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# Pennsylvania Crime Commission

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## *Coal Fraud: Undermining a Vital Resource*

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## *February 1985*

# COMMONWEALTH OF PENNSYLVANIA

110973



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U.S. Department of Justice  
National Institute of Justice

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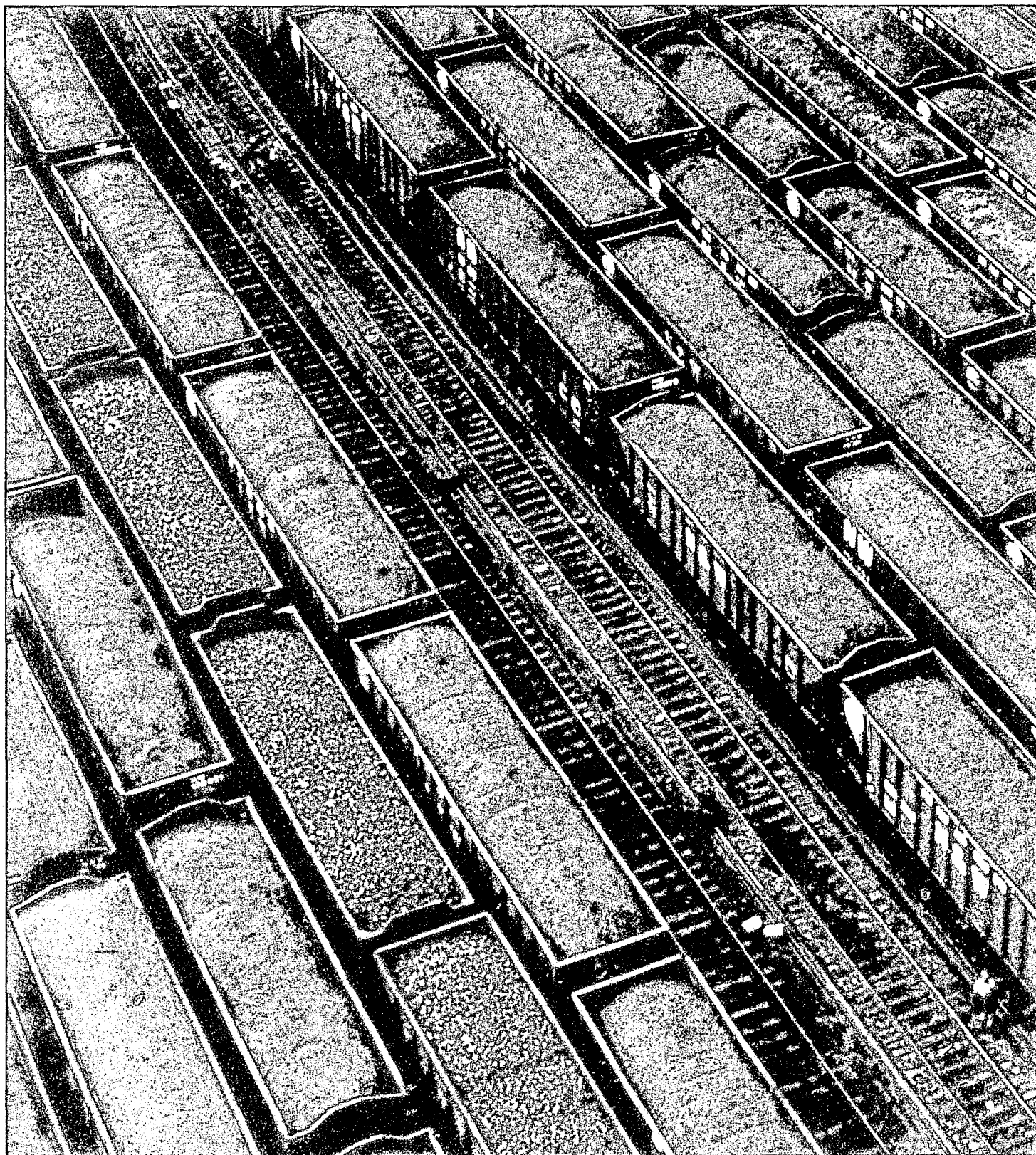
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# 1

## *Bunco Artists Take to the Coal Fields: Investor Confidence Eroded*



Coal once was king in Pennsylvania, a mighty economic force honeycombed in hills and hollows, providing jobs, producing prosperity. In its heyday, the state's anthracite industry alone turned out 100 million tons of coal a year and employed 150,000 men.

But the day came when cheap and convenient oil and gas took its place, and Pennsylvania's coal industry withered and towns died as the mines shut down. It would take an event thousands of miles away to spark coal's comeback.

In 1972, the Arab nations imposed their now famous oil embargo and a year later America had her "energy crisis." Government and industry alike sought alternative domestic sources of energy to reduce the United State's dependence on foreign oil. It wasn't long until America had turned to coal, which soon was in great demand.

