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February 14, 2007

Alvis Porter, Clerk
Circuit Court of Logan County
300 Straton Street
Logan, WV 25601

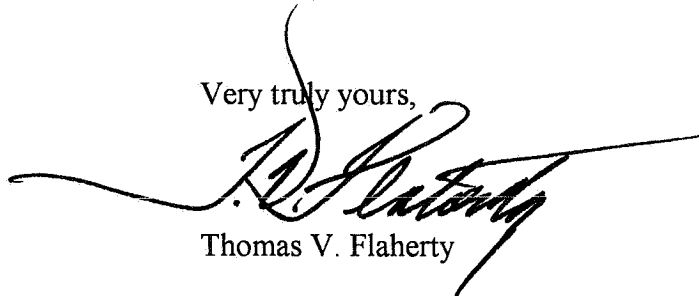
Re: **Bragg, et al. v. Aracoma Coal Company, Inc., et al.**
Civil Action No. 06-C-372-P

Dear Clerk Porter:

Enclosed please find a "**MOTION TO DISMISS DON L. BLANKENSHIP**" for filing in the above-referenced matter. A copy of the same has this day been served upon counsel of record.

Thank you for your attention to this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



Thomas V. Flaherty

TVF:sds:8712.15097

Enclosure

cc: Bruce E. Stanley, Esquire
Niall A. Paul, Esquire

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

**DELORICE BRAGG, individually and as
Administratrix of the Estate of Don Israel Bragg,
and
FREDA HATFIELD, individually and as
Administratrix of the Estate of Ellery Hatfield,**

Plaintiffs,

v.

CIVIL ACTION NO. 06-C-372-P

**ARACOMA COAL COMPANY, INC.,
MASSEY ENERGY COMPANY, INC.,
A.T. MASSEY COAL COMPANY, INC.,
and DON L. BLANKENSHIP,**

Defendants.

**MOTION TO DISMISS
DEFENDANT DON L. BLANKENSHIP**

Now comes Defendant Don L. Blankenship, by counsel, and, pursuant to Rule 12(b)(6) of the *West Virginia Rules of Civil Procedure*, respectfully requests that this Court dismiss Plaintiffs' Complaint as it relates to him on the grounds that plaintiffs have failed to state a claim against him upon which relief can be granted. In further support of his Motion, Mr. Blankenship states as follows:

I. OVERVIEW/BACKGROUND:

Plaintiffs' Complaint arises out of the January 19, 2006 accident at the Aracoma Alma No.1 Mine in Logan County, West Virginia. In their Complaint, plaintiffs assert a variety of claims against several defendants including the President and CEO of A T Massey Coal Company, Inc and Massey Energy Company, Inc. (hereinafter collectively referred to as "Massey"), Don L. Blankenship.

In support of their claims against Mr. Blankenship, plaintiffs baldly allege that Mr. Blankenship has put profits first and engendered a corporate attitude of indifference and hostility towards safety. In addition to failing to state a cause of action upon which relief can be granted, such allegations are baseless.

During his tenure as President and CEO of Massey, Mr. Blankenship has implemented numerous safety programs including the "Safety First" or "S-1" program. The S-1 program requires numerous enhancements that *exceed the requirements* of state and federal law.

During Mr. Blankenship's tenure as President and CEO, Massey has pioneered numerous safety innovations that are used in the industry today and which have been documented as saving lives. These include a dozer "submarine" kit that protects miners who fall into voids at coal preparation plants and video cameras on large surface mining equipment that allow drivers to see smaller vehicles in blind spots. Both of these are now required by law in West Virginia.

During Mr. Blankenship's tenure as President and CEO, Massey subsidiaries have *won numerous safety awards* and Massey's safety rating *has consistently been far better* than the national average.¹ Indeed, *Massey's safety program* just recently *won a national award* for the "Raymond Program" which creates incentives for employees to work safely.²

¹ Under the Mine Act, companies must track their work injuries and NFDL (Non Fatal Days Lost). See 30 C.F.R. Part 50. Massey's NFDL *has been better than the industry average in 13 out of the last 15 years*.

² The Raymond Safety Program, named after a retired past president of a Massey subsidiary mine who coined the slogan "a safe mine is a productive mine," was first implemented by Massey in 2004. In 2005, the program won a Circle of Excellence award for Most Outstanding Incentive Program *in the nation*. Just recently, on January 17, 2007, the program was awarded the highly coveted PPAI (Promotional Products Association International) Golden Pyramid Award for the Employee Incentive category for its effectiveness and creative approach toward promoting and rewarding Massey Member safety practices.

