

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
SOUTHERN DIVISION  
LONDON**

**UNITED STATES OF AMERICA**

**v.**

**INDICTMENT NO. \_\_\_\_\_**

**MANALAPAN MINING COMPANY, INC.,  
JEFFERSON DAVIS,  
JOSEPH MINIARD, and  
BRYANT MASSINGALE**

\* \* \* \* \*

**THE GRAND JURY CHARGES:**

**INTRODUCTION**

At times relevant to this Indictment:

1. MANALAPAN MINING COMPANY, INC. (hereinafter referred to as MANALAPAN) was the Kentucky corporate operator of its P-1 coal mine located in Harlan County, Kentucky, (hereinafter referred to as the P-1 Mine). As defined in Title 30, United States Code, Sections 802(d), the P-1 Mine was subject to the provisions of the Federal Mine Safety and Health Act of 1977 (Mine Act or Act) under Title 30, United States Code, Section 803, in that Manalapan utilized equipment manufactured outside the state of Kentucky that entered into or affected interstate commerce.

2. JEFFERSON DAVIS was the mine Operations Manager at the P-1 Mine. JOSEPH MINIARD was the Superintendent at the P-1 Mine. BRYANT MASSINGALE was a foreman on the second shift (4:00 p.m. to 12:00 p.m.) at the P-1 Mine. They were agents of the mine as defined in Title 30, United States Code, Sections 802(e) and 820(c).

3. Congress enacted the Mine Safety and Health Act of 1977. The Act and regulations promulgated by the Secretary of Labor, acting through her designated agent Mine Safety and Health Administration (MSHA), set forth mandatory health and safety standards to which each operator and its agents must adhere. Included in these standards are requirements for mandatory roof control plans, electrical equipment, safety examinations, and record keeping. Many of these mandatory standards relate to preventing mine roof falls, fires, and explosions.

4. To insure that all mines are operated in a safe manner, all work and travel underground must be performed under supported roof and certain measures must be taken to protect miners from hazardous conditions related to falls of the mine roof, rib, and face. Mine roof, rib and face conditions are required to be examined on a routine basis by a certified person designated by the operator. More particularly, that person must make a preshift examination, and examine for hazardous conditions in working sections including tests of the roof. The person doing the preshift shall certify that the examination was made by making a record of the results of the preshift examination which shall include a record of hazardous conditions and their location as found by the examiner. The record shall be made on the surface and shall be certified by the person making the examination. Further, a record shall also be made by a certified person of the

action taken to correct hazardous conditions found during the preshift examination. All preshift and corrective action records shall be countersigned by the mine foreman or equivalent mine official.

5. Each mine operator is required to develop and follow a roof control plan which has been approved by MSHA's District Manager. On May 6, 2009, the Roof Control Plan as submitted by Manalapan on its P-1 Mine to the District Manager of District 7 of MSHA was approved. The approved plan included Additional Measures Required To This Mine as set forth on pages 5 and 6. Specific conditions in subparagraphs (m) and (n) on page 6 provide as follows:

(m) In the event the ATRS (Automated Temporary Roof Support) becomes inoperative, roof bolting operations will cease until the ATRS is made fully operational.

(n) Where the mining height has been increased by the mining process to facilitate areas such as, but not limited to overcasts, track entries, head drives, etc., the use of temporary supports in lieu of the ATRS, while bolting the unsupported roof, is not permitted. For such areas, the equipment must be compatible with the created, increased mining height and the ATRS must firmly set against the roof while the unsupported roof is being bolted.

6. To insure that all mines are operated in a safe manner, underground electrical equipment must be maintained in a safe condition. Such electrical equipment must be examined on a routine basis by a qualified examiner. When a potentially dangerous piece of electrical equipment is found, it must be removed from service until corrected. The results of such examinations must be recorded in an approved record book for such examinations.

7. To insure all mines are operated in a safe manner, all electrical face equipment which is employed in the active workings of an underground coal mine shall be equipped with substantially constructed canopies or cabs installed in such a manner that when the operator is at the controls of such equipment he shall be protected from falls of the roof, rib and face, and from rib and face rolls.

**COUNT 1**  
30 U.S.C. § 820(d)

The allegations contained in the Introduction are incorporated by reference as if fully set forth herein.

From on or about June 6, 2011, and continuing through on or about June 29, 2011, in Harlan County, in the Eastern District of Kentucky,

**MANALAPAN MINING COMPANY, INC.,**

through its agent(s), in a matter within the jurisdiction of the United States Department of Labor, Mine Safety and Health Administration, willfully violated the mandatory safety standard set forth in Title 30, Code of Federal Regulations, Section 75.220(a)(1) in that it did not follow its May 6, 2009, revised Roof Control Plan, (see page 6, subparagraphs (m) and (n) of the Plan) by failing to cease bolting operations when the ATRS did not set firmly against the mine roof until the ATRS was properly set against the mine roof in the 002 Section of the P-1 Mine, all in violation of 30 U.S.C. § 820(d).

