Statement of Robert Bailey, Jr., Disabled Coal Miner and Member of the United Mine Workers of America
Submitted to the
Committee on Health, Education, Labor and Pensions, of the U.S. Senate
Subcommittee on Employment and Workplace Safety
Hearing on July 22, 2014

Chairman Casey, Ranking Member Isakson, Senators:

My name is Robert Bailey, Jr., and I am a retired and disabled union coal miner with complicated black lung disease. I graduated from high school in June of 1972, and began working in the coal mines in July of 1972. I retired after working in the coal mines for 36 ½ years due to having black lung disease.

I appreciate all the hard work that our elected officials have endured during these long struggles to get the changes that are needed. I also appreciate the support of the UMWA.

If you would ask me, “What it is like living with black lung disease,” I would think, “Where do I start?” First of all, living with black lung is hard. With this disease, I have had to learn to change my normal way of doing things to a much more simple way or just not doing it at all. Living with black lung is thinking about every breath you take. Breathing is something most people take for granted as it is a normal involuntary function of our bodies. It comes natural as we walk, do our daily jobs, come and go. But with this disease, I am reminded constantly as I struggle to breathe whether I am simply walking up my slight incline of a yard, or grocery shopping or trying to participate in Operation Compassion at our church when we give out food. My wife says she can see the pain on my face as I struggle to take in enough oxygen to do those things in my life. There are days that I feel so bad that I end up doing mostly nothing all day. I feel like this disease has taken about 80% to 90% of my active life away. I have always been an active, hard-working person who always had a hard time sitting still.

With this disease, I end up with infections in my lungs and my breathing gets so bad that I have no choice but to go to the hospital. There, they pump me full of IV Antibiotics, steroids, nebulizers, etc. to build my system back up for a while. I am now having a once a month IV treatment at the hospital in hopes that it will help keep the infections down. I leave the hospital feeling better, strap on the oxygen tank, and thank God for another day to try again.

When I originally filed for Black Lung Benefits in 2009, I had worked as an underground coal miner for more than three decades in very dusty conditions and had never smoked except for sneaking cigarettes for a few years as a teenager. I was denied because Dr. Wheeler gave a negative reading of my x-ray. In other words, he gave his opinion that I didn't qualify for black lung or didn't have severe black lung. I feel that Dr. Wheeler's negative reading was given more weight simply because he graduated from Harvard University and worked at Johns Hopkins, than Dr. Rasmussen's reading who is also a very accredited doctor in the Black Lung field with years of studying coal miners and their disease.

I continued my claim and was finally, after nearly four years, awarded my Black Lung Benefits by a Federal Judge from Washington, D.C. after much further testing, x-rays, MRIs, and a lung biopsy. They took three samples of my lungs and two of those samples were stated as "mostly black." The final result of the lung biopsy was "complicated Pneumoconiosis."

My lung doctor, Dr. Vasudevan of Princeton, WV, and I talked about the possibility of a lung transplant. His office started trying to find a hospital willing to see me to be evaluated for a transplant. We found Inova Fairfax Hospital in Falls Church, VA. The financial coordinator contacted Underwriters Insurance which I have through Patriot Coal as my insurance for anything related to black lung disease. Underwriters in turn approved a one-time evaluation. My one-time evaluation was scheduled for February 11th, 2014.

After this initial evaluation, it was determined by Dr. Steven Nathan that I needed a transplant and in his words "you are in the perfect window of opportunity for a transplant." This would require a complete evaluation of testing which would have to be approved through the Underwriters Insurance. My next appointment was scheduled for May 27th for a follow-up (a regular checkup) with Dr. Nathan, but I received a letter of denial from Underwriters so this appointment was rescheduled for June 12th. I started on the trip for this appointment without knowing if it would be approved. Finally, as I was halfway there, I received a phone call from Inova saying this visit was approved. When I got back home, I received a letter from Underwriters (from the attorney with Bowles Rice) stating that they authorized the June 12th appointment but do not authorize any lung transplant procedure and that Patriot reserves the right to approve or disapprove any further testing or transplant in keeping with the "applicable regulations and law."

As I write this letter, I am here in Fairfax for the week for all of the additional evaluation testing required to determine my eligibility for a lung transplant. I have no idea if this week of testing will be approved and paid for nor do I know if after all this testing, the insurance will agree to the transplant since Patriot is reserving their right to approve or disapprove based on the "applicable regulations and law." Today, as I write this letter, Underwriter has not sent me any letter of approval or denial concerning this week of testing.

I worked in the coal mines for 36 ½ years. Through the years, I have met a lot of good men who became like family. We were all there to make a living and none of us deserved this terrible disease, but sadly, there are a lot of us going through this. When I was working, I knew a lot of my co-workers who were afraid to have the free x-rays that the company was required to offer. They were afraid it would be used against them somehow, and they would lose their jobs. Even now, when a coal miner files for Black Lung Benefits, they know they are in for a battle. I just recently met a man who fought for 11 years and just recently won his benefits. He told me he was ready to give up several times but held on through much encouragement from people in the Black Lung Clinic.

It seems like the coal companies and/or the insurance company wants to put you off as long as possible hoping you will give up or die before they have to pay any benefits. In my case, I have been awarded my Federal Black Lung Benefits and Disability Social Security benefits based on my black lung disease. Yet, Patriot Coal wants to reserve the right to approve or deny my testing or transplant. Patriot's lawyers said they would need to review the medical records again (a stall tactic) and want to definitely determine the disease process present in the lungs.

I feel like I need to prove over and over again that I have this terrible disease. I feel that the “applicable laws and regulations” mentioned in the letter need to be changed to protect the diseased coal miner more than the coal companies. I’m hoping you can help me and all other coal miners who have this amount of medical evidence and physical needs to be approved in a more timely manner and can stop the long drawn-out stalling techniques by using policies and criteria that help the insurance company and coal operators, but do nothing for the coal miners who are dying from black lung disease. There are coal miners who have died waiting on the approval for a transplant. Policies and laws need to be changed to give hope and life to those who don’t have time for stall tactics. Once a coal miner has been awarded his federal black lung benefits and no appeals were made in protest by the company, there should be no question about paying for <u>anything</u> concerning the coal miner’s health and quality of life.

Robert Bailey, Jr.