

US: Trial begins for Massey CEO in Upper Big Branch disaster

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On Thursday, jury selection for the trial of Don Blankenship, former CEO of Massey Energy, began in Charleston, West Virginia. Blankenship was at the helm of Massey on April 5, 2010 when the company's Upper Big Branch mine near Montcoal, West Virginia exploded, killing 29 miners. It was the worst coalmine disaster in nearly four decades.

Four separate investigations into the disaster have been carried out, all of which agreed on the basic causes: sparks from a long-wall mining machine ignited a methane gas explosion that 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 that ripped through the mine.

However, Blankenship is not being charged with the mass slaughter at UBB. After an investigation lasting more than four years, the US Department of Justice (DOJ) has charged Blankenship with three criminal offenses of conspiracy, fraud and making false statements. If convicted, Blankenship faces up to 30 years in prison.

Blankenship was indicted by a federal grand jury in November 2014 and pled not guilty in March of this year. The trial has since been delayed three times and had its location moved from Beckley to Charleston out of concerns for seating an impartial jury. Last week, US District Judge Irene C. Berger denied Blankenship's latest motion to have the trial delayed a fourth time until January 2016.

Blankenship is the only Massey executive to face charges stemming from the investigation into UBB. In the aftermath of the disaster, he was allowed to retire from the company with a golden parachute worth millions of dollars. Throughout the DOJ's more than

four years of investigating, Blankenship and the other corporate executives of Massey responsible for the criminal operation of the company's mines remained untouched while the DOJ busied itself with prosecuting a handful of minor actors at the mine itself.

When Massey was purchased by Alpha Natural Resources for \$7.1 billion in June 2011, the Obama administration intervened to broker a \$209 million settlement with the new owners, shielding both companies from any criminal charges related to the UBB disaster.

Blankenship is accused of conspiring with others "to willfully violate mandatory federal mine safety and health standards at UBB," in order to increase Massey's profits and enrich himself personally. By providing mine employees with advance warning of impending health and safety inspections, as well as falsifying the results of coal dust samples, Blankenship is accused of conspiring to defraud the US Mine Safety and Health Administration (MSHA) of money it would have otherwise collected through violations and fines.

Despite such criminal practices institutionalized by Massey, the UBB mine was cited 835 times for violations of federal mine health and safety standards during the indictment period from January 2008 to April 2010. Some 319 of these violations were classified as significant and substantial (S&S), where there existed "a reasonable likelihood" of serious injury. Fifty-nine resulted in withdrawal orders being issued, where all or part of the mine was shut down by regulators.

Blankenship is also charged with lying to the US Securities and Exchange Commission and the investing public in company statements he authorized in the aftermath of the disaster. The statements, which claimed that Massey did not condone violations of

MSHA regulations, were aimed at stemming the steep decline in the company's stock value amidst the barrage of damning media accounts, in the aftermath of the disaster, about the company's reckless operations.

It is alleged that Blankenship was motivated to make the false statements in an effort to safeguard his personal wealth, which was closely bound up with Massey's bottom line. According to the indictment, "By April 7, 2010, Massey's Class A Common Stock price dropped approximately \$9.15 per share, or 16.8 percent, from its closing pricing on April 5, 2010. This decrease reduced Blankenship's net worth by approximately \$3 million."

For his part, Blankenship has filed a raft of motions underscoring his desperation. He has attempted to have the charges dismissed outright as the product of a vindictive conspiracy against him by West Virginia Democrats. In addition to repeated motions to move the trial outside West Virginia, he has also sought the disqualification of all judges in the US District Court of Southern West Virginia because US Attorney Booth Goodwin is the son of a judge in the district.

Defense motions have also been filed attempting to exclude details of Blankenship's wealth; public statements made by Blankenship after the UBB explosion; evidence regarding the effect of past MSHA violations on Massey's financial performance; and previous guilty pleas entered by Massey and its subsidiaries, as well as testimony given by Blankenship.

One defense motion asks the court to "exclude all evidence about the UBB explosion, the cause of the explosion, and responsibility for the explosion," arguing that it is "not relevant to any of the charges against Mr. Blankenship." The motion warns that if prosecutors admit such evidence, it "would be met by strong evidence from Mr. Blankenship rebutting the government's theories, leading to confusion about the actual issues and to undue delay—a satellite mini-trial about the cause of the UBB explosion and who is responsible for it."

The tangential character of the charges brought against Blankenship flow from the need of the Obama administration to shield MSHA from scrutiny, prevent a full accounting of the agency's role in abetting Massey, and thereby continue its general whitewashing of the dangers facing coal miners. Federal prosecutors

seek to use the weight of the UBB tragedy to secure a guilty verdict without actually charging Blankenship with the crime itself.

In its last motion to delay the trial, the defense accused federal prosecutors of an "eleventh-hour document dump" after they turned over a disc containing 72,700 pages of MSHA documents which had been requested by the defense over the past nine months. The defense complained that the material was incomplete and did not include specific email correspondence requested from MSHA inspectors who were at the mine in the months leading up to the explosion.

The defense claims MSHA failed to turn over records "from the MSHA inspector at UBB who ... stated to his supervisor that 'there isn't anything wrong there,' that 'the company is doing what they need,' that 'they have come a long way and are a lot better than they used to be,' and that 'several' junior MSHA inspectors 'have cited things [at UBB] that were not violations.'"

Also sought by the defense and not produced by prosecutors were records related to a meeting and phone call which took place between Blankenship and MSHA head Joseph Main in the weeks leading up to the UBB disaster.

While none of these records sought by Blankenship has any bearing on his responsibility for deaths at UBB or the reckless coal operations he oversaw in his tenure at Massey, they do point to the enabling role played by MSHA, as well as the ongoing whitewash by the Obama administration.

The author also recommends:

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[5 April 2014]



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