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Mining company, 4 employees convicted of safety violations

By DEBORAH YETTER
dyetter@courier-journal.com
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A company that operates a Muhlenberg County coal mine and four of the mine's top employees have been convicted by a U.S. District Court jury in Owensboro of violating federal mine-safety laws aimed at protecting miners from black lung disease.

In a case a federal prosecutor said appears to be "unprecedented" in scope, the jury found KenAmerican Resources Inc.

and the employees guilty of violations from 1996 - when the mine opened - to March 9, 2000, the day a flood alerted federal investigators to problems.

"This is unprecedented to have a corporation this large with this many violations over this period of time," said Assistant U.S. Attorney Randy Ream, lead prosecutor in the case. "These guys were operating as if there was no law."

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Mine company convicted of violating safety rules

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Prosecutors alleged the company and its employees routinely flouted federal mine-safety laws aimed at controlling levels of coal dust that cause black lung, a disabling disease that kills hundreds of miners each year. The goal was to put production ahead of safety, the government alleged.

KenAmerican is one of a group of coal companies operated by Ohio Valley Coal Co., one of the nation's top coal producers.

Lawyer Clyde Bennett II, lead counsel for KenAmerican, noted the company - though convicted of conspiring to violate federal mine-safety laws, the main charge in the indictment - was acquitted of other felony counts. The company was convicted of 10 misdemeanor counts and one other felony in the 28-count indictment.

"The company was pleased with the fact that it was found not guilty of 16 of 18 felony counts," said Bennett, with the Cincinnati office of Dinsmore and Shohl. "We plan to appeal the convictions on the other counts."

Also convicted in the case yesterday were the current superintendent at the company's Paradise No. 9 mine, Bobby Gibson, 57, of Dixon; former superin-

tendent William R. Mallicoat, 54, of Henderson; and foremen Kenneth Tucker, 58, of Madisonville and Andrew Hickerson, 53, of Dawson Springs.

Mallicoat, Gibson and Tucker were convicted of the conspiracy charge, and all were convicted of various violations of federal mine-safety laws. The company and four employees were convicted of a felony count that alleged officials signaled miners whenever inspectors from the U.S. Mine Safety and Health Administration showed up at the gate.

Officials would alert workers underground with the phrase "company's comin'" so workers could cease any illegal operations before the inspectors reached the miners about 2½ miles underground, federal prosecutors alleged in court records.

Yesterday's verdict followed a three-week trial at which current and former employees and MSHA officials testified about conditions at the mine. The case came to MSHA's attention after an accidental flood on March 9, 2000, forced miners to flee without clearing evidence of illegal operations inspectors found when they investigated the accident, according to court records.

U.S. District Judge Joseph H. McKinley scheduled sentencing for Sept. 22

KenAmerican faces up to \$2.8 million in fines. The verdict also could affect its contract to supply coal to the Tennessee Valley Authority, which has the right to cancel deals with suppliers who violate mine-safety standards.

Mallicoat faces a maximum sentence of 13 years in prison and an \$800,000 fine; Gibson, 19 years and a \$1.4 million fine; Tucker, 19 years and \$1.4 million; and Hickerson, nine years and \$900,000.

Bennett said he believed the company has grounds to appeal for several reasons, including the government witnesses' testimony about black lung disease, officially known as pneumoconiosis.

"We thought it was prejudicial and inflammatory," he said. "It had nothing to do with the case."

But prosecutors disagree, arguing that violating laws aimed at controlling coal-dust levels put miners at greater risk of contracting black lung.

"Workers in mines owned by KenAmerican deserve to be protected from life-threatening working conditions, not placed at risk by those who violate laws and regulations intended to promote safe workplaces," said Monica Wheatley, acting U.S. attorney for Kentucky's western district.