefits Restoration Act, I went to the Senate floor to tell a Pennsylvania story, if I could just add it briefly here today, of Armand Brunazzi, from Jessup, PA, outside Scranton. He is a 78-year-old retired miner who worked in the coal mines for over 40 years, starting when he was 14 years old. In the 1960's, he began to experience the symptoms of black lung. Today he has serious respiratory problems. He can only walk for half a block before he can hardly breathe. He is troubled climbing stairs, coughs and wheezes frequently.

In 1979, he applied for benefits through the Federal black lung program that was set up to compensate just such miners. To this day, Armand has not seen a single dime in benefits. Instead, he has faced countless delays, hearings, re-hearings, and just plain inaction.

So the time has long since come for change, and this legislation that we are going to move forward out of this committee restricts

the number of medical opinions the Government or other defendants can submit as evidence. It begins to level the playing field so that miners and their dependents can get legal representation early in the claims. The current system actually discourages lawyers from taking miners' black lung cases while the defense has legal representation from the beginning. That is unfair.

So I look forward to working with you, Mr. Chairman, and with our colleagues on this committee to restore fairness to the black lung system so that the Armand Brunazzis of this world and our friends here today do not have to spend their retirement years battling for benefits they should have seen years ago.

Thank you.

Senator SIMON. I thank you, Senator Wofford.

Ms. Varney mentioned her husband's breathing. When you are in coal country, and you hear people breathing hard, wheezing, you know that they have been coal miners. You mentioned somebody walking half a block. When you are driving through a small community, and you see somebody stopped in the middle of the block, not talking to anyone, just stopped temporarily, you know that person is a coal miner who cannot make it to the next store or to the end of the block.

Somebody referred to the gentleman in the audience with the oxygen tank, and I do not mean to put you on the spot. You see a lot of that in coal territory. I assume you have black lung, sir?

Mr. South. Yes, Senator.

Senator SIMON. And if I may ask, how many years did you work in the mine?

Mr. South. My name is Mike South, from Fayetteville, NC, and I worked for 11½ years in the mines.

Senator SIMON. If we cannot get something worked out, the alternative to black lung is, frankly, lung transplants. And for the coal companies who are resisting legislation to change, lung transplants are going to cost a heck of a lot more than black lung legislation, which is fair, is going to cost.

Ms. Fraley, how long did your father work in the mines?

Ms. FRALEY. He worked for 22 years. He was soon to retire, but he had a mining accident and was unable to finish work.

Senator SIMON. Mr. Dunford, how long did you work in the mines?

Mr. DUNFORD. Thirty-5 years.

Senator SIMON. And Mrs. Varney, how long did your husband work in the mines?

Mrs. Varney. Around 30 years.

Senator SIMON. And Mr. Zornes?

Mr. ZORNES. Sixteen years.

Senator SIMON. Ms. Fraley, your father got this notice to pay back \$70,000. What happens to a family when they get that kind of a notice?

Ms. FRALEY. Well, like I said, at first, you just cannot believe it. You do not believe that your Government is doing this to you. You look at the letterhead, you see where it has come from, and then you start thinking, what am I going to do? Everything that I have worked for all my life is going to go down the tubes.

I would like to say that I know my father worked hard for every penny that he got, and to think that something that was really due him and that he did receive—and as I stated before, trying to put his children through school; thank God, thanks to him, I am able to have a decent job teaching and educating young children, but if he had not done that, I would not have been able to. And he gave me that. It was just horrible, it was horrible.

I am sure it went through Dad's mind, well, would it be better for me to end it all?

Senator SIMON. But my experience is that most families just cannot pay back those kinds of sums.

Ms. FRALEY. There is no way, no; there was no way that he could. You adjust your income to the amount of money that you have. A miner makes fairly good wages, but it takes a lot of money, and sending three children to college—there was no way; he did not have the money. I heard him say 100 times, "I wish I did. I could just go ahead and pay it back and not go through this agony."

Senator SIMON. And coal miners do not live in \$250,000 homes, in my experience.

Ms. FRALEY. No, sir, they do not.

Senator SIMON. So you are talking about devastating the lives of these coal miners who have, as Senator Wofford said, given their lives to see that we get the energy that we need in this country. All of a sudden, they are being discarded like old kleenex.

Ms. FRALEY. Right, and they are not well. If they have black lung, their condition is bad to begin with, and then receiving this only makes things medically that much worse for them, because it puts a strain on their heart and everything else.

Senator SIMON. Mr. Dunford, \$17,000—what do you do when they send you a letter stating you have to pay back \$17,000?

Mr. DUNFORD. That is a right smart little handful of money, especially to get it back within 30 days. I do not know if a man could go out and borrow that much money and send it back within 30 days.

Senator SIMON. But let us just say that you could borrow that much money. Then you are going to have to pay it back out of Social Security. It sounds easy, borrowing, but it is not an easy thing in your life. I do not mean to put you on the spot, but were you able to pay back the \$17,000?

Mr. DUNFORD. No, I could not have paid it, and furthermore, what time I was drawing that, Social Security offset \$247 a month of this. You see, the State of Virginia has a law that you cannot draw over 80 percent of what you were making when you were working. And this here and Social Security put me over the top; so really, Social Security owes this back where the offset me, and not me. When it comes to a showdown, if I ever have to pay it back, I am going to have to sue the Social Security board, because they got \$247 a month out of this. I got the black lung, and they got the Social Security; that is just the way they swapped out. And that is the law in the State of Virginia.

Senator SIMON. Mrs. Varney, I believe you were the one who mentioned that your husband served in the service in World War II. Is that correct?

Ms. FRALEY. That was my father, Senator.



Mrs. VARNEY. My husband did serve in the army.

Senator SIMON. He did serve in the army. And my guess is that your husband was very proud to be an American.

Mrs. VARNEY. Very, very proud.

Senator SIMON. And you are very proud to be an American.

Mrs. VARNEY. Yes, sir, I am.

Senator SIMON. But does it cause you to wonder whether our Government is standing up for what is right when you see what is happening there—not that you are going to be any less of a loyal American, but when you see that there are some imperfections in our Government that we ought to get straightened out?

Mrs. VARNEY. Yes, Senator, it causes me to wonder. They see numbers on paper. They do not see these men as they come dragging home, or torn all to pieces, or what-have-you. I have some pictures here that your staff was nice enough to have blown up for me. This photo shows my husband before; in a 2-year period, this was my husband 2 days before he died. That just shows you what black lung can do to you.

My husband was a strong man. He was never sick. His lungs were the only problem.

Senator SIMON. And having black lung—I do not mean to have you revisit your husband's situation—but it is really almost choking to death, isn't it?

Mrs. VARNEY. Choking to death. I saw him literally pass out while driving. And as you stated, these men are the ones who are working this coal, getting it out for fuel or whatever the reason may be, for everybody. And now, it is like you said a moment ago, it is like they are a dirty old kleenex, and just get rid of them. We need help. Widows need help. When you get to be our age, you just do not walk out and get a job. It does not happen like that.

Senator SIMON. I am looking at these pictures—and I do not know if everyone can see—but this shows your husband as a strong, vigorous man—

Mrs. VARNEY. Absolutely.

Senator SIMON [continuing.] And there he is after suffering.

Mrs. VARNEY. After 17 months.

Senator SIMON. Yes.

Mr. Zornes, you mentioned the lawyers' fees. The present system benefits those who can afford the best lawyers, the most lawyers, the most expensive lawyers, rather than benefiting people who have worked in the coal mines. Is that an exaggeration, or is that what is happening?

Mr. ZORNES. That is what I really tried to spell out. They cannot get good lawyers. And if a lawyer is guaranteed payment as soon as he settles an appeal on a hearing, if the other side appeals that case, that lawyer may take that money and drop that case. That will leave that claimant without an attorney to represent him in the appeal coming up.

Senator SIMON. Let me interrupt you. What chance do you have on that appeal if you do not have a lawyer to represent you?

Mr. ZORNES. You do not have any at all, because the average miner, like myself, I could not furnish one on my own that way.

Senator SIMON. The average coal miner cannot go before an appeal and understand what is going on, cannot speak the com-

plicated language spoken in court, as well as the complicated medical terms involved in black lung.

Mr. ZORNES. That is right. Senator Simon, I would like to say to you that I went to work as a young kid; I did not get any education. And there is no way I could stand up in an appeal case and focus and speak a black lung claim. I would have to have someone to represent me.

Senator SIMON. Thank you.

Senator Wofford.

Senator WOFFORD. I was going to ask for some further evidence on how difficult it is to get legal representation. Can you give us any of your personal experiences on that? How hard is it to get lawyers on your side?

Mr. DUNFORD. Where we are from, you cannot hire a lawyer because the ratio is so low of not winning any cases. Now, back when we were winning 27, 30 cases, you could get a lawyer, but a lawyer would starve to death now fighting a black lung case.

And what I have never been able to understand is you cannot take the money out of your pocket and hire a lawyer; it is against the law, unless he wins the case. And yet you can go out here and shoot somebody, and they will furnish you two lawyers to represent you. But we can go down there in Richlands, where we are from, hire an attorney, give him \$1,000 to defend us, and tomorrow, we will be in jail. Well, now, that is an awful shabby law.

I think any time a man has any money in his pocket and wants to hire anybody, he ought to be able to hire them. That is his money if he wants to spend it for a lawyer and then lose.

Senator WOFFORD. Mr. Zornes.

Mr. ZORNES. I would like to say that in the Chicago area, in the Chicago Area Black Lung Association, which five of us organized, we have been blessed to be able to find lawyers who are really interested in poor people. If it had not been for that, I would have been out in the cold.

Senator WOFFORD. It is good to hear that.

Ms. Fraley.

Ms. FRALEY. I would like to say that in my father's case, which I think is probably true with most of the cases in Virginia, anyway, there are no private attorneys who will take these cases. My father ended up, after going from one attorney to another and being turned down, he finally went to Senator Rick Boucher and said, "I have no one. I am supposed to be going to court, and there is no one who will take my case." So there was no one.

Senator WOFFORD. Well, Mr. Chairman, I have pounded the point that in this country, if you are charged with a crime, you have a right to a lawyer. It is fundamental that if you are sick, if you have black lung disease, you have a right to a doctor and to health care. But here we have a system of benefits for victims of black lung disease, and they do not have adequate representation. As much as I hate to see the interminable process go into lawyers' fees, we need a system in which you can be represented promptly.

One other question. Are there some further thoughts you may have on this question of how many examinations should be undergone? Do you want to add anything to that? Does it seem like an interminable process in some of the cases you have experienced?

Mr. DUNFORD. Not over two or three, I would not think, on each side. And I do not think the company ought to be able to get more than we can afford. You see, that is what they are doing; they are dollaring us to death. They have spent from \$25,000 to \$30,000 to beat us. Well, if they would pay us that, a lot of us will not live long enough to draw it out—if they pay us what they are trying to beat us with. You know, when a coal miner has worked 35 to 40 years, he will not draw out \$30,000 on average; if he does, he lives longer than most of them.

I think if they get three, we should get three—they do not get 66, and we get five or six. Then, when you go to the hearing, you know the company has more than you have, and they are likely to rule in their favor. Well, that is not justice.

And they will pull an old judge out from Fort Lauderdale, FL up to Abingdon, VA to hear a case, who maybe never was around a coal mine in his life, and he will sit there about half asleep—one fellow, they had to wake him up I do not know how many times; he did not know what was going on until it was over.

Well, it seems to me like we could have judges—leave them in retirement down in Florida and have judges here somewhere, around the State of Virginia, who could try these cases.

Mr. ZORNES. What hurts a lot of the miners is the operators can get so many opinions, where the miner cannot get that many. So they can override a medical exam. And that should be eliminated because no way has a miner got enough money to keep stacking them up just as fast as they stack them up; no way.

Senator WOFFORD. Mr. Chairman, I will refrain from further questions now because you have another panel that is going to be important in helping us craft the legislation. The human dimension has come through strongly and in a way that I will not forget. I want to thank every member of this panel.

Mr. DUNFORD. We want to thank you very much, Senator.

Ms. FRALEY. Thank you.

Mrs. VARNEY. Thank you.

Senator SIMON. Well, I thank you. It is important, as one of you said, that we not just look at this as pieces of paper and some abstract issue. We are talking about people's lives here, and by standing up, you have helped to make that clear, and we thank you all very, very much for being here.

Mr. ZORNES. We thank you very much.

Ms. FRALEY. Thank you.

Mrs. VARNEY. We thank you.

Mr. DUNFORD. Thank you.

Senator SIMON. Our next panel includes Allen Hess, the president of the National Black Lung Association; Rich Trumka, the president of United Mine Workers in America, and in my opinion, one of the finest union leaders in this Nation; and Bruce Watzman, vice president of safety, health, and human resources for the National Coal Association.

Senator WOFFORD. And Mr. Trumka is a great Pennsylvanian as well.

Senator SIMON. Unless you have a preference, I will just go down the line and call first on Mr. Hess.

**STATEMENTS OF ALLEN B. HESS, PRESIDENT, NATIONAL BLACK LUNG ASSOCIATION, RICHLANDS, VA; RICHARD L. TRUMKA, PRESIDENT, UNITED MINE WORKERS OF AMERICA, WASHINGTON, DC; AND BRUCE WATZMAN, VICE PRESIDENT OF SAFETY, HEALTH, AND HUMAN RESOURCES, NATIONAL COAL ASSOCIATION, WASHINGTON, DC**

Mr. HESS. It is an honor for me to be here today, and I would like to thank both of you for being here.

My name is Allen Hess, and I am a third-generation coal miner. I am president of the National Black Lung Association. I have worked 27½ years underground in the coal mines. I have black lung, but have been denied my black lung benefits.

I am here to speak not only for myself, but for the thousands of coal miners and widows across the country who are being denied the benefits due them.

We stand at a 4 to 6 percent approval rate for black lung benefits. People who get benefits get them more by a stroke of luck than by application of the standards. It is not a function of how sick you are, but whom you are up against at a hearing. One of the main reasons for this is the piling on of evidence against the coal miner by the coal operator responsible for paying the benefits.

Instead of putting food on the table, our people are borrowing up to \$1,800 for a single black lung physical, and still, that is not enough. When a miner submits the results of a physical, the responsible operator sends his reports all over the country for outside evaluation. For every medical evaluation that a miner submits as evidence, the responsible operator will submit three or four outside evaluations and depositions of his doctor to try to discredit his opinion.

For every x-ray reading that a miner submits as evidence the coal operator will submit 10 readings. They will spent up to \$30,000 to defend a single claim. Our people do not have access to that kind of evidence. The law judge goes with the side that has the most evidence. A coal miner is up against such powerful opposition it is like David against Goliath without a sling.

