

## **Court: Justices Must Rule on MSHA Liability**

VICKI SMITH, Associated Press

MORGANTOWN, W.Va. (AP) — A federal appeals court said Tuesday the West Virginia Supreme Court should decide whether Mine Safety and Health Administration inspectors can be held liable for coal miners' deaths, calling it "a matter of exceptional importance for West Virginia."

The U.S. 4th Circuit Court of Appeals in Richmond, Va., said it found no case law, constitutional authority or state statute to definitively answer what it called "a pure question of state law, which has not been squarely addressed."

The lawsuit was filed in April 2010 by the widows of miners Don Israel Bragg and Ellery Elvis Hatfield. The men died when they were unable to escape a January 2006 conveyer belt fire at Massey Energy's Aracoma Alma No. 1 mine. Alpha Natural Resources Inc. bought Massey in 2011.

A faulty ventilation system caused smoke from the fire to flood the escape route, reducing visibility. The miners also struggled to find an unmarked personnel door in the dark and tried to use their breathing devices but lacked the training to properly activate them.

Ten men made it out alive, but Bragg and Hatfield died of carbon monoxide poisoning. Their widows accused MSHA of negligence, arguing the inspectors who'd failed to do their jobs before the fire should held be liable under state law.

But U.S. District Judge John Copenhaver dismissed the case last year, saying inspectors can't be deemed negligent under state laws as they are currently written.

Copenhaver said he could not conclude the current statute "would impose negligence liability on a 'private individual under like circumstances' to the MSHA inspectors." Essentially, he reasoned, if a private party can't be held liable, neither can federal inspectors.

The three-judge appeals panel said the state's high court should now decide if a private party would be liable if a death resulted from a negligent inspection.

"The question ... appears to be a matter of exceptional importance for West Virginia," the order said.

MSHA didn't immediately comment on the ruling.

An internal review after the fire, however, acknowledged that inspections of the mine had been insufficient. In late 2005, for example, the agency issued 95 citations for safety violations but failed to require corrective actions.

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"MSHA determined that its own inspectors were at fault for failing to identify or rectify many obvious safety violations that contributed to the fire," the ruling says. The agency also confirmed that its inspectors showed "a lack of initiative" in conducting proper inspections.

Bruce Stanley, the Pittsburgh attorney representing Delorice Bragg and Freda Hatfield, said his clients are "obviously pleased that this question's finally going to get some serious, thoughtful consideration."

"All they've ever wanted is to do everything they can to ensure that the people who are responsible are held responsible," he said. "It's preposterous to think that MSHA should be able to get away with that behavior."

Stanley said it's also significant that the appellate court took this position because "the federal government is used to courts rubber-stamping this issue" of a private-party counterpart.

Stanley argued West Virginia should specifically rule on the question because it's "tremendously important" to thousands of coal miners yet has never been sufficiently addressed.

"Frankly, I think that's because the answer is so obvious," he said. "We think a private citizen acting in this manner, engaging in this egregious conduct, would be held liable."

A similar finding by the state justices would create another legal avenue for people who have been hurt by the government's conduct, Stanley said. It also could serve as a deterrent to inspectors thinking of shirking their duties.

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