By any objective measure, Mr. Blankenship has created a culture of safety at Massey and, under his leadership, Massey has achieved successful results.

Nevertheless, in the Complaint, plaintiffs' counsel chooses to ignore Massey's safety record and achievements under Mr. Blankenship's leadership and, instead, focuses on a memorandum promulgated by Mr. Blankenship on October 19, 2005 to deep mine superintendents of Massey subsidiaries in which Mr. Blankenship stresses the importance of running coal. *See 10/19/06 memo, attached hereto as Exhibit A.* Specifically, the October 19, 2005 memorandum provided as follows:

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 constructions jobs, or whatever) you need to ignore them and run coal. This memo is necessary only because we seem not to understand that coal pay the bills.

Id.

In the Complaint, plaintiffs' counsel, without any basis whatsoever, alleges that this memorandum was a directive to the personnel at the Aracoma Alma No. 1 mine to forgo safety projects. *See Complaint, §§24-25, 44-46, 56.* Plaintiffs' counsel makes this allegation despite the obvious fact that nowhere in the memorandum does Mr. Blankenship direct or even imply that anyone should forgo safety projects and despite the evidence set forth below which clearly shows that Mr. Blankenship was ***not directing or even suggesting*** that anyone forgo any safety project or to compromise safety in any way.

First, to the extent that there could be any doubt as to what was intended in the October 19, 2005 memorandum, any such doubt was removed by Mr. Blankenship ***less than a week later*** when, on October 26, 2005, Mr. Blankenship sent a follow-up memorandum to all personnel reminding them that ***safety comes first and that safety requirements must be followed at all times.*** *See*

10/26/05 memo, attached hereto as Exhibit B. Specifically, in his follow-up memorandum, Mr. Blankenship directed all deep mine superintendents as follows:

By now each of you should know that *safety and S-1 is our first responsibility. Productivity and P-2 are second.* It has been the culture of our Company for a long time.

Last week I sent each of you a memo on running coal. Some of you may have interpreted that memo to imply that safety and S-1 are secondary. I would question the membership of anyone who thought that I consider safety to be a secondary responsibility.

The point is that each of you is responsible for coal producing sections, and our goal is to keep them running coal. If you have construction jobs at your mine that need to be done to keep it safe or productive, make every effort to do those jobs without taking members and equipment from the coal producing sections that pay the bills.

Id. (emphasis added).

Second, not only did plaintiffs' counsel choose not to mention Mr. Blankenship's October 26th memo, they *blatantly misrepresented* the testimony of Alma No. 1 Mine foreman Donald R. Hagy, Jr.³ regarding the October 19th memo. In the Complaint, plaintiffs' counsel asserts that Mr. Hagy "under oath" stated that "he and other Aracoma officials were aware of the [October 19, 2005] Massey memorandum, and that he believed the message was that the Alma Mine needed to produce more coal and not slow production in order to perform safety and construction products." *See Complaint, §45.*

Donald Hagy said no such thing. As part of its investigation of the Alma No. 1 Mine accident, MSHA interviewed numerous individuals including Mr. Hagy. Mr. Hagy's *actual*

³ At the time of the January 19, 2006 accident, Mr. Hagy was the outby foreman at Aracoma Alma No. 1 Mine. As an outby foreman, Mr. Hagy was responsible for various construction jobs at the mine.

testimony regarding the October 19, 2005 memo is as follows:

- Q. Do you ever feel pressured to get your specific job done?
- A. Excuse me. Pressure as in to the point of what? That you're going to get fired if you don't get it done?
- Q. As the Cable Guy would say git-r done in a hurry?
- A. Well, you know, you always want to get your job done as quick and safely as possible. But you know, **did I feel that I would lose my job if I didn't get it done in a certain amount of time, no.**

- Q. . . . And for the record, I would like to first ask if you've ever seen this memorandum to all deep mine superintendents from Mr. Don Blankenship? This was dated October the 19th, 2005, the subject is running coal?
- Q. What's your take on that, Don [Hagy]?
- A. Well, it sounds as if they don't want you to shut production down to go build an overcast or do construction jobs.
- Q. **Have you ever seen that memorandum prior to today?**
- A. No.
- Q. Have you ever had knowledge or heard anyone, your bosses at the mine, talk about the memorandum in any way?
- A. All I ever heard was there was some people talking about a memo come across the fax that didn't want the miner sections to shut down to do construction work. That's all I ever heard on it. I mean, I don't even remember who was talking about it.