The coal companies are estimating that the total cost of this law over 20 years is \$10 billion more than under the present law. If we grant them the worst case scenario, which assumes a 45 percent approval rate under S. 1781, the cost to the industry would be about 50 cents more on a ton of coal over the next 20 years.

The Department of Labor estimates that S. 1781 would increase the approval rate only about 15 percent. If we take this estimate, the cost to the industry would be cut to about 17 cents a ton over the next 20 years.

S. 1781 is a very modest reform. It does not restore any of the presumptions of eligibility which caused the generous approval rate prior to 1981. It is a drastic reduction from the proposed amendments to the law which the National Black Lung Association formulated in the last session of Congress.

We are not asking for the law to be all in our favor. We are only asking for a 50-50 chance to prove that we qualify for benefits. Remember, to even get his foot in the door at a hearing, a miner must have at least 10 years of exposure to coal dust.

Despite all claims of the industry and previous administrations that the mines are clean, there is no adequate proof that this is the case. I started working in the mines in 1959. Until 1964, we were taught that coal dust does not hurt you; you were supposed to spit it up. We did not get a law until 1969 that required dust sampling. Since 1969, the people are still working in the same dusty exposure.

We have known all along that the dust sampling was fraudulent, because if you got a bad sample, you would be put into a cleaner part of the mine until you came up with a clean sample. The companies who have pled guilty to dust sampling fraud are only proving what we already knew. Just about everyone who has worked in the mines for 10 years or more has black lung.

One of the worst things that is happening to our people is the collection of overpayments. People who get a letter saying that they owe \$30,000, \$40,000, \$50,000 to the Government are devastated. Some have tried to commit suicide, as you have just heard. It is not fair to come back to a person who has been getting benefits because he is too sick to earn a living and ask him to pay back such a huge sum of money. Where is he supposed to get it?

The ones who are in the most pitiful position are the widows. Almost no widows are being approved for benefits at this time. These women are devastated by the loss of a loved one and yet have to try to get by on almost no income at all. They cannot qualify for benefits because the current law says that they have to prove that black lung was the cause of death. This is almost impossible for them to prove because their husbands usually die of complications caused by black lung. S. 1781 would let widows qualify for benefits if the miner was receiving benefits before he died, or if he was totally disabled by black lung before he died. Our widows desperately need this legislation.

What makes matters worse for all of us is that we cannot even pay an attorney to represent us in our claims. We are up against the best-paid law firms for the company plus the solicitors for the Department of Labor. We have to go into a hearing without anyone to represent us because the law says that our attorneys cannot be paid unless they win. With a 4 percent approval rate, they cannot afford to take our cases. Even a criminal can get an attorney, but a coal miner is left out.

Senators, this is an issue of simple justice. The miners afflicted with black lung worked for years in the dusty and dangerous mines of this Nation. They sacrificed their health for the company and for the energy needed for all of us. When their lungs got bad, they had to quit work, unable to provide adequately for themselves and their families. They are entitled to fair compensation. That is all we ask.

Thank you very much.

Senator SIMON. We thank you.

Mr. Trumka.

Mr. TRUMKA. Thank you, Mr. Chairman.

My name is Rich Trumka, and I am president of United Mine Workers. I am also a third-generation coal miner. In addition to that, I am the son of a black lung victim; I am the grandson of two black lung victims; I am the nephew of six black lung victims and the cousin of at least two more black lung victims.

I appreciate the opportunity to present the views of the United Mine Workers on the Black Lung Benefits Restoration Act. This bill would restore an important measure of equity and fairness to a program which is badly—and I emphasize the word “badly”—in need of repair.

When Congress enacted the Federal Coal Mine Health and Safety Act in 1969, it made a historic commitment to eradicate pneumoconiosis, commonly known as black lung, and to compensate its victims and their families. Black lung kills, but before it kills, it tortures, robbing its victims of the ability to do even the simplest tasks, like taking a shower or getting dressed in the morning, without gasping for breath. There is no cure for black lung—only prevention and fair compensation for its victims.

Mr. Chairman, you spoke about what it is like to have black lung, and both of you are from the coal fields and understand that. For anyone who is not, I can give them a graphic demonstration of what it feels like to have black lung disease. Put a piece of tape across your mouth, tape one of your nostrils closed, and then run up and down a flight of steps 10 to 15 times. Then try to catch your breath through that one open nostril. That is how a victim of black lung breathes every minute of every day.

Twenty-5 years have lapsed since the Act was passed. During this time, our Government's commitment to compensate those who have experienced black lung disease has steadily decayed. During the Reagan and Bush Presidencies, claims by black lung victims became almost impossible to win, and many who thought they won discovered that they had lost on appeal and would be required to return tens of thousands of dollars that they had already received and spent on normal living expenses.

At the present time, with initial approval rates for black lung claims at 4 percent, the black lung program is in a crisis. And on top of the physical torment of the disease itself, men and women who have spent their lives in the mines face another indignity. It is the battle they and people like Jackie Fraley's dad, and Calvin Dunford, and Jean Varney and her husband Billy, and Lawrence Zornes must wage against bureaucratic indifference and the unrelenting efforts of wealthy and powerful employers, who spare little or no expense fighting black lung claims.

Too many elderly claimants are condemned to poverty and suffering, and for some, retirement comes with the added indignity of being hounded by collection agencies who threaten to take the few possessions they have managed to retain in old age and in declining health.

Mr. Chairman, on behalf of the thousands of retired miners, widows and dependents who face these problems, I applaud your efforts to reaffirm our Nation's commitment to compensate the victims of black lung.

The Black Lung Benefits Restoration Act represents a large beacon of hope for thousands of claimants who have been beaten down by a system where poor and elderly claimants must go up against legions of corporate attorneys in order to win their right to retire, if not with their health, at least with their dignity.

Before I comment on specific portions of this bill, I want to emphasize that black lung is not—is not—simply the historic byprod-

uct of an earlier era when dust levels in the mine were uncontrolled. Miners continue as we speak to develop chronic occupational lung disease from breathing dust, and miners exposed at the current exposure limit of 2 milligrams per cubic meter continue today to lose lung function.

As a Nation, we have not yet achieved either of the goals established in the 1969 Act. We have not yet eradicated the causes of black lung, and we have not guaranteed fair compensation to those who suffer from it.

Now I would like to briefly comment on the major components of S. 1781. Perhaps the most shameful of the prior administration's practices was the effort to require miners or their surviving dependents to repay benefits, many times tens of thousands of dollars, that they had received while their claim was being appealed. S. 1781 would put an end to this obscene practice.

Under the proposal, if interim claims are subsequently denied, recipients would not have to repay the money they have already received. We strongly support this provision and hope it will be approved by the committee.

There is ample testimony concerning the level of disagreement that persists in the medical community concerning the causes and appearance of chronic lung disease among retired coal miners, and it is no secret that parties opposed to the miner's claim, either coal mine operators or the trust fund, have significant resources to defeat the miner's case. Hearing officers and administrative law judges whose role it is to weigh the evidence often defer to evidence offered by the miner's opponents, in part because there is simply more of it. You have heard about the 2-foot stack of x-rays that were presented against our members.

For these reasons, we support reasonable limits on the amount of evidence that can be submitted by the opponent to a claim. This bill limits the number of medical examinations and chest x-rays that the miner's opponents may require to the number conducted and submitted by the miner—so that if a miner could afford five, they could submit five.

These changes will help transform the program from one which subsidizes the production of medical opinions to one that compensates victims suffering from the disease.

S. 1781 also addresses the almost insurmountable difficulties faced by widows and dependents of black lung victims seeking survival benefits. Processing claims takes many years—many years—and black lung kills. And as you have heard here today, it is not uncommon for a miner to die before a final decision is made on his or her claim.

Currently, the law requires proof that pneumoconiosis was the cause of death. But proving that black lung was the cause of death is extremely difficult, and consequently, many claims have been denied. We therefore support the provision in S. 1781 that would grant survivor benefits if the miner was either receiving interim benefits or was totally disabled due to black lung, unless the death was the result of an event that had no medical connection to black lung.

In addition, we support provisions in the bill to provide attorneys' fees, which have become necessary because of the scarcity of

attorneys willing to take on black lung cases. Few people are willing to take on a case that will take 7 to 10 years to complete for a 4 percent chance of winning. Given the low approval rate and the length of time it takes to process the claims, guaranteeing timely compensation to black lung attorneys has become a necessary element of guaranteeing fairness to victims of black lung.

And finally, we support the bill including a provision that would provide a de novo review of claims denied after January 12, 1982. This will provide a long overdue opportunity for miners and their survivors to have their claims evaluated as Congress had originally intended.

In closing, Mr. Chairman, I wish to commend you; I wish to commend you tremendously for moving this issue through to its present stage, for your commitment over the years to black lung victims and their families, and for seeing this bill move to its present State. Hopefully, it will be passed by the Senate, and the President will sign it into law and guarantee those victims what they were originally promised in 1969—fair compensation for a disabling, hideous disease that has no cure.

Thank you, Mr. Chairman.

Senator SIMON. We thank you, Mr. Trumka, for your testimony and your leadership.

[The prepared statement of Mr. Trumka follows:]

#### PREPARED STATEMENT OF RICHARD L. TRUMKA

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to present the views of the United Mine Workers on the Black Lung Benefits Restoration Act. This bill would restore an important measure of equity and fairness to a program which is badly in need of repair.

When the Congress passed the Federal Coal Mine Health and Safety Act in 1969, it made a historic commitment to eradicate pneumoconiosis, commonly known as black lung disease, and to compensate its victims and their families. Black lung kills. But before it kills, it tortures, robbing its victims of the ability to do the simplest tasks, such as taking a shower and getting dressed, without becoming short of breath. There is no cure for black lung; it must be prevented. And its victims must be compensated.

Twenty five years have lapsed since this Act was passed. During this time, our Government's commitment to compensate those who have experienced black lung has steadily deteriorated. During the Reagan and Bush presidencies, claims became almost impossible to win and many who thought they had won, would later lose on appeal and be required to return tens of thousands of dollars they had already received.

At the present time, with initial approval rates for claims having declined to 4 percent, the Black Lung program is in a crisis. On top of the physical torment of the disease itself, men and women who have spent their lives in the mines face another battle. It is a battle against bureaucratic indifference and the unrelenting efforts of wealthy and powerful employers who spare little expense to deny benefits. Too many elderly claimants are condemned to poverty and suffering, and for some, retirement comes with the added indignity of being hounded by collection agencies who threaten to take the few possessions they have retained in old age and declining health.

Mr. Chairman, on behalf of the thousands of retired miners, widows and dependents who have faced these problems, I applaud your efforts to reaffirm our nation's commitment to compensate the victims of black lung. The Black Lung Benefits Restoration Act represents a light at the end of the tunnel for thousands of claimants who have been beaten down by a system where poor and elderly claimants must go against legions of company lawyers in order to win their right to retire, if not with their health, at least with their dignity.

Before I comment on specific portions of this bill, I want to emphasize that black lung is not simply the historical byproduct of an earlier era, when dust levels in the mines were uncontrolled. Recent studies have confirmed what many have sus-



pected. Miners continue to develop chronic occupational lung disease from breathing dust. The signs of disease are evident in more ways than can be seen on a chest x-ray film. Chronic bronchitis and emphysema are caused by breathing dust. And miners exposed at the current exposure limit of 2.0 milligrams per cubic meter continue to lose lung function.

As a nation, we have not yet achieved either of the goals established in the 1969 Act: We have not yet eradicated the causes of black lung and we have not guaranteed fair compensation to those who suffer from it. There is a continuing need not only to provide compensation for miners with black lung but also to do more to prevent black lung by reducing exposure to respirable dust.

Now I would like to comment on the major components of S. 1781.

#### BENEFIT OVERPAYMENT

Perhaps the most shameful of the prior administrations' practices was the effort to require miners or their surviving dependents to repay benefits they had received while their claim was being appealed. We have heard testimony of elderly recipients, many of them widows of miners who died of black lung, who were contacted by the Department of Labor, many years after a claim had been approved, and requested to repay the benefits, often within thirty days. This often involved large sums of money—up to \$60,000 in some cases—and caused significant strains on people trying to live on fixed incomes. On at least one occasion, a recipient committed suicide rather than face poverty for the remainder of his life.

S. 1781 would put an end to this obscene practice. If interim claims are subsequently denied, recipients would not have to repay the money they had already received. We strongly support this provision and hope that it will be approved by the Committee.

#### AMOUNT OF EVIDENCE TO DETERMINE BENEFIT ELIGIBILITY

There is ample testimony concerning the level of disagreement that persists in the medical community concerning not only the interpretation of chest x-ray films but also the causes and appearance of chronic lung disease. It is no secret that parties opposed to the miner's claim—either coal mine operators or the Trust Fund—have significant resources to defeat the miner's case. Because of this, it is not uncommon for claimants to face company attorneys armed with several expert opinions gathered to refute evidence of the disease initially diagnosed by the claimant's own physician. Hearing officers and Administrative Law Judges, whose role it is to weigh the evidence, often defer to the evidence offered by the miner's opponent in part because there is more of it.

Most claimants can afford only one or two chest x-rays with appropriate readings. Companies have more—many more—resources to find contrary opinions from doctors with better resumes than the claimant's doctor.

In many cases, the claimant's physician has known, examined, and treated the miner for many years and has seen his condition deteriorate with his own eyes. Though the miner's own physician may not have fancy credentials, he or she knows something more important: the miner himself.

Not only is the volume of medical evidence a problem, requiring miners to submit to numerous examinations is burdensome and demoralizing.

For these reasons, we support limiting the amount of medical evidence that can be submitted by the opponent to a claim. This bill limits the number of medical examinations and chest x-rays that the miner's opponent may require to the number conducted and submitted by the miner. And neither the miner nor the other side may submit more than one medical opinion based on a review of the miner's medical records. Finally, if the miner's own physician is board certified in a relevant specialty, his or her opinion is to be given substantial weight over that of other physicians. These changes will help transform the program from one that subsidizes the production of medical opinions to one that compensates victims suffering from the disease. These are among the most important and necessary improvements contained in the legislation.

#### SURVIVOR BENEFITS

Processing claims can take many years. And black lung kills. Therefore, it is not uncommon for a miner to die before a final decision is made on his or her claim. In the absence of a final decision, survivors can be left not only without a spouse or parent, but also without any benefits. The one way that survivors can receive an award under the present program is if they can demonstrate that the cause of death

was black lung. Proving that black lung was the cause of death is extremely difficult and consequently, many claims have been denied.

This bill is an improvement. If a survivor files a claim for benefits and the miner was either receiving interim benefits or was totally disabled due to black lung, the miner's death would be presumed to be from black lung—unless the death was the result of an event that had no medical connection with black lung. This puts the burden of proof on the opponent to show that the cause of death was not due to black lung. We support this change.

