

Coal Outlook

Vol 36 / No 16 / April 16, 2012

Alpha hit with new suits from injured Upper Big Branch workers

Alpha Natural Resources faces nine new lawsuits filed in the last three weeks from workers claiming injuries as a result of the April 5, 2010, Upper Big Branch underground mine explosion in Raleigh County, West Virginia.

The complaints — all filed in the circuit court of neighboring Boone County and all but one filed by Huntington, West Virginia, attorney Mark Underwood — were all filed just prior to the two-year anniversary of the explosion, which killed 29 miners and was the deadliest US coal mining

accident in 40 years. April 5, 2011, also marked the deadline under the statute of limitations for filing personal injury lawsuits in West Virginia in connection with the accident.

The explosion happened under previous Upper Big Branch owner Massey Energy, which Alpha acquired in June 2011. The suits name as plaintiffs both Alpha and Massey, various subsidiaries of both companies and numerous individuals who served as managers and executives at the mine, its operating subsidiary Performance Coal and at the cor-

porate level, including former Massey Chairman and CEO Don Blankenship.

Underwood, in an April 11 interview, explained that the Boone County court is the court of record for litigating such complaints, though the mine's address is in Raleigh County. The mine, which Alpha said it would permanently seal on April 5, actually straddles both counties.

These new lawsuits differ from earlier wrongful death lawsuits filed by the deceased victims' families — and since settled by Massey and Alpha — in that

(continued on page 12)

No permitting changes after court ruling

Six months after a federal court overturned a coordinated review process between the US Environmental Protection Agency and the Army Corps of Engineers there has not been an influx of permits being issued in Appalachia, two industry associations said.

"We have not seen any difference in their behavior in regards of permitting," Bill Raney, president of the West Virginia Coal Association said April 3.

EPA, the Corps and the Department

of the Interior signed a memorandum of understanding in June 2009 announcing their efforts to reduce the environmental impacts of surface mining in Appalachia. Shortly after, 79 applications for Clean Water Act Section 404 permits — many tied to valley fills and large surface mining operations — were identified for an enhanced coordination process by the EPA and Corps.

The National Mining Association

(continued on page 12)

Market in Review

PRB coal prices pressured at both ends of curve

Powder River Basin 8,800-Btu/lb coal contracts for May 2012 and Cal 2013 were pushed to noticeably lower levels in the five-day trading period ended Thursday, April 12, while Central Appalachian thermal coal prices were relatively less impacted by the drop in natural gas prices to their lowest levels since January, 2002.

The PRB 8,800 front month May contract fell 15.2% to \$6.70/st in

the period and the Cal 2013 package declined 4.4% to \$10.90/st. The last time the front year contract was assessed below \$10.90/st was on December 24, 2009, when the front year contract was assessed at \$9.45/st. Year-to-date, the front year contract is down 24.8%.

The greatest losses occurred on April 11-12, as the over-the-counter market began to see improved turnover in the

(continued on page 13)

INSIDE THIS ISSUE

Marketscoop

Gas inventories, purchase agreements may curb fuel switch: analysts 3

New Plants

OMB, EPA study cooling-water rule changes; final rule still due in July 4
Mississippi IGCC project costs take bite out of contingency budget 6

New Mines

Bridger Coal seeks land lease for minemouth operation in Wyoming 7

Suppliers

Safety initiative will take time, resources: NMA official 7
Americas withdraws disclosure statement in bankruptcy case 8
Murray Energy says fate of Powhatan 6 mine uncertain 9

Transportation

US coal car loadings fall 16.1%: Association of American Railroads 10
Coal shipments up 25% in March: Lake Carriers' Association 11

International News

Komipo seeks 480,000 mt of steam coal in two tenders 11

Alpha ... from page 1

Underwood's eight plaintiffs were on two mantrips inside of the mine at the time of the explosion, the attorney said. An eighth suit — the most recent one filed on April 5 — lists plaintiff Johnny R. Brown and his wife, Connie L. Brown of Louisa, Kentucky, and was filed by Charleston, West Virginia, attorney Anthony Majestro.

Underwood filed six suits on March 21 and two, on April 2.