**COUNT 2**  
**30 U.S.C. § 820(d)**

The allegations contained in the Introduction are incorporated by reference as if fully set forth herein.

From on or about June 6, 2011, and continuing through on or about June 29, 2011,  
in Harlan County, in the Eastern District of Kentucky,

**MANALAPAN MINING COMPANY, INC.,**

through its agent(s), in a matter within the jurisdiction of the United States Department of Labor, Mine Safety and Health Administration, willfully violated the mandatory safety standard set forth in Title 30, Code of Federal Regulations, Section 75.202(b) in that it allowed miners to work under unsupported roof in the 002 Section of the P-1 Mine, all in violation of 30 U.S.C. § 820(d).

**COUNT 3**  
**30 U.S.C. § 820(d)**

The allegations contained in the Introduction are incorporated by reference as if fully set forth herein.

From on or about June 6, 2011, and continuing through on or about June 29, 2011,  
in Harlan County, in the Eastern District of Kentucky,

**MANALAPAN MINING COMPANY, INC.,**

through its agent(s), in a matter within the jurisdiction of the United States Department of Labor, Mine Safety and Health Administration, willfully violated the mandatory safety standard set forth in Title 30, Code of Federal Regulations, Section 75.1710-1 in that it allowed miners to operate electrical mobile bridge carriers and/or section scoops in the 002 Section of the P-1 Mine without substantially constructed canopies or cabs to protect the miner/operators from roof falls and from rib and face rolls, all in violation of 30 U.S.C. § 820(d).

**COUNT 4**  
**30 U.S.C. § 820(d)**

The allegations contained in the Introduction are incorporated by reference as if fully set forth herein.

On or about July 6, 2011, in Harlan County, in the Eastern District of Kentucky,

**MANALAPAN MINING COMPANY, INC.,**

through its agent(s), in a matter within the jurisdiction of the United States Department of Labor, Mine Safety and Health Administration, willfully violated the mandatory safety standard set forth in Title 30, Code of Federal Regulations, Section 75.512 in that it failed to remove from service until corrected a potentially dangerous condition which bypassed a monitoring device on the trailing electrical cable for the continuous haulage system located in the 002 Section of the P-1 mine, all in violation of 30 U.S.C. § 820(d).

**COUNT 5**  
**30 U.S.C. § 820(c)**  
**18 U.S.C. § 2**

The allegations contained in the Introduction are incorporated by reference as if fully set forth herein.

From on or about June 6, 2011, and continuing through on or about June 29, 2011, in Harlan County, in the Eastern District of Kentucky,

**JEFFERSON DAVIS,  
JOSEPH MINIARD, and  
BRYANT MASSINGALE**

aided and abetted by one another, in a matter within the jurisdiction of the United States Department of Labor, Mine Safety and Health Administration, knowingly violated the

mandatory safety standard set forth in Title 30, Code of Federal Regulations, Section 75.220(a)(1) in that they did not follow Manalapan's May 6, 2009, Roof Control Plan, (see page 6, subparagraphs (m) and (n) of the Plan) by failing to cease bolting operations when the ATRS did not set firmly against the mine roof until the ATRS was properly set against the mine roof in the 002 Section of the P-1 Mine, all in violation of 30 U.S.C. § 820(c) and 18 U.S.C. § 2.

**COUNT 6**  
**30 U.S.C. § 820(c)**  
**18 U.S.C. § 2**

The allegations contained in the Introduction are incorporated by reference as if fully set forth herein.

From on or about June 6, 2011, and continuing through on or about June 29, 2011, in Harlan County, in the Eastern District of Kentucky,

**JEFFERSON DAVIS,**  
**JOSEPH MINIARD, and**  
**BRYANT MASSINGALE,**

aided and abetted by one another, in a matter within the jurisdiction of the United States Department of Labor, Mine Safety and Health Administration, knowingly violated the mandatory safety standard set forth in Title 30, Code of Federal Regulations, Section 75.202(b) in that they allowed miners to work under unsupported roof in the 002 Section of the P-1 Mine, all in violation of 30 U.S.C. § 820(c) and 18 U.S.C. § 2.

**COUNT 7**  
**30 U.S.C. § 820(c)**  
**18 U.S.C. § 2**

The allegations contained in the Introduction are incorporated by reference as if fully set forth herein.