#### ATTORNEY FEES

Another problem claimants face is finding an attorney to prepare a claim. Several factors deny claimants adequate representation. Since it is so difficult to win a claim, and since attorney's fees are paid only if a the claimant wins, there is little incentive for attorneys even to take up claims. Payment is late and unlikely. Furthermore, attorney's fees come out of the claimant's award, denying him or her the full amount. This is a system stacked against the claimants.

This bill provides a partial solution to the problem. Under this bill, attorney fees are still contingent on winning a claim but they are to be paid either by the Responsible Operator or by the Trust Fund; they do not come out of the claimant's award.

#### REFILING CLAIMS

Finally, the bill makes it possible for claims filed and closed since 1982 to be re-opened, de novo, as if they were new claims. This is an important and long overdue opportunity for miners and their survivors to have their claims evaluated as Congress had originally intended, without having to combat the disabling volume of medical evidence offered by company attorneys.

In closing, I wish to commend the Chairman of the subcommittee for moving this issue through to its present stage. We look forward to seeing this bill passed by the Senate and sent to the President for his signature.

Senator SIMON. Mr. Watzman.

Mr. WATZMAN. Thank you, Mr. Chairman.

I am Bruce Watzman, vice president of the National Coal Association. On behalf of our producer and affiliated members, I am pleased to be here today. I have submitted a lengthy written statement which I would ask be made a part of the record and I will merely summarize it.

Senator SIMON. It will be made a part of the record.

Mr. WATZMAN. Mr. Chairman, we recognize that some discrete modification to the black lung program is warranted. Regrettably, the bill pending before this committee does not achieve such reform. Rather, we believe it represents a wholesale attempt to repeal the amendments which labor, management, and the administration brought to the Congress in 1981, which was ultimately passed and signed into law.

Since passage of the black lung program, the coal industry has attempted to eliminate the occurrence of CWP. On an industry-wide basis, based on samples taken by mine safety and health inspectors, we continue to achieve consistent compliance with the statutorily mandated dust levels. These standards, established using the best available medical evidence, are designed to prevent the occurrence of CWP.

We believe it is extremely unlikely that individuals whose principal mining employment has been since 1970 will contract pneumoconiosis. In fact, it should be assumed that the approval rate should continue to decline over time.

Second, we have supported an equitable compensation program for the generations of miners and their dependents who are afflicted by this disease. These actions notwithstanding, we continue to seek new systems and devices to reduce respirable coal mine

dust generation and exposure in the mines. Today, more than one-quarter million miners and their beneficiaries receive monthly benefits and medical care, at a cost of approximately \$1.5 billion annually. They are a powerful testament to Congress' decision 35 years ago to compensate those suffering from CWP.

We believe that no change to existing law is necessary to ensure that legitimate claimants receive benefits. To date, in excess of \$30 billion has been spent collectively by SSA, by mine operators through the assignment of claims directly to them, and through the payment of the coal excise tax which funds the Black Lung Trust Fund.

Some have alleged that legislation is necessary to secure a higher approval rate. In my statement is a chart from the Department of Labor OWCP Annual Report to Congress for fiscal year 1992. The chart indicates that for the 19-year period 1973 to 1992, approximately one out of every two claims filed, 47.9 percent, were approved for benefits. Simply put, those suffering from CWP receive benefits.

We submit that the existing program has become a powerful tool for entitlement. S. 1781 only enlarges and perpetuates that entitlement.

Mr. Chairman, we have several concerns with the pending legislation which are critiqued in detail in our written submission. In the interest of time, I will focus on only two of the sections.

Section 3 would limit the submission of evidence by a party adverse to the claimant to only that amount of evidence submitted by the claimant. It further limits the contesting of the central medical question by restricting the submission of more than one piece of evidence during rebuttal, and places increased and unwarranted significance on the opinion of claimant's treating physicians. This section raises serious concerns in our minds as to whether the Congress can limit a party's rights in a judicial proceeding. It creates an evidentiary balance which, under present legal interpretation known as the "true doubt principle," would culminate in the approval of thousands of claims.

A second section, Section 8, would permit the refile of all claims denied since 1982. This would occur even though—and I stress even though—under present law, a claimant can have his claims reconsidered upon the showing of a change of condition. Let me emphasize this point. There was nothing under the current law to prevent these individuals from having their claims reviewed again if their condition changes.

In 1978, 60,000 claims which had been previously denied were reversed following enactment of the 1977 Amendments. This cannot and must not be permitted to occur again.

Mr. Chairman, we are not unsympathetic to the claimants' complaints over the administration operation of the program. No one should be deprived of legal representation, nor should it take years to have a claim finally adjudicated. We must, however, strenuously object to provisions which limit our ability to defend against claims and the unfettered refile of tens of thousands of claims.

This bill neither addresses the real problems nor assures potential claimants that the program will operate in an expeditious and fair manner. We stand ready to work with you to address the real

problems confronting claimants, but we do not believe the current legislation will accomplish that.

Thank you.

[The prepared statement of Mr. Watzman follows:]

#### PREPARED STATEMENT OF BRUCE WATZMAN

Mr. Chairman, members of the subcommittee, I am Bruce Watzman, Vice President, Safety, Health and Human Resources for the National Coal Association. On behalf of our producer and affiliated members who produce almost 80 percent of our nation's coal production—I am pleased to be here today. The National Coal Association recognizes that some modest reform of the existing Black Lung Benefits Program is narrated. Regrettably, the bill before the Committee, S. 1781, does not represent reform. It perpetuates existing problems in the program and reverses improvements made by Congress a decade ago.

The Black Lung Program was enacted as Title IV of the Coal Mine Health and Safety Act of 1969. Since passage of this wise and humane law, the American coal industry has pursued two objectives. First, we have attempted to eliminate the occurrence of coal workers pneumoconiosis, better known as black lung, among our nation's miners. Second, we have supported an equitable and generous compensation program for the generations of miners, and their dependents, who are afflicted with this occupational disease.

The coal industry has virtually eliminated pneumoconiosis by reducing particulate concentration in the nation's coal mines. Since 1972, statutorily mandated concentrations of 2 milligrams of particulate per cubic meter have been in place. This standard, established using the best available medical evidence, is designed to prevent the occurrence of pneumoconiosis. For miners who have spent most of their working lives at this exposure level, the incidence of pneumoconiosis should be minimal at worst.

Nevertheless, the coal industry and equipment manufacturers that supply it are seeking new systems and devices to reduce particulate exposure. America coal companies continue to explore ways to make their mines safer and healthier environments for their employees.

Our industry is committed to the proposition that miners who demonstrate the symptoms of pneumoconiosis are entitled to benefits. Today, more than one-quarter million miners and beneficiaries receive monthly benefits and medical care. They are a powerful testament to Congress' decision 35 years ago to compensate those who suffered from this disease. No change in existing law is necessary to insure that legitimate claimants receive black lung benefits.

We respectfully submit, however, that the existing program has also become a powerful instrument for entitlement. The bill before this Committee only enlarges and perpetuates this entitlement. S. 1781 breaks a critical and fundamental link in the existing law: the link between disability established by medical evidence and the award of benefits.

This link is the only basis for charging coal companies with the sole responsibility for benefit payments. If Congress wishes to sever the link and pay benefits for reasons totally unrelated to coal mining, this is the decision which Congress is entitled to make. However, the coal industry should not be charged with paying for benefits engendered by causes which cannot be related to the mining of coal.

Our reasons for opposing these measures are set out below. However, I believe it is worthwhile to review briefly the program's transformation since its inception in 1969 in terms of beneficiary eligibility and attendant cost.

#### OVERVIEW OF THE BLACK LUNG ACT AND REFORM AMENDMENTS

The federal black lung program was initiated in 1969 as Title IV of the Coal Mine Health and Safety Act. It was designed to provide benefits to miners totally disabled due to pneumoconiosis arising out of coal mine employment and to survivors of miners whose death was a result of the disease.

Medically, pneumoconiosis is divided into two categories: simple and complicated, neither of which was statutorily defined. Complicated pneumoconiosis, the advanced stage of the disease, involves substantial fibrotic reaction of the lungs to dust deposits, leading to marked pulmonary impairment and disability in later years. Simple pneumoconiosis is not considered disabling and seldom results in significant respiratory impairment. On this later point, a report submitted to Congress in 1986,

Current Medical Methods in Diagnosing Coal Workers' Pneumoconiosis. and a Review of the Medical and Legal Definitions of Related Impairment and Disability stated "prevailing medical opinion holds that simple CWP does not cause significant lung impairment."

Title IV, as amended, is divided into two parts, Part B and Part C. Part B deals with claims filed on or before December 31, 1973. Part B claims, which are a closed universe of claims, are administered by the Social Security Administration (SSA).

Part C deals with claims filed after 1973. Coal producers are responsible for the payment of benefits to eligible claimants under Part C in two direct ways: (1) as individual coal mine operator defendants (responsible operators) and (2) as mandatory payers of a production tax into the Black Lung Disability Trust Fund. Revenues from the Fund are used to pay compensation to eligible claimants whose coal mine employment ended before 1970 or where a individually responsible operator cannot be identified. The Department of Labor (DOL) was chosen to administer Part C claims and to process and defend claims against the Fund.

The black lung program's history over the last 20 years is one of disagreement over what Congress intended as the program's actual purpose and how the program should be administered. Congress has repeatedly amended the law, changed standards, reopened claims for examination, changed administrative agencies, and fostered constant rewriting of regulations. Circuit court interpretations have varied widely on the use of various presumptions favoring entitlement and the right of defendants to introduce medical evidence or to generally defend against black lung claims.

Three times in the last 12 years, the Supreme Court of the United States has had to address this confusion and disagreement. The Supreme Court, for example, has pointed out that "if a miner is not actually suffering from the type of ailment with which the Congress was concerned, there is no justification for presuming that the miner is entitled to benefits." *Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 158-159 (1987).

This may seem obvious. However, some federal appellate courts have repeatedly held, in certain cases, that benefits can be awarded to a miner who is not totally disabled due to pneumoconiosis or does not even have the disease.

Congressional policy shifts and inconsistent judicial interpretation have resulted in varying approval rates over the history of the program. In the early years of the program, SSA approved approximately 50 percent of the 357,000 miner and survivor claims filed. However, a backlog of pending and denied claims created pressure to amend the statute in 1972—the first of two major liberalizations of the program.

In 1972, Congress greatly expanded the eligibility criteria by adding a new presumption of eligibility based on coal mining exposure of 15 years or more, by extending eligibility for benefits to survivors of miners who died from causes other than pneumoconiosis, by ordering reconsideration of all denied claims, and by making several additional changes. Of particular concern was the addition of the 15-year presumption. It was adopted in spite of testimony presented by the National Academy of Sciences that stated, "At best, it takes 10 to 15 years of underground mining for coal miners even to begin to develop coal workers' pneumoconiosis." The result of these amendments was that by 1974 some 470,000 miners, widows and dependents received monthly compensation, at a cost of \$1 billion per year. Present estimates of benefits provided under this part of the program, administered by SSA, is a cumulative \$20.8 billion through fiscal year 1993.

In 1974 the DOL-administered program began. Under it, DOL assigned payment responsibility to individual coal operators where they could be identified. Those claims for whom a responsible operator could not be identified were still paid from general revenue. Unlike SSA, however, DOL in administering claims developed evidence addressing the medical basis for entitlement. By 1977, the DOL had received more than 128,000 claims and processed about half, with approximately 5,000 approved. This approval rate of approximately eight percent was considered to be unacceptable by certain members of the Congress and gave rise to the second major liberalization of the program.

Congress, in 1977, amended the Act again expanding the eligibility requirements. Among the changes were several new presumptions designed to ensure increased claims approval. The Department of Labor and Social Security Administration were directed to re-examine all claims which had been denied prior to March 1, 1978 and language was added to limit the government's ability to re-read x-rays. This last point is of particular interest since the x-ray is regarded as the best evidentiary tool for diagnosing pneumoconiosis. Additionally, the amendments eliminated the deadline on Part C filings thereby making the program permanent.

Lastly, the 1977 amendments incorporated the Black Lung Revenue Act of 1977 which created the Black Lung Disability Trust Fund. It is this Fund, currently \$3.95 billion in debt, which the proponents of the legislation pending before this Committee look toward to provide the resources to pay what undoubtedly will be a large group of new black lung recipients for whom there is no responsible operator.

The 1977 amendments had a dramatic effect on the DOL and SSA approval rate. The SSA allowed an additional 23,178 claims, bringing the final tally under the 1969, 1972 and 1977 legislation to an 81 percent approval rate. A July 1980 General Accounting Office report based on a random study of SSA approvals concluded that "in 88.5 percent of the cases, medical evidence was not adequate to establish disability or death from black lung."

The DOL approval figure shot up from 5,000 to 60,000 within two years after enactment of the 1977 amendments. Today, approximately 100,000 miners, survivors or dependents receive either compensation and/or medical benefits from the Fund. This figure does not account for those receiving benefits from SSA (approximately 150,000) or directly from responsible operators (approximately 16,000). The cumulative cost of benefits from these three sources exceeds \$1.5 billion annually.

In 1981 the Administration, labor, and management brought to the Congress a compromise set of amendments to the Act to stabilize the program and steer the Fund toward a course of financial stability. Of great import, the amendments eliminated three of the five presumptions contained in the law, removed the bar of the rereading of x-rays in the file, limited survivor benefits to only those cases where the death was the result of pneumoconiosis and not from an unrelated cause, required a social security earning offset applied to Part C claims and increased the coal excise tax by—amount sufficient to restore the Black Lung Trust Fund to solvency.

This general background puts into perspective the history of the program from one which provided benefits to the maximum number of claimants possible, albeit paid by funds from SSA and general revenue, to a program funded by the industry in which benefits are increasingly paid only to those medically eligible. From the beginning, Congress intended payment of claims to be based on "all relevant medical evidence."

Unfortunately, this was not always the case as the Supreme Court noted in its review of the program:

After the SSA adopted its interim presumption, its claims approval rate increased, in part due, it is thought, to factfinders failing to consider all of the employers' relevant medical evidence. To assure that this problem would not infect adjudications under the new Labor interim presumption, the requirement of 30 U.S.C. Sec. 932(b) that all relevant medical evidence be considered in adjudicating SSA claims was explicitly carried over into the Labor presumption's rebuttal section.

*Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. at 149-50 (1987) ("Mullins"). Since enactment of the 1981 reform amendments, the Part C permanent program has been one based on medically accepted diagnostic testing and evaluation. We believe S. 1781 would again result in the channeling of benefits to individuals (or their survivors) with limited or no discernible disability.

