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IN THE CIRCUIT COURT OF BOONE COUNTY, WEST
VIRGINIA

HUGH M. CAPERTON, HARMAN
DEVELOPMENT CORPORATION,
HARMAN MINING CORPORATION, AND
SOVEREIGN COAL SALES, INC.,

PLAINTIFFS,

V

CIVIL ACTION NO. 98-C-192

A. T. MASSEY COAL COMPANY, INC.,
ELK RUN COAL COMPANY, INC.,
INDEPENDENCE COAL COMPANY, INC.,
MARFORK COAL COMPANY, INC.,
PERFORMANCE COAL COMPANY, AND
MASSEY COAL SALES COMPANY, INC.,

DEFENDANTS.

A transcript of proceedings had and testimony taken before
THE HONORABLE JAY M. HOKE, JUDGE OF BOONE COUNTY
CIRCUIT COURT, at the Boone County Courthouse in Madison,
Boone County, West Virginia, pursuant to a trial in this case
being continued to this day the 18th day of July, 2002
concerning the above-styled case; said proceedings beginning
at 10:35 a.m.

DONNA MILLER-MAIRS, Certified Court Reporter
(304) 988-9581

1 MR. STANLEY: Thank you, Your Honor.

2 (At this time, Mr. Stanley began cross-examination of the
3 witness on behalf of the Plaintiffs.)

4 **CROSS-EXAMINATION**

5 BY MR. STANLEY:

6 Q Mr. Blankenship, how are you?

7 A Doing real well.

8 Q Good. Will you tell the jury again how it is that you're
9 employed by Massey Energy, in what position?

10 A I'm employed as the Chairman and the Chief Executive
11 Officer and the President.

12 Q So, you hold three positions with Massey Energy?

13 A Some companies break it up into three positions, but it's
14 all together at Massey.

15 Q And I think in response to a question that was asked by
16 Mr. Woods, you stated that you answered to Massey's Board of
17 Directors.

18 A Yes.

19 Q You're the chairman of that board, right?

20 A That's correct.

21 Q So, you run the board?

22 A No, I vote, and sometimes I get outvoted. I still only get
23 one vote as chairman.

1 A Taking a picture of the house, as I heard the testimony,
2 was for the purpose of making sure that there was no
3 misunderstanding that Hugh was not on starvation, and his life
4 has not been destroyed.

5 Q Well, the jury saw you testify earlier in court on videotape
6 and portions of your videotape designation that were selected
7 by your attorneys, whether they're hundred thousand dollar
8 attorneys or million dollar attorneys, but in that piece of
9 videotape selected by them about your obligation to represent
10 Massey's shareholders, you said, "It's my obligation to
11 represent Massey shareholders ethically, responsibly, legally in
12 the their best interests. I'm sure you wouldn't change that
13 testimony today, would you?

14 A No, I certainly wouldn't. I haven't changed any
15 testimony. I don't know if that was an insinuation that I had.

16 Q Well, in truth, when it comes to making money, Massey
17 would consider breaking the law, wouldn't it?

18 A Absolutely not, although we do truck illegally if that's
19 where you're getting to, as I said, in the law as far as how
20 companies operate in this country-- in this area for twenty or
21 thirty years. So in that case, we are trucking illegally, and I've
22 testified to that on television.

23 Q And that's certainly—do you think that's representing
24 Massey shareholders legally?

1 A I think it's the best representation I can give them. The
2 law has told us for years that as long as we stayed tarped and
3 stayed under, you know, the speed limit that it was okay, and
4 although I realize that the written law is different than that,
5 every coal company in West Virginia has been abiding by the
6 verbal law that says it's okay as long as we behaved properly,
7 and Massey is no exception, and when the law changed
8 overnight, I was in the predicament of deciding whether to lay
9 off hundreds of people or continue to do what we were doing
10 until I could make other arrangements.

11 THE COURT: Just a minute. Since this is something I do
12 know something about, let me explain to everybody that the law
13 in the State of West Virginia has to do with the subject of his
14 testimony here -- has to do with certain weight limits. Now, it
15 has not been the evidence in this case. You may be aware that
16 there's a great debate going on in this state, including a special
17 session of the Legislature, even as we speak, having to do with
18 these weight limits.

