

FILED DISTRICT COURT
Third Judicial District

APR -2 2008

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080905510
Judge Fratt

IN THE THIRD JUDICIAL DISTRICT COURT,
SALT LAKE COUNTY, STATE OF UTAH

BESSIE ALLRED, TIFANI MARASCO,
CODY ALLRED, and TYLEE ALLRED,
for themselves and on behalf of the heirs
and Estate of Kerry Allred; NELDA
ERICKSON, BRANDON ERICKSON,
BRIAN ERICKSON, ERICK ERICKSON,
and LUCILE ERICKSON, for themselves
and on behalf of the heirs and Estate of
Don Erickson; GUILLERMINA
GONZALEZ de HERNANDEZ, for herself
and on behalf of the heirs and Estate of
José Luis Hernandez; JOSE LUIS
PAYAN and ISABEL VILLA GARCIA de
PAYAN, for themselves and on behalf of
the heirs and Estate of Juan Carlos
Payan; JAMIE PHILLIPS and SHEILA
PHILLIPS, for themselves and on behalf
of GAGE PHILLIPS, a minor child, and
the heirs and Estate of Brandon Phillips;
MARTA SANCHEZ, on behalf of ARIANA
SANCHEZ and APOLONIA SANCHEZ,
minor children, and AYDALIZ SANCHEZ
and ARTURO SANCHEZ, on behalf of
themselves and the heirs and Estate of
Manuel Sanchez; JOSEPH RANDY
BOULDIN; KORIE BOULDIN; CASEY
METCALF; TRISTA METCALF,

Plaintiffs,

vs.

MURRAY ENERGY CORPORATION, an
Ohio corporation; UTAHAMERICAN
ENERGY, INC., a Utah corporation;

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

ANDALEX RESOURCES, INC., a Delaware corporation; AGAPITO ASSOCIATES, INC., a Colorado corporation; INTERMOUNTAIN POWER AGENCY (IPA), a political subdivision of the State of Utah; LOS ANGELES DEPARTMENT OF WATER AND POWER (LADWP), a political subdivision of the State of California,

Defendants.

For causes of action against the defendants, plaintiffs allege as follows:

PARTIES AND JURISDICTION

1. Plaintiffs are citizens and residents of the State of Utah, except José Luis Payan, Isabel Villa García de Payan, and Guillermina Gonzalez de Hernandez, who are residents of Mexico.
2. Plaintiffs Bessie Allred, Tifani Marasco, Cody Allred, Tylee Allred are the survivors and heirs of Kerry Allred, deceased.
3. Plaintiffs Nelda Erickson, Brandon Erickson, Brian Erickson, Erick Erickson, and Lucile Erickson are the survivors and heirs of Don Erickson, deceased.
4. Plaintiff Guillermina Gonzalez de Hernandez is the survivor and heir of José Luis Hernandez, deceased.
5. Plaintiffs José Luis Payan and Isabel Villa García de Payan are the survivors and heirs of Juan Carlos Payan, deceased.

6. Plaintiffs Jamie Phillips, Sheila Phillips, and Gage Phillips are the survivors and heirs of Brandon Phillips, deceased.

7. Plaintiffs Marta Sanchez, Ariana Sanchez, Apolonia Sanchez, Aydaliz Sanchez, and Arturo Sanchez are the survivors and heirs of Manuel Sanchez, deceased.

8. The plaintiffs' decedents, Kerry Allred, Don Erickson, José Luis Hernandez, Juan Carlos Payan, Brandon Phillips, and Manuel Sanchez, were all trapped and injured in the Crandall Canyon Mine on August 6, 2007, eventually succumbed to their injuries, and remain entombed therein.

9. Plaintiffs Joseph Randy Bouldin and Casey Metcalf are rescuers who, while attempting to rescue the six trapped miners, were injured on August 16, 2007. They also observed the injuries and deaths and the circumstances leading to the injuries and deaths of their colleagues who were also attempting to rescue the victims.

10. Plaintiffs Korie Bouldin and Trista Metcalf were and are the legal spouses of Joseph Randy Bouldin and Casey Metcalf, respectively.

11. Defendant Murray Energy Corporation ("Murray Energy") is an Ohio corporation doing business in the State of Utah.

12. Defendant UtahAmerican Energy, Inc. ("UEI"), is a Utah corporation doing business in the State of Utah.

13. Defendant Andalex Resources, Inc. ("Andalex"), is a Delaware corporation doing business in the State of Utah.

14. Defendant Agapito Associates, Inc. ("Agapito"), is a Colorado corporation doing business in the State of Utah.

15. Defendant Intermountain Power Agency ("IPA") is a separate legal entity and political subdivision of the State of Utah.