Some have indicated a need to amend the Act to achieve a higher approval rate. The chart below, which covers the period from 1973-1992, indicates that 47.9 percent of the claims filed were approved. What often gets overlooked is that for that 19-year period approximately one out of every two claims filed was approved for benefits. A factor which has impacted the approval rate decline in recent years is that individuals who worked in the mines prior to 1970 for a period sufficient to contract black lung disease have retired and are, where entitled, receiving benefits

under the program. Individuals, whose principal mining employment has been since 1970, presuming medical studies are correct, cannot contract CWP. CWP does not arise from specific exposure but from consistent high levels of exposure over an extended period of time. In fact, it should be assumed that the approval rate should continue to move toward zero as time progresses.

Summary of Claims Activity, Department of Labor Black Lung Program  
Cumulative, July 1, 1973 - September 30, 1992

| Claim Category  | Approved | Denied  | Total Decisions | Approval Rate (%) |
|---|----------|---------|-----------------|-------------------|
| SECTION 435<br>claims filed<br>7/1/73 - 2/28/78                         | 56,169   | 63,636  | 119,805         | 46.9              |
| SECTION 727<br>claims filed<br>3/1/78 - 3/31/80                         | 20,516   | 41,179  | 61,695          | 33.3              |
| SECTION 718 (PRE)<br>claims filed<br>4/1/80 - 12/3/81                   | 4,125    | 28,525  | 32,650          | 12.6              |
| SECTION 718 (POST)<br>claims filed<br>1/1/82 - present                  | 6,413    | 81,759  | 88,172          | 7.3               |
| PART B DENIALS<br>denied claims<br>inherited from SSA                   | 21,934   | 45,709  | 67,643          | 32.4              |
| SSA APPROVALS<br>claims approved by<br>SSA under the 1977<br>amendments | 15,946   | 711     | 16,657          | 95.7              |
| Subtotal  | 125,103  | 261,519 | 386,622         | 32.4              |
| MEDICAL ONLY  | 116,679  | 1,660   | 118,339         | 98.6              |
| GRAND TOTAL   | 241,782  | 263,179 | 504,961         | 47.9              |

Source: OWBPT Annual Report to Congress, FY 1992.  
U.S. DOL, Employment Standards Administration

#### FINANCIAL IMPLICATIONS OF PROPOSED REFORM LEGISLATION

NCA, in an effort to ascertain the financial implications of proposed black lung legislation, retained the services of Milliman and Robertson, a leading independent actuarial firm. They estimated that H.R. 2108, introduced by Rep. Austin Murphy, which is similar to S. 1781, would:

significantly increase the costs of the Federal black lung indemnity program over the costs being expended under current law by as much as \$30 billion. We believe that a minimum approval rate in the 45 percent range will emerge—these high approval rates will occur even though the incidence of disabling coal workers pneumoconiosis is decreasing as the 1970 dust standards are, by all accounts, having the intended effects of limiting disabling coal dust exposures.

We would ask that a copy of this study be included as a part of the hearing record.

#### S. 1781

This bill proposes to address perceived inequities in the program's administration by imposing limitations (which are unjustified and potentially unconstitutional) on a defendants ability to enter contravening evidence into the record. This occurs even though another section of the bill provides incentives for the claimant's counsel to perfect the record with expert testimony and opinions. Moreover, the bill would require the reconsideration of thousands of previously denied claims even though mechanisms currently exist for a claimant to have his claim reconsidered through a modification proceeding if the individuals medical condition has changed since the time of the denial of his previous claim.

The Black Lung Benefits Restoration Act of 1991 is a misnomer. This bill does not restore benefits to anyone previously receiving them. Congress has never authorized, nor has the coal industry advocated, the termination of benefits where a final adjudication of entitlement has been entered. Rather, it attempts to validate a entirely new class of claimants whose claims were previously denied by providing

them another opportunity to have their claims reconsidered under new provisions which would strictly limit a defendant's ability to introduce evidence. It is important to repeat that the vast majority of these claims have already been denied by both SSA and DOL, many rejected three or more times, and that there is nothing under current law to prevent these individuals from having their claims reviewed again through the filing of a modification petition if their condition changes.

The proposed amendments to the black lung program go far beyond the intent of the original law enacted by Congress and they undermine the amendments enacted some 13 years ago which were supported by labor, management, and this body. In fact, the provisions contained in S. 1781 would again transform the present specific disease-related compensatory program back into a general welfare program where benefits would automatically accrue to individuals regardless of whether they had actually contracted coal workers' pneumoconiosis.

For this Committee to now embark on such a legislative course within the narrow confines of the coal industry, without considering the potential economic impact on the industry, its existing work force and the communities which rely on a competitive coal industry and the economic infrastructure the coal industry supports, is questionable public policy. The coal industry and its employers already pay social security and state workers compensation taxes to compensate individuals unable to work because of occupational disability. To perpetuate and compound the acknowledged flaw of the federal black lung program through enactment of S. 1781 is not sound. This same conclusion was reached in a study conducted by the School of Social Service Administration, the Committee on Public Policy Studies, The University of Chicago entitled, *Black Lung: A Study of Disability Compensation Policy Formation*. The study states:

Through a classic confluence of interest groups, politics and public relations, the Black Lung Program mushroomed into a billion-dollar-a-year permanent federal program. The great conflict between the Social Security Administration and congressional proponents centered upon Social Security's efforts to run Black Lung as a disability compensation program and the desire of proponents to make it into an income maintenance program for miners and their families. The proponents largely succeeded and essentially Black Lung became for a while a supplemental pension program for long-term miners with any form, and virtually any degree, of respiratory disease.

Some have argued that the coal industry will not be called upon to pay for the thousands of approved claims which will result—nothing can be further from the truth. Senator Simon has recognized that an increase in the black lung coal excise tax will be required to pay for the thousands of claims approved under S. 1781. We believe that his amendment, which satisfies Congressional Budget Office budget statement by passing along to electric rate payers \$185 million over 5 years, represents just the tip of the iceberg. Congressional and Administration estimates of the cost of this program have always been too low. I can assure you that should S. 1781 become law the Congress will again have to address the question of who should pay for the black lung program since over 80 percent of the coal produced in the U.S. is used by U.S. electric utilities, ultimately Congress will be forced to decide how much electric consumers should be called upon to contribute. Each and every ton of coal used shoulders a share of this burden and every electric consumer unknowingly subsidizes this program. Currently coal companies not only directly pay for the black lung benefits for certain of their former employees but also pay into the Black Lung Disability Trust Fund \$1.10 for every ton of underground-coal mined and 55 cents for every ton of surface-mined coal. Coal consuming industries and American electric rate payers should not be forced to pay benefits where medical evidence of black lung does not exist. S. 1781 would mandate just that.

#### SECTION-BY-SECTION ANALYSIS

##### Sec. 2. BENEFIT REPAYMENT

New "Sec. 436" would allow claimants to keep Part C claim payments irrespective of whether the claimant is finally adjudged eligible for benefits unless fraud or deception was used to procure the claim.

This section contains no limitation on its application, so presumably its reach is limitless and could include claims filed and approved since the programs inception. As such, any claimant who received benefits under the Act before final adjudication of the claim and who is entitled to the benefits could conceivably be entitled to the benefit of this section even if the claim and its denial dated back to the inception of the program. If this is the case, the financial burden will far exceed Congressional Budget Office's estimate.



Of greater concern, this section removes the balance which the original framers of the program had intended. Namely, that claimants, because of the potential for lengthy adjudicatory proceedings, could begin to receive benefits upon initial approval with the understanding that they would have to be repaid if ultimately found to be ineligible. This principal has guided the program since its inception and its elimination is without merit.

### Sec. 3. EVIDENCE

This section limits the submission of evidence by a party adverse to the claimant to only that amount submitted by the claimant.

It further limits the contesting of the central medical question by restricting the submission of more than one piece of evidence during rebuttal.

It further requires that "substantial weight" be given to the miner's treating physician and allows for a ALJ to require additional medical evidence for "good cause" to perfect a claim.

In an attempt to resolve a perceived inequity in the presentation of evidence, this section raises constitutional concerns on whether the Congress can limit a party's rights in a judicial proceeding. Setting aside the whole philosophical question of whether one should limit a party's evidentiary rights, this section creates evidentiary balance which, under present legal interpretation (the true doubt doctrine) would culminate in the approval of thousands of claims.

All parties to a proceeding must be permitted, under standards of equal access, to present their case completely and without artificial limitation. Section 3 will deny defendants this right and undoubtedly lead to constitutional challenges.

### Sec. 4. SURVIVORS AND DEPENDENTS

This Section 422 is similar to that proposed in H.R. 2108. It would mandate survivors and dependents awards when:

Death was due to pneumoconiosis in whole or in part, or

The miner was receiving benefits at the time of death, or

The miner was totally disabled by pneumoconiosis at the time of death.

It establishes a rebuttable presumption where death resulted from a cause having no medical connection to pneumoconiosis.

Stipulates that survivor's benefits will not terminate upon remarriage, is remarriage occurs after attaining the age of 50.

Section 4 would return to the pre 1981 days when benefits were provided regardless of the actual cause of a miner's death. It would mandate that a surviving spouse is automatically entitled to survivor benefits when a claim is filed (1) if the miner was receiving benefits at the time of death and (2) even in instances where the miner was disabled by pneumoconiosis but no medical determination of impairment or cause was finalized.

In enacting the 1981 reform amendments Congress sought to assure that survivor benefits would be paid only when the miner's death was significantly related to or aggravated by pneumoconiosis. DOL's administration of the program since enactment of those reforms has resulted in thousands of eligible survivors receiving benefits. Elimination of this restriction serves no purpose other than to perpetuate the income transfer which occurred prior to 1981.

### Sec. 5. RESPONSIBLE OPERATOR

This section is intended to provide expedited mechanism for a responsible operator to be determined prior to the claim proceeding on its merits. This section resolves a DOL policy to name for administrative convenience, in some instances, multiple responsible operators.

### Sec. 6. ATTORNEY FEES

This section addresses a claimant's inability to obtain legal representation by establishing a mechanism for the claimant's attorney to receive compensation (including expert witness fees) at each successive stage of the adjudicatory process, provided an favorable entitlement decision is obtained.

Should an operator ultimately prevail in challenging the validity of a claim, the operator will be reimbursed, by the Trust Fund, for any money paid to the claimant's attorney.

Section 6 represents a bizarre attempt to address what many have recognized as a true problem confronting black lung claimants, namely, the inability to obtain legal representation in judicial proceedings. It alters the existing system which allows for the payment of attorney's fees only after a final adjudication.

This section establishes a special, preferred class of claimants whose ability to obtain attorney's fees far exceed those provided by any other program or statute. We are unable to identify any other program which provides for the payment of such fees prior to a case being finally adjudicated. This section sets a dangerous precedent which should be examined by the Judiciary Committee prior to its final consideration.

### Sec. 7. ADMINISTRATION

The section addresses a previous dispute regarding the appeal of District Office decisions to the Benefits Review Board.

### Sec. 8. REFILEING

This section permits the refiling of any claim filed and defined after January 1, 1982, for a de novo review on the merits. Approximately 90,000 previously denied claims would be subject to review.

Under the current program, claimants can refile for consideration upon the showing of a change of condition. This provision eliminates that prima facie requirement and provides for unrestricted refiling authority.

No one can predict with certainty how many claims will be refiled and what percentage will ultimately be approved. While history is not a exact gauge for the future, one need only look to the 1977 amendments to the Act and the mandate that previously denied claims be considered under the new eligibility criteria to ascertain the potential financial implications of this provision. In that instance, some 60,000 previously denied claims were reconsidered and placed in payment status, thus dooming the Trust Funds fiscal solvency.

### Sec. 9. DEFINITIONS

This section would:

Amend the definition of miner to include coke oven workers or those working in operations reasonably related to the coke oven. As it stands now, the amendment contains no mechanism for the financing of any claims which may be approved. It validates an entirely new class of individuals as potential claimants and unjustifiably subjects the coal industry to the potential financial liability for the payment of benefits to individuals who were not employed by the coal industry.

Amend the definition of pneumoconiosis to include obstructive lung disease (non coal-related diseases) in the list of compensable conditions under the Act. This will broaden the scope of the Act and assure the payment of benefits to miners suffering from respiratory disorders unrelated to coal workers pneumoconiosis.

Inclusion of this section creates the potential for a significant number of new claimants under the Act even though their respiratory impairment may be totally unrelated to long-term exposure to excessive quantities of respirable coal mine dust. In a 1989 study published in the Journal of Occupational Medicine, Dr. Thomas M. Roy and his colleagues in a study entitled "Cigarette Smoking and Federal Black Lung Benefits in Bituminous Coal Miners" concluded:

This evidence suggests that prolonged exposure to coal dust may be expected to cause only minor airway obstruction in the absence of other irritants. In our study group, cigarette smoking clearly emerged as the primary variable associated with pulmonary impairment severe enough to warrant a financial award under present legislation.

In summary, we wish to call attention to the fact that the Federal Coal Mine Health and Safety Act appears to reward the bituminous coal miner whose pulmonary reserve has been damaged by cigarette smoking rather than by coal dust exposure.

### Sec. 10 and 11 BENEFITS REVIEW BOARD

These sections amend the Act relating to the appointment of and compensation of members of the Benefits Review Board.

### CONCLUSION

Mr. Chairman, we are not unsympathetic to claimants' complaints when it takes years for final adjudication of claims nor do we believe that claimants should be deprived legal representation when they desire such assistance. What we do strenuously object to are provisions which will place artificial limitations on our ability to defend against claims as well as the unfettered refiling of thousands of claims. There must be an end to this. We cannot afford to provide benefits regardless of actual disability or the cause of such disability. This was never what was intended. The federal black lung program was not intended as, and cannot be permitted to become, a supplemental pension program. Other mechanisms exist which provide supplemental income to retired miners. The black lung program cannot fill this role. This bill neither addresses the real problems nor assures potential claimants that the program will operate in an equitable and expeditious adjudication of black lung claims.

Senator SIMON. Mr. Watzman, have you ever been in a coal mine?

Mr. WATZMAN. Yes, I have.

Senator SIMON. And, judging by your age, you have been down in a coal mine since 1970.

Mr. WATZMAN. Yes, I have.

Senator SIMON. And you have been up in the face, where you have seen the work done, and you have not noticed any coal dust out there?

Mr. WATZMAN. I have noticed coal dust, Senator.

Senator SIMON. And when you came out of the mine, did you notice coal dust when you blew your nose, or in your hair or your face?

Mr. WATZMAN. Yes, I did.

Senator SIMON. And you know that people who are down there for 8 hours, working, are breathing that in, and that that affects their lungs.