Domestic electric utility companies converted from oil to coal-fired generators and rapidly hoarded coal reserves in anticipation of a miners' strike. Coal mine operators were suddenly selling coal that had been stock-piled as unsalable only a few months earlier. Foreign orders for U. S. coal also rose sharply.

In an effort to deal with this increasing demand, a variety of investment incentives were developed to hike domestic coal output. They included the exemption of long-term coal production contracts from wage and price controls, the exemption of the coal industry from the windfall profits tax, and the government authorization of \$750 million in loan guarantees to coal mine operators who opened new mines.

There were two other incentives that spawned investor interest in coal. They also undoubtedly helped open the coal industry's door to the organized criminal.

The first was Rule 146, adopted by the U. S. Securities and Exchange Commission (SEC) in 1974 to make qualified private investment offerings easier and cheaper by exempting them from SEC registration. While it accomplished its goal, Rule 146 also tended to insulate these offerings from scrutiny by the SEC's enforcement arm, much to the delight of coal-country swindlers.

The second incentive was a series of favorable Internal Revenue Service (IRS) rulings that enabled investors to deduct the entire cash and note amount of an investment in a coal mining venture for the tax year in which the investment was made.

This high degree of "leveraging" made coal deals attractive tax shelters for high tax bracket investors. And it made the investors reluctant to cooperate with investigators for fear that fraudulent schemes would jeopardize past tax deductions and result in major assessments for back taxes. As it turned out, the lion's share of these investors were more interested in tax savings than they ever were in coal.

By the spring of 1977, law enforcement and regulatory agencies in Alabama, Georgia, and Kentucky had begun investigating fraudulent coal investment schemes and other related crimes. They soon discovered that most of the major criminal activity was interstate in nature. Pennsylvania and other states soon joined in.

In a short time these state agencies, including the Pennsylvania Crime Commission, were documenting cases of grand larceny, securities fraud, tax fraud, bank fraud, insurance fraud, political and business corruption, murder, extortion,

theft of heavy equipment, loan sharking, narcotics trafficking and price fixing.

By December of 1977, the problem had become so immense that the SEC issued a rare warning to the American public to be aware of coal swindles.

Two years later, in a grant application to the federal government, the founding agencies of a multi-state strike force to be known as the Leviticus Project Association noted:

■ Criminal elements are acquiring substantial interests in and control of the American coal industry including coal resources, mining, and support industries.

■ Through the use of foreign coal purchase contracts, these criminal elements are defrauding foreign purchasers of American coal and bankrupting American coal producers.

The Leviticus Project was formed specifically to investigate and prosecute criminals operating in the Appalachian coal region. It borrowed its name from the Bible: "Ye shall not steal; neither shall ye deal falsely, nor lie one to another." Leviticus 19.11.

It received its first federal funding in February of 1980. A month later a New York grand jury returned the first of many indictments that would stem from project investigations.

As of September 30, 1984, criminal charges stemming from Leviticus-sponsored probes have been brought against 233 defendants. Civil charges have been brought against 179 individuals and businesses.

In addition, Leviticus Project members have, as of that date, referred approximately \$168 million in suspect investments to the Internal Revenue Service. Additional referrals to the IRS involving between \$20 million and \$40 million have either been made

since September 30, 1984, or are expected to be made in the near future.

Today, the Leviticus Project, which still is federally funded, consists of 16 law enforcement and regulatory agencies from seven states: Pennsylvania, Alabama, Georgia, Indiana, Kentucky, New York and Virginia. The Pennsylvania Crime Commission is a charter member.

Other members:

The Alabama Securities Commission, the Alabama Department of Public Safety, the Birmingham, Ala., Police Department, the Georgia Organized Crime Prevention Council, the Georgia Bureau of Investigation, the Georgia Secretary of State's Office, the Indiana Securities Commission, the Indiana State Police, the Kentucky Division of Securities, the Kentucky Attorney General's Office, the Kentucky State Police, the New York County District Attorney's Office, the Pennsylvania Securities Commission, the Virginia State Police, and the Virginia Attorney General's Office.

Newsweek magazine, in the spring of 1983, summed up Leviticus' creation this way:

*"Not long after the federal government sweetened the tax laws to encourage investments in the coal industry, bunco artists took to the hills of Appalachia. They hijacked heavy equipment, sold bogus mineral leases and, most creatively, peddled phony tax shelters. For a time these coal-country criminals had the upper hand because they operated across boundaries that confounded local law enforcement agencies. A typical scam would move from the hollows of Kentucky to the putting greens of the Sun Belt to the financial canyons of Manhattan. When the Department of Justice showed less interest in attacking these problems than some local officials thought*

*appropriate, six coal-producing states and New York formed their own strike force."*

America's "energy crisis," of course, is behind us now. And coal may not be booming like it was a decade ago. But there is reason to be cautiously optimistic about the industry's future. Oil and natural gas no longer are the cheap alternatives they once were. Nuclear energy, once so promising, has been bogged down by heavy fallout from environmental activists and corporate decision makers who aren't sure which energy path to follow.