* * *

- Q. In performing construction work, how do you take that memo specifically directed towards you and your crew? Do you think - - - and like a series of questions - - - I'm not going to ask you multiple questions, but how does that affect you in general? Do you feel pressured in any way?
- A. The way I take it is that he don't - - - they don't want you to take the coal production crews and do the construction jobs. You know, I don't feel they're putting no pressure on the construction people, to get the job done any faster. I mean, you know,

I don't know what their meaning was by this. Did that answer your question?

Q. In a sense. In a sense. If they give you a timeline and say we want this belt project done by such and such a date, say, you can't get people to work to fulfill that order, do you feel pressured by that, knowing that you've got a deadline to beat without people to help you do that work?

A. There's pressure to a point, but I mean, you know in your mind what you can get done and get done safely without anybody getting hurt, you know. That's what I said on it, I mean, if we get done by that deadline, then we get done. If we don't, you know, if the company don't like it, whether it's this company or any other company I've worked for, then you know, I can move on. That is my, you know - - -. But as far as me putting pressure to meet a deadline, you know, I don't - - - we don't do that.

Q. **Was that memo ever discussed in your boss meetings, staff meetings, management meetings that you remember?**

A. No.

Q. . . .Do they sometimes use people from the [coal] sections to help you guys on construction projects?

A. Yeah, they pull people off section to help - - - to actually build overcasts or build stoppings.

* * *

Q. **The memo that you were shown there, the October [19] 2005 memo - - -**

A. Uh-huh (yes)

Q. **- - - that Mr. Burke showed you, had you seen that prior to today?**

A. No.

Q. Now, you mentioned that you heard some sort of conversation about a fax or something to that effect. **Did that affect, in any way, the way you conducted your job duties in October or November of 2005?**

A. No.

See Hagy transcript, pgs. 118-124, 219, attached hereto as Exhibit C. (emphasis added).

Clearly, plaintiffs' counsel's characterization of Mr. Hagy's testimony is false and an obvious attempt create a claim where none exists. Fortunately, however, this Court need not even consider the facts as set forth above or plaintiffs' counsel's outrageous twisting of such facts in deciding this Motion because, as a matter of law, plaintiffs have failed to state a viable cause of action against Mr. Blankenship. As such, the claims against Mr. Blankenship must be dismissed.

II. ARGUMENT

PLAINTIFFS HAVE FAILED TO STATE A CLAIM AGAINST DON L. BLANKENSHIP FOR WHICH RELIEF MAY BE GRANTED. THEREFORE, THE COMPLAINT AGAINST MR. BLANKENSHIP MUST BE DISMISSED AS A MATTER OF LAW.

As a matter of law, an officer of a corporation cannot be held liable for the torts of the corporation simply because of his status of an officer. *See e.g., In re Ellison*, 296 F.3d 266 (4th Cir. 2002)(applying West Virginia law). Indeed, the reason for the creation of a corporation is to limit liability and, as the Fourth Circuit noted, “the finding of personal liability for a corporate officer or director is an *unusual and extraordinary event*.” *Steinke v. Beach Bungee, Inc.*, 105 F.3d 192 (4th Cir. 1997)(*emphasis added*). To incur personal liability, an officer must ordinarily be shown to have in some way participated in or directed the tortious act of the corporation. *See e.g., Bowling v. Ansted Chrysler-Plymouth-Dodge, Inc.*, 425 S.E.2d 144 (W.Va. 1992); *Cato v. Silling*, 73 S.E.2d 173 (W.Va. 1952)(an officer of corporation does not incur personal liability for its torts merely by reason of his official character unless he has participated in or sanctioned tortious acts and is not liable for such acts committed by other persons if he is not a party to wrongful acts).