One of the realities is that the black lung law on complicated pneumoconiosis was not only designed to protect coal miners, but also to protect coal companies. If we had no law, these four witnesses who are here could sue the coal companies for pain and suffering. Let me tell you, if you went to a jury in southern Illinois or in coal country in Pennsylvania, you would have some big awards against coal companies. There are complaints about the costs, however, the costs to the coal company if we were just to repeal black lung would be enormous.

So I think what we had better do is find some sensible middle ground. I have been in Government for a fair number of years, and I know that pendulum can swing from one extreme—and I do not know if you were here when I made my opening remarks— candidly, there were people who received black lung benefits when the program started who should not have received black lung benefits. It was too easy at first, and the coal miners who are here know what I am talking about.

Then that pendulum swung over to the other extreme. So I think we had better find a sensible middle ground here, both for the protection of the coal companies, the coal industry, and for the protection of coal miners.

Now, you mentioned the 47 percent approval rating since 1973. That figure is heavily tilted. President Trumka has used the 4 percent figure, and my own experience talking to coal miners is that that 4 percent figure has to be about right. There is not 47 percent being approved right now, and you will acknowledge that, won't you?

Mr. WATZMAN. I will acknowledge that, Senator. The number that is used by the Department of Labor and contained in the same report I referenced is 7.9 percent. That is a Labor Department determination.

Senator SIMON. OK, 7.9 percent. That means one out of every 12 miners is getting approved.

Let me ask about another area. Ms. Fraley, you talked about the \$70,000. Most coal miners I talk to are just devastated by these claims, but they cannot pay them back. How much is being returned now? Is it a significant amount?

Mr. WATZMAN. Senator, I am not capable of quantifying that. I think the Department of Labor is better qualified. The impression I have is that while letters have gone out to claimants, my impres-

sion is that if a claimant can inform and demonstrate to the Department of Labor that they are incapable of returning the money, I do not think they go much further than that.

However, what must be remembered, Senator, is that when the legislation was originally passed, there was a balance created. Congressman Perkins was involved as one of the original framers. It was always conceived that these would be interim benefits that would begin to flow to the claimant with the understanding that if ultimately, they were adjudicated to be not entitled, the money would be returned, and claimants were advised of that when the initial adjudication and a favorable decision was rendered.

Mr. HESS. May I interrupt here? I have to, due to the fact of what he is saying here. Mr. Perkins was in a hearing last year. They have a collection agent down in Texas, and they said they were paying out one dollar for every two that they collected. OK, it is just like the collection agent. And what we have to look at here is these people are getting these benefits, and when they sign up for them, like Mr. Zornes said, maybe they do not have a lot of education; maybe they read the letters and they says, "OK, I have spent this much time, and this is mine. They are giving me nothing." Then they will come back in, say, 5 years and State that you have an overpayment, and they will turn the collection agent loose on this person, devastating him. So this is not true due to the fact that they will continue to hound these people, and when you do not have a knowledgeable person to turn to, these people are devastated.

Senator SIMON. Let me mention one other area that is of concern, and that is the imbalance of representation. The only lawyers who frequently take these cases, if they take them, are lawyers with very little experience. They go against the lawyers that represent the coal companies, and the results are really grim.

I happen to be—and it is a minority opinion here—I happen to be opposed to capital punishment. My reason for being opposed to capital punishment is that, candidly, if you are poor and you do not have the money, you are not going to be able to hire good attorneys. If you are wealthy, and you can hire the best attorney, you are never going to receive capital punishment. So you put good prosecutors against inexperienced lawyers, and capital punishment occurs.

When you put the lawyers for the coal companies up against inexperienced lawyers—and I do not mean this disrespectfully—frequently young lawyers, or lawyers who are desperate for work, there is a huge imbalance in representation. Does that concern you, and what is the answer for that?

Mr. WATZMAN. Senator, this is one of the administrative areas where we recognize the program needs reform. I do not have a solution to offer to you today. Will what is contained in the legislation solve the problem? It might. But in closing on that point, this is one area where we recognize the program needs revision.

Senator SIMON. Mr. Trumka.

Mr. TRUMKA. Mr. Chairman, S. 1781 does not change the substantive provisions of the black lung eligibility bill. What it does attempt to remove some of the David and Goliath mismatch from the local victims and the companies. And they will spare no ex-

pense on every black lung claim. I was tempted to ask Mr. Watzman if he would submit how much the companies have cumulatively spent against these claims over the years.

So I think the industry gets hoisted on their own petard in their argument. What they are saying is that if in fact you take away some of the discrepancy and power, or the ability to represent yourself fairly and procedurally in these claims, too many claims will be approved, and it will cost too much money. In essence, that is their argument.

Well, what does that say about the current system? What it says about the current system is that they like it stacked so against the little guy that they can always win. But that is always how it has been. I mean, employers have always liked to have a tremendously large overabundance of power to be able to use against workers.

So this is an argument that has been used in a different forum for nearly 100 years against coal miners. And I really believe that on this one, it gets hoisted by saying that if you remove some of the procedural unfairness, too many claims will get approved, and therefore it is going to cost us too much money.

Mr. WATZMAN. Senator, may I respond?

Senator SIMON. You may, and then I want to toss one other question at all of you and then hear from my colleague, Senator Wofford.

Mr. WATZMAN. With all due respect, we are not saying do not remove the procedural hurdles because we are advantaged by them. What we are saying is do not inadvertently, by creating new hurdles, create a mechanism that by administrative fiat results in the approval of claims. There is in place a mechanism of the benefits the ALJs and the Benefits Review Board call "true doubt." It is before the U.S. Supreme Court right now. This bill, your bill, establishes equipoise, which under the Benefits Review Board doctrine, says the ALJ must at that point rule in favor of the claimant.

We are not saying—can I sit here and defend where an operators has presumably 66 x-ray re-reads and the claimant has two? No, and I would not pretend to do that. What I am saying is do not inadvertently create a mechanism that goes from this point to this point.

Mr. HESS. Well, I certainly have to disagree due to the fact that I believe anything you go at, if you say 50/50—if we go into court, and you have the same evidence I have—but what we are submitting here is two/two, three/three, four/four, not for the Coal Association to have 67, and our people, who have to pay \$1,800 for a full physical, which they cannot afford, to have to be up against that.

Now, I will be honest with you. I will go in with any of them with an attorney, three to three or four to four, but not take them and send them to Ontario, Canada, even out of this country, to somebody they bought to overturn them.

And another thing you have to look at—we keep talking about widows, which is the sad part here. If we have a widow in here today whose husband is drawing black lung after 1981, and he is, for instance, on oxygen, like the gentleman behind me, and he is in an ambulance, and they are in an accident, and he is killed, his wife cannot draw her benefits due to the fact that the death certifi-

cate is going to State that this gentleman was killed in an ambulance accident, and that does away with it. Is that fair?

Senator SIMON. Let me just mention one other concern I have, even if we pass S. 1781. The concern is that we will set up a system where we are going to have a lot of lawyers making a lot of money, but we are not going to get the money to the coal miners, who really ought to be receiving the money.

I would toss this out for all three of you. I still would like to see a system where, if you had so many years in the mines—when I was in the House, I remember a study by the University of West Virginia Medical School, I believe, that indicated that anyone who had been in the mines for 17 years or longer had black lung. I do not know what the figure is, and let us just say that you do not acknowledge it below 10. Let us say that we pick the year 20—between 10 and 20, you can contest it, and then you go through the process.

There ought to be protections so we do not just enrich the lawyers above a certain level. It just seems to me we ought to have a system that is not that complicated. A system for coal miners, if they are in good health—and even if they are not in good health. I have seen coal miners go down into those mines, and you know they have black lung, the way they are breathing and staggering. But they want to make that money. They want to pay for that house mortgage or whatever. We ought to be able to design something that is fair.

And again, Mr. Watzman, I would say to the Association that if we do not permit that pendulum to swing down to something that is fair, one of these days, that pendulum is going to swing over too far in the other direction, and the coal industry in this country is going to get hurt.

Now, just any observations from the three of you, and then I want to hear from my colleague, Senator Wofford.

Mr. HESS. Well, I would like to know how many times or how much time Mr. Bruce Watzman has been in the coal mines.

Senator SIMON. Well, if he wants to answer, he can, but I think we had better leave the questions up to the members of the panel here.

Mr. Trumka.

Mr. TRUMKA. Mr. Chairman, we have long been an advocate of a system such as you have explained. I think it would be fair and just, and in other countries, it is the type of system they have put into place. In many foreign countries, black lung was recognized as a disease 50 years before we recognized it in this country, so we are behind the curve on that both in terms of eradicating black lung and compensating victims for black lung.

We would be foursquare in favor of a system as you just described. I think it would make sense administratively. It would minimize and be cheaper for the industry because of the expenses that they go through in all of these claims, and it would be far more humane to the victims who have to drag themselves around the country to hearing after hearing, and far more humane to the surviving spouses of those victims as well. We would be anxious, ready, willing and able to stand and work with you for such a system.

Senator SIMON. Thank you.

Senator Wofford.

Senator WOFFORD. Thank you, Mr. Chairman.

I am especially interested in what more we should be doing to prevent this terrible disease. Is the current coal dust sampling adequate? Is that part of our system adequate today?

Mr. TRUMKA. The system, in our opinion, is totally inadequate. I think it has been proven over a number of years that when you put the system in the hands of those that you are monitoring, namely the operators, that there is a tendency to abuse the system. Most recently, the rash of dust fraud cases is only the most recent indication of that.

Currently, MSHA, the agency that is charged with protecting the health and safety of American miners, lacks the number of inspectors to be able to adequately monitor the mines. Moreover, even if they were monitored, with the current dust standard, contrary to what Mr. Watzman said, they are not consistently below the 2 milligram standard. There are a number of long wall systems and continuous mining systems that are out of compliance on a normal, regular basis. And even if they were, the other countries and the medical evidence that we have indicates that a 2 milligram standard is simply too high to prevent the occurrence of black lung in miners.

It is our opinion that it needs to be lowered to one milligram per cubic meter of air, the same standard that you see in many other foreign countries.

Senator WOFFORD. Mr. Watzman.

Mr. WATZMAN. Senator, let me respond in two manners. One, I will go back to what I said earlier. Disregarding for the moment operator sampling in the mines, because for some reason, today, we are tainted by some allegations that an administrative law judge overturned, but using only MSHA inspector samples, we are below the current dust standard, and we continue to be. And we continue to strive for better and better systems to reduce the standards and the achievement below where we are today. And in those instances where miners are exposed to quantities in excess of 2 milligrams, we attempt to utilize protective equipment where it is permitted, we attempt to remove them from the dusty environment. But what must be recognized is that a short-term exposure to an excessive quantity of dust does not cause pneumoconiosis.

The 2 milligram standard was designed to protect a miner working his entire life, 8 hours a day for 40 years. There is nothing that relates a short-term, single-incident exposure to the onset of pneumoconiosis.

Senator SIMON. If my colleague would yield at that point, I differ with you, Mr. Watzman, in your statement. The answer is that for some people, that is accurate. People are different. My body is different than yours. And I have known coal miners who have been down in mines 40 years, and believe it or not, they seem to be vigorous and without impairment. I have known others like the gentleman in the audience, with 11½ years in the mines, and he is using that oxygen tank. He does not have that oxygen tank because he enjoys carrying it around. He needs it to live.

So different people will have different responses, and I do not think we can say that because some people can go 25 years without having complicated pneumoconiosis that therefore everybody can go 25 years without having it.

I am sorry for interrupting, Senator Wofford.

Senator WOFFORD. Did you want to add anything to that, Mr. Trumka?

Mr. TRUMKA. I was just going to say that the process in black lung is quickly about to get more complicated than it already is, with the interjection of and exposure to diesel equipment into underground coal mines. More and more States are now allowing diesel equipment into underground coal mines. First of all, we have no threshold level of diesel exhaust that can prevent carcinogenic agents in diesel exhaust from causing further lung disease. Moreover, animal evidence indicates that when you mix diesel exhaust with coal dust, the incidence of black lung increases dramatically, and we have no measuring device today and no system to take care of that or to measure for that.

I did not mean to imply that there are not a number of operators who are not trying to increase the level of health and safety in their mines. I just want to point out that when Mr. Watzman says that a few of the samples were recently "tainted," there are a couple hundred people responsible for those few tainted samples who have pled guilty to a criminal charge of fraudulent dust sampling—over a couple hundred.

So it is more than just a few tainted samples, Bruce. It is widespread. And this is not the first flurry of it. Since 1969, we have come up on this Hill time and time again and exposed where operators were abusing the system, taking samples outside, and then exposing men and women to high dust levels, all in the hope of saving a few bucks short-term. Long-term, it ultimately cost them more.

The Nation's coal mines are not safer today than they were 10 years ago, Mr. Chairman. They are more dusty today than they were 10 years ago. They are more dusty, not less dusty. The trend is in the wrong direction. More and more people in the future are going to have black lung, no less. And a system like this may disguise it because guys like that one back there with the oxygen tank just cannot come forward and bring a bag of money to do battle with some of his corporate attorneys. The system is twisted against them, and I applaud you, and I applaud the Senator from Pennsylvania for trying to change it. And I applaud those operators who are willing to step up to the plate and help us change the system to make it more fair.

Senator WOFFORD. Mr. Watzman, would you elaborate a little on what else you would suggest to us needs modification. You said that some "discrete modifications" are called for in the black lung program, and you mentioned legal representation.

Mr. WATZMAN. I think the other area, Senator, that needs to be looked at is the time it takes to process a claim. I think if we could shorten the time in the adjudicatory process, that may get to the issue and resolve the issue of repayment of benefits where final adjudication says a claimant is not entitled.



The Department of Labor does not proceed expeditiously. It takes several years—it does not take a long time for an initial determination, but that is when things begin to slow down. And I think if we could compress the time in some manner, we may get over the hurdle of a claimant receiving interim benefits for 4 or 5 or more years and then being asked to repay that amount.

Senator WOFFORD. Anything else?

Mr. WATZMAN. I think another area, and one that we have looked at and that is not contained in the legislation, and it was raised by one of the individuals on the previous panel, is the ability to settle claims. Right now, there is no authority under the black lung program to do that. So by not having that ability, de facto you are led into the process of having to litigate. But that is the alternative. You accept the payment, or you litigate. And I think if there were settlement authority in the program which is contained under the Longshore Act, but was excluded by reference in the black lung act, that may move the process along as well.

Senator WOFFORD. Is there any evidence as to the comparison between the percent of claims the Department of Labor is approving and the actual rate of occurrence of black lung disease?

Mr. WATZMAN. I think the Department would be better equipped to respond to that, Senator, than I. I do not have information like that available.

Senator WOFFORD. This is another version of the question of whether we are making progress or falling behind.