16. Defendant Los Angeles Department of Water and Power ("LADWP") is a separate legal entity and political subdivision of the State of California.

17. All notices and acts required as conditions precedent to the filing of this action against the governmental entity defendants have been properly accomplished, and the claims have been, or are deemed to be, denied.

18. This Court has jurisdiction over this action under section 78A-5-102(1) of the Utah Code Annotated.

GENERAL ALLEGATIONS
History and Ownership of the Mine

19. Crandall Canyon Mine has been in operation for many years, first beginning in 1939 and continuing through 1955. Genwal Coal Company resumed mining there in 1983.

20. In 1990 IPA acquired a 50% ownership interest in the mine.

21. In 1995 Andalex acquired ownership of Genwal Coal Company and the other 50% ownership of Crandall Canyon Mine.

22. In 1995 Andalex and IPA initiated longwall mining at Crandall Canyon, which greatly increased coal production.

23. The owners changed the name of the mine operator, Genwal Coal Company, to Genwal Resources, Inc. ("Genwal"). Genwal was the operator of the mine continuously from 1995 through August 2007, and was the employer of the miners who were killed and injured on August 6 and 16, 2007.

24. By 2007 the mine was approaching the end of its working life. The owners were proceeding with plans to mine out portions of the remaining coal from the rooms and pillars in the main entries ("mains") and from barrier pillars left in place after longwall mining had ceased.

25. Murray Energy, through its wholly owned subsidiary UEI, acquired the assets of Andalex on August 6, 2006, exactly one year before the catastrophic "bounce" (a violent ejection of rock and coal from the roof, ribs or floor) in the mine that killed the plaintiffs' decedents.

Crandall Canyon Mine Operations Before Ownership by Murray Energy

26. Prior to the acquisition of Andalex by UEI, thousands of feet of coal had been mined from longwall panels seven through twelve on the north and thirteen through eighteen on the south at the Crandall Canyon Mine in the West Mains area.

The panels of coal had been mined using longwall machines, leaving large areas of "gob," which are areas of collapsed roof and rock debris.

27. In the middle of these two parallel sets of mined out longwall panels were the West Mains, areas of room and pillar mining, the entries of which functioned as access, ventilation, and coal haulage roads. These mains also provided partial support of the roof due to the pattern of parallel entries and intersecting cross cuts that left square or rectangular coal pillars throughout the length of the mains.

28. The longwall gob provides little if any support of the roof over the mined out areas. Much of the weight of the overburden above the gob is transferred to barrier coal pillars intentionally left along the sides of the mined out areas to provide roof support.

29. The previous owners of the Crandall Canyon Mine had left very long barrier pillars of coal approximately 450 feet wide along the sides of the longwall gob. The barrier pillars provided protection for miners from the heavy overburden in the area by spreading the stresses from the overburden onto sufficient amounts of coal pillars so that pressures and stresses were not dangerously concentrated on too little coal.

30. If the pressures and stresses from the overburden become too high, or are concentrated on too small amounts of coal pillars after mining in the area has been performed, the risk of violent and dangerous bounces – explosions of coal and rock – is

increased. The risk of bounces increases dramatically as the depth of the overburden above the coal seam increases.

31. The Crandall Canyon Mine is a "deep cover" coal mine, defined as one with overburden over 750 feet deep. In the area of the north and south barrier pillars of West Mains where defendants were mining in 2007, the overburden was between 1,300 and 2,200 feet deep.

32. In 2004, Andalex, which along with IPA owned the Crandall Canyon Mine at the time, notified the United States Mine Safety and Health Administration ("MSHA") and the Bureau of Land Management ("BLM") that it intended to seal West Mains of the Crandall Canyon Mine due to deteriorating conditions of the pillars in the mains. Andalex had concluded from its engineering studies that pulling out the remaining pillars and allowing controlled roof collapses as the miners retreat towards the mine entrance – "retreat mining" – could not be safely accomplished.