According to the lawsuit filed by Majestro, Johnny Brown worked for Alpha subsidiary Rockspring Development at the time of the explosion, and he and coworkers were called on to help recover deceased miners from within Upper Big Branch. It was at that point of the recovery operation that Brown suffered debilitating injuries from carrying bodies out of the mine, according to the suit.

The common thread of all of the lawsuits is blaming Massey, its subsidiaries, company officers and mine management for allowing the conditions to occur at Upper Big Branch that led to the explosion.

Further, Underwood said, on the second anniversary of the accident, "We want to make sure those [deceased victims] are not forgotten."

Of his clients and others injured by the explosion, Underwood said, "There were basically 13 miners in the mine with objectively verifiable brain injuries, hearing loss and vision loss ... and over the last two years, they've been forgotten, and I want to make sure they're not forgotten."

He pointed to research on Iraq combat veterans that shows debilitating brain injuries from explosions that occur in enclosed areas, such as buildings or, in his cases, a coal mine, as being more traumatic than explosions that occur in open areas.

Suits recall Massey mine safety history

The Majestro-filed lawsuit, in particular, calls Massey and its executives and managers to task for a culture and "lawless operations, which have placed production ahead of safety, [and] have claimed the lives of far too many West Virginia miners."

The suit recalls the January 19, 2006, fire at Massey subsidiary Aracoma Coal's Alma underground mine, in which two miners died and in which Aracoma "pled guilty to 10 criminal charges and entered into the largest settlement in coal industry history" at the time.

Since 2000, 54 miners have died at Massey-controlled mines, according to the suit.

In the 343 pages of complaints filed by Underwood, the common theme is, "Despite the Defendants' knowledge that the Upper Big Branch Mine was being operated in such an unsafe fashion, and despite the Defendants' authority to shut the mine down or change its management, the Defendants breached the duties owed by them by virtue of their positions and allowed the mine to continue to operate exactly in

the manner dictated by Blankenship in his October 19, 2005, memorandum" to "all underground mine superintendents."

According to the complaints, that memo stated, "If any of you have been asked by your group presidents, your supervisors, engineers or anyone else to do anything other than run coal (i.e. - build overcasts, do construction projects, or whatever), you need to ignore them and run coal. This memo is necessary because we seem to not understand that coal pays the bills."

The complaints go into detail about causes of the Upper Big Branch explosion, as determined in four separate accident reports, including "disregard for state and federal mine safety laws and regulations, basic coal mine safety practices" such as dusting with inert rock material to control explosive coal dust and controlling methane buildup through proper ventilation, "and the safety of miners working in the mines."

The suits charge "negligence/reckless acts" by Massey and its officers, and ask for unspecified general, special and punitive damages.

Alpha did not respond to requests for comment last week on whether it would fight these lawsuits or, as in the case of earlier suits, agree to mediation — rather than trial by jury — and pay out damages, with a judge ordering settlements sealed.

Commenting in general on similar Upper Big Branch lawsuits that have been mediated, Alpha spokesman Ted Pile said in an April 10 email, "All parties to the mediation are bound by a court-ordered confidentiality agreement so I'm not at liberty to discuss anything related to the mediation proceedings."

Similar settlements have reportedly been in the multiple millions of dollars.

The eight suits filed by Underwood name as plaintiffs Ryan C. Powers, Derek Williams, Adam and Heather Farthing, Jason Dancy, Patrick and Rosaline Hilbert, Charles and Stephanie Gray, Larry Richmond and Morris Hulgan .

— Steve Hooks

No permitting change ... from page 1

challenged the process in court. In October of last year, the US District Court of the District of Columbia ruled in favor of NMA and stated that EPA overstepped its statutory authority by implementing the enhanced coordination process for mining permits in Appalachia.

Following the court's decision, EPA's regional offices and the Corps' district offices "have all ceased using the ECP," EPA said on its website.

Bill Bissett, president of Kentucky Coal Association, said that despite the decision, there has not been much of a change.

"The decision was good news for us, but we're not seeing a sudden flood of permits," he said in an interview April 3.

In a November 16, 2011, memo, Jo Ellen Darcy, assistant secretary of the Army (civil works), said there were 21 permit applications pending for surface coal mining projects in