Mr. TRUMKA. In each one of the claims that is contested, there is medical evidence to indicate that the victim has black lung. There is no case that I am aware of that gets past the preliminary stage where no doctor says you do not have black lung. So what it comes down to is a battle of the Titans, or a battle of the medical evidence. One person looks at an x-ray and says, "Yes, you have it," and another person looks at the same x-ray, maybe 500 of them, and has never seen one yet that had black lung.

So I guess our argument would be that 4 percent of the people who have it ultimately get benefits.

Mr. WATZMAN. Senator, if I might, let me draw on a personal reflection here. In February of 1992, my mother passed away in a nursing home here in Maryland. Up until 6 months prior to that, she had lived her entire life in Pittsburgh, PA. The last 3 years of her life, she was on oxygen full-time. The last 8 months of her life, she was in a nursing home, confined to a bed, on oxygen full-time. She never worked a day of her life in the mines. She suffered from emphysema.

Am I saying by that that all miners are smokers? No. Am I saying by that that there are not miners who contract pneumoconiosis and should be compensated? No, I am not. But I am saying that there are compounding factors that come into play beyond a person working in the mines that contribute to this. It is not cut and dried in each case. That is why the standards are in place that there are.

The medical standards were looked at—disregard our view of the medical tests that are used by the Department of Labor or the Mine Workers' critique of the medical tests used—these were looked at by independent individuals, the Thoracic Association, who have no axe to grind in this, and they determined and their

view was that these were the right tests to use given the State of the art to determine whether a miner was suffering from pneumoconiosis. That is what is in place today. All we do as operators is work within those confines.

Yes, there are aberrations, as I said before, where operators will come in with excessive amounts of evidence as opposed to the miners. Should they be permitted to do that and the determination made on quantity rather than quality of evidence? No, it should not. Quantity should not be the determining factor. But in many instances, it is.

All we want to avoid in your modification to the program is that we do not create a situation like Mr. Hess talked about, where there are three or four pieces of evidence, and no matter what the limitation is, if it is an artificial limitation that imposes the same restrictive amount on both parties, the determination will be made on behalf of the claimant. That is the issue that is before the U.S. Supreme Court in the "true doubt" case, where both the claimant and the contestant had the same number of pieces of evidence, and the administrative law judge said the evidence is in equipoise; we must find for the claimant. That is our major concern with the way this legislation is written. It creates that situation in our mind.

Senator WOFFORD. Mr. Chairman, I guess the committee's test is going to be whether it concludes that the problems we have seen are by and large aberrations and exceptions, or whether they are real problems of the system that go beyond the several points that Mr. Watzman says he recognizes need to be acted on. I hope we can move soon to resolve this in the committee.

Senator SIMON. Yes. And let me say that obviously, Senator Wofford and I have concluded that something is wrong with the system. But I am not interested in just introducing a bill, having a hearing, and getting nothing done. We have had enough of that kind of stuff. What I would really like to see is some additional protection. And I will consult with my colleagues, Senator Wofford and Senator Robb, to see what they think.

We will come up with some modification of this, and then I would like to ask all three of you and any others who are interested in seeing it for your reactions. And let us see if we cannot get something done that will more adequately protect the people who work in our coal mines. I think we owe that to them.

Senator WOFFORD. If we add those words, "get it done."

Senator SIMON. And get it done; absolutely.

[Additional statements and material submitted for the record follows:]

#### PREPARED STATEMENT OF STEPHEN A. SANDERS

My name is Stephen A. Sanders. I am an attorney with the Appalachian Research and Defense Fund of Kentucky, Inc., in Prestonsburg, Kentucky. In the course of my practice, I have represented many miners and widows on claims for benefits under the Federal Black Lung Benefits Act. I am submitting comments today concerning the Black Lung Benefits Restoration Act, 5.1781, on behalf of Mildred Meade, a widow from Feds Creek, Pike County, Kentucky.

Mrs. Meade's husband, Bill Meade, worked as a coal miner for 32 years. For many of those years, he worked in an underground mine as a continuous mining machine operator. He also worked as a helper to the continuous mining machine operator, pulling the electrical cable and water hose to enable the mining machine to cut coal. These jobs required him to work in an extremely dusty part of the mine, and day

after day he breathed in large amounts of coal dust and rock dust as the mining machine cut coal from the coal seams. Mr. Meade stopped working in 1982, and in 1983 he filed a claim for Federal Black Lung Benefits.

Mr. Meade's claim illustrates the problems with the present system. Twice hearings were postponed at the request of the Operator who claimed they were prejudiced by evidence submitted by Mr. Meade and needed the opportunity to develop additional evidence.

During the course of the development of the evidence on this claim, seventy-five x-ray interpretations were submitted. Every time Mr. Meade obtained a chest x-ray interpretation the Operator submitted multiple rereadings. Fourteen pulmonary function tests and nine arterial blood gas tests were obtained. As with the x-ray evidence, for every test Mr. Meade submitted, the Operator submitted reports from consultative physicians who reanalysed the reports. In addition, the Operator required Mr. Meade to submit to multiple physical exams. The reports of Mr. Meade's treating physician, who had stated in several well-reasoned written reports that Mr. Meade was disabled by pneumoconiosis, based on the results of objective testing, as well as the report from a pulmonary specialist who had examined Mr. Meade, received no consideration in view of the Operator's consultants' opinions. Mr. Meade died in July, 1994, without having received a decision on his claim. After Mr. Meade died an autopsy was done. The autopsy proved that Mr. Meade had pneumoconiosis.

Mrs. Meade is now pursuing a claim for benefits on Mr. Meade's account. She submitted the autopsy results to the Department of Labor. The conclusion of the pathologist who performed the autopsy was that pneumoconiosis contributed to cause Mr. Meade's death. Mr. Meade's treating physician agreed with this opinion. However, a consulting doctor who reviewed the autopsy slides disputed whether Mr. Meade's pneumoconiosis contributed to cause his death. Mr. Meade's original claim and Mrs. Meade's claim continue in litigation because of this opinion.

The premise of workers compensation laws is to provide compensation to a worker whose health has been damaged or destroyed by their employment. Mr. Meade was only 52 years old when he was forced to leave coal mining because of his breathing difficulty. He would have continued mining if he had been healthy. Mr. and Mrs. Meade had four children. Financially, it was very hard for them when Mr. Meade was forced to leave his job. Mr. Meade received nothing for the Black Lung which destroyed his health. The Federal Black Lung benefits, created to provide compensation for disabled miners, was of no benefit to Mr. Meade during his lifetime, and he died with the uncertainty that it would provide any benefits to his widow.

S. 1781 contains provisions which would have prevented this ongoing travesty. By limiting the amount of evidence that can be introduced, unnecessarily lengthy litigation can be avoided, and the claims process can become a fairer and more efficient process. The bill sets much needed limits on the amount of x-ray interpretations and medical examination reports that can be introduced into evidence.

S. 1781 has flaws. It does not give proper weight to the opinion of the treating physician who is not board certified in a specialty relating to the treatment of lung disease. Current case law in the U.S. Court of Appeals for the Sixth Circuit gives greater weight to the treating physician, regardless of board certification. As we all know, a doctor gains a great deal of information about their patients simply by treating their ailments over a period of time. This expertise is not dependent on being board certified in any specialty, and the opinion of a competent doctor whose treatment of a patient spans a period of time, when expressed with sound reasoning, should be given added weight by the fact finder in the adjudication of a disability claim.

S. 1781 also invites abuse on widows. If the miner suffered from pneumoconiosis at the time of his death and was disabled by it, the widow should receive benefits. S. 1781 leaves open the door to litigation as to whether the miner's death was the result of an event that had no medical connection with pneumoconiosis. This is not significantly different from the present regulations. To prove the cause of death requires the widow to have her deceased husband's body dissected by pathologists after his death so that autopsy results are available. Requiring a widow to litigate whether Black Lung was the cause of the death of a miner disabled by Black Lung places an inhumane onus on a widow.

In closing, we ask that you return this benefits program to what it was originally intended to be, a fair system of compensation for miners whose work exposed them to the hazards of breathing coal dust and rock dust, and whose disease left them disabled and unable to support their families.

## JOINT PREPARED STATEMENT OF TINA DOUGLAS, PAUL SIEGEL, AND GEORGE NEW

We wish to thank Senators Simon, Robb, and Rockefeller for their initiative in submitting S. 1781. The bill addresses many of the huge problems faced by disabled miners and widows who apply for Federal Black Lung benefits.

In our work with hundreds of disabled miners and widows we have found that the program's intent has in the last decade been distorted beyond recognition, to the point where the process of seeking Federal Black Lung benefits has become a long exercise in frustration, and despair for the majority of disabled miners and widows who apply.

No matter how compelling and convincing the evidence is of severe disability due to a coal dust related lung disease, the coal companies always have a vast array of well paid doctors and lawyers who are only too happy to deny that coal dust is the cause of the problem. Because of the huge hourly fees that medical experts charge for the consulting opinions, there is no possibility of the miner matching the coal companies' voluminous, "bought and paid for" testimony. The result is years and years of litigation as the claimant gets older and sicker, followed by inevitable denial.

This situation is especially disheartening in view of the fact that it has now been clearly established by epidemiological studies that there is a link between chronic obstructive pulmonary disease and coal dust exposure in addition to the link long ago established between coal dust and interstitial, restrictive disease—the objective existence of such a link is now the official position of NIOSH. This ends a generation of controversy in which the coal companies promoted the myth that COPD can be caused by cigarettes and other pollutants but not by coal dust. But despite the proof of a significant statistical link based on population studies, the superior financial resources of the coal companies allow case after case of individual miners to be denied anyway. In effect, the U.S. government tells us that, scientifically speaking, coal dust causes COPD among thousands of miners, while it tells us—through the denial of over 9600 of cases—that we just cannot find which individuals have it so virtually no claims can be paid. This is because the coal companies will always be able to hire doctors to deny the link in each individual case.

And what makes the situation doubly disheartening is that during the same decade in which the coal companies and the Department of Labor spent huge amounts of dollars and incredible numbers of hours to defeat miners' claims, many operators were also fraudulently falsifying the legally required dust sampling, while the Department of Labor failed for years to catch this fraud.

Thus, there was a sabotaging of the U.S. Congress's commitment to reduce respirable coal mine dust to levels where we might actually see a reduction in black lung disease instead of just a reduction in the number of disabled miners receiving benefits.

Clearly, there is a great need to reform the black lung program so that claims are resolved fairly without years of litigation and mountains of paper which is always stacked against miners and so that resources are channeled into the reduction of future disease through effective and well enforced dust control measures.

Last us say quite frankly that S. 1781 and the similarly worded House bill, attempt less than the comprehensive reform of the program that the Associations had hoped for. This reflects political and fiscal realities; we understand this and support the effort to get the best possible legislation this year. But it is thus crucial that the provisions that the bill does offer be very clear and that they assure the implementation of intent without inadvertently opening the door to distortions and years of wasteful litigation.

In this regard, we ask that you carefully consider the following comments which grow out of our considerable experience with the realities of the Black Lung Benefits Program.

1. Section 3—Evidence. This key section addresses the imbalance created by the coal companies' purchasing of large numbers of medical reports. The intent is laudable. We have concluded that the real problem is the proliferation of "consultative" or "interpretive" opinions by non-examining physicians and multiple x-ray re-readings. By devoting a considerable number of words to the issue of "examinations" of the miner, the bill tends make the examination process more cumbersome, complex and contentious than it already is. The current regulations already limit the number of exams; they also allow the DOL to order additional exams when there are unresolved medical issues. It would be much preferable to leave the existing rules on exams intact and have the bill address the real problem—consulting opinions and x-rays.

We thus urge that (m) (1) A, B (i), (C) and (D) be eliminated from the bill. (E) should also be eliminated since existing rules already clearly allow for admission of

hospital, treatment and biopsy/autopsy records. The only thing that should remain from Sub-section (m) (1) is paragraph (B) (ii) which deals with x-ray readings, and that wording could be made clearer.

Subsections (2), (3) and (4) address the real problem of multiple interpretive (non-examining) opinions. We would suggest that sub-section 4 spell out that the claimant may submit an opinion of his treating physician in addition to any interpretive opinion that the claimant submits under subsection 2. This is in line with the special relevance that the treating physician's knowledge may have. It is also entirely fair since sub-section (2) allows each party to submit one interpretive opinion, thus creating a situation where two interpretive opinions will often be arrayed against the claimant (one by the DOL and one by the coal company).

We would also suggest that if the intent of sub-section (4) to allow extra weight for the treating doctor is to be implemented it should be spelled out that if the treating doctor is board certified in internal medicine, then such certification shall be considered a specialty relevant to diagnosis of total disability or death due to pneumoconiosis.

Finally, in line with eliminating the handling of actual examinations from the bill, sub-section 5 can be eliminated.

Attached, as Appendix I is our suggested wording for Section 3.

Section 4—Survivors. This section addresses the tragic situation in which survivors' benefits have been almost eliminated by the unfair burden of proving death due to pneumoconiosis even if the miner was totally disabled by pneumoconiosis at the time of death. S. 1781 has taken the language of the House bill, that where a miner was totally disabled by black lung his death shall be considered to have been due to black lung, and added, "unless the miner's death was the result of an event that had no medical connection with the pneumoconiosis".

The above language would not effectively remedy the injustice. The legislative history accompanying the 1981 amendments already allows the establishment of a relationship between pneumoconiosis and death when the direct cause is another condition that was related to pneumoconiosis. In fact, the above wording could possibly have a restrictive effect in relationship to current case law.

We urge that the bill clearly state that entitlement shall be established if the miner was totally disabled by black lung or if he died of causes related to black lung. If this forthright ending of the "cause of death" requirement cannot be accomplished, at the very least the phrase quoted above should be changed to, "unless the miner's death was the result of an event that would have ended his life on the same day regardless of his pneumoconiosis". But we think restoring the right of widows to receive benefits if the miner was totally disabled by black lung without adding the burden of cause of death is entirely reasonable and necessary. (Appendix II has suggested wording for Section 4 (a)).

Concerning Section 4 (b) (2), (ineligibility of remarried widows under age 50), we would suggest adding clarifying language that if the remarriage terminates, eligibility resume.

Section 6. Attorney Fees. This section addresses the difficulty which claimants currently have in finding attorneys to take their claims, since it is so difficult to win and it takes so many years of litigation. We are a little concerned that the provision for payment of claimant attorneys who win an approval, even if that approval is contested at the next level of appeal, could result in some attorneys withdrawing from the claim having received fees and leaving the claimant unrepresented. We think that if incentives are to be offered, the incentives ought to be directed at encouraging the best attorneys to take on claimants' cases through all the challenging levels of appeal and at encouraging adversaries to stop dragging every case through the highest levels of appeal.

In line with this, we suggest that for each level beyond the ALJ level in which the claimant's adversary appeals, a "multiplier" be added to the fee which they must pay to the claimant's attorney, if the claimant prevails.