But if coal's future is to be bright, investor confidence will have to be restored. For, unfortunately, the criminals who robbed the coal industry of its money, also soiled its reputation.

There are lending institutions today that consider investments in coal ventures too risky. And that's understandable considering that between 1979 and 1984 there were 116 Pennsylvania coal companies that went bankrupt, some as a result of fraudulent schemes that funneled corporate funds into people's pockets. Many banks and investment firms sustained heavy financial losses.

Richard Trumka, president of the United Mine Workers of America, touched on the subject at a Crime Commission public hearing in January of 1983.

He noted that such corporate "bust-outs" leave miners with unpaid wages and benefits, while stiffing states for unpaid taxes, unemployment insurance payments, and workers' compensation premiums.

"The financial and psychological damage that this situation causes for the miner cannot be overstated," Trumka testified.

"The economic and social problems that accompany (the resultant) unemployment lead to bitter anger and frustration and

too often are vented on the worker himself and on his family. And while the workers watch their wages and dreams fall apart, the real perpetrators of the scam—the fly-by-night coal operators—count their undeserved and illegal profits."

Noted James Hooton, executive director of the state Senate Environmental Resources and Energy Committee, at another Commission hearing:

"If the fraud your (Crime Commission) investigations have uncovered goes unchecked, the reputation of the industry as a whole could suffer, and our hopes for future expansion could be undermined. The industry simply cannot afford a reputation for dishonesty."

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This anthology was compiled as part of the Crime Commission's mandate to report to the Pennsylvania General Assembly on its investigative findings. It includes Leviticus-sponsored investigations the Commission has conducted since the formation of the multi-state task force in the fall of 1978.

It reflects the efforts of the entire Commission staff. But there are certain agents, attorneys, and supervisors who deserve special mention because of their close involvement in the probes: Joan Weiner, Esq., Leviticus counsel; Donald E. Johnson, Esq., the Crime Commission's former chief counsel; Frank R. Booth, assistant director for investigations; William J. Fry III, special agent-in-charge, Harrisburg office; Christopher J. DeCree, special agent-in-charge, Pittsburgh; and agents Thomas J. Connor, Victor N. DiCicco, John P. Ditmore, Deborah A. Feurer, William F. Foran, Michael R. Hoey, Dwight L. McKee, Russell J. Millhouse and Albert B. Risdorfer.

This report was compiled by Christopher M. Roberts, the Commission's special assistant for communications.

Throughout the report, reference will be made to organized criminals. Both the Leviticus Project and the Pennsylvania Crime Commission (going back to its inception in 1968) have defined organized criminals as persons who take part in illegal conspiratorial acts with economic gain the ultimate goal.

Organized crime is not synonymous with the Mafia or La Cosa Nostra. It is not limited to such criminal acts or unlawful services as gambling, prostitution, drugs, loansharking, or racketeering. It can, and often does, include such sophisticated activities as laundering of ill-gotten money through legitimate businesses, securities fraud, or hi-tech thievery committed not with guns, but with computers. Organized crime attempts to get a toehold wherever there is a potential for profit.

So, when we mention organized crime in this report we are not usually talking about the Mafia. But sometimes we are.