In the instant case, the allegations against Mr. Blankenship are legally insufficient to hold him personally liable for any alleged torts of Massey. Plaintiffs allege Aracoma Coal Company, Inc (“Aracoma”) allowed certain unsafe working conditions to exist at the Alma No. 1 Mine that resulted

in the death of plaintiffs' decedents.⁴ *See Complaint, Count I.* Plaintiffs then allege that Massey, as the parent corporation of Aracoma, "failed to monitor and correct the unsafe conditions at the Alma Mine."⁵ *See Complaint, Count II, ¶41.* Finally, plaintiffs allege that Mr. Blankenship, as president and CEO of Massey, had an "individual duty to exercise reasonable care in the operation of the [Alma Mine], and a duty not to assent to or participate in any torts committed by the Massey Defendants." *See Complaint, Count III, ¶51.*

However, plaintiffs do not allege how Mr. Blankenship breached any "duty to exercise reasonable care" nor do they allege how or when Mr. Blankenship "assented to" or "participated in" the alleged torts committed by Massey. Specifically, plaintiffs do not allege that Mr. Blankenship personally created any of the alleged unsafe working conditions or that he directed the creation of any of the alleged unsafe working conditions. What plaintiffs do allege is that Mr. Blankenship "engendered a corporate attitude of indifference and hostility towards safety measures." *See Complaint, Count III, ¶53.* Disregarding for the moment that plaintiffs premise this allegation on a single memo promulgated by Mr. Blankenship that in no way encourages "indifference or hostility to safety measures" and on their creative, if not, accurate, characterization of the testimony of an Aracoma mine foreman, "engendering a corporate attitude" does not rise to the level of participation necessary to expose a corporate officer to personal liability. *See e.g., In re Ellison*, 296 F.3d 266 (4th

⁴It is undisputed that Mr. Blankenship is not a corporate officer of Aracoma.

⁵Notably, it is well-recognized that a parent corporation, such as Massey, is not liable for the alleged torts of a subsidiary corporation much less an indirect subsidiary corporation, like Aracoma. *See e.g., Southern States Co-Op, Inc. v. Dailey*, 280 S.E.2d 821 (W.Va. 1981); *Southern Electrical Supply Co. v. Raleigh Co. Nat. Bank*, 320 S.E.2d 515 (W.Va. 1984); *Johnson v. Flowers Industries, Inc.*, 814 F.2d 978 (4th Cir. 1987); *In re County Green Ltd Partnership*, 604 F.2d 289 (4th Cir. 1979); *Reynolds Metal Co. v. Columbia Gas Systems, Inc.* 669 F.Supp. 744 (E.D.Va. 1987). Therefore, it is doubtful that plaintiffs will be able to successfully pursue a claim against Massey much less Massey's president.

Cir. (W. Va.) 2002)(corporate officer is only personally liable for corporate torts where he *actually participates in or otherwise sanctions* the tortious acts); *Inter-Ocean Cas. Co. v. Lecony Smokeless Fuel Co.*, 17 S.E.2d 51 (W. Va. 1941)(in the absence of an active intent to deceive, a creditor of a corporation cannot maintain an action against the officers and directors of the corporation for simply non-feasance of duty to the corporation or fraud in its management or mismanagement in the disposition of its money or property); *White v. Wal-Mart Stores, Inc.* 918 So.2d 357 (Fla. Dist. Ct.App. 1st Dist. 2005)(an officer of corporation may not be held personally liable for the torts of the corporation because of his general administrative responsibility for performance of some function of his employment, he must be *actively negligent*); *Taylor v. Swartwout*, 429 F.Supp.2d 209 (D.Mass. 2006)(a corporate officer is personally liable for any tortious activity in which they *actively participate*); *Mill Run Associates v. Locke Property Co., Inc.*, 282 F.Supp.2d 278 (E.D. Pa. 2003)(an officer of a corporation who takes part in commission of tort by corporation is personally liable, however, an officer who takes no part in commission of the tort committed by corporation is not personally liable for such tort, nor for the acts of other agents, officers or employees of corporation in committing it, unless he *specifically directed the particular act* to be done).

