



Don's World

Massey Energy's CEO defines a rogue coal company

The "Don" of West Virginia politics?

When Massey Energy CEO Don Blankenship moved in 2004 to inject himself into West Virginia state politics, he got national recognition—but it wasn't the kind of recognition he was looking for.

Blankenship spent \$3 million to support a little-known lawyer named Brent Benjamin in a campaign for a seat on the West Virginia Supreme Court of Appeals. He established a political action committee called "And for the Sake of the Kids," which sponsored vicious television and radio ads against the incumbent, Warren McGraw.

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"This was just an out-and-out effort to buy a favorable seat on the Supreme Court," said President Roberts. "Don Blankenship and Massey Energy had some cases that were either at the court or coming to the court on appeal. This was Don's way of doing what he could to get an extra vote for himself and his company."

It worked. On Nov. 21, 2007, the West Virginia Supreme Court threw out a \$76 million judgement against Massey filed by Harman Mining, which alleged that Massey had intentionally reneged on coal supply contracts to drive Harman out of business.

"Don spent \$3 million to get Brent Benjamin elected, then got a \$76 million judgement against Massey thrown out," Roberts said. "I'm sure he thought at the time that it was a pretty good return on his investment. But then the facts got in the way."

That's because Hugh Caperton, the owner of Harman Mining, appealed to the U.S. Supreme Court. The High Court took up the case precisely because of the appearance of impropriety raised by Benjamin voting on cases that involved Blankenship and Massey Energy. The case became one of the more high-profile cases the Supreme Court has heard this year

On June 8, the U.S. Supreme Court issued a ruling in Caperton v. Massey that was a direct slap at Blankenship. The Court threw out the West Virginia Supreme Court's ruling, saying that "Blankenship's campaign efforts had a significant and disproportionate influence in placing Justice Benjamin on the case." The Court went on to say that "Blankenship's extraordinary contributions were made at a time when he had a vested stake in the outcome... There was here a serious, objective risk of actual bias that required Justice Benjamin's recusal."

In other words, justice cannot be for sale.

"Justice is supposed to be blind, but it was not in this case," Roberts said. "The Supreme Court has acted correctly to restore the public's confidence that judgements rendered by our court system cannot be bought and sold."

The case is important to the UMWA, because the miners who worked at Harman are UMWA members who lost their jobs and their health care benefits as a result of Massey's attack on the company. The union initially covered their health care for a period of time, and many of the miners were able to take their retirement and qualify for health care through the UMWA Health and Retirement Funds.

"UMWA members who worked at Harman are owed in excess of \$13 million for past and future health care obligations," Roberts said. "They and the union are looking forward to this money being repaid to them, and soon."



Massey Coal Services

MATT ALLEY

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W.Va. voters to Blankenship: Enough!

After his success in 2004 with getting Benjamin elected, Blankenship took his act to the state legislative elections in West Virginia in 2006. This time though, the voters of West Virginia were on to him. Nearly every candidate who was supported by Blankenship lost.

“The results of that election made it pretty clear just how much the voters were ready to reject Blankenship’s campaign of half-truths and outright lies,” Roberts said. “And I think he got the message. He hasn’t publicly raised his head since in electoral politics in West Virginia.” Another legal blow to Massey and Blankenship was dealt last December, when the U.S. Supreme Court refused to hear Massey’s appeal of a \$220 million verdict against the company in a suit filed by Wheeling-Pittsburgh Steel Corp. Originally filed in 2004, the suit alleged that Massey reneged on an agreement to supply Wheeling-Pittsburgh with metallurgical coal at a time when prices for that high-quality coal were spiking.

Blankenship rises—the environment suffers

Blankenship became President of Massey Energy shortly after the company was spun off from its corporate parent, the Fluor Corp., in 2000. Almost from the very beginning, his tenure as head of the company was marked with con-

trovery and contempt, not just for the UMWA, but for the people who live near Massey operations as well.

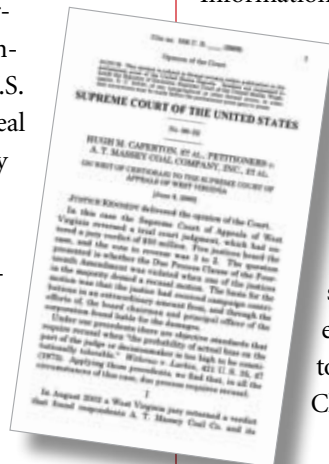
In Martin County, Ky., a Massey-owned coal sludge dam broke in 2000, releasing 306 million gallons of coal waste into an abandoned underground mine beneath the impoundment. The sludge eventually found its way into the Big Sandy River, causing a major environmental disaster that led to a \$3.5 million payment to the state of Kentucky in penalties and damages.

Massey has continued to be a bad actor when it comes to mining coal in a responsible and community-friendly way. According to the Coal Impoundments Location and Information System kept by Wheeling Jesuit University,

Massey had 27 spills from its coal impoundments into coalfield waterways from 1994 through 2008, totaling nearly 422 million gallons. The next-closest operator had three spills during that same period.

In 2008, Massey paid \$20 million in fines to the federal government for violations of stream discharge regulations, the largest fine ever levied against any mine operator. This was to settle over 4,500 violations of the company’s Clean Water Act permits between 2000 and 2007.

“Coal can be mined in an environmentally responsible way,” President Roberts said. “But in many respects, Massey has chosen not to do it that way, and the result has been to give the coal industry a black eye. As public scrutiny gets raised about coal and coal mining, Massey gives those who oppose the use of coal something to point to as they bad-mouth our entire industry.”



