



Opening Statement

COMMITTEE ON EDUCATION & LABOR

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The Hon. Robert C. "Bobby" Scott • Chairman

Opening Statement of Chairwoman Alma Adams

Asleep at the Switch: How the Department of Labor Failed to Oversee the Black Lung Disability Trust Fund
Subcommittee on Workforce Protections Hearing
Wednesday, February 26, 2020 at 2:00 p.m.
2175 Rayburn House Office Building

Today, we will hear the disturbing story of a major failure of government oversight – a failure apparently going back several decades – and an even more troubling account of how the coal operators and their creditors on Wall Street have left taxpayers to take the hit.

Last June, this subcommittee held a hearing about the growing red ink in the Black Lung Disability Trust Fund (Trust Fund). The decline of coal production, a reduced level of funding due to the sunset of the black lung excise tax, and a resurgence of black lung disease is pushing the Trust Fund deeper and deeper into debt.

Today, we will explore another important piece of this problem: The Department of Labor's (DOL) failure to ensure that coal operators are covering their fair share of the benefits owed to miners and their families.

When miners are disabled from black lung disease, they can file a claim for black lung benefits with the Department of Labor. If a claim is approved the coal operator that most recently employed them is required to provide benefits and cover medical expenses for the miner and their family. The law requires that operators have insurance to cover benefits for miners and their survivors, benefits that frequently outlast the life of the mining company. If a mine operator shuts down or files for bankruptcy however, benefits are paid from the Black Lung Disability Trust Fund, which is financed by a small tax on each ton of mined coal.

In order to ensure that the obligations of the mine operators do not fall on the Trust Fund and taxpayers, operators are required by the DOL to either:

1. Purchase commercial insurance sufficient to cover their current and future obligations, or
2. Mine operators can self-insure, as long as they can prove that they have collateral sufficient to cover their obligations. DOL is supposed to oversee that self-insurance program.

But the Department of Labor has failed to enforce the mandate that self-insured mine operators set aside sufficient collateral in the event of bankruptcy. As a result, the amount of collateral DOL has required from some of these operators is tens of millions of dollars less than their most recent estimated black lung benefit liability. In 2016, Chairman Scott and then-Congressman Sander Levin asked the Government Accountability Office (GAO) to:

1. Examine the potential exposure of the Trust Fund from self-insured mine operators who file for bankruptcy;
2. Evaluate the effectiveness of DOL's oversight over the program, and
3. Make recommendations for improving oversight of the program.

The GAO is here today to detail their report. We will also hear from the director of the Department of Labor's Office of Workers Compensation Programs to describe the Department's efforts to correct this problem. We will be hearing some troubling findings today.

Last summer, we learned from GAO that of 22 self-insured coal operators, DOL had not reassessed black lung liabilities or collateral levels of almost half of them in the past ten years. One of these operators had not been examined for over 30 years.

Today, we will learn that over six months after the DOL required self-insured coal operators to update their information, DOL has still not publicly released updated estimates of liability and the appropriate levels of collateral.

Today, we will also hear about the consequences of this inadequate oversight. GAO's report found that mine operators in three very large recent bankruptcies involving nearly \$1 billion in black lung liabilities were required to post only 3 percent of the needed collateral.

At last June's hearing, the GAO made a preliminary finding that the bankruptcies of those three companies – Alpha Natural Resources, James River Coal, and Patriot Coal – had resulted in \$310 million being added to the Trust Fund's obligations. But today we will learn that that true number is \$865 million – three times the original estimate.

While taxpayers were saddled with debt, coal executives were walking away with millions of dollars in salaries and bonuses.

Following their bankruptcy declaration, one of the bankrupt operators, Alpha Resources, offered executive bonuses of up to \$11.9 million to its top executives. Alpha CEO Kevin Crutchfeld made almost \$8 million in 2014, the year Alpha declared bankruptcy, and then another \$1.8 million in 2016 when Alpha emerged from bankruptcy.

At the same time, Alpha dumped \$494 million in liabilities into the Trust Fund while providing only \$12 million in collateral. As part of the \$12 million payment, DOL allowed Alpha's successor to continue to self-insure after the bankruptcy.

This fleecing of the Trust Fund and taxpayers has occurred under DOL's nose despite the Department's power to prevent it. The *Black Lung Benefits Act* gives DOL the authority to hold coal executives personally liable for the costs that were shifted to the Trust Fund. But this power has rarely been used in the 40 years since this authority was given to DOL.

Finally, the Department had no functioning appeals process in those rare occasions when they remove an operator's permission to self-insure and the operator appealed. The American people expect good government and deserve answers.

I am disappointed that the Department has refused to brief the Committee prior to this hearing about its proposal to remedy the self-insurance program. That said, we will be particularly interested in their plans to address this problem and whether those efforts are adequate. This is a failure on multiple fronts by current and previous administrations to protect American taxpayers, miners, and their families.

What we are seeing here is nothing less than a gaming of the system. The winners are the coal operators and their Wall Street creditors. The losers are the American taxpayers. In other words, the costs of black lung disease have been socialized and the gains from DOL's failed oversight have been privatized. Today, we hope to learn what happened, how to fix it, and how to prevent it from happening again.

Finally, I want to recognize the coal miners who are attending this important hearing. Thank you for travelling all this way. I look forward to hearing from our witnesses and thank them for their testimony. I yield to the Ranking Member, Mr. Wright, for his opening statement.