Illustratively, in a case somewhat analogous to the instant case, *Sensale v. Applikon Dyeing & Printing Corp.*, 79 A.2d 316 (N.J. 1951), the Court refused to hold the president of a defendant corporation personally liable because the facts presented did not personally implicate the president in the events leading to an employee's death. There, plaintiff's decedent was electrocuted while moving a "jay box" machine for his employer. In addition to suing the decedent's employer, Textile, Inc., plaintiff also filed suit against Textile's president, Arthur Nazzaro, alleging that Mr. Nazzaro, "acting with authority as master or manager, failed to warn and instruct the decedent as to the

dangers of his employment of which Mr. Nazzaro knew, or in the exercise of reasonable care ought to have known, and of which Mr. Nazzaro knew or ought to have known the decedent had no knowledge, actual or constructive.” *Id.* In support of her allegations, plaintiff alleged that Mr. Nazzaro was “the executive in charge of Textile’s operations; that he was frequently in the plant, sometimes twice a day and also in the evenings; that an employee of Textile, after experiencing difficulty in handling goods at the jay box, had called Mr. Nazzaro’s attention to the operation of the machine and recommended a change in its location; and that Mr. Nazzaro was near the jay box about 20 minutes before the accident happened and at that time, an employee overheard a conversation between Mr. Nazzaro and another official of Textile, ‘about moving that jay box around so as to get more production’.” *Id.*

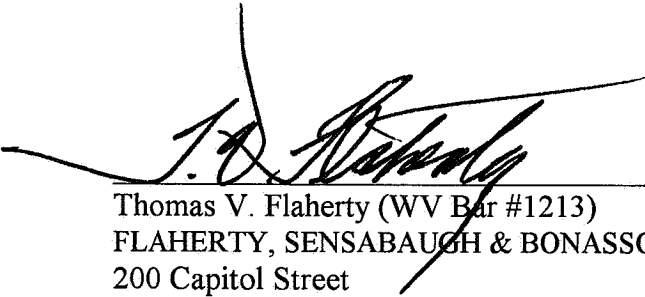
Despite these allegations, however, the court found that there was no facts that Mr. Nazzaro gave any particular directions for the installation of the wiring of the jay box, or that he in any way supervised, participated or cooperated in the installation thereof, and no evidence that he gave any particular directions for the moving of the jay box, or that he in any way supervised, participated or cooperated in the moving thereof, dismissed plaintiff’s claims. *Id.* By so doing, the court explained that Mr. Nazzaro’s alleged involvement in the events leading up to the accident were insufficient to hold him personally liable for the alleged torts of the corporations. *Id. See also, Shipley v. Perlberg*, 780 A.2d 396 (Md.App. 2001)(corporate officer was not sufficiently involved with the rental properties in question to justify the imposition of liability).

Likewise, in the instant case, plaintiffs have failed to allege any facts that even if true could establish that Mr. Blankenship was “sufficiently involved” in the alleged events leading up to the January 19, 2006 accident render him personally liable for such accident. The only “involvement”

plaintiffs allege on behalf of Mr. Blankenship is a memo in which he basically states that mining crews should not be enlisted to perform construction work (for which there are people specifically employed) because mining coal is what pays the bills. This is no different than the president of a garage stating that mechanics should not be operating the cash register because fixing cars is what pays the bills. Accordingly, plaintiffs have failed to allege any facts which would support a claim that Mr. Blankenship should be held personally liable for the alleged torts of Massey. To find otherwise would be to make the theory of a corporate entity truly meaningless.

WHEREFORE, based upon the forgoing, Defendant Don L. Blankenship respectfully requests that plaintiffs' Complaint against him be DISMISSED, with prejudice. Mr Blankenship further requests that he be awarded his costs and attorney fees expended in the defense of this matter and such other relief as may be deemed just and proper.

DON L. BLANKENSHIP
By Counsel.



Thomas V. Flaherty (WV Bar #1213)
FLAHERTY, SENSABAUGH & BONASSO, PLLC
200 Capitol Street
P.O. Box 3843
Charleston, WV 25338
(304) 345-0200



MEMORANDUM

TO: All Deep Mine Superintendents
FROM: Don Blankenship
DATE: October 19, 2005
SUBJECT: RUNNING COAL

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 jobs, or whatever), you need to ignore them and run coal. This memo is necessary only because we seem not to understand that the coal pays the bills.

DLB:sld

cc: Chris Adkins
Drexel Short

(dictated, not edited)

EXHIBIT

tabbles

A

MEMORANDUM



TO: All Deep Mine Superintendents
FROM: Don Blankenship *DLB*
DATE: October 26, 2005
RE: MEMBERSHIP

By now each of you should know that safety and S-1 is our first responsibility. Productivity and P-2 are second. It has been the culture of our Company for a long time.