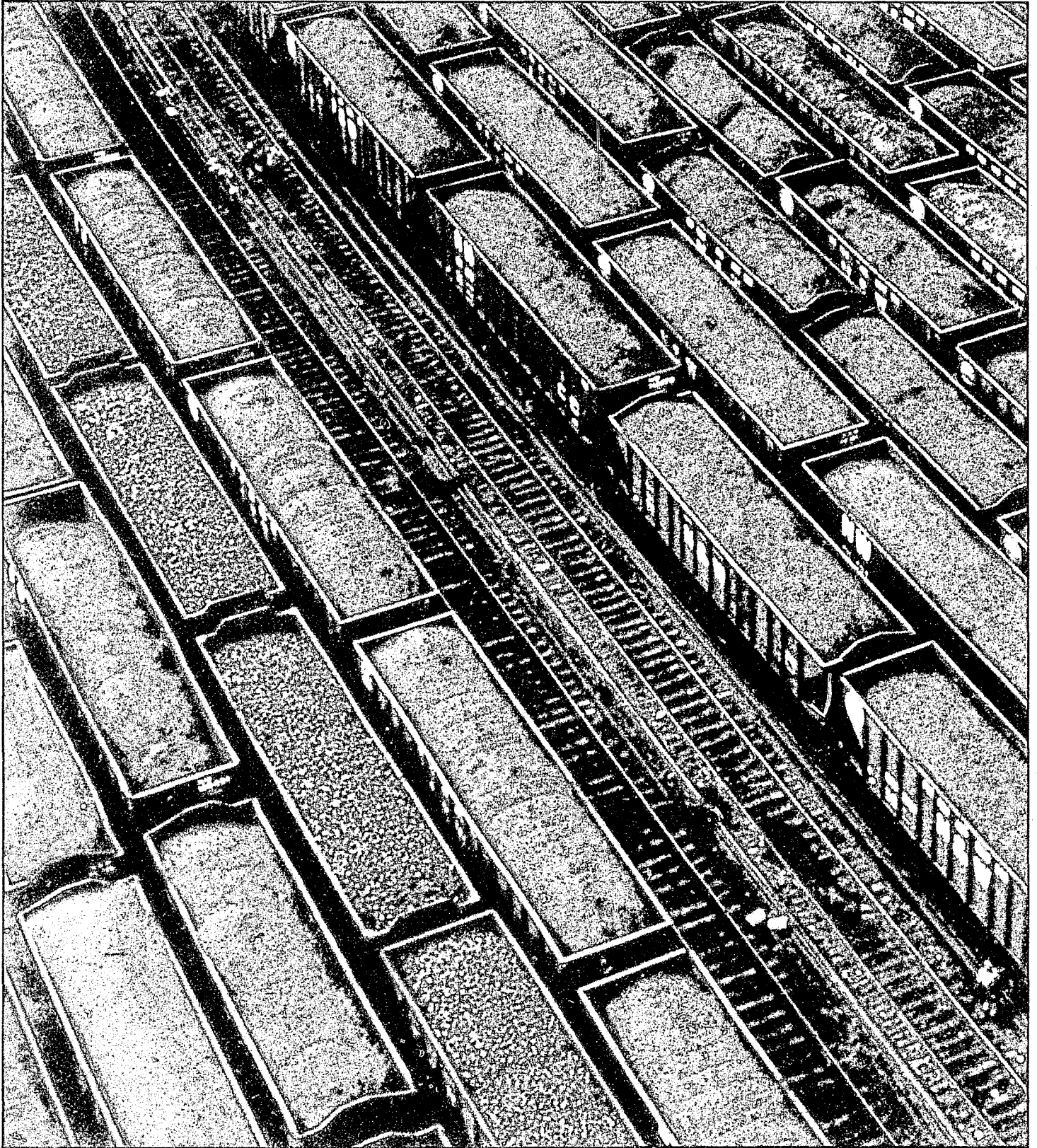
And sometimes we are talking about the same organized crime figures who have been listed over the years in other Crime Commission reports, reports dealing mostly with crime in Pennsylvania's big cities.

As it turns out, the coal fields outside her little towns were preyed upon too.



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*Coal for Korea: Anything Goes*



During the early 1980s, the Crime Commission examined fraudulent practices involving anthracite silt shipments from the United States to the Republic of Korea.<sup>1</sup> This coal silt, destined to be transformed into briquets to heat the homes of indigent Koreans, came from suppliers in northeastern Pennsylvania and was shipped from ports in New Jersey and New York during 1981 and 1982. Some 265,000 metric tons of silt valued at nearly \$16 million was involved.

During its investigation, the Commission uncovered evidence of attempted bribery, bribery, fraud and forgery which resulted in substandard coal being transported overseas. Shippers, suppliers and others, including the Korean Government, lost more than \$4 million.

The Republic of Korea, a resource poor nation, is heavily dependent on foreign energy to fuel an ambitious economic revitalization program. Korea's use of coal is expected to accelerate greatly in the 1980s and beyond, according to information gathered by the U. S. State Department. The Korean government is setting up long-term coal supply contracts, promoting Korean investment in overseas coal mines and diversifying as much as possible the sources of imported coal.

Pennsylvania suppliers are in a position to take advantage of this expanding market—a market that currently handles 3.5 million tons of imported anthracite and has a projected demand for bituminous coal imports of better than 13 million tons by 1986.

However, fraudulent schemes like the ones examined by this commission will only serve to undermine foreign buyer confidence in the Pennsylvania an-

thracite market, a market that is estimated to pump about \$105 million annually into the Commonwealth's economy.

Prior to March of 1982, the Office of Supply, Republic of Korea, (OSROK), handled all coal purchases from the United States.

One of the first firms that OSROK contracted with to purchase U. S. anthracite was United Young Co., a former wig importing business located on Broadway in New York City and run by Che Yung Choi, a Korean national who was working in this country on a permanent visa.