33. MSHA approved the plan to seal the West Mains in October 2004. On November 4, 2004, BLM Inspector Stephen Falk visited the Crandall Canyon Mine and reported that West Mains were taking unacceptable weight and that the situation in West Mains made future pillar recovery untenable. Engineer Falk wrote clearly of the danger presented by pulling the pillars in West Mains:

No mining company in the area has ever pulled pillars in main entries with mined out sides and under 1500+ feet of cover Attempts to split pillars under this depth could not hold the top and prevent pillar outbursts

. . . . Depth of cover precludes pillar recover[y] even if there were no mined out sections next door. Weight on the pillars is substantial and dangerous conditions are present. Mining any of the coal in the pillars will result in hazardous mining conditions such as pillar bursts and roof falls.

34. In February 2005, BLM echoed engineer Falk's findings and, despite its charge to maximize recovery of coal reserves, approved Andalex's plan to seal the West Mains: *"We agree that the pillars in Main West inby crosscut 116 cannot be recovered safely or practically. We also concur with sealing the area as the coal is not recoverable"*

35. Andalex had been doing retreat mining in 2006 in the South Mains of the mine, which also were located between two sets of longwall gob. The retreat mining in the South Mains had been plagued with bounces and roof collapses, especially as it came under deeper cover, although no serious mining accidents had been reported.

36. Regarding the barrier pillars in the mine, Andalex submitted a mining plan in April 2005 to the Utah Division of Oil, Gas and Mining ("DOG M") providing that *"solid coal barriers will be left [in the Crandall Canyon Mine] to protect main entries from mined out panels and to guarantee stability of the mine entries for the life of the mine."*

This was consistent with earlier mine plans to preserve the barrier pillars in the mine for safety reasons. Genwal Coal Company, the operator of the mine, had documented that

the plan shows no [retreat] mining of barrier pillars is planned at this time. Barrier pillars are designed to protect mine workings by supporting stresses that are redistributed from the mining of section panels. Because these barriers are 'loaded up' with high concentrations of stresses it is not

good mining practice to [retreat] mine barrier pillars and in fact could be dangerous.

37. In 2006 Andalex proposed to do development mining (room and pillar mining "inby," or towards the interior) of the north and south barrier pillars along the West Mains. The plan was to mine some of the 450-foot-wide barrier pillars, leaving thinner solid "remnant" barrier pillars adjacent to the gob, and creating rooms and pillars from the rest of the barrier pillars.

Crandall Canyon Mine Operations After Ownership by Murray Energy

38. On August 6, 2006, Murray Energy's wholly owned subsidiary UEI acquired Andalex and its percentage ownership of the Crandall Canyon Mine. Thereafter, Murray Energy's subsidiaries UEI and Andalex and IPA co-owned the Crandall Canyon Mine.

39. Murray Energy and UEI/Andalex immediately pressed ahead with the plan to do development mining of the north barrier pillar, commencing mining in November 2006.

40. Murray Energy and UEI/Andalex not only pushed ahead with the barrier pillar development, but also decided to retreat mine the pillars created from the barrier development, contrary to the long-standing plans of the prior mine owners not to retreat mine the West Mains barrier pillars, and contrary to previous assessments of prior owner management and officials that retreat mining of the barriers was unsafe.

Agapito Encourages Barrier Pillar Retreat Mining

41. Murray Energy and UEI/Andalex employed Agapito to provide them with an engineering analysis to justify their plan to do development **and** retreat mining of the West Mains barrier pillars.

42. Agapito did the engineering analysis and presented to Murray Energy and UEI/Andalex its conclusions and recommendations in three stages, in July 2006, August 2006, and April 2007.

43. Agapito calculated the stability factors of the standard production coal pillars and barrier pillars using both the ARMPS – Analysis of Retreat Mining Pillar Stability – and LAMODEL modeling, concluding in its reports to UEI/Andalex that the north and south barrier pillars could be safely mined in development and also in retreat.

44. Agapito's analysis was flawed and unconservative, and its conclusions unsafe. The United States National Institute of Occupational Safety and Health ("NIOSH") found in a September 2007 study that Agapito's modeling was "very unconservative" and "substantially overstate[d]" the production pillar and barrier pillar stability factors.

45. NIOSH, from comprehensive analyses of coal mines in 1996 and 2002, had determined and published that the recommended minimum production pillar stability factor for deep cover mines was 0.8, and the recommended minimum barrier pillar stability factor for deep cover mines was 2.0. Agapito's modeling using ARMPS

showed production pillar stability factors ranging from 0.32 to 0.52, and barrier pillar stability factors ranging from 0.91 to 0.95 – stability factors far lower than, and in most cases less than half of, the NIOSH minimum recommended stability factors.