Last week I sent each of you a memo on running coal. Some of you may have interpreted that memo to imply that safety and S-1 are secondary. I would question the membership of anyone who thought that I consider safety to be a secondary responsibility.

The point is that each of you is responsible for coal producing sections, and our goal is to keep them running coal. If you have construction jobs at your mine that need to be done to keep it safe or productive, make every effort to do those jobs without taking members and equipment from the coal producing sections that pay the bills.

DLB/

EXHIBIT

B

tabbles

05 Q. Do you remember in talking
06 about those stoppings when Terry and
07 Shiner were discussing that, can you
08 remember about when that was in your
09 mind? Was it before Christmas, after
10 Christmas? A month, a week?

11 A. It'd be before Christmas. It
12 was the last day I worked --- would
13 be whatever that Friday was before
14 November.

15 Q. Did Terry state why that
16 stopping needed to be replaced?

17 A. To my knowledge, no. He just
18 said he wanted it built back.

19 Q. Do you know who done the
20 pre-shift exam for you and your crew
21 before you went on, on January the
22 19th at that location?

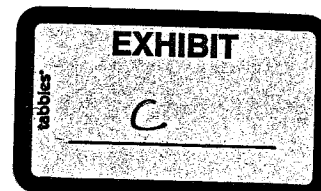
23 A. It'd either been Tom Adkins or
24 Linsey Whited probably. They're the
25 one that usually give the pre-shift

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01 in that area.

02 Q. Okay. Did they ever report
03 any hazardous conditions to you and
04 pass it along to you that you needed
05 to address a specific issue ---

06 A. No.



07 Q. --- or a problem they may have
08 encountered?
09 A. No.
10 Q. Are you on a ---?
11 A. Wait. There was one. There
12 was a rib inby the --- at --- inby
13 the mother drive, Ten headgate mother
14 drive, there was rib there, they had
15 cut it out, they said there was a rib
16 there and we corrected that. We
17 bolted it up.
18 Q. Okay. So that was a
19 corrective action he reported to you,
20 that you had a loose rib ---
21 A. Yeah.
22 Q. --- and you all took a roof
23 bolter and actually put on some spot
24 bolts and bolted it?
25 A. Yeah. Yeah.

01 Q. Okay.
02 A. Other than that, I don't
03 remember none.
04 Q. Do you ever feel pressured to
05 get your specific job done?
06 A. Excuse me. Pressure as in to
07 the point of what? That you're going
08 to get fired if you don't get it
09 done?

10 Q. As the Cable Guy would say
11 git-r done in a hurry?
12 A. Well, you know, you always
13 want to get your job done as quick
14 and safely as possible. But you
15 know, did I feel that I would lose my
16 job if I didn't get it done in a
17 certain time, no. I mean, they ---.

18 MR. BURKE:

19 I need an exhibit
20 numbered, please.

21 (Hagy Exhibit B marked
22 for identification.)

23 BY MR. BURKE:

24 Q. I'd like to offer you Exhibit
25 ---.

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01 MR. BURKE:

02 What would this be?

03 MR. TUCKER:

04 B

05 BY MR. BURKE:

06 Q. Exhibit B Hagy. And for the
07 record, I would like to first ask if
08 you've ever seen this memorandum to
09 all deep mine superintendents from
10 Mr. Don Blakenship? This was dated
11 October the 19th, 2005, the subject

12 is running coal. Could you please
13 read that aloud for the record? I
14 would ask you, could you read that
15 aloud for us, please?

16 A. If any of you have been asked
17 by your work --- excuse me, by your
18 group president, your supervisor,
19 engineers or anyone else to do
20 anything other than run coal, build
21 overcasts, do construction jobs or
22 whatever, you need to ignore them and
23 run coal. This memo is necessary
24 only because we seem not to
25 understand that the coal pays the

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01 bills.

02 Q. What's your take on that, Don?

03 A. Well, it sounds as if they
04 don't want you to shut production
05 down to go build an overcast or do
06 construction jobs.

07 Q. Have you ever seen that
08 memorandum prior to today?

09 A. No.

10 Q. Have you ever had knowledge or
11 heard anyone, your bosses at the
12 mine, talk about that memorandum in
13 any way?

14 A. All I ever heard was there was

15 some people talking about a memo come
16 across the fax that didn't want the
17 miner sections to shut down to do
18 construction work. That's all I ever
19 heard on it. I mean, I don't even
20 remember who was talking about it.

