



**THE OFFICE OF
STATE TREASURER
DENISE L. NAPPIER**

NEWS

FOR IMMEDIATE RELEASE

May 12, 2010

**Treasurer Nappier and Eight Other Institutional Investors
Urge Withhold Votes for Massey Energy Directors**

*Investor Coalition Cites Failure to Respond to Serious
Safety Violations, Lack of Board Oversight*

HARTFORD – Treasurer Denise L. Nappier, principal fiduciary of the Connecticut Retirement Plans and Trust Funds (CRPTF), joined eight public pension funds representing over \$500 billion in assets under management in urging Massey Energy shareholders to withhold support from Board of Directors Baxter F. Philips, Richard M. Gabrys, and Dan R. Moore for failures in safety oversight. All three Directors are up for re-election at the May 18 annual meeting of shareholders.

Massey's safety record has had significant consequences for both its employees and its shareholders. On April 5, 2010, a massive explosion at the company's Upper Big Branch mine claimed the lives of 29 miners. Regulators have sharply criticized the company for its record of past safety violations, and the U.S. Department of Justice recently opened a criminal investigation of the events leading up to the disaster.

"Massey's record of past safety violations compounded by the failure of the board to insist on corrective action reveal a history of contemptible conduct," Nappier said.

Following the April 5 explosion, Massey shares lost approximately \$820 million in market value over a two-day period. The Company said it expects second-quarter losses of between \$80 million and \$150 million for costs related to the explosion, including benefits to the families of the victims and mine damage. Shortly after the blast, Standard & Poor's announced it may cut Massey's credit ratings due to potential losses from interruptions in production, workers' compensation claims, and litigation liability.

Leading proxy advisory firms RiskMetrics and Glass Lewis advised clients to withhold their support from the three Directors, citing numerous past safety violations, the Board's failure to adequately oversee management, and poor corporate governance practices. The coalition letter notes that all three nominees are members of the Board Safety, Environmental and Public Policy Committee (SEPPC), which is responsible for

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“reviewing safety risks, establishing goals for safety enhancements, and reasonably informing the Board about compliance with all mine safety laws.”

“The SEPPC has clearly failed in its oversight responsibilities,” Nappier said. “As the nation continues to mourn the tragic loss of the 29 brave and dedicated Massey employees in the Upper Big Branch mine catastrophe, we must hold those individuals who had the power, but not the motivation, to make changes in safety practices responsible.”

In light of repeated safety violations, the investor coalition sent a letter to Massey Lead Director Admiral Bobby R. Inman last month calling on the board to direct CEO Don L. Blankenship to step down as Chairman of the Board and to undergo a comprehensive evaluation of the competencies and performance of the entire Board, including the Board’s ability to oversee management and risk.

“As a longtime advocate for corporate governance practices that protect and enhance long-term shareholder value, I depend on the board to identify and confront risk factors that could jeopardize the company’s financial outlook. Simply put, the Massey Board has failed to perform,” Nappier said. “Poor risk management, including the failure to address repeated safety violations, has apparently become standard practice for a Board that has neglected its duty to its shareholders, and more importantly, to its employees. It’s time to clean house.”

As of May 7, 2010, the CRPTF owned 170,863 shares of Massey Energy valued at approximately \$5.6 million.

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May 11, 2010

Dear Fellow Massey Energy Shareholder:

As major public institutional investors collectively holding \$ 64 million of Massey Energy Company ("Massey" or the "Company") shares, we write to urge you to **withhold** your support from Board of Directors Baxter F. Phillips, Jr. ("Phillips"), Richard M. Gabrys ("Gabrys") and Dan R. Moore ("Moore"), who are standing for re-election at the May 18 annual shareholder meeting. We believe that shareholders should withhold their votes primarily because these Directors have failed to carry out their duties on the Safety, Environmental, and Public Policy Committee ("SEPPC"). As you may know, last week both proxy advisors RiskMetrics and Glass Lewis also recommended that shareholders withhold their support from these Directors.

