


FEBRUARY 27, 2017 | MSHA INSPECTIONS, CITATIONS & ENFORCEMENT

Former Coal Company CEO Blankenship Loses On Appeal, In A Reminder Of Aggressive Federal Enforcement

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Former coal company CEO Don Blankenship faces continued prison time after his appeal in federal court was recently denied. The latest decision against the ex-Massey Energy executive underscores how strongly federal prosecutors are pressing for higher-level players to be held more accountable for alleged safety and health violations, including in the mining sector.

Blankenship, will not be released from a minimum-security prison facility in California until the end of a year's sentence. A jury found Blankenship guilty in late 2015 of a willful violation of safety laws. The judge in the case properly allowed jurors to reach that conclusion as long as they found that his actions amounted to a "reckless disregard" for those laws, according to the appeals court decision. 

A legal question before the Fourth Circuit Court of Appeals in reviewing the case was the jury instruction regarding the meaning of "willfully" in 30 U.S.C. § 820(d), which makes it a misdemeanor for a mine "operator" to "willfully" violate federal mine safety laws and regulations. In Blankenship's case the appeals court found that the instructions had been made properly:

"Because mine operators have 'primary' responsibility for safety and regulatory compliance and because an operator acts with reckless disregard if he 'clos[es] [his] eyes' to safety compliance or 'should have known' that an action or omission would lead to a safety violation, a mine operator cannot avoid liability under Section 820(d) by failing to engage in close oversight over safety and regulatory compliance.

"... the district court properly instructed the jury that it could conclude that [Blankenship] 'willfully' violated federal mine safety laws if it found that [he] acted or failed to act with reckless disregard as to whether the action or omission would lead to a violation of mine safety laws."

Could Management Enforcement Trend Continue?

The federal charges against Blankenship stemmed from an the investigation of Massey's operations and business practices after the 2010 explosion at the Upper Big Branch mine that killed 29 miners. The Obama administration aggressively pursued the case, and Blankenship has long argued that his prosecution was politically motivated.

Whether there is any validity to Blankenship's argument, it is undoubtedly true that under Obama's leadership the federal government increased its scrutiny of top-level executives and their involvement in all sorts of alleged regulatory infractions. It became an increasing trend under the current administration to hold "agent of management" figures accountable, especially in major probes like Upper Big Branch.

This was the first time a senior-level manager at a major mining company was pursued for criminal charges due to an MSHA special investigation. It is also highly unusual that a chairman and CEO would be subject to such enforcement action, though that became increasingly a possibility.

After all it was not that long ago that the Departments of Justice and Labor [reached an agreement](#) to refer more cases of alleged serious safety violations for possible criminal prosecution.

This looks like one of those trends, however, that could be reversed or at least see a decline under the Trump administration, given the new president's friendliness toward business and general disinclination toward tough regulatory enforcement. We could well see a drop in federal prosecutions of high-level managers, though in egregious cases they could still be exposed to criminal charges.

Blankenship's case and his legal team's failure on appeal serve as a reminder to mining companies and their managers all the way up the chain of command that MSHA views everyone in an operation as responsible for safety and health compliance. Failure to recognize this spread of responsibility can lead to tough enforcement activity, including even prosecution.