21 Q. You don't remember who?

22 A. No. I mean, how you'll walk
23 by and there will be four or five
24 sitting at a table and you know, you
25 just kind of hear it out --- about

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01 it. I mean, no, I don't have no
02 specific ---.

03 Q. Two more questions and I'll
04 turn you over to Bill for the State.
05 Are you aware of how that practice
06 described in that memorandum affects
07 you in your job and what do you think
08 about it?

09 A. Can you enlighten more on, in
10 my job?

11 Q. In performing construction
12 work, how do you take that memo
13 specifically directed towards you and
14 your crew? Do you think --- and like
15 a series of questions --- I'm not
16 going to ask you multiple questions,

17 but how does that affect you in
18 general? Do you feel pressured
19 because of that in any way?
20 A. The way I take it is that he
21 don't --- they didn't want you to
22 take the coal production crews and do
23 the construction jobs. You know, I
24 don't feel they're putting no
25 pressure on the construction worker,

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01 construction people, to get the job
02 done any faster. I mean, you know; I
03 don't know what their meaning was by
04 this. Did that answer your question?

05 Q. In a sense. In a sense. If
06 they give you a timeline and say we
07 want this belt project done by such
08 and such a date, say, you can't get
09 people to work to fulfill that order,
10 do you feel pressured by that,
11 knowing that you've got a deadline to
12 beat without people to help you do
13 that work?

14 A. There's pressure to a point,
15 but I mean, you know in your mind
16 what you can get done and get done
17 safely without anybody getting hurt,
18 you know. That's what I said on it,
19 I mean, if we get done by that

20 deadline, then we get done. If we
21 don't, you know, if the company don't
22 like it, whether it's this company or
23 any other company I've worked for,
24 then you know, I can move on. That
25 is my, you know ---. But as far as

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01 me putting the pressure on other
02 people to meet a deadline, you know,
03 I don't --- we don't do that.

04 Q. Was that memo ever discussed
05 in your boss meetings, staff
06 meetings, management meetings that
07 you remember?

08 A. No.

09 Q. If you was that mild mannered
10 section boss up on Two section trying
11 to run coal and a memo like that came
12 across your desk, how would you take
13 it?

14 A. I really don't know how to
15 answer that. I mean, the way I look
16 at things and the way somebody else
17 looks at things, they might let
18 things bother them more. Probably
19 wouldn't like it.

20 Q. Do you feel threatened if you
21 was a section boss by that last

01 Q. Did you have anything else
02 that you'd like to make mention of?

03 A. No.

04 MR. BURKE:

05 Mr. Hardy, do you have
06 any clarifying ---?

07 ATTORNEY HARDY:

08 Just a couple of
09 follow-up questions.

10 MR. BURKE:

11 Okay.

12 BY ATTORNEY HARDY:

13 Q. The memo that you were shown
14 there, the October 2005 memo ---

15 A. Uh-huh (yes)

16 Q. --- that Mr. Burke showed you,
17 had you seen that prior to today?

18 A. No.

19 Q. Now, you mentioned that you
20 heard some sort of conversation about
21 a fax or something to that effect.

22 Did that affect, in any way, the way
23 you conducted your job duties in

24 October or November of 2005?

25 A. No.

219

01 ATTORNEY HARDY:

02 That's all the

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

**DELORICE BRAGG, individually and as
Administratrix of the Estate of Don Israel Bragg,
and
FREDA HATFIELD, individually and as
Administratrix of the Estate of Ellery Hatfield,**

Plaintiffs,

v.

CIVIL ACTION NO. 06-C-372-P

**ARACOMA COAL COMPANY, INC.,
MASSEY ENERGY COMPANY, INC.,
A.T. MASSEY COAL COMPANY, INC.,
and DON L. BLANKENSHIP,**

Defendants.

CERTIFICATE OF SERVICE

I, Thomas V. Flaherty, do hereby certify that I have served the “**MOTION TO DISMISS
DON L. BLANKENSHIP**” upon counsel of record this 14th day of February, 2007, by depositing true copies thereof in the United States mail, postage prepaid, addressed as follows:

Bruce E. Stanley, Esquire
Reed Smith LLP
435 6th Avenue
Pittsburgh, PA 15219

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THOMAS V. FLAHERTY (W. Va. Bar No. 1213)