

Upper Big Branch mine disaster: Opening statements in trial of former Massey Energy CEO

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After four days of jury selection, opening statements and testimony began last week in the trial of former Massey Energy CEO Don Blankenship, who is accused of conspiring to violate federal mine safety laws in the years leading up to the explosion at the company's Upper Big Branch (UBB) mine in West Virginia and then issuing false statements in the disaster's aftermath. Twenty-nine miners died in the April 5, 2010 explosion, the worst coal mine disaster in nearly four decades.

In his opening remarks, Assistant US Attorney Steve Ruby detailed the prosperity of both Massey—then the sixth-largest coal producer in the US—and Blankenship as the company's CEO. In 2009, Massey made more than \$100 million in profit while Blankenship received more than \$17 million in total compensation for the year. Ruby also explained how more than a quarter of Blankenship's wealth was bound up in Massey stock and therefore tied directly to the company's bottom line. That Blankenship was very conscious of this fact was demonstrated in several telephone conversation recordings on the subject submitted as evidence.

During the testimony of Blankenship's executive assistant, Sandra Davis, the prosecution played for the court a 2010 telephone recording in which Blankenship can be heard lamenting his financial situation. "I don't know why they are so unappreciative," Blankenship claims, referring to Massey's decision to limit his compensation to \$12 million in 2010. "It was just an ugly conversation," he tells Davis, "they talk about all my pay being in stock and all of it being on options and none of it being cash. Finally I said I can't go to the grocery store and buy groceries with options."

Massey's profits, in turn, relied heavily on the

performance of UBB. As Ruby explained to the court, UBB "was the biggest producing mine and the highest revenue group of mines that Massey Energy Company had. That group of mines in 2009 shipped coal worth more than \$300 million." The longwall mining section at UBB alone could produce more than \$600,000 worth of coal every day and this coal was the "indispensable ingredient" in the coal mixture Massey sold on the market.

It was within this context that Blankenship obsessed over coal production at Massey mines, especially UBB. Ruby told the court that Blankenship "demanded a report every 30 minutes" detailing coal production. "At night and on the weekend he had them faxed to his house so he could stay on top of what was going on at UBB."

However, the production reports sent to Blankenship also detailed year-to-date tallies of health and safety violations issued to Massey by the US Mine Safety and Health Administration (MSHA). The lists were broken down meticulously on a companywide, mine group, and individual mine basis, showing routine violations for inadequate ventilation and roof controls, as well as persistent and dangerous accumulations of combustible coal dust at UBB.

Testimony given by MSHA data analyst Tyler Childress showed that over the indictment period between January 2008 and April 2010, UBB was cited by MSHA for federal health and safety violations 836 times, 311 of which were classified as significant and substantial (S&S), where there existed "a reasonable likelihood" of serious injury. Over the same period, UBB was issued 59 unwarrantable failure orders where sections of the mine were shut due to "aggravated

conduct constituting more than ordinary negligence.”

However, even these statistics underestimate the level of negligence at the mine. In order to prevent MSHA fines and focus on coal production, the illegal practice of warning underground miners of the presence of inspectors became institutionalized at UBB. Due to the mine’s size, Ruby explained how it could take an inspector more than an hour and a half after entering the mine gate to reach deep sections of the mine, providing enough time for miners to correct and cover up hazards. “There was almost never a time when safety inspectors were able to see what the mine truly looked like when they weren’t there,” Ruby claimed.

“Sometimes I’m torn with what I see about the craziness we do,” Blankenship says in a telephone recording from November 2009 submitted by the prosecution. “Maybe if it wasn’t for MSHA we’d blow ourselves up.”

The court also heard testimony from ex-UBB miner Bobbie Pauley, who said she was shocked by the working conditions when she started working at the mine in 2008. Pauley explained to the court how the advance warning scheme worked, described the mine’s multiple hazards she and other miners were instructed to ignore, and the chronic ventilation problems which plagued UBB.

Pauley also told the court how management instructed miners at UBB to cheat on coal dust sampling meant to protect miners from the occupational lung disease known as black lung. While autopsy results subsequently showed that at least two-thirds of the victims of the UBB disaster had already contracted the deadly affliction, the prosecution submitted audio of a telephone conversation in which Blankenship dismisses the disease, claiming that “the truth of the matter is black lung is not an issue in this industry that’s worth the effort they put into it.”

The prosecution seeks to demonstrate how Blankenship was not only aware of the appalling safety record at UBB, but discouraged even the simplest steps that could be taken to drastically reduce hazards.

One two-line memo issued by Blankenship to all deep mine superintendents in 2005 is explicit: “If any of you have been asked by your group presidents, your supervisors, engineers or anyone else to do anything other than run coal (i.e.—build overcasts, do construction jobs, or whatever), you need to ignore

them and run coal. This memo is necessary only because we seem not to understand that the coal pays the bills.”

The second and third charges against Blankenship relate to false statements made by the company under his direction to the US Securities and Exchange Commission, Massey shareholders, and the general public in the aftermath of the UBB disaster claiming that the company did not condone violations of federal mine health and safety regulations. As Massey’s stock plunged amidst a barrage of media reports detailing the company’s appalling safety record, Blankenship sought the protection of his eroding wealth.

As Ruby explained in his opening statement, “The motive for all this was simple: Money.” While this is certainly true, Blankenship’s crimes occur within a definite social context that cannot be ignored. Capitalist property relations and private ownership of the means of production provided the fertile environment for Blankenship’s personal greed and ruthlessness, allowing him to act as he did and be compensated handsomely for it.

Moreover, while not being directly charged with the mass slaughter of 29 miners who died in the UBB explosion, Blankenship is only on trial because of the disaster. A vast portion of the evidence being presented by the federal prosecution to demonstrate Massey’s reckless and negligent operations simultaneously implicates the social system which allowed it to occur as well as the role played by institutions such as MSHA in abetting it.



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