

# Former Massey CEO escapes most serious charges for role in mine disaster

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After more than 10 days of deliberations, a West Virginia jury acquitted former Massey Energy CEO Don Blankenship of felony charges relating to the Upper Big Branch mining disaster. The jury found him guilty of only one misdemeanor count of conspiring to willfully violate federal mine health and safety laws and defraud the US Mine Safety and Health Administration (MSHA).

A smiling Blankenship emerged from the federal courthouse in Charleston, WV on Thursday evidently satisfied with the verdict, which carries a maximum sentence of only one year in prison. He had faced two additional felony counts of lying to investors and the US Securities Exchange Commissions (SEC). Conviction on all three charges could have sent Blankenship to prison for up to 30 years.

The Obama administration hailed the verdict as an historic victory that sends a strong message to powerful corporate executives that they will be held accountable. “This is a landmark day for the safety of coal miners. Really it’s a landmark day for all working men and women,” prosecuting US Attorney Booth Goodwin said at a press conference following the verdict. “It doesn’t matter who you are, how rich you are, how powerful you are; if you violate the laws and gamble with the lives of your workers you will be held accountable.”

Whether it is CIA officials and operatives who ordered and engaged in torture, bankers and financial executives whose rampant criminality precipitated the economic crisis in 2008, or the reckless executives at BP whose actions led to the death 11 workers and unleashed an unprecedented ecological and social disaster along the Gulf coast in 2010, the Obama administration has intervened time and again to shield the wealthy and powerful.

The case of the Upper Big Branch (UBB) disaster is no different. During Blankenship’s decade-long tenure as CEO of Massey, some 52 coal miners and employees

were killed at the company’s operations. When an explosion ripped through Massey’s UBB mine on April 5, 2010, 29 West Virginia miners were killed in the worst coalmine disaster in nearly four decades. The slap-on-the-wrist sentence prosecutors delivered to Blankenship is only the latest chapter in the Obama administration’s whitewashing of the mass murder Blankenship oversaw at UBB.

In the aftermath of the April 2010 explosion, four separate investigations were initiated: one by MSHA, another commissioned by then West Virginia Governor Joe Manchin and headed by former MSHA chief Davitt McAteer, third by the United Mine Workers of America (UMWA), and a fourth by the West Virginia Office of Miners Health, Safety and Training.

The four investigations all agreed on the basic cause of the explosion: sparks from a longwall mining machine ignited a minor methane gas explosion, which was transformed into a massive coal-dust explosion due to the accumulated coal dust in the mine. The initial spark was the result of the worn cutting blades and inoperable water sprays on the longwall machine. The high concentrations of methane gas were a product of inadequate ventilation. And the accumulated coal dust was due to a lack of basic clean-up practices and rock dusting, the spreading of pulverized limestone to render the coal dust inert.

The various reports also pointed to what was already widely acknowledged: Massey’s criminal corporate culture of placing production and profit ahead of miners’ health and safety was the enabling factor for the unsafe conditions and reckless operation.

MSHA declared the disaster “entirely preventable” while the UMWA report described it as “industrial homicide.” However, rather than expose the neglect of safety throughout the coal industry and the complicity of federal and state regulatory agencies, Massey and its CEO were presented as rogue entities.

The US Department of Justice (DOJ) launched a five-year investigation into the UBB disaster, suppressing the details of its findings and the results of its interviews from the public in the name of protecting the ongoing investigation. Over the course of the investigation, the DOJ focused on convicting a number of minor actors. In 2011, former UBB foreman Thomas Harrah, who left the mine more than seven months before the explosion, was convicted and sentenced to 10 months in prison for falsifying mine safety records and lying to federal investigators. Shortly thereafter, former UBB security chief Hughie Stover was convicted and sentenced to three years in prison for destroying company records and lying to federal investigators.

In early 2012, former UBB superintendent Gary May pled guilty to conspiring to violate mine health and safety laws and was sentenced to 21 months in prison. In late 2012, former Massey executive David Hughart reached a deal with federal prosecutors, pleading guilty to one misdemeanor count of conspiracy to violate federal mine health and safety laws and one felony count of conspiracy to defraud MSHA. However, Hughart did not work at UBB, but Massey's White Buck subsidiary. As part of his plea deal, Hughart testified about the pressure he received from Blankenship to produce coal as well as the institutionalized practice of providing underground miners with advance warning of the arrival of inspectors.

The top executives at Massey, however, were left untouched throughout the DOJ investigation. Former UMWA safety director and current MSHA chief Joe Main made the decision not to invoke the agency's subpoena powers during its investigation into the disaster, allowing at least 18 top company officials, including Blankenship, to refuse to speak to investigators. At the end of 2010, Blankenship was allowed to retire from Massey with a golden parachute worth over 10 million dollars.

Meanwhile, at the corporate level, the Obama administration intervened after Alpha Natural Resources' \$7.1 billion acquisition of Massey in June 2011 by brokering \$209 million settlement which stipulated that no charges would be brought against either company for the UBB disaster.

When federal prosecutors decided to pursue charges against Blankenship last year, it was not for the mass murder of the 29 miners killed in the UBB explosion. Instead they charged him with one misdemeanor count of conspiring to "willfully violate mandatory federal mine safety and health standards at UBB" and two felony counts of lying to the SEC and investors. The tangential

character of the charges flowed from the desire 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.

In the first count, prosecutors argued that Blankenship enforced aggressive production goals, which, coupled with chronic understaffing, created a working environment in which basic safety procedures could not possibly be followed. At the same time, it was alleged that Blankenship oversaw a conspiracy to defraud MSHA through various means, including providing underground miners with advance warning of impending inspections and cheating on coal dust sampling intended to protect miners from coal-dust explosions and the deadly occupational disease known as black lung.

As evidence of this, federal prosecutors presented data showing that 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 down due to "aggravated conduct constituting more than ordinary negligence." Prosecutors also took testimony from about a dozen former UBB miners and employees confirming the appalling working conditions in the mine.

The two felony counts against Blankenship were associated with company statements Blankenship authorized claiming that Massey did not condone violations of safety laws and strived to be in compliance with them. Prosecutors alleged that the false statements to the SEC and investors were aimed at stemming the erosion of Massey's stock value—with which Blankenship's personal wealth was closely bound up with—amidst the barrage of damning media accounts regarding the company's operations in the days following the disaster.

Blankenship's defense team has already indicated that they will appeal the verdict. Sentencing is tentatively scheduled for March 23, 2016.



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