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November 7, 2013

VIA FACISIMILE (202) 693-5121

The Honorable Scott S. Dahl
Inspector General
U.S. Department of Labor
200 Constitution Avenue, NW
Room S-5502
Washington, DC 20210

Dear Inspector General:

As the Senior Democratic Member of the Committee with oversight and legislative jurisdiction over the Black Lung Benefits Program, I respectfully request that your office investigate publicly reported allegations of misconduct by doctors and lawyers working on behalf of the coal industry that has resulted in coal miners being improperly denied health-related benefits and compensation to which they are entitled.

According to a year-long investigation of the Black Lung Benefits Program by the Center for Public Integrity (CPI)¹ and ABC News,² doctors and lawyers have allegedly used medically and ethically questionable tactics to defeat the benefits claims of miners sick and dying of black lung, even as disease rates are on the rise and an increasing number of miners are turning to a system that was supposed to help alleviate their suffering.

This investigative report revealed how medical opinions from doctors at Johns Hopkins Hospital have helped coal companies thwart efforts by ailing mine workers to receive disability benefits. According to the CPI investigative report, Dr. Paul Wheeler, who heads a unit at Johns Hopkins Hospital where radiologists read X-rays of coal miners seeking black lung benefits, had not found a single case of severe black lung in the more than 1,500 cases decided since 2000 in which he offered an opinion. In recent court testimony, Dr. Wheeler said the last time he recalled finding a case of severe black lung — a finding that would automatically qualify a miner for benefits under a special federal program — was in "the 1970's or the early 80's."³ In written opinions, judges have said Wheeler's assumptions seem to have "affected his objectivity" and

¹<http://www.publicintegrity.org/2013/10/29/13585/coal-industrys-go-law-firm-withheld-evidence-black-lung-expense-sick-miners>

² <http://abcnews.go.com/Blotter/investigation-johns-hopkins-tough-questions-black-lung-money/story?id=20721430>

³ <http://abcnews.go.com/Blotter/top-hospital-suspends-black-lung-program-abc-news/story?id=20760361>

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“inappropriately colored his readings.” Another wrote in 2011 that Wheeler had a “bias against a finding of complicated [black lung] in ‘young’ individuals.”⁴

In response to the CPI-ABC News investigation, Johns Hopkins Medicine has suspended its black lung program pending a review.

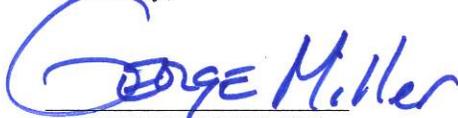
The CPI-ABC News investigation also reported how a law firm, Jackson Kelly PLLC, which has a unit that specializes in opposing federal black lung benefit claims, deliberately withheld key evidence⁵ from the Department of Labor, claimants and even their own expert witnesses, and presented incomplete or potentially misleading evidence among other actions.⁶ The investigative report suggests that there has been a pattern and practice by lawyers at the Jackson Kelly law firm which has compromised the integrity of the black lung benefits program and potentially tainted numerous decisions adversely affecting coal miners and their survivors.

I look forward to learning the results of your investigation, as I work with my colleagues to assess legislative reforms to prevent the benefit claims process from being gamed by coal companies, their lawyers and their doctors, and to ensure that those who have been improperly denied benefits will have another opportunity at securing fair treatment.

Should you need to discuss this matter further please contact me or direct your staff to contact my Senior Labor Policy Advisor, Richard Miller, who may be reached at (202) 225-3725.

Thank you for your attention to this matter.

Sincerely,



GEORGE MILLER
Member of Congress



JOE COURTNEY
Member of Congress

cc: Chairman John Kline

⁴ <http://www.publicintegrity.org/2013/10/30/13637/johns-hopkins-medical-unit-rarely-finds-black-lung-helping-coal-industry-defeat>

⁵ <http://s3.documentcloud.org/documents/810891/lesniak-2005-order.pdf>

⁶ <http://s3.documentcloud.org/documents/809255/burke-2009-decision-in-fox-case.pdf>