Choi, who has since returned to Korea, had no experience in brokering coal. Neither did many of the others who were drawn to the Korean anthracite deals. They would include a tire innertube importer, a former railroad conductor, an unsuccessful candidate for a city council seat in an eastern Pennsylvania town, and a convicted gambler.

Despite Choi's lack of knowledge about coal, OSROK, on Sept. 14, 1979, entered into a contract with United Young to supply 350,000 metric tons of anthracite silt (plus/minus 5% at seller's option.)

Twelve days later, a letter of credit was issued by the Korean Exchange Bank, Seoul, Korea, in the amount of \$11.5 million and advised through the First Chicago International Banking Corp. of New York.<sup>2</sup>

The contract called for the coal silt to meet certain specifications regarding such characteristics as calorific value (KCALs) and sulphur and moisture content. It also stipulated that should the coal fall short of certain specifications, penalties would be assessed against the seller.<sup>3</sup>

United Young Co. eventually supplied 175,898 metric tons of coal via six shipments — some 174,102 metric tons shy of the amount originally ordered.

Under the contract, the coal was to be tested prior to leaving the United States. On Nov. 29, 1979, the Inspectorate, a testing lab located at 4041 Ridge Ave. in Philadelphia, was appointed to examine the silt on the first five shipments. According to an officer of United Young Co., Fuel Engineering Co. of Thornwood, N. Y., tested the coal for the sixth shipment.

Certificates of analysis issued by the Inspectorate showed the coal to meet or exceed all contract specifications with the exception of moisture content, a condition that resulted in a penalty of \$122,587 being assessed by OSROK.<sup>4</sup>

Upon submission of the certificates of analysis and other shipping documents to the Korean Exchange Bank, \$4.9 million was released to United Young Co.

On arrival in Korea, Dai Han Coal Corp., a government agency responsible for monitoring the quality of incoming coal, found the silt to be of substandard quality, falling well below contract specifications.

<sup>1</sup> Silt is an extremely fine coal by-product which results from an earlier mining process such as washing.

<sup>2</sup> A letter of credit is a formal legal document issued by the buyer's bank to a seller of merchandise or services. It specifies the terms and conditions that will institute payment of a certain sum of money to the seller, also known in financial circles as the beneficiary. The letter outlines and specifies where and what documents must be presented to prove absolute conformance to its terms and conditions. (See accompanying box on pg. 12 for additional detail.)

<sup>3</sup> KCAL stands for kilo calorie, a measure of potential energy or heat produced from a natural resource such as coal. Another familiar unit of energy potential is the British Thermal Unit, or BTU. One BTU equals one KCAL times 1.8.

<sup>4</sup> The Crime Commission was unable to obtain the certificate of analysis issued by Fuel Engineering for the sixth shipment due to jurisdictional constraints.

In a telex to the Inspectorate on Nov. 25, 1980, OSROK officials stated: "We were shocked and dismayed at your inadequate and insufficient inspection of the calorific value of the coal in question . . ."

As a result of Dai Han Coal Corp.'s findings, the coal shipments stopped.

The Pennsylvania Crime Commission, aware that certificates of analysis had been falsified in other Korean coal deals, attempted to obtain from the Korean Exchange Bank the documents pertaining to the United Young shipments. Officials of the bank, however, stated that all records had been lost.

The Commission did learn from an official of a firm that had supplied silt to United Young that Choi had said not to worry about the quality of the coal—that he had "people" in Korea who would "take care of it." In fact, one sales contract for 75,000 metric tons between United Young and Popple Brothers, a coal supplier in Pittston, Pa., simply called for the quality of coal to be "as is."

The Crime Commission also surfaced evidence of a bribe attempt—something it would find not uncommon as its investigation progressed.

On Nov. 1, 1983, Andrew Harmelin, Inspectorate's financial director, told Crime Commission agents that on May 12, 1980, Choi, when exiting a car driven by Harmelin, tossed a plain white envelope onto the back seat and said, "Here." Harmelin said that when he opened the envelope he found five \$100 bills. Harmelin further stated that he mailed the money back to Choi the next day (via a money order) with a note stating: "It seems that you unfortunately left an envelope in the back of my car containing \$500 in cash . . . When I realized that you had mistakenly left it half opened I tried to return it to you . . ."

Harmelin testified at a Crime Commission hearing on Jan. 5, 1984, that the incident occurred in Philadelphia during the period that the Inspectorate was testing coal for the United Young shipments. He stated that Choi was traveling that day with another United Young officer, Shin Il Kim. This exchange took place:

Q. Did you have any conversations with Mr. Choi and Mr. Kim about this money after you sent it back?

A. I don't think so.

Q. However, they never said it was not their money?

A. No.

### Spare Tires and Coal

Some of the coal silt that arrived in Korea had KCAL ratings significantly below what the Inspectorate's records had indicated, according to Dai Han Coal Corp.'s findings. For instance, on the second shipment, transported on the motor vessel *Silvretta*, Inspectorate reported a KCAL/KG value of 8,156, Dai Han a value of 4,880—about half as much.

