Court Says Negligent Mine Inspectors Can Be Sued

VICKI SMITH,Associated Press

MORGANTOWN, W.Va. (AP) — Private and federal mine safety inspectors can be held liable and sued when a negligent inspection results in the wrongful death of a coal miner, the state Supreme Court ruled Tuesday in handing a victory to the widows of two men killed in 2006.

The unanimous ruling penned by Justice Robin Davis says inspectors owe "a duty of care" to workers who count on them to do their jobs "with ordinary skill, care, and diligence" expected by members of their profession. Inspectors, the ruling said, know that negligence is likely to result in foreseeable harm to miners.

For the widows of Don Israel Bragg and Ellery Elvis Hatfield, the ruling is a victory in a continuing battle for justice for those behind by the January 2006 fire at Massey Energy's Aracoma Coal Co. Alma No. 1 mine in West Virginia's Logan County.

"The conscious decision of coal companies to ignore the most basic of mine safety laws and instead just run coal should not and cannot excuse government regulators from their independent responsibility to enforce those laws," said attorney Bruce Stanley, "regardless of the prevailing political climate or perceived economic pressures.

"Hopefully, the threat of a private suit will serve as an incentive for them to do their jobs instead of turning their heads," he said.

The federal Mine Safety and Health Administration didn't immediately comment on the ruling.

A faulty ventilation system at Aracoma caused smoke from the fire to flood the mine's 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.

U.S. District Judge John Copenhaver dismissed their lawsuit, saying inspectors can't be deemed negligent under state laws as they are currently written.

When the widows appealed, the U.S. 4th Circuit Court of Appeals in Richmond, Va., asked the West Virginia justices to specifically address the liability question.

In a ruling last summer, the appellate court said it had found no case law, constitutional authority or state statute to definitively answer what it called "a pure question of state law" that had yet to be specifically addressed. It urged the justices to decide the question once and for all, calling it "a matter of exceptional importance" for West Virginia.

The state's response, crafted to address a certified question relating to private or third-party inspectors, may help Delorice Bragg and Freda Hatfield pursue their appeal and revive the case against MSHA. They settled with Massey in 2008 for undisclosed terms.

In October, the state Supreme Court heard arguments that included a description of how flammable shavings from a misaligned conveyor belt were allowed to grow into a 4- to 5-foot pile. It was among many safety violations that MSHA inspectors had a duty to catch, Stanley argued, accusing District 4 inspectors of getting "too cuddly" with the company.

The government's attorney argued that while MSHA could have done its job better, the burden to run a safe mine was on Massey.

He also noted that Massey later agreed to pay $4.2 million in criminal fines and civil penalties, while five supervisors pleaded guilty to criminal negligence.

Cabell Circuit Judge Paul T. Farrell heard the case in place of Justice Brent Benjamin.

A 2009 U.S. Supreme Court decision bars Benjamin from hearing any cases involving Massey after its then-chief executive, Don Blankenship, spent more than $3 million to help Benjamin win election in 2004.

Massey has since been acquired by Virginia-based Alpha Natural Resources.

Online:

Bragg & Hatfield vs. U.S.: http://bit.ly/Tullv9 *[1]*

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