From on or about June 6, 2011, and continuing through on or about June 29, 2011, in Harlan County, in the Eastern District of Kentucky,

**JEFFERSON DAVIS,**  
**JOSEPH MINIARD, and**  
**BRYANT MASSINGALE,**

aided and abetted by one another, in a matter within the jurisdiction of the United States Department of Labor, Mine Safety and Health Administration, knowingly violated the mandatory safety standard set forth in Title 30, Code of Federal Regulations, Section 75.1710-1, in that they allowed miners to operate electrical mobile bridge carriers and/or section scoops in the 002 Section of the P-1 Mine without substantially constructed canopies or cabs to protect the miners operating such equipment from roof falls and from rib and face rolls, all in violation of 30 U.S.C. § 820(c) and 18 U.S.C. § 2.

**COUNTS 8 - 14**  
**30 U.S.C. § 820(f)**

The allegations contained in the Introduction are incorporated by reference as if fully set forth herein.

On or about the dates in June of 2011, as set forth below, in Harlan County, in the Eastern District of Kentucky,

**BRYANT MASSINGALE,**

in a matter within the jurisdiction of the United States Department of Labor, Mine Safety and Health Administration, was a certified person designated by the mine operator to perform preshift examinations of working sections of the mine including examinations for hazardous conditions, did knowingly make and certify false statements and representations in the Preshift – Onshift and Daily Report records for the P-1 Mine, in that he knowingly failed to record hazardous conditions, including the matter that the ATRS for the Fletcher roof bolting machine did not reach the mine roof and the matter that mobile bridge carriers did not have protective cabs over the operators:

COUNT	DATE OF ENTRY IN THE PRESHIFT RECORD
8	June 13, 2011 @ 9:05 p.m.
9	June 14, 2011 @ 9:02 p.m.
10	June 15, 2011 @ 8:55 p.m.
11	June 16, 2011 @ 9:06 p.m.
12	June 23, 2011 @ 9:06 p.m.
13	June 27, 2011 @ 8:05 p.m.
14	June 28, 2011 @ 9:03 p.m.

each in violation of 30 U.S.C. § 820(f).

**COUNTS 15 - 32**  
**30 U.S.C. § 820(f)**

The allegations contained in the Introduction are incorporated by reference as if fully set forth herein.

On or about the dates in June of 2011, as set forth below, in Harlan County, in the Eastern District of Kentucky,

**JOSEPH MINIARD,**

in a matter within the jurisdiction of the United States Department of Labor, Mine Safety and Health Administration, was an official of the P-1 Mine designated to countersign the report of the person who performed preshift examinations of working sections of the mine in the Preshift – Onshift and Daily Report records of the P-1 Mine, did knowingly countersign such records knowing that the preshift examiner had failed to report and to record hazardous conditions, including but not limited to the matter that the ATRS for the Fletcher roof bolting machine did not reach the mine roof, and the matter that mobile bridge conveyor machines did not have protective cabs over the operators:

COUNT	DATE OF ENTRY IN THE PRESHIFT RECORD
15	June 13, 2011 @ 5:02 a.m.
16	June 13, 2011 @ 1:04 p.m.
17	June 14, 2011 @ 5:04 a.m.
18	June 14, 2011 @ 1:00 p.m.
19	June 15, 2011 @ 5:04 p.m.
20	June 15, 2011 @ 1:02 p.m.

21	June 16, 2011 @ 5:01 a.m.
22	June 16, 2011 @ 1:03 p.m.
23	June 17, 2011 @ 5:01 a.m.
24	June 17, 2011 @ 1:30 p.m.
25	June 18, 2011 @ 5:01 a.m.
26	June 20, 2011 @ 5:00 a.m.
27	June 20, 2011 @ 1:00 p.m.
28	June 21, 2011 @ 5:00 a.m.
29	June 21, 2011 @ 1:05 p.m.
30	June 22, 2011 @ 1:02 p.m.
31	June 23, 2011 @ 1:05 p.m.
32	June 23, 2011 @ 9:06 p.m.

each in violation of 30 U.S.C. § 820(f).

**A TRUE BILL**

\_\_\_\_\_  
**FOREPERSON**

\_\_\_\_\_  
**KERRY B. HARVEY**  
**UNITED STATES ATTORNEY**

## PENALTIES

- COUNTS 1-7:** Not more than 1 year imprisonment, a fine of not more than \$250,000, or by both, except if after the first conviction of such corporate director, officer or agent the punishment shall be by a fine of \$500,000.00, or by imprisonment of not more than five year, or by both, and not more than three years of supervised release.
- COUNTS 8-32:** Not more than five years imprisonment, a fine of not more than \$250,000 or both, and not more than three years of supervised release.