As it turned out, the coal that was loaded onto the *Silvretta* was not sampled at the port because the inspector assigned to the job said he arrived at the pier after the vessel had sailed. Instead, the inspector stated that a pile believed left behind was tested, generating the lab report for the *Silvretta* shipment. Harmelin was asked about the incident.

Q. Why would (the Inspectorate tester) have gone to the pier to test coal after the ship had already departed?

A. It took less time to load it than we had anticipated . . .

Q. When you issue a certificate (of analysis), is the certificate based on coal that was shipped?

A. Well, coal that we sampled and coal that we assumed was shipped.

Q. You really do not know what the coal was on that ship, and yet you are stating that it was sampled and the report was issued stating what the quality of that coal was?

A. Right, Basically, what he had to do was the next best thing . . . a side of the mound of coal that was taken to put on the vessel, that didn't go on the vessel.

Q. . . . in effect, what you are telling me is that Inspectorate sampled at the site. The ship had left, but you assumed that what was at the site went on the ship?

A. We had to do that in that one case.

Q. Why?

A. Because the vessel was gone.

Q. Didn't you know when the vessel was coming in?

A. As I recall, I think we got late notification from United Young Company.

The discrepancy between what Inspectorate reported and Dai Han's findings eventually resulted in OSROK claiming a loss of \$663,272. Pennsylvania coal suppliers and truckers also suffered financial losses in their dealings with United Young Co. On June 23, 1981, a civil suit was filed in Lackawanna County Court against the firm.

The plaintiffs included Popple Brothers, which sought to recover \$296,670 for coal supplied; George W. Bone Jr., Pittston, \$170,165 for coal supplied; Anthra Trans, Inc., Moscow (Pa.), \$291,730 for hauling services; and Kearney's Inc., Portland, (Pa.), \$164,598, also for hauling services.

Judgment in favor of the plaintiffs was obtained by default on Aug. 21, 1981, in the amount of \$978,723.

By then, however, United Young Co. had gone out of business.

David M. Grosz, the coal inspector who had tested the silt on the dock after the second ship, the *Silvretta*, had sailed, stated in an internal company memo dated April 24, 1980, that "the coal at the pier site at the time of arrival of the inspector (for the first shipment on the Motor Vessel *George*) was approximately 250 tons of coal or approximately 10 truck-loads . . . (It was) reported that adjacent to the pier area in a leased yard were approximately 10,000 M/T (metric tons) of coal dust fines, some unscreened and some screened . . .<sup>5</sup> It was quite evident that the unscreened material contained impurities and particles up to 250 mm (millimeters) in length, railroad ties, breaker rocks, and all varieties of items which could not be shipped in satisfactory completion of the contract."

Grosz further stated in a notation dated April 25, 1980, that he was informed by personnel at the pier that "large breaker rocks and coal chunks, a spare tire, and other material was being loaded onto the *George*."

Despite the demise of United Young, Choi did not get out of the coal brokerage business. In September of 1981 he met with Yung Soo Yoo, another newcomer to coal, who served as president of James Martin and Co., Inc., a tire innertube importing firm located in Elizabeth, N. J. Arrangements were made for Yoo to provide the remainder of silt called for under the United Young-OSROK contract.

The James Martin Coal Co. was thus formed with Yoo serving as president and Choi as chairman. On Sept. 23, 1981, after the two men had travelled to Korea to negotiate with OSROK officials, James Martin Coal was awarded the remaining United Young business with one condition: It would have to make up for the poor quality silt that already had been shipped.

According to Yoo, Choi was to receive one-third of the profits of James Martin Coal Co. Other officers of the newly created firm were Yoo's wife, Kyung Bin Yoo who served as secretary-treasurer; and Young Nam Kim, general manager.

On Sept. 25, 1981, a letter of credit was issued through the Hanil Bank, Seoul, Korea, and advised through the bank's New York branch in the amount of \$12.3 million. The beneficiary was James Martin Coal Co., Inc. Three months later the letter of credit was re-advised through the Girard Bank in Philadelphia.

James Martin Coal supplied 165,262 metric tons of anthracite coal silt under its contract with OSROK. Three of the nine shipments were exported from the United States, five from Asia and one from Africa. Because of jurisdictional constraints, the Pennsylvania Crime Commission did not pursue the non-U. S. shipments.

The domestic coal came from northeastern Pennsylvania and was shipped on three vessels: The *Didymi*, carrying 31,911 metric tons of silt, sailed from Camden, N. J., on Jan. 15, 1982; the *Aqua Glory*, 38,001 metric tons of silt, sailed from Newark, N. J., on March 4, 1982; and the *Nan Feng*, 31,978 metric tons, sailed from Camden, March 11, 1982.

