On the French Riviera:

# Top West Virginia judge vacations with coal boss defendant

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The insidious relationship between corporate elite and the US judicial system has long been a fact of American political life. There are, however, few more blatant examples of this cozy bond than what recently came to light in the coal mining state of West Virginia.

Earlier this month West Virginia Supreme Court Chief Justice Elliott "Spike" Maynard was forced to recuse himself from a case after photos surfaced of him vacationing along the French Riviera with Don Blankenship, the CEO of Massey Energy, one of the coal companies involved in a suit the judge was trying.

Justice Brent Benjamin, a second state Supreme Court judge, refused to step aside, despite the fact he received more than $3 million from Blankenship for his 2004 election campaign.

The decision of Chief Justice Maynard to step down came after lawyers for Harman Mining Company, a company suing Massey, presented three dozens photos of Maynard vacationing in Monaco with Blankenship. The time stamp on the photos indicates they were taken in July 2006, when the Harman case was pending before the Supreme Court.

Immediately after Maynard's recusal, Justice Benjamin took over the position of chief justice, where he appointed a replacement for Maynard in the Massey case, all but assuring another judge favorable to the coal producer.

The case involves a 1998 suit filed by Harman and its president Hugh Caperton against Massey Energy, which argued that the smaller company was forced into bankruptcy after Massey illegally stole a contract with a Pittsburgh steel manufacturer and bought a small strip of coal to prevent Harman from continuing mining operations.

At that time, Harman, a small unionized coal company was negotiating to sell itself to Massey, the nation's number four coal producer. During those negotiations, Harman revealed plans to purchase additional coal reserves from Pittston Coal Co. in order to continue its mining operations.

Massey broke off negotiations, however, stating it did not want to buy a union mine. Then it bought a 1,500-foot strip of coal from Pittston, in order to block Harman's access to the reserves. To date, Massey has not mined that strip.

In August 2002, a Boone County jury found Massey guilty of hijacking the supply contract and unfair business practices. It awarded Harman a $60 million verdict, which has now grown to $76.3 million because of interest.

While awarding Harman millions, the ruling did not provide anything to the coal miners who lost their jobs as a result.

In addition to the Harman judgement, Massey faced a suit by Wheeling-Pittsburgh Steel and action by the US Environmental Protection Agency for massive pollutions violations.

Faced with a divided state Supreme Court, Blankenship decided to sabotage the re-election campaign of a liberal Democratic judge. In 2004, Blankenship spent more than $3 million of his own money in an ad campaign attacking the incumbent, which helped Benjamin, an unknown corporate attorney who had never argued a case before the state supreme court, on to the bench.

According to the local news media there has never been as case in West Virginia history, when one company or individual spent so much to back an individual judicial candidate.

Following the election of Benjamin, lawyers for Massey appealed the verdict to the state's Supreme Court. In November the court voted 3 to 2 to throw out the judgement. Both Justices Maynard and Benjamin voted to

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overturn the verdict against Massey.

In refusing to step down, Benjamin said the mere fact he had received so much money from Massey did not prove that he had acted improperly when he ruled in favor of the company.

The photos show Maynard dining with Blankenship in July 2006 while they were vacationing along the French Riviera. Ten photos, which were sealed, reportedly show Maynard and Blankenship with two female escorts who accompanied them on the vacation.

In addition to the photos, the motion filed by Harman also cited numerous times in which the two had dined together including a luncheon held less than three weeks before the Supreme Court vote.

The photos "clearly evidence the appearance of impropriety" and raise "the specter of corruption or worse," wrote lawyers representing Harman Coal Co. and its president, Hugh Caperton in their motion.

In a statement announcing his decision to step down, Chief Justice Maynard stated that his long friendship with Blankenship is well known, but denied he made his legal decision based on friendship.

However, West Virginia law requires all judges to disclose any relationship they have with a party in a case. Furthermore, the law prohibits judges from meeting with one party in a case when the other party is not present.

While Massey's support for Benjamin began in 2004, Maynard's relationship with the notoriously anti-union company stretch back two decades. In 1985, while still a circuit court judge, Maynard, a Democrat, fined the United Mine Workers union $200,000 for picketing two Massey subsidiary coal mines as it fought the company's union busting. The state Supreme Court later overturned that judgement stating that Maynard did not have that authority.

An Associated Press review of state Supreme Court rulings since Maynard joined the court in 1996, found that Maynard voted with Massey in all eight cases brought before the supreme court that involved Massey or any of its subsidiaries. In half of those cases, Maynard voted against the majority of the court.

Last July, a Brooke County jury ordered Massey and one of its subsidiaries to pay Wheeling-Pittsburgh Steel $219 million in damages, for breaking a supply contract. Earlier this month, Massey appealed that verdict to the state's Supreme Court. This week Judge Maynard recused himself from that case too.

Massey is also facing criminal charges stemming from the death of two coal miners at its West Virginia Aracoma Coal Alma mine in January 2005. Massey is known for flagrant safety violations at its mines. Blankenship's close ties to the Republican Party and the Bush administration in particular has led to most of the fines being dropped or reduced to only token amounts.

The two miners who were killed at the Alma mine were trapped when a conveyor belt caught fire, filling the mine with smoke. Massey had been cited several times for allowing the build-up of combustible coal dust along the beltway but no substantial actions were taken. In addition, large sections of wall that was meant to separate the beltway from the escape tunnel were missing, meaning that the escape tunnel quickly filed with smoke.

Again, Massey's connections with both Democrats and Republicans are related to the fire. In addition to the lack enforcement of safety standards by the Mine Safety and Health Administration (MSHA), Massey applied for and received permission from the MSHA under the Clinton administration to provide fresh air to the miners over the belt way. This saves Massey millions by not having to dig a separate air vent shaft. For the miners however, it means one less escape route in case of trouble and in the case of belt fires. Moreover this cost-cutting measure actually provides a fire with fresh air while spreading the poisonous fumes throughout the mine.

Meanwhile, according to the *Charleston Gazette*, federal government officials have confirmed that MSHA regulators have allowed mine operators to avoid fines for thousands of health and safety citations, despite a federal law requiring monetary penalties for such violations. Over the last six years, MSHA—which is headed by a former mine boss appointed by President Bush—did not assess civil penalties for about 4,000 violations, allowing companies to violate safety conditions with impunity. At least one of the citations involves a violation that MSHA inspectors concluded was partly responsible for the December 2005 death of an underground miner in Kentucky.

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