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April 14, 2010

Eric Holder  
United States Attorney General  
950 Pennsylvania Ave NW  
Washington, DC 20530

Re: Request Criminal RICO Investigation Of Don Blankenship-CEO of Massey Energy and Director of the U.S. Chamber of Commerce

Dear Mr. Holder:

I am writing on behalf of a network of more than 150 organizations dedicated to corporate and government accountability to request that your office immediately open a criminal investigation into the activities of Don Blankenship, both as CEO of Massey Energy and as a Director of the United States Chamber of Commerce. Specifically, it appears, from public documents, court records, statements, and videos, as well as actual events, that Mr. Blankenship has been engaged in a pattern of criminal racketeering that has resulted in death.

We urge you to appoint a career DOJ attorney to conduct this investigation and that you give that attorney wide latitude to follow the evidence wherever it may lead. We believe, based on past behavior, that Mr. Blankenship will attempt to improperly influence the investigation if he has any opportunity to do so. We also believe, based on the public record, that absent a criminal investigation, Mr. Blankenship will continue his criminal conduct and more people will be killed.

The public record about Mr. Blankenship's wrongdoing is voluminous and we cannot possibly cover it all here. \*\* However, we will provide a brief overview of some of his most egregious conduct to clearly demonstrate that a criminal investigation under RICO is warranted.

- Massey Energy consistently sacrifices the welfare of its employees in order to boost the bottom line. The latest death of 29 miners represents the fourth fatal disaster in 12 years at Massey mines. The Upper Big Branch mine has racked up 1,342 safety violations since 2005, drawing \$1.89 million in fines. And 86 of those violations were for an inadequate ventilation plan that prevents the very type of explosions that caused these deaths. Last year alone, Massey's Upper Big Branch Mine was cited for 495 violations and

\$911,802 in fines. So far this year, regulators have found 105 violations at the mine. Twelve of those citations were issued in the last month. The same day of the explosion, the Upper Big Branch mine was hit with two additional safety violations.

- Before the disaster, Blankenship attacked the Mining Safety and Health Administration and "emotional" elected officials trying to improve mine safety with "nonsensical" laws." He also said, "I don't need Washington politicians to tell me [about mine safety], and neither do you. But I also know — I also know Washington and state politicians have no idea how to improve miner safety."
- In 2008, Massey's subsidiary Aracoma Coal was charged by the Department of Justice with willful violation of mandatory safety standards, one count resulting in the death of two miners, and with making a false statement. A huge problem at Aracoma was that Massey officials had removed key ventilation walls, or stoppings, allowing smoke to enter that primary escape tunnel in the first place -- a move that U.S. District Judge John T. Copenhaver later said "doomed two workers to a tragic death." Massey settled those criminal charges along with civil violations for \$4.2 million in criminal and civil penalties -- the largest financial settlement in the coal industry's history. Massey pled guilty to criminal mine safety violations that led to the deaths. Testimony showed that Blankenship suggested firing two supervisors for raising concerns about safety problems with the conveyer belt just before the belt caught fire, causing the deaths. The mine "had 25 violations of mandatory health and safety laws" before the fire on January 19, 2006, but Blankenship passed off the events that caused the deaths as "statistically insignificant." Days before fire broke out in the Aracoma mine, a federal mine inspector tried to close down that section of the mine, but "was told by his superior to back off and let them run coal, that there was too much demand for coal." Three months before the Aracoma mine fire, Blankenship sent managers a memo saying, "If any of you have been asked by your group presidents, your supervisors, engineers or anyone else to do anything other than run coal...you need to ignore them and run coal. This memo is necessary only because we seem not to understand that the coal pays the bills." All these fines, including the largest in coal history, have proven insufficient to stop Blankenship from repeating his violations.
- Mr. Blankenship has challenged hundreds of citations and refused to pay fines. Figures show that Massey tops the coal industry in challenging citations. Last year, Massey contested 34 percent of its alleged violations, compared with the national average of 27 percent that year. Massey is contesting violations valued at \$10 million, a total of 11.2 percent of all the contested violations before the commission. While Massey contests these citations, it ignores the safety violations.