19 And I think part of what the testimony and the questions and
20 answers have been about are that the use by certain law
21 enforcement officers of tolerances above the weight limit, okay,
22 and I want you to understand that that had to do with giving
23 people citations or not giving people citations. It did not have
24 to do with whether or not the law was violated. The law was

1 violated if the weight limit is exceeded. Whether or not to give
2 a ticket for it had to do with the individual officer and what he
3 may or may not have been instructed by his superiors.

4 Everybody understand me?

5 All right. Do you take exception to that explanation on
6 behalf of the Plaintiffs' side?

7 MR. STANLEY: No, Your Honor.

8 THE COURT: Do you take exception of that explanation on
9 behalf of the Defendants' side?

10 MR. WOODS: No, Your Honor.

11 THE COURT: All right, thank you very much. Within that
12 context, you may proceed.

13 MR. STANLEY: Thank you, Your Honor.

14 BY MR. STANLEY:

15 Q And Massey's receiving numerous written notices of
16 violations from West Virginia's environmental regulations, it
17 doesn't mean anything to you, does it?

18 A I think the question is absurd, but it means a lot to us.
19 We are doing everything that we can to comply with
20 environmental laws. They change quicker than you can keep up
21 with them, and we have had a couple of slurry line breaks that
22 have been in the newspapers, but the thing that gets missed is
23 that we pump about 8 million gallons of material a year, and the
24 odds are a little bit against us, but we are doing everything we

1 can, and we're pleased that in the last several months we've
2 done all right.

3 Q How many slurries was it you just described for the jury?

4 A We've had the big one two or three years ago that was in
5 Martin County, Kentucky, and then we've had about three or
6 four in the last, I don't know, six, eight months.

7 Q How big was the one in Harlan County, Kentucky? How
8 big?

9 A Two hundred and thirty million gallons.

10 Q Excuse me, how many gallons?

11 A Two hundred and thirty million, I believe was the
12 estimated number.

13 Q Haven't you publicly stated that, "There's no question
14 violations happen. It doesn't mean anything" with regard to
15 environmental regulations?

16 A Not in connection with violations that Massey is getting.
17 It's just like billboards along the highway don't count either. It's
18 a matter of what they want to write and it's within their
19 discretion. The law gives a lot of discretion, and unfortunately,
20 we have been the focus of that. So when people have tried to
21 use the violation count against Massey as not behaving as well
22 as others, we discount that simply because there are a lot of
23 violations written against Massey that would not be against
24 others.

1 Q You mentioned another spill besides the Martin County
2 Spill. Before we leave it, though, the Martin County spill, isn't
3 that the largest coal mine spill of its kind in the history of the
4 United States?

5 A To my knowledge, it is, yes.

6 Q With regard to the violation count issue, you've been
7 quoted as saying, "Violation count is simply what inspectors
8 write. We have no interest in violations. We know the DEP"—
9 which is the West Virginia Department of Environmental
10 Protection --

11 A Is that a question?

12 Q Yes.

13 A Yes, the DEP is the Department of Environmental
14 Protection.

15 Q "We know the DEP is basically an extension of the union."

16 A Yes.

17 Q Do you agree with that statement? You made that
18 statement.

19 A Well, I agree with the statement. I made the statement,
20 and I stand by the statement.

21 Q In 2000, 2001, Massey racked up more than 500 state
22 violations from the Department of Environmental Protection,
23 didn't they?

1 A I wouldn't know the exact count, but when you look at the
2 records, we didn't have any more violations per permit or per
3 ton than other companies did.

4 Q Sitting here today, can you tell us how many violations
5 Massey or its subsidiaries received in 2000, 2001? Can you tell
6 us?

7 A No, I don't think anybody would expect me to be able to.

8 Q Would you be surprised if it was as many as 500?

9 A If it was what?

10 Q As many as 500?

11 A It wouldn't surprise me, no.

12 MR. STANLEY: Your Honor, is this a reasonable stopping
13 point for today?

14 THE COURT: It's twenty after 5:00. I think that's probably a
15 reasonable time. Let's see.

16 Ladies and Gentlemen of the Jury, given the circumstances
17 here, we're taking a division time in the cross-examination. I
18 don't want you to consider in some vacuum the things that have
19 been set out in the cross-examination today. There's going to
20 be more cross-examination. There's going to be redirect
21 examination, and a number of things, okay? As I said, in regard
22 to this testimony as well as in regard to all the other testimony,
23 there's more evidence to come. Don't make up your minds
24 about anything. Keep your minds open and your mouths shut.