46. Agapito's analysis using LAMODEL was likewise unrealistic, flawed, and unconservative due to improper assumptions and data concerning coal strength throughout the area and improper assumptions of stress concentrations and convergence. Agapito's flawed analysis led it to report to UEI/Andalex erroneous and improperly high stability factors. NIOSH has found that the Agapito LAMODEL analysis was "misleading" with a "conspicuous lack of scientific, quantitative design criterion."

47. Agapito engineers knew that their ARMPS stability factors for the West Mains barrier pillar mining plan were far below the NIOSH minimums. But Agapito justified its plan, claiming that the pillars "*are not intended for long-term performance and, therefore, can accept a reduced design safety margin compared to typical life-of-mine mains pillars.*" Agapito gambled that "[b]ecause rib yielding and roof sag are time-dependent effects, it is probable that mining will be completed in the barriers before rib and roof conditions show advanced deterioration." By providing a plan allowing Murray Energy to mine out most of the West Mains barrier pillar coal, Agapito failed to properly assess all the risks of the mining conditions and lost its bet. But it was the miners who died and were injured and their families who paid the price of Agapito's irresponsible gamble.

Murray Energy's Unsafe Plan to Mine the West Mains Barrier Pillars

48. Based in part on the first two misleading and flawed Agapito reports to UEI/Andalex, Murray Energy and UEI/Andalex obtained MSHA approval for retreat mining in the north barrier and began retreat mining on February 16, 2007. The MSHA approval was obtained despite the prior warnings of an MSHA inspector, Pete Del Duca, that complete retreat mining in the north barrier pillar would be unsafe.

49. Almost immediately Murray Energy and UEI/Andalex submitted a plan to begin development mining in the south barrier pillar, again basing their plan in part on the flawed Agapito analysis.

50. BLM inspector Falk visited the Crandall Canyon Mine on February 27, 2007, and reported that he was concerned with the north barrier pillar extraction progress.

51. In March 2007, as the retreat mining came under deeper cover, repeated bounces, roof falls and rib sloughage occurred. These dangerous conditions were discussed in a meeting of the mine owners and agents, Murray Energy, UEI, IPA, and LADWP, on March 10, 2007, and were specifically acknowledged by Murray Energy CEO Robert Murray. Yet none of these increasingly ominous signs of danger during the first ten days of March were recorded by Murray Energy or UEI/Andalex in the pre-shift logs which MSHA required them to keep and make available to MSHA inspectors.

52. On March 11, 2007, a major bounce occurred in the north barrier during retreat mining. The bounce was so violent that it destroyed parts of the ventilation system, stoppings, and other structures in over 800 feet in the area, forcing the abandonment and sealing of that section of the mine. Apparently, and fortunately, no one was seriously injured.

53. The March 11 bounce was required to be reported to MSHA *immediately* (within 15 minutes), but Murray Energy and UEI/Andalex deliberately did not do so, apparently justifying their violation of the reporting regulation by their decision to cease retreat mining in the north barrier. Robert Murray was personally notified of the March 11 bounce that very day and also attended a mine owners' meeting by phone on March 21 at which the north barrier bounce was discussed in detail, contradicting his public claims in August 2007 after the disaster that he had no prior knowledge of the March 11 north barrier bounce.

54. In light of the March 11, 2007, bounce, Genwal asked Agapito to "refine the pillar design" for the south barrier retreat mining plan based on the bounce in the north barrier pillar. Agapito provided a revised plan on April 18, which essentially increased the pillar length of the development pillars from 80 x 92 feet to 80 x 129 feet, "*which helps to isolate bumps to the face and reduce the risk of larger bumps overrunning crews in outby locations.*"

55. Agapito's revised south barrier pillar development and retreat plan also provided that the remnant barrier pillar would be reduced to only 97 feet width, and would be "slabbed," meaning that 40-foot-long cuts of coal would be taken out of the remnant barrier. Agapito recognized that the *"slabbed barrier will be subject to side abutment loads from gob on both sides, resulting in elevated stress levels through the core."*

56. Even before receiving the Agapito revisions of the pillar recovery plan in April, Murray Energy and the mine co-owners continued the same barrier mining plan in the south barrier pillar, only 900 feet from where they had been mining in the north barrier from February 16 to March 11. The cover and conditions were virtually identical, and so were the risks and dangers.

57. The devastating March 11 bounce made absolutely no difference to Murray Energy management, and Murray Energy and the mine co-owners proceeded with their plan to mine the south barrier pillar in the very same dangerous fashion they had done in the north barrier, demonstrating greedy determination to mine the easily accessible coal without regard to safety.

