

# Former Massey CEO Don Blankenship sentenced to one year in prison

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A federal judge sentenced former Massey Energy CEO Don Blankenship to one year in prison yesterday and issued him a \$250,000 fine for conspiring to willfully violate federal mine health and safety laws. Blankenship was at the helm of Massey when its Upper Big Branch (UBB) mine exploded in April 2010 killing 29 West Virginia coal miners. The sentence comes a day after the sixth anniversary of the UBB explosion, the worst coal mining disaster in four decades.

Following the sentence, several family members of those killed at UBB screamed at Blankenship as he left the Robert C. Byrd Courthouse in Charleston, West Virginia and his defense team told the press of their intention to appeal.

“There was no direct evidence I committed a crime,” Blankenship told the court in his brief address before the sentencing. “I am not guilty of a crime.”

Blankenship was indicted by a federal grand jury in November 2014 and pled not guilty to a three-count superseding indictment in March 2015 alleging he conspired to willfully violate federal mine health and safety laws, obstructed and defrauded the US Mine Safety and Health Administration (MSHA), and gave false statements to the US Securities and Exchange Commission (SEC) and investors.

However, the Obama administration chose not to charge Blankenship for causing the UBB disaster or the mass murder of the 29 coal miners despite the overwhelming evidence supporting such a charge, which they had at their disposal.

In the aftermath of the disaster, four separate investigations were conducted: one by MSHA, another by the United Mine Workers of America (UMWA), a third commissioned by then West Virginia Governor Joe Manchin and headed by former MSHA chief Davitt McAteer, and a fourth by the West Virginia Office of

Miners Health, Safety and Training.

The four investigations all agreed that 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. The accumulated coal dust was due to a lack of basic cleanup practices and rock dusting, which involves the spreading of pulverized limestone to render the coal dust inert.

Over the course of Blankenship’s two-month trial late last year, federal prosecutors not only took testimony from more than a dozen former UBB miners and employees confirming these appalling conditions as the mine’s normal operating state. They also demonstrated that Blankenship was intimately aware of, and involved in, the maintenance of these conditions for the sake of boosting Massey’s corporate profits and amassing his own multi-million-dollar fortune.

Evidence at the trial showed 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.”

“By putting profits of the company ahead of the safety of your miners, you, Mr. Blankenship, created a culture of non-compliance at Upper Big Branch,” US District Judge Irene C. Berger said as she handed down the sentence. “Instead of being able to tout you as a

West Virginia success story, we are here as a result of your participation in a dangerous conspiracy.”

These words rang hollow, however, when coupled with the absurdity of the one-year wrist-slap sentence and \$250,000 fine, which was the maximum allowed. The charge of conspiracy to willfully violate federal mine health and safety laws became a misdemeanor offense once detached from the second part of the first-count charge of defrauding MSHA, for which Blankenship was acquitted.

The second and third counts in the indictment related to the charges that Blankenship lied to the SEC and investors in the wake of the disaster in an effort to stem the plunging value of Massey’s stock amidst a wave of damaging media reports of the company’s recklessness. A conviction on these counts would have exposed Blankenship potentially to decades in prison and steep fines.

Earlier this week Judge Berger also shut the door to any restitution to the victims of Blankenship’s conspiracy, ruling on Tuesday—the sixth anniversary of the UBB disaster—against the nearly 100 requests she had received. While the details of the 94 requests remain confidential, Judge Berger’s ruling makes clear they were overwhelmingly from former Massey miners and their families in connection with the UBB explosion.

While Judge Berger wrote, “The court recognizes that many of these individuals have suffered actual financial loss and other loss for which there could be no adequate award of restitution,” she also noted, “The overwhelming majority of these claims for restitution explicitly link the claimed losses to the Upper Big Branch explosion of April 5, 2010.”

However, the cause of that explosion was not at issue in this case, she explained. This was the direct result of the Obama administration, she wrote, which “sought to preclude any evidence, argument, or testimony concerning the cause of the Upper Big Branch explosion” in its pre-trial filing.

This in turn laid the basis for Judge Berger to deny about a dozen former UBB miners and family members the right to speak at the hearing, since they were not technically victims of Blankenship’s crime and therefore had no legal right to be heard.

The *Charleston Gazette-Mail* reported that Judge Berger likewise interrupted Blankenship when he began

referring to the UBB disaster as he addressed the court before his sentencing, saying that he too had no right to speak about the tragedy.

Judge Berger also ruled against the restitution requests from “certain other claimants [who] did not specifically discuss the explosion at Upper Big Branch as the basis for their restitution claim,” writing that they too “failed to allege *any* basis sufficient for the court to find direct and proximate causation.”

On Monday, Judge Berger similarly ruled against a \$28 million restitution claim filed by Alpha Natural Resources for costs it has incurred cooperating with the five-year federal investigation, including legal fees associated with witnesses now with the company. Alpha purchased Massey in a \$7.1 billion deal in June 2011, about six months after Blankenship was allowed to retire from Massey with a \$12 million golden parachute. The company then reached a \$210 million settlement with the Obama administration, which granted Alpha immunity from any future corporate criminal liability from the UBB disaster.

Blankenship remains free on \$1 million bond and will be allowed to voluntarily report to prison; however, the date has not yet been set. Judge Berger has given Blankenship and his attorneys 10 days to appeal her ruling.



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