- Massey is the parent of Martin County Coal, which was responsible for the "nation's largest man-made environmental disaster east of the Mississippi" until the 2008 Tennessee coal-ash spill. "In October 2000, a coal slurry impoundment broke through an underground mine shaft and spilled over 300 million gallons of black, toxic sludge into the headwaters of Coldwater Creek and Wolf Creek," in Martin County, Kentucky. After the Martin County Coal spill, then-U.S. Secretary of Labor Elaine Chao, who oversaw the MSHA, "put on the brakes" on an agency investigation into the spill by placing a staffer to her husband, Sen. Mitch McConnell (R-KY), in charge. In 2002, a Labor Department judge levied a \$5,600 fine. "In September 2002, Massey's PAC gave \$100,000 to the National Republican Senatorial Committee," which McConnell had previously chaired. Overall, McConnell has been one of the top recipients of Massey-related contributions, collecting \$13,550 from Massey-connected contributors. Blankenship's contributions to Republicans helped him place allies at the highest levels of the federal mine safety system during the Bush administration. Massey COO Stanley Suboleski was named a commissioner of the Federal Mine Safety and Health Review Commission in 2003 and was nominated in December 2007 to run the Energy Department's Office of Fossil Energy. Suboleski is now again on the Massey board. After being rejected twice by the Senate, President Bush put one-time Massey executive Dick Stickler in charge of the MSHA by a recess appointment in October 2006. In the 1990s, Stickler oversaw Massey subsidiary Performance Coal, the operator of the deadly Upper Big Branch Mine, after managing Beth Energy mines, which "incurred injury rates double the national average." Bush named Stickler acting secretary when the recess appointment expired in January 2008.
- In 2009, the U.S. Supreme Court ruled in *Caperton v. A. T. Massey Coal Co* that Mr. Blankenship's spending \$3 million on a successful campaign to oust a state Supreme Court justice who frequently opposed him "had a significant and disproportionate influence" on the election's outcome. It reversed the decision that favored Massey.
- In June 2007, two board members resigned from Massey's board of directors. Daniel S. Loeb and Todd Q. Swanson submitted a resignation letter saying they were stepping down in part because of Blankenship's "poor risk management" and the company's "confrontational handling" of regulatory matters. In December 2008 a group of shareholders sued Massey Energy's board members for "blatantly disregarding their fiduciary obligations," in part because of safety violations that allowed employees to die in "preventable accidents."
- The Change to Win Investment Group — a union pension fund group with over \$200 billion in assets — believes the Upper Big Branch mine explosion

is the “tragic consequence of the board’s failure to challenge Chairman and CEO Blankenship’s confrontational approach to regulatory compliance.” New York State Comptroller Thomas P. DiNapoli, who controls about \$14.1 million of Massey stock as the trustee of the New York State Common Retirement Fund, blasted Massey’s “callous disregard for the safety of its employees” as a “failure both of risk management and effective board oversight”

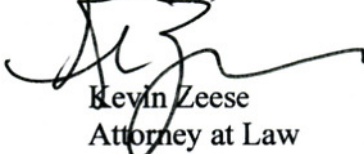
- West Virginia Supreme Court Justice Larry Starcher told ABC News that Blankenship “bought a seat on the Court” when he spent millions to elect pro-Massey Justice Brent Benjamin. And when ABC News tried to interview Blankenship about the matter, Blankenship threatened to “shoot” the reporter, attacked and pushed him and broke his camera. ABC also reported that Blankenship was caught vacationing on the French Rivera with the Chief Justice of the WV Supreme Court, Elliot Maynard.  
<http://www.youtube.com/watch?v=O4Ym8qqR5vU&f>.
- As a board member of the United States Chamber of Commerce, Blankenship has a direct hand in how the Chamber spends its money. And over the last decade, the Chamber has spent over \$50 million to elect judges that agree with its ideological position. For instance, in Michigan, one of the judges the Chamber spent millions to elect in 2000 was Judge Robert Young of the Michigan Supreme Court. Young has paid back the Chamber and Blankenship in spades, even co-signing an amicus brief in 2009 to the Supreme Court in the Caperton v. Massey case. Mr. Blankenship’s involvement in Chamber expenditures amounts to a quid-pro-quo and a conflict of interest.

It is clear from the above list that Mr. Blankenship 1) does not want his mines to be regulated, 2) does not believe that public officials in Washington have a right to regulate the safety of his mines, 3) will avoid and ignore regulations, citations, and fines, 4) considers the bottom line and profits as more important than the safety of his workers, 5) treats worker deaths as a cost of business and a public relations problem that must not be allowed to affect the stock of Massey, 6) sees politicians and judges as mere pawns who can be bought to protect him and his company, 7) considers the Chamber of Commerce, with its army of lobbyists and lawyers, and unlimited funds, as his front line of defense to any problem he or his company faces, and 8) will make broad use of fear, intimidation, threats, suits and even violence to avoid scrutiny.

We believe that the above presents a prima facie showing that Mr. Blankenship has engaged in a pattern of criminal activity, from obstruction of justice to fraud and homicide. Clearly, the decisions that he has made have resulted in mass death and environmental destruction. Treating this as a Labor Department administrative or investigative matter will only result in more deaths and more destruction.

In conclusion, we strongly urge that you immediately order a widespread criminal investigation into the conduct, policies and practices of Don Blankenship, both at Massey Energy and the U.S. Chamber of Commerce.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Zeese', written over the word 'Sincerely,'.

Kevin Zeese  
Attorney at Law  
301-996-6582

\*\* Sources: Washington Post, New York Times, Charleston Gazette, Huffington Post, Think Progress, Raw Story, ABC News and others.