

Former Massey CEO Don Blankenship pleads not guilty to updated charges

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With the five-year anniversary of the Upper Big Branch (UBB) mine disaster approaching, federal prosecutors have updated their indictment against former Massey Energy CEO Don Blankenship. Blankenship pled not guilty to the adjusted charges on Tuesday.

Blankenship was initially indicted by a grand jury last November and charged with four criminal offenses of conspiracy, fraud and making false statements. The new indictment adds an additional charge that Blankenship was involved in the falsification of coal dust sampling at the mine.

The April 5, 2010, explosion at UBB killed 29 West Virginia miners and was the worst mine disaster in nearly four decades. In its aftermath, four separate investigations were carried out, which all agreed on the basic causes: sparks from a longwall mining machine ignited a methane gas explosion which was transformed into a massive coal-dust explosion due to high levels of accumulated coal dust in the mine. Poor ventilation, inoperable water sprays, worn and unmaintained equipment and inadequate rock dusting all contributed to the immense blast which ripped through the mine.

In the year preceding the disaster, Massey tripled coal production at UBB while cutting its company-wide workforce by 700 and imposing wage and benefit cuts. UBB management used threats and intimidation to silence miners concerned with health and safety hazards and institutionalized the practice of providing advanced warning when safety inspectors were on site in order to conceal safety violations.

Following the disaster, the Obama administration intervened to whitewash it. Former United Mine Workers of America (UMWA) safety administrator and current head of the U.S. Mine Safety and Health Administration (MSHA), Joe Main, refused to invoke the agency's subpoena powers, allowing Blankenship and other top Massey officials to refuse to answer investigators' questions.

In the five years since the UBB disaster, the U.S. Department of Justice (DOJ) has largely occupied itself with prosecuting a handful of minor actors while leaving the company's former executives untouched. Blankenship was allowed to retire at the end of 2010 with a golden parachute worth tens of millions of dollars.

After Alpha Natural Resources purchased Massey for \$7.1

billion in June 2011, the DOJ brokered a \$209 million settlement with the new owners, shielding both Massey and Alpha from any criminal charges related to the UBB disaster.

The indictment of Blankenship does not represent a departure from this strategy on the part of the Obama administration. Blankenship is not being charged for the explosion at UBB or the resulting slaughter of 29 miners. Rather, the charges relate to Blankenship's role in violating federal mine safety and health standards at the mine, as well as false statements made to the U.S. Securities and Exchange Commission (SEC) and the investing public in the disaster's aftermath.

While the indictment of Blankenship does not include the murder of the 29 miners, the details of the indictment provide a small glimpse into the horrendous and unsafe conditions under which miners are forced to work.

The first count against Blankenship charges him with conspiring with others "to willfully violate mandatory federal mine safety and health standards at UBB," in order to increase Massey's profits and enrich Blankenship personally. Through Massey's practice of providing advanced warning of impending MSHA inspections and falsifying coal dust samples, the indictment charges Blankenship with conspiring to defraud the agency of money it would have otherwise received through the issuance of fines.

The indictment explains that UBB was cited approximately 835 times for violations of federal mine safety and health standards between January 2008 and April 2010. Approximately 319 of these violations were classified as significant and substantial (S&S), where there existed "a reasonable likelihood" of serious injury. Approximately 59 resulted in withdrawal orders where all or part of the mine was shut down by regulators.

Among the routine violations documented by the indictment were the following:

- The Upper Big Branch mine was cited 283 times for violations of mine ventilation standards, including inadequate airflow, departure from approved mine ventilation plans, failed temporary mine ventilation structures and inoperable water sprays required to control coal dust and cool the longwall shearer to prevent sparks.
- The mine was cited 81 times for violations of coal dust

standards requiring coal dust, loose coal and combustible materials to be cleaned up and not permitted to accumulate. The indictment notes that “UBB’s own records of mine safety examinations also revealed near-constant violations” of mandatory standards related to coal dust, including rock dusting.

· It was cited 91 times for violations of roof-control standards aimed at preventing collapses of the mine’s roof and walls.

The indictment claims that “Blankenship knew that UBB was committing hundreds of safety-law violations every year and that he had the ability to prevent most of the violations that UBB was committing. Yet he fostered and participated in an understanding that perpetuated UBB’s practice of routine safety violations, in order to produce more coal, avoid costs of following safety laws, and make more money.”

The focus in the indictment on UBB’s record of violations and efforts to hamper regulators is aimed at covering for MSHA, which failed to identify the mine as having a “pattern of violations,” allowing Massey to continue its dangerous operation. The indictment of Blankenship is of a piece with the Obama administration’s self-serving narrative that Massey and Blankenship were the “bad apples” in an otherwise safe and healthy coal industry.

The indictment explains how UBB—the centerpiece of a group of metallurgical coal mines—was key to Massey’s profit strategy. UBB provided coal which was “an essential ingredient in a blend of metallurgical coal” which generated about \$2.5 billion, or approximately 15 percent of Massey’s annual revenue. “When operating at full productivity, the UBB longwall mining section could produce more than \$600,000 worth of coal every day, more than any of Massey’s dozens of other underground mining sections.”

As CEO, Blankenship micromanaged Massey’s operations and was intimately involved with all aspects of management at the Upper Big Branch mine. “Blankenship insisted on personally reviewing and approving or denying every proposed hire at UBB, every proposal to give a UBB employee a raise, every capital expenditure at UBB, and every hiring of a contractor to perform work at UBB.”

Moreover, Blankenship obsessively tracked coal production at the mine, insisting on receiving and reviewing production reports every 30 minutes, including faxes of such reports to his home on evenings and weekends, along with reasons for any production delays.

Blankenship also insisted on receiving daily safety reports which laid out in detail Massey’s violations of federal mine safety standards on a year-to-date basis for each of the company’s mines, group of mines, and company as a whole, as well as the estimated fines the company would incur.

Blankenship calculated that the profitability of Massey could be maximized by treating the routine safety violation fines as just another cost of doing business, knowing he had little to fear from federal and state regulators. The indictment contains

several excerpts of intimidating messages sent to UBB managers, berating them for resources spent on any activity, including safety improvement, which did not positively impact coal production.

The indictment claims that Blankenship aggressively enforced coal-production quotas while consciously employing an inadequate number of miners to perform work necessary to comply with mandatory safety standards. Repeated requests from UBB management to hire more coal miners for jobs critical to safety-law compliance were routinely denied.

The second and third counts in the indictment relate to company statements, authorized by Blankenship in the days after the disaster, to the SEC and investors, respectively. The statements claimed that Massey did not condone any violation of MSHA regulations and strove to be in compliance with all regulations at all times.

The indictment alleges that the false statements to the SEC and investors were aimed at stemming the erosion of Massey’s stock value amidst the barrage of damning media accounts regarding the company’s operations in the days following the disaster. “By April 7, 2010, Massey’s Class A Common Stock price dropped approximately \$9.15 per share, or 16.8%, from its closing pricing on April 5, 2010. This decrease reduced Blankenship’s net worth by approximately \$3 million.”

The trial is scheduled to get underway on April 20, pending rulings on various defense motions to dismiss the charges completely or delay the trial. If convicted on all three counts, Blankenship could face up to 30 years in prison.



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