58. Had Murray Energy and the mine co-owners conducted post-failure modeling of the March 11, 2007, bounce, they could have accurately determined the stress levels at which the coal pillars failed (bounced). Such a comparison would have shown south barrier pillar stress levels as great as the stress levels which caused

failure in the north barrier, again indicating excessive pillar loading and a predictable pillar bounce.

59. However, Murray Energy and the mine co-owners conducted no failure analysis of the north barrier pillar bounce and no comparison of the existing primary bounce conditions (depth of cover, geologic environment, and coal strength), even though the most cursory comparison would have strongly indicated the probability of a second devastating bounce while mining in the south barrier pillar.

60. On July 17, less than three weeks before the disastrous bounce of August 6, Murray Energy and UEI/Andalex began retreat mining the south barrier pillar.

Murray Energy Continued to Retreat Mine Despite Warnings and Signs of Danger, and in Contravention of Express Mine Plan Prohibitions

61. Based on inspected conditions in the south barrier area in late May 2007, MSHA had required modification of the Roof Control Plan in the area of crosscuts 139 to 142 by requiring three additional pillars to be left in place, and to not slab the remnant pillar. These changes to the plan were not followed. The pillars were pulled and the remnant barrier was slabbed in direct contravention of the Roof Control Plan and MSHA restrictions, *at the very site where miners were working at the time of the mine bounce of August 6, 2007.*

62. As with the north barrier, signs of increased pressure and stress mounted as south barrier development proceeded in May, June, and July. On June 5 the

Genwal manager reported to the UEI manager "*constant bumping and sloughing of the ribs,*" although the pre-shift reports again do not reflect adverse seismic events or mine conditions. On June 22 UEI President Bruce Hill reported to Robert Murray in a memo that "*several bumps are occurring and the ribs show significant signs of sloughage,*" which Mr. Murray acknowledged by writing "*noted.*"

63. After retreat mining began on or about July 16, company reports revealed increasingly bad conditions as the retreat proceeded under deeper cover. Mr. Hill reported by an August 3 memo to Mr. Murray that "*significant sloughage is occurring outby the face.*"

64. Mr. Murray was expressly informed that south barrier pillars were being pulled and retreat mining was in full swing just before the August 6 bounce, in contrast to his repeated denials at press conferences in the days after the bounce that retreat mining was being done.

65. On August 2 a management meeting report noted "a lot of floor heaving that took a lot of clean up." On August 3 an internal safety report documented a bounce occurred just before the night shift. Most of these increasing stress signals were not reflected in the company pre-shift logs for review by MSHA.

66. In addition to the violations noted above of the amended Roof Control Plan, Murray Energy and UEI/Andalex had been violating express prohibitions against mining coal from the floor during pillar pulling operations, including on August 6, at the

time of the fatal bounce. The illegal practice at Crandall Canyon Mine of mining floor coal was commonplace and was well known by, and appears to have been condoned and encouraged by, Murray Energy CEO Robert Murray.

The Fatal August Bounces and Rescue Efforts

67. Early in the morning of August 6, 2007, the catastrophic bounce registering 3.9 at the University of Utah seismology lab occurred, trapping and eventually killing Kerry Allred, Don Erickson, José Luis Hernandez, Juan Carlos Payan, Brandon Phillips, and Manuel Sanchez.

68. The August 6 disaster triggered frenetic rescue efforts by MSHA and Murray Energy. Robert Murray and Murray Energy usurped MSHA's statutory duty to oversee, supervise, and run the rescue operation. As a result, Murray Energy, acting primarily through and by its CEO, Robert Murray, took over the management of the rescue advisories, updates, and meetings with mine victim families and friends. Murray Energy engaged in multiple acts of abusive and unconscionable behavior, subjecting the plaintiffs and their families to additional and inexcusable emotional pain and upset.

69. Rescue efforts were hampered by repeated bounces and other seismic events throughout the next ten days, which damaged roof supports, rescue and digging equipment, and passageways. By August 16 rescue teams had progressed only about 800 feet of the approximately 2000+ feet to the estimated location of the trapped miners.

70. On August 16 an explosive bounce occurred near the site of the rescue operations. Nine rescuers were caught in the bounce. Three--Dale Black, Brandon Kimber, and Gary Jensen--were killed. Six other rescuers, including plaintiffs Joseph Randy Bouldin and Casey Metcalf, were injured.

71. Deteriorating conditions and increasing seismic events at the site of the rescue operations preceded the fatal bounce in the last few days before August 16, yet operations continued.