Safety last

On Jan. 19, 2006, a fire broke out on a belt line at Massey's Aracoma Alma #1 mine. As miners evacuated the mine, two became separated from the rest in the thick smoke. They never made it out.

A subsequent investigation by state and federal safety authorities found that management at the mine committed multiple violations of the law, including several criminal violations that led to prosecution of the Massey subsidiary operating the mine, Aracoma Coal. In April of this year, Aracoma pleaded guilty to 10 mine safety violations and paid criminal fines amounting to \$2.5 million.

Additionally, Aracoma agreed to pay \$1.7 million in civil penalties to resolve over 1,300 violations that federal Mine Safety and Health Administration (MSHA) investigators found at the mine after the fire.

The federal judge who approved the plea deal said that Aracoma's safety failings "doomed two workers to a tragic death." He went on to say that the "combination of these failings is inexcusable, and shows a lack of concern at the time for the safety and welfare of the miners."

"This mine was set up to be a death trap, and that's what it became," President Roberts said. "Conditions in the mine were bad, and made worse by the decisions mine management made and the lack of attention to critical safety measures that could have meant the difference between life and death.

"MSHA's report on the Aracoma Alma tragedy shows that Massey management at the mine violated multiple safety laws that contributed to the tragic deaths of the two miners there," Roberts said. "The report also demonstrates that these conditions were ongoing for weeks and months prior to the underground fire at the mine.

"Everywhere you turn in MSHA's report, there is another safety procedure that was supposed to be followed that wasn't or safety equipment that was supposed to be in place that either wasn't there or didn't work," Roberts said. "There was no water available to fight the fire because it was shut off. The hose couplings didn't fit. Carbon monoxide monitors were not installed. Ventilation plans were not being followed and ventilation controls were not being maintained.

"This is yet another example of what happens when upper management puts pressure on a mine to 'run coal' before doing anything else," Roberts said, referring to a memo Blankenship sent to Massey mines in the fall of 2005 taking workers to task for not producing as much coal as he wanted.



TERRY COTTRELL

"Proper maintenance isn't done in that kind of working environment," Roberts said. "Required safety equipment is not put in place, and effective safety procedures in the event of an emergency are not practiced or followed. When you put production ahead of safety, tragedies like this are all too often the result."

Intimidating workers, ignoring labor laws

Massey has long been one of the most anti-union coal operators in America. That tradition continues today. Under Don Blankenship, Massey has repeatedly been found in violation of U.S. labor laws, yet that has not stopped the company from continuing to promote a climate of fear and intimidation among its workforce when it comes to union organizing.

When Horizon Natural Resources declared bankruptcy in 2004 and closed its mines, Massey bought two of them, including the former Cannelton mine in Kanawha Co., W.Va. When Massey announced plans to reopen the Cannelton mine under the new name of Mammoth mine, over 80 members of L.U. 8843, who had lost their jobs in the Horizon bankruptcy, went to Massey and applied for their old jobs back.

They were experienced miners who knew the mine well and were prepared to go to work immediately. But none of that mattered to Blankenship or his company. Massey told nearly all the former Cannelton miners to get lost.



UMWA members and leaders confront Kanawha County, W.Va. sheriffs on the road outside the former Cannelton mine, now Massey's Mammoth mine, in 2005.

Big mistake. The miners filed unfair labor practice charges with the National Labor Relations Board (NLRB) against the company, saying that Massey was discriminating against them because of their union membership.

“These miners clearly were not hired because they belonged to the union previously,” Roberts said. “Massey wanted no involvement with the union. Don Blankenship even testified during the NLRB hearings that unions are somehow ‘bad for business,’ which is baloney. So Massey just outright discriminated against them because of their union status.”

After weeks of hearings, a NLRB administrative law judge agreed, ordering Massey to hire the former Cannelton workers and to begin negotiating with the UMWA for a contract. But true to form, Massey refused to abide by the judgement and appealed the decision. That appeal is still in process.

Just recently, Massey added another chapter to its sorry labor-relations record. On Apr. 29, 2009, Blankenship announced that the company increased its revenue by 25 percent in the first quarter of the year. In almost the next breath, he announced that the company would be cutting wages and benefits for all Massey employees by an average of about 6 percent.

A week later, Massey announced that all executives, including Blankenship, would be taking a 10 percent cut in their base pay, meaning Blankenship's base salary would be reduced to \$900,000. No mention was made of any other cuts company executives might take, such as the bonuses, stock options and other compensation they receive each year, which drove Blankenship's 2008 total compensation to \$19.7 million.

So in reality, the \$100,000 cut in Blankenship's 2009 pay amounts to one-half of one percent of his total 2008 compensation.

A story not yet finished

The final chapter of Don Blankenship and Massey Energy has not yet been written, nor does it appear that it will be for some time. But this much is known: At a time when there is increasing scrutiny of coal and coal mining practices by the public and by state and federal governments, Massey and its CEO are squarely in the limelight—for all the wrong reasons.

In Don Blankenship's world, the coal industry should hunker down behind the Appalachian mountains and do nothing but call names and make enemies. He somehow appears to think that if he can ignore the issues surrounding coal and the future of coal, or if he says enough bad things about the politicians in Washington, then they will go away and leave the coal industry alone.

“That is a recipe for failure,” President Roberts said. “It is absolutely critical that coal's voice is heard in Washington, because if we're not part of the discussion, we'll be left behind. Don's solution is to make the politicians do their worst and then try to gain some political advantage from it. That won't lead to a single additional ounce of coal being mined, or a single coal job being saved.

“The right way to do this is to get involved and stand up for our industry in the halls of power,” Roberts said. “The UMWA is standing up for coal, and we're standing up for coal jobs. That's the right road to be on.” ■