## ***A LETTER OF CREDIT***

A letter of credit is a formal legal document in writing issued by a buyer's bank and addressed to a seller of merchandise or services. It specifies the terms and conditions that will institute payment of a certain sum of money to the seller or beneficiary. The letter outlines and specifies where and what documents must be presented to prove conformance to its terms and conditions.

In actuality, the procedure substitutes the credit worthiness of a bank for that of the buyer. It assures a seller that if he performs precisely in accordance with the letter of credit's requirements, that bank will pay regardless of the financial stability of the buyer.

The buyer has no right of inspection and no right of rejection. Of course, if a bank has knowledge and proof of a perpetrated fraud, the payment can be put in escrow pending some equitable resolution. However, a bank makes its determination to pay on the face value of the documents alone and is not responsible for their falsification or legal effect.

Some key terms in a letter of credit transaction:

**Beneficiary**—The seller of goods or services to whom the letter of credit is addressed and who is entitled to its benefits.

**Issuing bank**—The financial institution that initiated and wrote the letter of credit extending its guarantee and liability to pay if the terms and conditions are fulfilled.

**Advising bank**—The bank, usually in the beneficiary's country, whose primary job is to pass on the letter of credit to the beneficiary. The advising bank normally is a corresponding bank of the issuing bank, meaning that the two parties have exchanged authenticating procedures such as authorized signatures.

<sup>5</sup> Coal dust fines are the finest form of anthracite coal, close to a powder.

## Forged Documents Release \$4.4 Million

Certificates of analysis issued by Fuel Engineering Co. of Thornwood, N. Y., for the Didymi shipment and by Hampton Roads Testing Laboratories, Hampton Roads, Va., for the Aqua Glory and the Nan Feng showed that the coal did not meet contract specifications at the time of loading and that the moisture level was well beyond the rejection point of 12 percent.

The certificates of analysis submitted by James Martin Coal Co. to Girard Bank to effect the release of the money for the three shipments, however, showed the coal meeting specifications. Consequently, the bank, unaware that the documents it had in its possession had been altered and forged, released some \$4.4 million as the three ships sailed towards Korea.

Upon docking at Inchon, the Dai Han Coal Corp. (DHCC), the same Korean government agency that had tested the United Young Co. shipments, inspected the coal on the Didymi, the Aqua Glory and the Nan Feng.

In a telex to James Martin Coal Co., dated June 7, 1982, OSROK stated: "We have to inform you with our great regret that the coals shipped on (the) three vessels were found to have considerable defects upon receipt of DHCC's test results on 27 May . . . ."

The telex also advised James Martin that it still owed \$663,272 as compensation for the poor quality coal supplied by United Young, and that because of new penalties that were being assessed the debt had climbed to \$2.1 million. OSROK threatened to debar James Martin Coal Co. from conducting any future business with Korea if the financial obligations were not met.

In addition to showing the documents had been altered, the Crime

Commission developed information regarding attempted bribery and bribery involving the James Martin transactions.

Thomas Paul Barrett Jr., a former Fuel Engineering employee who was involved in sampling coal for James Martin in January of 1982, testified at public hearings held by the Crime Commission in Harrisburg on Feb. 22-23, 1984, that he had been approached by Yoo.

Barrett stated: "(Yoo) knew that the moisture in his coal was too high, and he said something to the effect like you scratch my back and I will scratch yours, and he wanted us to do something so that the results would be in his favor . . . ."

Thomas Gongloff, Barrett's supervisor, also testified. Excerpts of that testimony follow:

Donald E. Johnson, the Crime Commission's chief counsel: In your capacity as an employee for Fuel Engineering, did you sample coal for James Martin Coal Co. on a coal shipment to Korea on the boat the Didymi?

Gongloff: Yes, I did.

Johnson: During the sampling of that coal, did you meet and speak with Yoo, president of James Martin Coal Co.?

Gongloff: Yes sir, I did.

Johnson: Specifically, did the president, Mr. Yoo, ask you to do something regarding his coal?

Gongloff: Yes sir. Mr. Barrett and myself went in there (an office at Camden Port) and whenever we went in I gave this gentleman, Mr. Yoo, the moisture results from the specific samples that were taken and he told me "no good."

Johnson: Who told you they were no good?

Gongloff: Mr. Yoo.

Johnson: Continue.

Gongloff: Okay. Then he asked us to walk out into the hall, and we did.

Johnson: That would be you and Mr. Barrett?

Gongloff: Myself, Mr. Barrett, and Mr. Yoo; and then Mr. Yoo said, "If you take care of my problems, I will take very good care of you." I said, "No, thank you. I couldn't do that." He said, "Okay," and I walked away from him and left.