72. As a result of the August 16 bounce, all rescue efforts at the level of the entries to West Mains ceased. After drilling and monitoring seven bore holes from above, all of which were unsuccessful in detecting any signs of life, all rescue and recovery efforts were terminated on September 1, 2007.

Defendants Owed and Breached Duties of Care

73. Defendants owed duties of care to the Crandall Canyon miners employed by Genwal, based on each defendant's respective responsibilities, activities, involvement, and efforts in connection with retreat mining in the West Mains areas of the Crandall Canyon Mine in 2007.

74. Defendants prepared, contributed to, participated in, or oversaw the preparation and implementation of the plans to mine in the West Mains at the Crandall Canyon Mine; required, permitted, encouraged, or failed to prevent dangerous and inappropriate mining activities or practices; and otherwise engaged or were involved in

the implementation and conduct of the plans, practices, and activities at Crandall Canyon Mine, as described above.

75. Careful and conservative planning and execution of safe mine plans and sufficient safety margins were necessitated by virtue of the inherent and extraordinary hazards of the mining being done in the Crandall Canyon Mine, including but not limited to retreat mining under deep cover.

76. Murray Energy, UEI, Andalex, IPA, and LADWP had duties to employees of Genwal and MSHA to keep and maintain the mine in reasonably safe condition.

77. Murray Energy, UEI, Andalex, IPA, and LADWP knew, or should have known, that their premises were in a dangerous condition that posed unreasonable hazards to those working in and entering the mine.

78. Defendants breached their respective duties of care to the miners who were killed and injured by negligently, recklessly, or intentionally acting or failing to act as described above, including their failure and refusal to create, use, follow, or implement careful, safe, and conservative mining plans for the West Mains areas.

79. Defendants negligently, recklessly, or intentionally, in contravention of approved plans, good mining practices, and common sense, mined areas, amounts of coal, or both, engaged in mining activities and extracted coal in methods and ways that led to unsafe degradation of structural integrity, support, and stability within the Crandall Canyon Mine, which acts and omissions directly and proximately caused the explosive

bounces described above and the subsequent deaths and injuries of the miners and rescuers.

80. Murray Energy and UEI/Andalex negligently, recklessly or intentionally, in contravention of approved plans, mining laws, good mining practice, and common sense, took over the rescue efforts and operations and sent and returned rescuers into the mine in the face of warnings and signs of grave danger of further catastrophic bounces.

81. Murray Energy and UEI/Andalex, by and through Robert Murray and others, usurped MSHA responsibilities regarding communications and interactions with the miner victims' families in violation of applicable mining laws and human decency, provided information to the plaintiffs that was false or misleading, and treated the plaintiffs in a disrespectful, abusive, and insensitive manner, causing them extreme emotional suffering, fear, and upset.

82. The acts and omissions by the defendants as described above were motivated by avarice and greed, at the expense of safety and human life, are shocking to the conscience, manifested a knowing and reckless indifference toward and a disregard of the rights of the plaintiffs and their decedents, justifying the imposition of punitive damages.

83. The defendants are vicariously liable for the negligent, reckless, and intentional acts and omissions of their respective employees and agents.

FIRST CAUSE OF ACTION
Wrongful Death -- All Defendants

84. Plaintiffs incorporate the allegations of the preceding paragraphs.

85. Plaintiffs Bessie Allred, Tifani Marasco, Cody Allred, Tylee Allred, Nelda Erickson, Brandon Erickson, Brian Erickson, Erick Erickson, Lucile Erickson, Guillermina Gonzalez de Hernandez, José Luis Payan, Isabel Villa García de Payan, Jamie Phillips, Sheila Phillips, Gage Phillips, Marta Sanchez, Ariana Sanchez, Apolonia Sanchez, Aydaliz Sanchez, and Arturo Sanchez are heirs of the decedents.

86. Defendants, or one or more of them, as owners, managers, consultants to, or overseers of the Crandall Canyon Mine, reserved and undertook to perform various duties and responsibilities related to the design, engineering, planning, and operation of the mine, including but not limited to the following:

- (a) Providing for safety in the mine;
- (b) Deciding where the mining would be done;
- (c) Deciding in what order and by what general method, including retreat mining, the mining would be done;
- (d) Preparing, reviewing, and approving mine plans, practices, and procedures and seeing that they were followed;
- (e) Preparing, reviewing, and approving plans, practices, and procedures for roof control systems and seeing that they were followed;

- (f) Reviewing and implementing rock mechanics and geological studies and practices; and
- (g) Setting and fostering attitudes regarding production and profit in relation to safety.