Section 8. Re-filing. This is a very important section, since the bill does not provide for an automatic reopening of all previously denied claims. We want to make sure that de novo review on the merits means that the claimant has full rights to submitting of new evidence and to all levels of appeal. We believe that de novo means that but we would hope for clarification either in the bill's language or in the legislative history. It also might be advisable to provide that the Secretary of Labor shall notify all previously denied claimants in writing that legislation has passed and that they have a right to file new claims which will be considered on their merits under the new law.

## APPENDIX I

*Section 3. Evidence*

Section 422 (30 U.S.C. 932 is amended by adding at the end the following:

(m)(1) During the course of all proceedings on a claim for benefits under this part, the results of not more than 3 interpretations of chest roentgenograms offered by the claimant may be received as evidence to support eligibility for benefits. The responsible operator or trust fund, whichever one is found liable for payment of benefits, may offer into evidence no more than the total number of roentgenogram interpretations offered into evidence by the claimant.

(m)(2) In addition to the medical examinations authorized by the existing regulations, each party may submit not more than one interpretative medical opinion whether presented as documentary evidence or in oral testimony. Such medical opinion may review other evidence derived from chest roentgenograms, blood gas studies, or pulmonary function studies contained in the reports of examinations authorized under existing regulations.

(3) [Preserve identical language to (m) (3) in Senate bill 1781]

The claimant may submit a medical opinion by his treating physician and this opinion shall be received into evidence in addition to any interpretive medical opinion submitted by the claimant under paragraph (2). If the claimant submits a medical opinion by his treating physician, such opinion shall be given substantial weight over the opinion of other physicians in determining whether the claimant is disabled by pneumoconiosis if the treating physician is board-certified in a specialty relevant to the diagnosis of total disability or death due to pneumoconiosis. For purposes of this Section, board certification in internal medicine shall be considered to be a specialty relevant to the diagnosis of total disability for death due to pneumoconiosis.

## APPENDIX II

*Section 4. Survivor Benefits*

(a) Section 422 (30 U.S.C. 932), as amended by section 3, is amended as follows:

If an eligible survivor files a claim for benefits under this part., such survivor will be eligible for benefits if the miner—

(1) was receiving benefits for pneumoconiosis under this part; or

(2) was totally disabled by pneumoconiosis at the time of the miner's death; or

(3) died of causes which were related to pneumoconiosis.

[also change add to Section 4 (b) (c) (2) the provision that if a remarriage is terminated, then the widow or widower's eligibility resumes.]

Written Testimony, Senate Subcommittee on Labor and Education  
 Black Lung Benefits Restoration Act, S. 1781  
 The Reverend Darren Cushman-Wood,  
 Pastor of East Tenth United Methodist Church,  
 Indianapolis, Indiana,  
 on behalf of the  
 Indiana Black Lung Association  
 March 15, 1994

My name is the Reverend Darren Cushman-Wood and I am writing on behalf of the Indiana Black Lung Association. It has been my privilege over the past two years to work with them. They have asked me to express their support for the Black Lung Benefits Restoration Act (S. 1781) and to encourage you to vote for it.

These miners and their wives are hard working Americans who devoted their lives to the coal companies. After more than 37 years in the mines, Charles Stark recalls, "When I started I wanted to follow in my father's footsteps because he was a coal miner too." And yet Charles and hundreds of other Hoosier coal miners are permanently disabled and killed from breathing in coal dust.

Senate bill 1781 will create a more equitable and humane process for these men and women to receive the benefits they deserve. The bill would stop the collection of back pay from miners whose claims are overturned in the courts. It would also make it easier for widows and survivors to qualify for benefits. Currently, widows must prove that the cause of death was black lung disease.

Often the issue of repaying back payments and widow's rights go hand in hand. Thelma Dimmett of Boonville lost her husband, Bob, in 1980 to black lung disease. Nine years later she received a letter from the Department of Labor requiring her to pay back more than \$20,000 in benefits.

The Black Lung Benefits Restoration Act would limit the number of examinations and interpretations which can be submitted. Because of the debilitating nature of the disease and limited financial resources, disabled miners do not have an equal chance to compete with the coal operators.

Multiple examinations are extremely difficult for these people. Leonard Lockhart of Linton describes the struggles of living with the disease,

"I am a retired coal miner of 43 plus years, with serious breathing problems. I have to sleep with oxygen and at times use it daily. Black Lung is a terrible disease. Have you ever been choked and couldn't breathe? That is what we have to try and live with. Can't walk across the room some days without stopping and gasping for air. Coughing and spitting up mucous to get always open."

In spite of these struggles, the current system tortures the victims of the disease. Mary Houchins of Winslow recalls her husband Tom's struggles,

"After working 32 years in the coal mines and being exposed to coal dust, fumes and gases, Tom has been disabled since 1989 and has been battling for black lung benefits since that time.

One time he was asked by the coal company to travel 126 miles for an evaluation knowing the limit was 75. Another time an appointment was made and the only way we knew of it was the judge sent a letter granting an extension of time, due to the earliest possible date for an evaluation being July 12. We contacted our lawyer on July eighth and he phoned the coal company and was told the appointment was at 1:30pm. When arriving at the doctor's office Tom was informed he had been scheduled for tests at the hospital at 11:30am that morning. The coal company then notified the judge, we were two and half hours late for the appointment.

Now we are still trying to get the coal company to pay the bill for that examination and it has been over eight months now and Welborn Clinic has threatened to turn us over to an attorney."

Justice delayed is justice denied for many miners as they wait many years for their hearings and benefits. For example, Herman Klass of Worthington first began applying for his benefits 12 years ago.

In too many cases the Administrative Law Judges and the Department of Labor do not act as neutral parties. Mrs. Herschel Hays of Linton recounts the capricious actions of her husband's judge,

"At this time the doctor and coal company diagnosed him with this ailment...he has been in court, with his lawyer, in Evansville in the year of 1986. The judge, at this time, ruled he was eligible for payments of black lung. We have the papers to back this up. As of now they, or someone says, that he isn't completely disabled to receive the benefits. Now we are wondering where the stipulations or evaluations came (from which caused) the judge to completely change his decision on his ruling of this case...As of now, we are appealing the letter we received from the Department of Labor in order to get payments started again."

Mr. Hays began filing for benefits in 1985.

Senate bill 1781 would provide incentives for the attorneys to give sufficient representation. Right now, it is very difficult for miners to find attorneys to represent them and often lawyers "mysteriously" drop their cases when filing fees must be paid. The bill would make it easier for miners to collect the money needed to pay their attorneys after an initial settlement has been reached.

Poor legal representation, delays, multiple examinations and widow's benefits typify Max Beasley's story. Max was from Jasonville and worked in a coal repair shop for over thirty years. He retired in April of 1982 and received his first denial for benefits in March of 1983. He underwent over five examinations and multiple interpretations of his medical records creating a file over 1,000 pages long.

January 20, 1989 Max's condition met the medical criteria. He was scheduled for a hearing on April 17. On January 23 his attorney notified him that his hearing had been canceled due to a "technicality." January 30, 1989 the coal operator's physician determined that he did indeed meet the medical criteria. Again, in April of that year, another physician concurred, but this report was not mailed to Max's attorney until 1991. In the mean time, Max's attorney dropped his case. Max learned this through the Department of Labor.

He was scheduled for another hearing in March of 1992, but it was canceled. The family was notified that his attorney had taken his case again, but that all the evidence had not been submitted. Max died in July of 1992.

The Black Lung Benefits Restoration Act will correct these problems if amendments are made to sections three and four. Section three deals with evidence. As it is currently written, the bill allows for the use of multiple consultative or interpretive opinions by coal companies. We believe that the current wording would further confuse the situation and perpetuate the unfair situation which currently exists.

Section four, which deals with widows and survivors, is also troubling for Hoosier miners. The Senate bill adds the phrase, "unless the miner's death was the result of an event that had no medical connection with the pneumoconiosis." We feel that this leaves the door wide open for continued denial of widows whose spouses were disabled by black lung disease.

The Indiana Black Lung Association believes that the House version (H.R. 2108) offers better language on these two points, and we encourage the Senate to consider amending S. 1781 to conform to the House version.



As a pastor, I see this issue as a matter of God's justice. The biblical tradition calls us to uphold justice for all members of society and to show mercy to the weakest members--children, widows and the sick. Paul Orman expresses the deep faith of many of the victims of black lung disease,

"After World War Two I was real tickled to work in a coal mine for \$6.85 a day...Wet and bad top, terrible conditions. It got better when we got eight hour day- union mines. I still breathed a lot of coal dust. I timbered, roof bolter, loaded coal. Shot coal with air. The next mines I got covered up three times, trapped over eight hours. We were dug out. Our belief in the Lord sustained us through this."

Their faith is sustaining them as they wait for our legal system to work. We must commit ourselves to God's standard of justice to sustain these men and women who suffer from black lung.



ASSOCIATION  
OF AMERICAN  
RAILROADS

Edwin L. Harper  
President and  
Chief Executive Officer

March 23, 1994

Honorable Paul Simon  
Chairman  
Subcommittee on Employment and Productivity  
Senate Committee on Labor and Human Resources  
SD 644 Dirksen Senate Office Bldg.  
Washington, DC 20510-6300

Dear Chairman Simon,

The Association of American Railroads (AAR) is pleased to have the opportunity to submit this statement for the record of the March 15 Senate Labor Committee hearing on S. 1781. AAR is seriously concerned about the scope of coverage of the Federal Black Lung Benefits Act (the Act), a law which the Committee is currently considering amending. S. 1781 would amend in respects on which AAR takes no position. However, AAR believes that this bill presents an opportunity to clarify the scope of the Act's applicability--an action made necessary by recent judicial expansion of the Act's coverage well beyond its original intent.

The purpose of the Act is to compensate eligible coal miners who are totally disabled by coal workers' pneumoconiosis, also known as black lung disease. Only individuals who meet the definition of "miner" under the Act may qualify for benefits. Other than the Fund, only coal mine "operators" are to be liable for paying benefits. Although the Act was meant to cover only individuals working in and around mines, recently, a number of railroad employees have filed claims for benefits under the Act against several railroads.

The Senate has previously recognized that railroad employees who deliver or pick up rail cars at coal mines or preparation plants might contend they were miners qualified for benefits under the Act. In connection with the 1977 amendments to the Act, which amended the definition of "miner" to include certain "outside men," the senate Human Resources Committee stated:

Definition of miner. - The term is expanded in the Committee bill to include additional workers. Existing law limits the term miner to "any individual who is or was employed in a coal mine." The expanded definition in the committee bill includes ... those who work or worked in a coal preparation facility or who transport

preparation plant workers, for example, are clearly covered as miners. ... The provision does not contemplate inclusion of those workers employed by a railroad, trucking company, or barge line unless such company also operates a mine. Nor does it include such individuals not directly related to the production of coal such as coke oven workers. These exclusions are not the result of any judgment that such workers should not be compensated for occupational diseases - they are merely beyond the scope of this legislation.

S. Rep. No. 95-209, 95th Cong. 1st Sess. 20-21 (1977).

This language confirms the railroads' belief that their employees were never meant to be covered under the Act and that the Act's plain language was clear on this point. However, the Court of Appeals for the Fourth Circuit, has greatly expanded the definition of operator and miner to include railroads and railroad employees. As a result, in one case a railroad employee who transported coal from mine sites to preparation plants, over distances in excess of thirty miles, was found to be a miner and his employing railroad the responsible operator. The most recent decision found that a railroad employee who transported empty cars to mines and to coal preparation plants also would be considered a miner (and, again, his railroad employer would be considered the responsible operator).

AAR considers that a clarifying amendment is necessary to return the Act to its original purpose. Moreover, should S.1778, which would facilitate recovery of benefits easier, be enacted absent a clarification excluding railroad employees from the Act's coverage, railroads will face even greater potential liability than they do today.

Amending the Act to clarify that railroad employees are not miners would not prejudice any railroad employee who was legitimately injured as a result of exposure to coal dust. Railroad employees have a comprehensive federal remedy for work-related injuries, including occupational diseases, under the Federal Employers' Liability Act (FELA).

For these reasons, AAR urges the Committee to include the following amendment as a new subsection (c) to section 9 of S. 1781:

(c) RAILROADS. -

(1) FEDERAL MINE SAFETY AND HEALTH ACT OF 1977. -

Section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802) is amended -

(A) in paragraph (d) by inserting following the addition made by section 9(a)(1)(A) and before the semicolon the following:

"(but will not include a rail carrier, as defined in 49 U.S.C. § 10102 (20), based on its provision of transportation or transportation-related services at a mine, coke oven, machine shop or other operation reasonably related to a coke oven)."

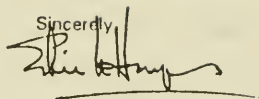
(B) in paragraph (g), by inserting following the addition made by section 9(a)(1)(B) and before the semicolon the following:

"(but will not include an employee of a rail carrier, as defined in 49 U.S.C. § 10102 (20), on the basis that he or she works in transportation or transportation-related services at a coal or other mine, coke oven or any other operation reasonably related to the operation of a coke oven)."

(2) BLACK LUNG BENEFITS ACT. - Section 402(d)

(30 U.S.C. 902(d)) is amended by adding at the end the following: "Anything in the above to the contrary notwithstanding, an employee of a rail carrier, as defined in 49 U.S.C. §10102 (20), is not a miner within the meaning of this subsection."

I would be happy to work with you on this matter.

Sincerely,  


March 24, 1994

Commeton W.C. 2503

Honorable Paul Simon  
 United States Senate  
 Washington D.C.

Dear Senator

I was in the audience with the National Black Lung Association during the hearings on S-1781 on March 19, 1994 before the Senate Labor & Human Resources Committee. I am sending you the following information concerning my struggle for Black Lung Benefits that has been going on for 21 years as of March 20, 1994.

On March 20, 1973 I filed a claim for Black Lung benefits under the Social Security Administration. My claim was denied because I was still working. I could not support my family on the amount of money I would get so I continued to work.

As a (Fire Boss) in a Coal mine my work was making an examination of the mine before the men entered the mine to work. During this work I had to walk about 2 miles and (Crawl) about 4,000 ft. on hands and knees in coal that averaged 36" to 40" high.

This was done in the first 4 hours of my shift the other 4 hours was opening return airways and escapeways. The air in these entries was full of coal dust. I wore a respirator but it offered very little protection or I was always coughing & spitting up black coal dust.

In 1978, as a member of the United Mine Workers of America having 32 years seniority I was able to get a job driving a truck delivering supplies from the Company warehouse to the mine. This was easier work but as the warehouse was located between the preparation plant and a coal stock pile I was still in too much dust, and still having trouble breathing.