A History of Safety Violations at Upper Big Branch Mine and Other Mines

Since the tragic Upper Big Branch mine ("Upper Big Branch") explosion on April 5, 2010, federal Mine Safety and Health Administration ("MSHA") records and media reports have revealed repeated and serious safety violations. As Assistant Secretary of Labor for Mine Safety and Health Joseph Main said during his testimony before the United States Committee on Health, Education, Labor and Pensions last month, "The citations MSHA has issued at Upper Big Branch have not only been more numerous than average, they have also been more serious." A MSHA report points out the agency issued 515 citations and orders in 2009 and another 124 this year. Of these complaints, 39 percent of the citations constituted "significant and substantial" ("S&S") violations. The MSHA report notes that "[i]n some prior years, the S&S rate at Upper Big Branch has been 10-12 % higher than the national average."

In addition, MSHA also issued 48 withdrawal orders "for *repeated* significant and substantial violations that the mine operator knew, or should have known, constituted a hazard" (emphasis in original). The mine's rate is almost 19 times higher than the national rate.

Upper Big Branch is not an outlier. Indeed, three other Massey mines had more citations in 2009 than the Upper Big Branch. In fact, the United States Department of Labor is litigating to establish that one of these mines is a pattern violator. If this effort is successful, the mine will

be the first one placed on pattern violator status since the passage of the federal Mine Safety and Health Act.

Safety, Environmental, and Public Policy Committee Duties and Responsibilities

According to the most recent Massey Definitive Proxy Statement, SEPPC principal duties include reviewing and assessing risks, and making recommendations to safety issues. SEPPC's responsibilities include: (1) reporting to the Board of Directors on a quarterly basis the Company's compliance with worker safety rules and regulations; (2) establishing goals for implementing enhancements used to monitor and count mine safety incidents and complaints; and (3) determining the specific content of mine safety reports to the Board of Directors and reasonably informing the Board of Directors about compliance with all mine safety laws. These duties are further underscored in the April 28, 2010 letter from Lead Director Admiral Bobby Inman to institutional investors in which he writes that "... all our directors participate in meetings of the Safety, Environmental and Public Policy Committee, which meet on a quarterly basis regarding our compliance with worker safety and environmental compliance rules, regulations and goals."

Given Massey's repeated and serious safety violations as discussed above, we believe SEPPC Directors Phillips, Gabrys, and Moore have failed to carry out their roles and responsibilities under SEPPC. We also believe that Massey has tried to deflect criticism by emphasizing less relevant metrics such as Non-Fatal Days Lost ("NFDL"), a statistic cited by Lead Director Inman in his April 28 letter to us. NFDL does not capture other safety violations such as S&S violations or withdrawal orders. We also believe that Lead Director Inman's reliance on the company-wide NFDL rate overlooks the significant NFDL rate for Upper Big Branch that was more than three times the NFDL rate for the Company as a whole in 2008 and 2009. Because SEPPC responsibilities and duties include reviewing safety risks, establishing goals for safety enhancements, and reasonably informing the Board about compliance with all mine safety laws, we believe these three Directors failed to manage the many safety risks the Company faces.

Consequences for Shareholders

Massey's safety record has real consequences for its shareholders. Following the April 5th accident, Massey shares lost approximately \$975 million in market value during a two-day time period. Massey has also said it will take a second-quarter loss of between \$80 million to \$150 million for costs related to the Upper Big Branch explosion, including employee benefits and mine damage. Finally, Standard & Poors said that it may cut Massey's ratings due to increased regulatory scrutiny that would impact the Company's production.

In our view, the SEPPC has fallen short of fulfilling its responsibilities to Massey and its shareholders, as evidenced by the Company's poor safety record and market value. For that

reason, we believe that shareholders should **withhold** their support from SEPPC members Phillips, Gabrys and Moore's re-election.

Sincerely,

Christopher J. Ailman, Chief Investment Officer
California State Teachers' Retirement System

Denise Nappier, State Treasurer
State of Connecticut

William R. Atwood, Executive Director
Illinois State Board of Investment

Ronald E. Powell, Chairman of the Board
Illinois State Board of Investment

Nancy K. Kopp, Chairman, Board of Trustees
Maryland State Retirement and Pension System

Dean Kenderdine, Executive Director
Maryland State Retirement Agency

Thomas P. DiNapoli
New York State Comptroller

Diane D'Alessandro, Executive Director
New York City Employees' Retirement System

Janet Cowell, State Treasurer
North Carolina Department of State Treasurer

Ted Wheeler, State Treasurer
Oregon State Treasury

Rob McCord, State Treasurer
Pennsylvania Treasury