87. Defendants negligently, recklessly, or intentionally engaged in acts and omissions which directly and proximately caused the deaths of Kerry Allred, Don Erickson, José Luis Hernandez, Juan Carlos Payan, Brandon Phillips, and Manuel Sanchez.

88. Defendants and each of them are liable to the plaintiffs for the loss of financial support, expectation of inheritance, assistance, services, happiness of association, companionship, society, care, affection, nurture, guidance, training, counsel, advice and other benefits of the relationships with plaintiffs' decedents, and funeral, burial, and related expenses and costs, all in amounts to be determined at trial, and for interest, costs, attorney's fees, and other damages as provided by law.

89. Defendants' acts and omissions resulting in the deaths of Kerry Allred, Don Erickson, José Luis Hernandez, Juan Carlos Payan, Brandon Phillips, and Manuel Sanchez were willful, wanton, and manifested a knowing and reckless indifference toward and a disregard for human life and safety, by reason of which punitive damages should be assessed against the defendants.

SECOND CAUSE OF ACTION
Survival Claims -- All Defendants

90. Plaintiffs incorporate the allegations of the preceding paragraphs.

91. As a direct and proximate result of the defendants' acts and omissions as described above, Kerry Allred, Don Erickson, José Luis Hernandez, Juan Carlos Payan, Brandon Phillips, and Manuel Sanchez were trapped and prevented from escaping from the underground mine on August 6, 2007, and thereafter for an indeterminate period of time until their survival was untenable and rescue efforts were terminated.

92. During that time or some portion of it, Kerry Allred, Don Erickson, José Luis Hernandez, Juan Carlos Payan, Brandon Phillips, and Manuel Sanchez experienced conscious pain and suffering from the physical injuries they sustained, as well as the fear, uncertainty, and dread of their predicament and of the inability of rescuers to reach them, for which damages should be awarded in amounts to be determined at trial.

THIRD CAUSE OF ACTION
Personal Injuries -- All Defendants

93. Plaintiffs incorporate the allegations of paragraphs 1 through 83, above.

94. On August 16, 2007, Joseph Randy Bouldin and Casey Metcalf were acting within the scope of their employment with Genwal. They were attempting to rescue the men trapped in the mine when another mine bounce and subsequent collapse occurred, severely injuring them.

95. Defendants, or one or more of them as owners, managers, consultants to, or overseers of the Crandall Canyon Mine, reserved and undertook to perform various duties and responsibilities related to the design, engineering, planning, and operation of the mine and mine rescue efforts, including but not limited to the following:

- (a) Providing for safety in the mine;
- (b) Preparing, reviewing, and approving mine plans, practices, and procedures and seeing that they were followed;
- (c) Preparing, reviewing, and approving plans, practices, and procedures for roof control systems and seeing that they were followed;
- (d) Reviewing and implementing rock mechanics and geological studies and practices;
- (e) Setting and fostering attitudes regarding production and profit in relation to safety;
- (f) Deciding when, whether, and how the mine rescue and recovery efforts would be undertaken;
- (g) Determining the equipment, materials, and supplies to be used in, and in association with, the mine rescue and recovery efforts; and
- (h) Determining and implementing the proper methods and materials to detect, prevent, control, and protect from subsequent bounces, collapses

and other undesirable and unplanned ground movement, knowing that a catastrophic bounce and mine collapse had already occurred.

96. Defendants negligently, recklessly, or intentionally performed or failed to perform those duties and undertakings, directly and proximately causing the severe injuries to Joseph Randy Bouldin and Casey Metcalf.

97. As a direct and proximate result of defendants' acts and omissions described above, plaintiffs Joseph Randy Bouldin and Casey Metcalf have suffered severe and permanent injuries including pain and suffering, fear of death, uncertainty of their predicament, and emotional and mental distress.

98. As a direct and proximate result of defendants' acts and omissions described above, plaintiffs Joseph Randy Bouldin and Casey Metcalf have incurred and will continue to incur medical expenses, loss of past and future wages, loss of earning capacity, expenses for household services, and other economic damages.

99. The acts and omissions of the defendants resulting in the severe injuries to Joseph Randy Bouldin and Casey Metcalf were willful, wanton, and manifested a knowing and reckless indifference toward and a disregard for human life and safety and the rights of Joseph Randy Bouldin and Casey Metcalf, by reason of which punitive damages should be assessed against the defendants.

