

Charged Exec Cooperating in Mine Blast Probe

VICKI SMITH, Associated Press

MORGANTOWN, W.Va. (AP) — Federal prosecutors investigating the West Virginia mine explosion that killed 29 men widened their net Wednesday, filing criminal charges against a longtime Massey Energy executive who worked closely with former CEO Don Blankenship — a move signaling where their sights may be ultimately set.

The cooperation of David Craig Hughart is a sign that authorities may be gathering evidence to target officials further up the Massey hierarchy. Some victims' families hold Blankenship personally responsible for the worst U.S. mining disaster in four decades, though prosecutors have declined to say who else could face charges in the wide-ranging and continuing probe.

Several former federal prosecutors say it wouldn't be easy to prosecute Blankenship, and it would require more than just damning testimony from witnesses who may have their own agendas.

Corporations like Massey, since bought out by Virginia-based Alpha Natural Resources, are typically structured to shield their leaders from liability, the experts say. To reach the top, investigators would most likely need hard evidence to match witnesses' words.

Either that, says former U.S. Attorney Kendall Coffey of Miami, or they'll need multiple witnesses.

"If the star witness has a supporting cast," he said, "it can be a compelling basis for conviction."

Hughart, former president of a Massey subsidiary that controlled White Buck Coal Co., worked alongside Blankenship for at least 15 years and was named in a federal information filed Wednesday in U.S. District Court in Beckley. He is cooperating with prosecutors, and U.S. Attorney Booth Goodwin said Hughart is prepared to plead guilty to two conspiracy charges that carry the possibility of six years in prison.

Hughart's phone has been disconnected, and his attorney didn't immediately comment.

Although Upper Big Branch is never directly mentioned in the case against Hughart, Goodwin said the charges come from the investigation of the April 2010 explosion. And the nature of the allegations parallels charges brought against those who were directly involved with UBB.

Prosecutors say Hughart worked with unnamed co-conspirators to ensure miners at White Buck and other, unidentified Massey-owned operations received advance

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warning about surprise federal inspections many times between 2000 and March 2010.

Those illegal warnings gave workers time to conceal life-threatening violations that could have led to citations, fines and costly shutdowns, authorities say.

Hughart faces two charges: felony conspiracy to defraud the government by impeding the Mine Safety and Health Administration, and misdemeanor conspiracy to violate mandatory health and safety standards.

Goodwin wouldn't say who else might be charged or when, but that his investigators are "trying to push forward as quickly as we can."

Hughart has been president of at least 10 Massey subsidiaries throughout his career, positions that would have required the consent of a CEO whose micromanagement is well-documented.

At Upper Big Branch, for example, Blankenship demanded production reports every 30 minutes.

And last year, Blankenship acknowledged during a deposition for an unrelated lawsuit that his employees had sometimes found cans of Dad's root beer on their desks: Dad's, he told the attorney questioning him, stood for "Do as Don says."

Neither Blankenship, who retired about eight months after the disaster, nor one of his attorneys responded to an email seeking comment.

Four investigations have concluded that Massey concealed problems at the mine through an elaborate scheme that included sanitized safety-inspection books and an advance-warning system.

Clay Mullins, who lost brother Rex in the explosion, doesn't believe it will be that hard to prove that Blankenship personally maintained a corporate culture that put no value on workers or safety.

"I think all Massey operations ran just the way UBB did," Mullins said. "They all had advance warning. They all tried to hide and cover up as much as they could. They tried to conceal and deceive and deny. That was Massey's mentality. That was how they handled things."

The United Mine Workers of America, which accused Massey of "industrial homicide," has demanded that Blankenship and 17 other managers who refused to talk to investigators be compelled to testify publicly or cited for contempt. It says those responsible for the disaster must be brought to justice.

But David Weinstein, a former assistant U.S. attorney in Miami who now heads the white-collar litigation practice of a private law firm, said corroboration would be critical to prosecuting Blankenship.

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"They are going to need documents," he said. "The real linchpin of their prosecution is being able to prove the CEO or some other officer or director actively participated in what was going on."

Absent direct proof, Weinstein said, prosecutors would have to demonstrate "willful blindness" to matters of safety.

After a 2006 fire that killed two men at a different Massey operation, a memo surfaced that could help prosecutors make that part of the case. In it, Blankenship told workers at the mine that if their bosses asked them to build roof supports or perform similar safety-related tasks, "ignore them and run coal."

"This memo is necessary only because we seem not to understand that the coal pays the bills," he wrote.

Massey settled that lawsuit for undisclosed terms, and its Aracoma Coal subsidiary paid \$4.2 million in civil and criminal penalties.

Bruce Stanley, the Pittsburgh attorney who handled that lawsuit and others against Massey, said no managers could act without Blankenship's direction.

"I cannot imagine that anybody at Hughart's pay rank could engage in any of the activities that he's accused of without Don Blankenship's permission and blessing," Stanley said.

During the Aracoma investigation, memos made clear that Blankenship paid particular attention to mines that were falling short of budget projections, Stanley said. The day of the fire, he called Aracoma's then-president, wondering why a section crew wasn't working.

"Indeed he was super micromanaging all of these mines," Stanley said. "At the section level and on a daily basis."

Hughart is the third person to face serious criminal charges in connection with Upper Big Branch.

Former UBB superintendent Gary May is also cooperating with prosecutors. He pleaded guilty to a federal conspiracy charge for his actions at the mine and is set to be sentenced in January.

Former Massey security chief Hughie Elbert Stover, meanwhile, is appealing his conviction last fall on charges he lied to investigators and ordered a subordinate to destroy documents.

He was sentenced to three years behind bars — one of the stiffest punishments ever handed down in a mine safety case — but has been free pending appeal. Witnesses testified that Stover instructed mine guards to send radio alerts whenever inspectors entered the property. He's denied any wrongdoing.

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The explosion at Upper Big Branch was sparked by worn teeth on a cutting machine, and fueled by methane and coal dust. It was allowed to propagate by clogged and broken water sprayers. The force of the blast traveled miles of underground corridors, killing men instantly.

Goodwin's office negotiated a \$210 million agreement with Alpha to settle past violations at UBB and other Massey mines, protecting the company from criminal prosecution.

But individuals remain on the hook.

Jeffrey Sloman, a former U.S. attorney in Miami, said criminal prosecutions of big-company CEOs are "relatively rare, but it happens from time to time."

"You see it on Wall Street," he said, "with New York going after financial crimes cases pretty aggressively."

Gary Quarles, who lost his son Gary Wayne at Upper Big Branch, just wants Blankenship to face criminal charges and be held accountable.

"Everybody thinks he's above the law," he said. "I want at least something filed against him, to show him you can be had. It doesn't matter what he's charged with, just something. ... Even Martha Stewart went to jail. "

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Associated Press writer Larry O'Dell contributed from Richmond, Va.

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