In 1985, I bid on a dispatcher's job. This was light work and most of it was setting down & I was doing good. In 1987 the company started assigning me other duties. First cleaning 1 Bath house then 2 and later 3 bathhouses, and carrying trash from the bathhouse to a dumpster about 150ft. away. I had to drag heavy mop buckets around and the dumpsters used in the bathhouse made breathing difficult.

On April 11<sup>th</sup> 1989 I was 62 years old and eligible for a miners pension and Social Security benefits. I continued to work until May 31<sup>st</sup> 1989. I was still having trouble breathing and doing the heavy work my job required. I took an early retirement on May 31<sup>st</sup> 1989.

I am still trying to get my claim approved. haven't worked for 5 years. at the

present time my claim is before the Administrative Law Judge of the Labor Dept. I am sending copies of the denial of my claim dated 5-11-1991 also a copy of my latest application for a Modification of award dated 11-10-93. This claim is before the Administrative Law Judge of the Labor Dept. OWBP. now.

I would appreciate any help you can give me on this claim. I have spent about \$1,800<sup>00</sup> on this claim and haven't given up yet.

Thank you very much,  
 Vernon C. Gillhous  
 P.O. Box 312  
 Conaerton W.V. 25036.

Daniel B. Rutland, ~~5-11-1991~~  
 aged 73 years has worked in and around the coal mines twenty six and one half years plus about four years of driving a truck loading and unloading coal.

He last worked in the coal mines in 1977. At this time he became short of breath and found it difficult to continue working. He was advised by his doctor to stop exposing himself to coal dust.

He was awarded Pneumoconiosis in 1978. The award was terminated in 1988.

At this time the Labor Board began to demand pay back of \$54,000<sup>00</sup>. This has been hanging over his head with much expense and aggravation since 1988.

Three different doctors have declared  
me to be totally disabled to work  
in coal dust because of Pneumoconiosis.

Daniel B. Fisher

Dear Senator Paul Simon,

My name is Carl H. Cox, I have worked 26 years in the coal mines. At the age of 29 I went for a interview in a Union Mines and took physicals and did not pass because, they said my lungs were covered with coaldust and had streaks on them, in 1974, I drew Black Lung, I took 60 percent and left 40 percent to leave my claim open, and worked until 1986 when I got hurt in the mines, and in 1987, I filed for Black Lung. The two doctors who gave me physicals for Black Lung in 1974, I went back to the same doctors and they denied saying I had Black Lung. There is no way I can fight Rockwood because everytime I go for a physical they get my X-rays and send them to 20 to 30 doctors, please help pass the Bill S-1781.

Thank You,  
Carl H. Cox

To: Paul Simon +  
Kristina Zahorik

I am 60 years old and a disabled coal miner. I drew blacklung for 9 years. There was five doctors said I had blacklung. Westmoreland doctors said I didn't have blacklung and they cut my check out. They stopped my check in 1991. It is up to be reappealed to the Supreme Court.

I now draw \$600.00 a month from Social Security to live on. When I pay my bills and buy groceries I don't have enough left to buy my medicine.

I am not able to climb stairs or walk long distances.

There is no way I could hold a job and I barely draw enough to get by.

I need my blacklung check so that I can be doctored when I am sick.

It's hard for me to try to get my blacklung back, when Westmoreland can hire lawyers and doctors and I can't even afford to buy my medicine I need.

I talked to a lawyer and he said with the reports I

have, if this bill passes, I will get my blacklung check back.

Without this bill being passed I have no chance of getting my blacklung back.

I cannot afford to fight Westmoreland, they have money for lawyers and I don't.

Thank You

Richard D. Lawson  
Rt. 1, Box-1170  
Dryden VA. 24243

(703) 546-1262

P.S. Notify me if there's any changes.

3/25/94

To whom it May Concern: I  
Am Loretta Cox Mess Wife of  
the deceased husband Iderabel  
Lee Cox. I have two children of  
his 16 & 11 yrs. of age. I have  
fought the Black lung group since  
my husband died in 1984 and he  
was signed up since 1981, which  
he was disabled and he had a  
back injury, but he spent 18 yrs  
in the Coal mines and won his  
Black lung back in I believe '76  
and had the disease, but then  
the Insurance Co said his  
disability was from his back that  
brought him out of the mines and  
cut him off, and he fought to get  
it back and never could get it back.



And he had the disease then and  
 won his Black Lung and now  
 the Company presents 15 or 20 pieces  
 of evidence against my nothing and  
 says he is not entitled to it. I  
 have seen my husband smother  
 so bad from this disease, til  
 he would cry and couldn't climb

Anything steep, or no stairs, he  
 never did have the opportunity  
 opportunity to sleep in our up-  
 staus home because of this disease.  
 And he got so bad with this disease  
 and his back and he seen no hope  
 for himself so in 1984 he committed  
 suicide and wrote me a letter  
 and said if he had to live like  
 this he would soon be dead and  
 he is dead now because of his sickness  
 and never could get anything out of  
 being diseased with this dreadful  
 disease. So now the children &  
 me can't get anything because the  
 Company fights me with so much  
 evidence & re-reading of X-rays til  
 I can't get it and he is gone now  
 so now I have nothing to go on.  
 Its not fair to man, draws Black  
 lung and had evidence then to get  
 it and now the Company says  
 he is not entitled to it. If the  
 people don't help us, with this then

we are a losing battle (as widows)  
 Cause after the man is gone  
 and cant be checked and the  
 Annuona Companies fight us  
 now like they are allowed to,  
 then we are a losing battle its  
 just not rights to the children,  
 struggling to get an education or a  
 little bit of Social Security, when their  
 daddy was entitled to this and  
 cant get it for the Companies.  
 I think its a shame when a man  
 is no longer here and their children  
 has to suffer because of Companies  
 paying \$15,000. for an evaluation to  
 treat these kids out. I pray there  
 will be something passed to approve  
 this bill to help the widows to  
 get their children a education +  
 a decent life to live in  
 America.

Thanks.

A deceased husbands  
 wife and children  
 Loretta Cox Hess

Dear Senator Paul Simon,

My name is Steve Pennington, my father has pneumoconiosis,  
 and I know how he suffers, so please help pass the the Bill S-1781.

I am a 34 year old coal miner and I have a job in Harlen Kty.  
 I had to go for a physical the doctor I was sent to said I had  
 Black Lung but I was good for at least 10 more years, but if  
 I were out of work know, and had to go for another physical for  
 Black Lung he would denie me, because everyone in Southwest Virginia  
 knows what a crook he is. There is no way I could pay 20 to 30 doctors

for physicals the way the insurance company sends X-rays all over the country to be read by other doctors. I work 6 days a week, I eat and breath coal dust all the time. I risk my life for my family because, I have a wife, and three children, a mines is not just a hole in the ground, it is a place where you crawl on your hands and knees from eight to twelve hours a day to make a living. At times I crawl from 1 to 5 miles a day underground, if people in congress would come down to these coal mines, I would be more than glad to take them inside.

*Steve Pennington*

March 21, 1994

Mr. Virgil Young

P.O. Box 812

Rockwood, Tenn 37854-0812

1995 MAR 25 10 11 AM

Honorable; Paul Simon  
United States Senator.  
State of Illinois  
Senate office building  
Washington, D.C. 20510

Dear Honorable Simon;

On March 15, 94, I read with great interest your current attempt to assist the Coal Miners of this nation who have been diagnosed with the killer disease "Black Lung". the reason for my interest is for the past 25 years I have assisted coal miners throughout the United States in applying for their benefits.

In my opinion the greatest assistance you and your panel can do the coal miners is to clean out the Offices of the Administrative Law Judges there in Washington.

In every case that I have been associated with where the coal company is represented by the Law firm of Jackson and Kelly, the coal miner loses any and all attempts of every avenue they might pursue in getting their claims through. It has even come to the point in this area to

where you can call an Attorney and ask their assistance for a miner and the first question out of their mouth is who is representing the coal company, and when you tell them that Jackson and Kelly Law firm is on the opposing team then the Attorney will not take the case because they already know they will loose the matter before the administrative Law Judges there in Washington.

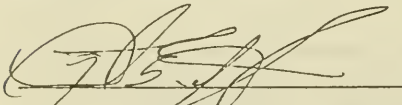
The respondents in these matters obtain an order to compel from the Administrative Law Judges Office requiring that the Miner go anywhere in the United States that the Respondent's Attorneys ask for additional Medical Examinations. In one case that I am currently involved in the Respondents Attorney has already submitted 7 medical reports from Physicians as far away as Pennsylvania and now have an order to compel the miner to go an additional 325 miles for another examination. and this miner is currently bedfast.

It would be my impression that the law should state that any miner not represented by an Attorney at Law that the coal mining company should select a Non-Attorney to represent their interest as well, or that the Administrative law judges should be compelled to appoint an Attorney for the miner at their option.

Mr. Simon I am not an Attorney, I represent these coal miners to the best of my ability until the matters are forwarded to the Office of the Administrative Law Judges there in Washington and then I try to find the miner a competent Attorney to handle their interest from that point. However as I noted earlier this has become impossible.

Any improvements that your panel can make in this matter will be greatly appreciated by all underground coal miners everywhere and anything that I can do to assist you or the other members will be accomplished with haste.

Thanking you.

  
\_\_\_\_\_  
VIRGIL E. YOUNG

March 5, 1992

THE TRAGEDY OF BLACK LUNG

HON. ROBERT E. WISE, JR.

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 5, 1992

Mr. WISE, Mr. Speaker, I would like to introduce for the Record a statement written by Mike South, a constituent from Boone's Fork WV. Those who have been exposed to the devastating effects of black lung realize how it affects the lives of victims and their families.

For those who have not been exposed in individuals with black lung, please read Mr. South's account of what it is like to live with this disabling condition. I encourage my colleagues to keep Mr. South's comments in mind as Congress considers important legislation that will affect the lives of thousands of miners across the Nation.

STATEMENT OF MIKE SOUTH

To those who are members of this committee, we, the living and dead victims of Black Lung, appeal to your sense of humanity.

Those who do not suffer from lung disease can in no way know the agony that it puts families through. When you mention a person suffering from lung disease it involves the whole family. The spouse who tries to take over the tasks more done by her husband who once did all the heavy physical chores.

The children who sit and watch their father pant and gasp for breath from such simple tasks as eating or speaking; and the man himself who suffers even more than his family realizes.

He suffers in ways that others may consider foolish, especially his wife and children. He feels that he is no longer an asset to his family. He can no longer provide monetarily for the support of his family. He is nothing. He goes to doctors, but with little or no results, for his lungs worsen with time. He takes his breathing treatments four times a day and stays on oxygen as recommended by his physician but yet he still sees his condition worsen as time goes by.

There are times during the long breathless nights that he lies awake thinking how much longer he has to endure the suffering he is going through. Times when he gasps for rest and is asked if he is all right and he responds "yes". When in truth he often wonders if this might be his last gasp of life.

I would not be afraid to wager that not a person in this room knows what it is like to get up from your bed and walk 10 ft. to your bathroom and be breathless before you get to the toilet. To take a shower and have to rest several times during the procedure. To step out of the shower and into a thick Terry robe because you haven't the breath to wal yourself dry. And, when you dress, it seems like it takes forever to pull on your pants and especially to try to tie your shoes.

The longing to be able to do at least a sitcom of the things that you used to do in a part before death took hold of your life, slow and agonizing death that takes away many of life's simple pleasures. Not being able to play with your children or just the sense and reason that was so much a part of our life has been replaced by sedentary desperation.

Many breathless hours are spent trying to do tasks that used to take minutes to accomplish. No more cutting the lawn, because you cannot push, or even feet, walk behind the mower. Maintenance on the cars and home is out of the question.

Your life now consists of oxygen tubing and its 50 ft. life line. A tin that you carry day after day. Your tin consists of a "0 ft. radius in which you drag your life line like an extension cord. A cord that you sometimes wish were attached to the coal company executives and members of the Department of Labor.

If only they could spend 24 hours in your shoes. To get a taste of how worthless and lifeless your existence is. I wonder if they

they would change their attitude towards those who suffer from lung disease.

I think not. They sit back and take their apathetic stance hoping the victims will file before any Black Lung claim is settled. And when the victim files the claim goes with him, for the widow stands no chance to prove the assistance of Black Lung in her dead spouse.

The parties involved knew the hardships and years that are spent trying to prove that they are the "walking dead".

Some men spend anywhere from eight to sixteen years being shuffled from doctor to doctor trying to obtain evidence that company doctors say does not exist. I often wonder how these physicians can sleep at night, but I guess they just "blanket" themselves with the money given them by the coal companies.

It has to be the love of money and greed that fuels these physicians and companies, for compensation has no part to play. Human suffering (physical) is supposed to be alleviated by the healing compressions in hands of a physician; instead, these hands are stained "green" from the dyes of money and greed.

This stain has put many a miner in an early grave. A stain that has spread and engulfed a whole nation that has turned its back on the suffering that exists in the "death" of a miner. A "death" that means nothing to any one except the miner's family and friends. A nation that has put a man on the moon and won countless wars, yet the suffering still continues for the coal miner. A miner who has helped in all the endeavors this country has put forth. Yet when he is down with failed health, he is spurned by the nation that he helped lead to such greatness. A nation that is complacent in its attitude, that it does not affect me, it does not exist.

To the powers that be: listen I beseech you. Take a walk in my weary shoes and pass HR 1637; for without it countless numbers of deserving men and their families will suffer in the quagmire of red tape involved in the present system. A system established for the benefit of big business and not the man, without whom they would not exist.

And, as they reap their enormous profits, they hire lawyers to protect their greed. A greed that does not encompass compassion for the men who die for their dollars. So, in reality, they trade "dollars for death" and think none the less for it. Has the nation become so oblivious that greed overrides everything that is supposed to be the make-up of human existence? His common decency and compassion gone by the way of the grave? I would hope not, but from my point of view, it has; for it seems that the plight of the coal miner is forever to exist in poverty and suffering.

Could this distinguished body exist on \$200 a month? I think not. Yet, that is all the monthly benefits that a miner receives from Black Lung. Some gentlemen pay \$500 or more for their suits, yet a miner is asked to survive a month on that amount.

Members of Congress say they cannot sustain their lifestyle on less than \$116 thousand dollars a year.

Blip on my size 8 shoes and lies on my yearly income, and then ask for a raise. It comes to mind the words, "I once complained of no paw shoes, till I saw the man who had no feet".

So remember, without good lungs you cannot perform your daily tasks, for without them the gift of speech means nothing. Pass HR 1637 and let those who deserve their right to breathe, breathe a little easier. Thank you.

Mike South  
(for file records)  
ED 847

Senator SIMON. We thank you very much for being here. Our hearing stands adjourned.

[Whereupon, at 12:15 p.m., the committee was adjourned.]

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