FOURTH CAUSE OF ACTION
Loss of Consortium -- All Defendants

100. Plaintiffs incorporate the allegations of paragraphs 1 through 83 and 93 through 99, above.

101. By reason of the severe and significant permanent physical and emotional injuries suffered by Joseph Randy Bouldin and Casey Metcalf that have substantially changed their lifestyles, plaintiffs Korie Bouldin and Trista Metcalf have suffered loss of consortium, companionship, affection, and marital intimacy, all to their damage in amounts to be proved at trial.

FIFTH CAUSE OF ACTION
Strict Liability for Ultra-Hazardous Activities -- Murray Energy, UEI, Andalex, IPA, and LADWP

102. Plaintiffs incorporate the allegations of the preceding paragraphs.

103. The activities and conditions which Murray Energy, UEI, Andalex, IPA, and LADWP caused, directed, created, or permitted were ultra-hazardous and inherently dangerous. These defendants are strictly liable to plaintiffs for all injuries and damages alleged.

SIXTH CAUSE OF ACTION
Premises Liability -- Murray Energy, UEI, Andalex, IPA, and LADWP

104. Plaintiffs incorporate the allegations of the preceding paragraphs.

105. Murray Energy, UEI, Andalex, IPA, and LADWP had duties to keep their property in reasonably safe condition.

106. Murray Energy, UEI, Andalex, IPA and LADWP created, maintained, or permitted conditions at the Crandall Canyon Mine that were unreasonably dangerous and posed unreasonable hazards to those who worked in or entered the mine, by reason of which they are liable to plaintiffs for the damages alleged.

SEVENTH CAUSE OF ACTION

Infliction of Emotional Distress -- Murray Energy, UEI, and Andalex

107. Plaintiffs incorporate the allegations of paragraphs 1 through 83, above.

108. The conduct of Murray Energy, UEI, and Andalex, by and through their agents, including but not limited to Robert Murray, was outrageous and intolerable and offended generally accepted standards of decency, morality, and civility.

109. Murray Energy, UEI, and Andalex, by and through their agents, including but not limited to Robert Murray, intended to cause or acted with reckless disregard of the probability of causing emotional distress or should have realized that their conduct involved an unreasonable risk of causing the plaintiffs emotional distress.

110. The conduct of Murray Energy, UEI, and Andalex, by and through their agents, including but not limited to Robert Murray, proximately caused severe emotional distress resulting in illness or bodily harm to the families of the trapped miners and the rescuers, by reason of which plaintiffs should be awarded damages in amounts to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief against Defendants as follows:

1. For economic damages in amounts to be proved at trial sufficient to fully compensate each plaintiff, including but not limited to medical expenses, lost wages, lost economic support and benefits, and all other recoverable economic damages resulting from the deaths of Kerry Allred, Don Erickson, José Luis Hernandez, Juan Carlos Payan, Brandon Phillips, and Manuel Sanchez;

2. For all recoverable non-economic damages resulting from the deaths of Kerry Allred, Don Erickson, José Luis Hernandez, Juan Carlos Payan, Brandon Phillips, and Manuel Sanchez in amounts to be proved at trial sufficient to fully compensate each wrongful death plaintiff;

3. For all recoverable damages to the estates and/or heirs of Kerry Allred, Don Erickson, José Luis Hernandez, Juan Carlos Payan, Brandon Phillips, and Manuel Sanchez for the conscious pain and suffering they endured prior to their deaths;

4. For economic damages in amounts to be proved at trial sufficient to fully compensate Joseph Randy Bouldin and Casey Metcalf, including but not limited to medical expenses, lost wages and benefits, lost earning capacity, and all other recoverable economic damages resulting from their personal injuries;

5. For all recoverable non-economic damages resulting from the personal injuries to Joseph Randy Bouldin and Casey Metcalf in amounts to be proved at trial sufficient to fully compensate them;

6. For damages in amounts to be proved at trial sufficient to fully compensate plaintiffs Korie Bouldin and Trista Metcalf for their losses of consortium;
7. For attorneys' fees, expenses, and costs of this action as allowed by law;
8. For punitive damages in amounts to be determined and assessed against the defendants, as allowed by law;
9. For pre-judgment and post-judgment interest in the maximum amounts allowed by law; and
10. For such further relief as this Court deems necessary, just, and proper.

JURY DEMAND

Plaintiffs demand a trial by jury of all claims asserted in this complaint.

DATED this 2nd day of April, 2008.

DEWSNUP, KING & OLSEN


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