

# Low-level Massey employee convicted in Upper Big Branch mine investigation

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A former Massey employee has been convicted and sentenced to 10 months in prison for falsifying mine safety records and lying to federal investigators. The 46-year-old coal miner, Thomas Harrah, conducted at least 228 key safety examinations at the Upper Big Branch (UBB) mine between January 2008 and August 2009 under a falsified foreman's license.

Harrah's conviction is the first produced by investigators looking into the massive explosion on April 5, 2010 that took the lives of 29 miners in Raleigh County, West Virginia. However, investigators admit that Harrah had nothing to do with the explosion, having left the Massey-owned mine some eight months before the tragedy.

Harrah is only the second person to face charges from the UBB investigation, which the federal Mine Safety and Health Administration (MSHA) says has involved 300 witnesses, 84,000 pages of documents, 23,000 photographs, nearly 1,000 different maps, and over 1,000 pieces of physical evidence.

The trial of Hughie Elbert Stover, another low-level employee, is slated for later this month. Stover was the security director for Performance Coal, a former Massey subsidiary. He is charged with obstructing a federal investigation when he ordered thousands of security documents from the UBB destroyed shortly after the disaster. He is also accused of lying to federal investigators about providing underground workers advanced warning about the arrival of inspectors. Stover has pled not guilty to the charges.

The focus on low-level employees amounts to a whitewash of the company and for numerous Massey executives who were well aware of longstanding hazards at the mine. No top executives have been prosecuted in the case.

Former company president and CEO Don Blankenship, who retired last December with a golden parachute worth tens of millions of dollars, continues to draw hefty compensation and perks from Alpha Natural Resources, which bought out the company in June. The acquisition, worth some \$8.5 billion, has effectively acted as a shield for

Massey assets and former executives against penalties and lawsuits.

In fact, the falsification of safety records is rampant industry-wide and well known by regulatory agencies. Indeed, Harrah's conviction is one of several related to key mine safety examinations being performed by unqualified personnel under fake licenses in West Virginia.

In June, another West Virginia miner was convicted of a felony after pleading guilty to performing hundreds of safety examinations between June 2007 and April 2009. Luke W. Pugh admitted to lying about his qualifications under which he carried out 387 safety examinations over his 22-month tenure at the Pleasant Hill Mine operated by Carter Roag Coal Co. in Randolph County, West Virginia. Pugh is appealing his one-year prison sentence.

Chad J. Ferrell was stripped of his miners' license and sentenced to five years probation after pleading guilty to nearly 500 safety examinations without a foreman's license at Alpha Natural Resources' Poplar Ridge No. 1 Deep Mine in West Virginia's Webster County. Another West Virginia miner, Neil A. Hansen, was given three years probation for the more than two dozen unqualified safety inspections he conducted at Big River Mining's Broad Run Mine in Mason County.

In addition to Harrah, two other former Massey miners, Craig W. Belcher and Scott E. Jeffrey, were stripped of their mining credentials for allegedly using forged foreman's licenses. The two have yet to be criminally charged.

Harrah had been under scrutiny by state-level investigators for years before the UBB case. In August 2007, Harrah failed his foreman's test, which is required in West Virginia to supervise other miners and perform key pre-shift and on-shift safety checks. While licensing is the jurisdiction of the states, federal criminal charges can be brought against those who sign federal mine safety reports under false credentials. Harrah's charges stem from safety documents he signed on December 16, 2008 under the forged license number, and for statements he made to federal agents on October 22, 2010.

Harrah worked at the UBB from December 2007 to

August 2009 before transferring to a different Massey operation, the Slip Ridge Cedar Grove Mine. Shortly after beginning work there under the false license number, state investigators began questioning him.

A petition filed by West Virginia state Office of Miners' Health, Safety & Training's (MHS&T) director Ron Wooten in October 2009 sought the permanent revocation of Harrah's underground miner's license. However, this request was rejected on March 2, 2010 by the state Coal Mine Safety Board of Appeals in favor of a one-year suspension.

As part of the plea deal, Harrah recanted his testimony before the appeals board that Massey officials Jason Whitehead and Rick Hodge had helped him obtain the fake license. Whitehead was the director of underground improvements at the time of the UBB disaster and is under federal investigation along with Performance Coal President Chris Blanchard for suspicious activity underground for several hours following the explosion.

Federal officials are hailing Harrah's conviction as a victory for mine safety. In a press release, US Attorney Booth Goodwin claimed, "This sentence sends an important and unmistakable message: If you break the law and threaten the lives of coal miners, you should expect prison time."

Goodwin's gloating is cynical and dishonest. In the 18 months since the UBB tragedy, ample evidence has surfaced to bring criminal charges against dozens of high-ranking former Massey officials, including Don Blankenship. Yet regulators are unwilling to do so, limiting themselves instead to prosecuting low-level and minor scapegoats.

In the run-up to the first anniversary of the UBB explosion, Goodwin issued a similar demagogic statement when charges were brought against Stover. "I want to be clear," Goodwin warned, "There will be real consequences if you falsify records, lie to federal agents or otherwise attempt to obstruct this investigation."

Yet in late June, MSHA announced it discovered that Massey had been keeping two sets of books. A detailed internal set was kept which focused on production rates, including details of safety problems and their effects in slowing down coal extraction. These safety issues were omitted from the second set of books kept for inspection by federal and state regulators.

While both books' reports were produced by workers and foremen, they were co-signed by management. According to MSHA official Kevin Stricklin, Massey "managers were aware that chronic hazardous conditions were not recorded." Moreover, MSHA found that this illegal record keeping was enforced through threats and intimidation by upper management.

Months later, however, there have been no

"consequences" for these upper management officials who knowingly signed off on wholesale falsifications of records.

As part of the Harrah case, MSHA official Scott Johnson analyzed records from other mines in District 12 employing a similar number of miners as the UBB for the period beginning January 1, 2006 and ending with the explosion on April 5, 2010. Johnson discovered that the UBB was issued citations at both a higher rate and in greater overall number than comparable mines for MSHA violations in three critical areas: significant and substantial (S&S) violations, elevated issues and orders, and citations regarding safety examinations.

According to Johnson's findings, the UBB had an S&S rate of 8.83 per 100 inspections compared to the average of 6.43 for the other mines. In the two years prior to the explosion the UBB was issued 109 more S&S violations than the average.

The UBB was also issued seven elevated issues and orders while the average for the other mines was one. The mine was issued more than six times the number of elevated citations than the average in the two years before the disaster.

Significantly, Johnson found that when it came to "pre-shift and on-shift examinations of the workings and equipment underground," the UBB was issued 12 citations compared to an average of 6.4 for the other mines. In the 18 months leading up to the explosion, MSHA inspectors issued more than 600 safety violations, including hundreds for allowing the buildup of explosive coal dust and for ventilation problems.

Yet in spite of the preponderance of evidence that conditions in the mine posed imminent risk of death to miners, MSHA took no action to close the operation, or even to increase the frequency of inspections. Instead, the agency issued only token fines, which Massey consistently stonewalled through legal appeals.

In the aftermath of the disaster, officials in the industry, regulatory agencies, and state and federal government issued copious pledges for improved safety standards. A year and a half later, not only has safety not been strengthened, the Obama administration has gone on the offensive to weaken regulatory oversight and workplace safety across the board. Thirty coal miners have been killed on the job since the UBB disaster, and hundreds of others have died of black lung.



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