Crime Commission agents interviewed Yoo in his office in Elizabeth, N. J., during May of 1983. At the time, Mr. Yoo stated that he had provided \$3,000 to Choi who, according to Yoo, was to give the money to a coal broker named Robert Duran to bribe an official of Fuel Engineering Company. Yoo further alleged that Choi had advised him: "Duran will fix all the paper." In exchange for the \$3,000, Yoo said he did receive an altered certificate of analysis.

Duran, who faces unrelated charges of grand larceny in connection with the theft of \$4.1 million from New York's Chase Manhattan Bank, was brokering coal for Yoo, trading under the name Continental Coal Co.\* In private hearings, Duran denied ever bribing anyone at Fuel Engineering. The Crime Commission subsequently attempted to talk to the firm's employees, but they refused to answer questions, invoking their 5th Amendment privilege on the advice of counsel. Several employees later testified, but only after receiving grants of immunity.

\* Duran was indicted with six other men on Nov. 17, 1982, on the grand larceny charges. According to the indictment, the money was stolen by means of illegal loans granted by two former bank executives to American Coal and Energy, an apparent paper corporation controlled by Duran and two of the other defendants—James J. Durkin Sr. of Dallas, Pa., and Irvin Freedman, a real estate developer from West Lake, Calif. The company lacked property, equipment or mineral leases.



# JAMES MARTIN COAL CO., INC.

## CERTIFICATE OF ANALYSIS

### "Didymi" Shipment

**ORIGINAL**

Fuel Engineering Company of New York  
35 CLERMONT AVENUE • ELIZABETH, N.J. 07208 • (609) 326-1900

Test Report # 328660  
Date Received 1/18/82  
P.O. #

Sample Identification  
Composite Sampled as Loaded "M. V. DIDYMI"  
30,911 Metric Tons Loaded: January 15, 1982  
Port: Camden, New Jersey U.S.A.  
Sampled by: CENCO Lab Date: 1/22/82 thru 1/15/82  
BY: T. Gungloff, T. Berrett, R. Hodgson & Z. Zarko

**CERTIFICATE OF ANALYSIS**  
Approved by: *[Signature]*  
Date Mailed: January 20, 1982  
Contract # KFX/P-K05-7909080-SN-A  
L/C # M190109630107

James Martin Coal Company  
1065 East Grand Street  
Elizabeth, New Jersey 07201  
Attn: Mr. Y. S. Yoo

	AS RECEIVED	AIR DRY	DRY
Moisture	22.102	1.242	XXXX
Ash	23.932	30.342	30.722
Volatile	6.972	8.432	8.362
Fixed Carbon	47.302	59.972	60.722
Sulfur	0.512	0.642	0.652
Heating Value	7983	9883	10448
K Calories	4331	5491	5559

Size = 25 x 9 mm

*I certify that this is a true copy*  
Dated 6-2-83  
*[Signature]*

**ALTERED**

Test Report # 328660  
Date Received 1/18/82  
P.O. #

Sample Identification  
Composite Sampled as Loaded "M. V. DIDYMI"  
30,911 Metric Tons Loaded: January 15, 1982  
Port: Camden, New Jersey U.S.A.  
Sampled by: CENCO Lab Date: 1/22/82 thru 1/15/82  
BY: T. Gungloff, T. Berrett, R. Hodgson & Z. Zarko

**CERTIFICATE OF ANALYSIS**  
Approved by: *[Signature]*  
Date Mailed: January 20, 1982  
Contract # KFX/P-K05-7909080-SN-A  
L/C # M190109630107

	AS RECEIVED	AIR DRY	DRY
Moisture	11.92	1.24	XXXX
Ash	30.34	30.72	30.72
Volatile	8.43	8.36	8.36
Fixed Carbon	59.97	60.72	60.72
Sulfur	0.64	0.65	0.65
Heating Value	9883	10448	10448
K Calories	5491	5559	5559

Size = 25 x 9 mm

The Crime Commission was able to obtain a copy of the original certificate of analysis issued by Fuel Engineering for the Didymi. That report is contrasted below to the doctored certificate of analysis that was presented to Girard Bank. In examining the two documents, keep in mind that the letter of credit stipulated a moisture rejection point of 12 percent and a minimum caloric value of 5800 KCALS.

#### M/V Didymi

	Original Report # 328660	Fraudulent Report # 328660
Moisture*	22.10%	11.92%
Ash	30.34	30.34
Volatile	8.45	8.45
Fixed Carbon	59.97	59.97
Sulphur	0.64	0.64
Heating Value	9883	10448
K Calories**	5491	5804

\*As received basis

\*\*Air dry basis

#### A Lot of Money for a Lot of Water

Robert Fulton Lanier, a marine and analytical chemist who is vice president of Hampton Roads Testing Laboratories, testified at the public hearings about the alterations made to the original documents after they were issued by his firm—alterations that were carried out with a rubber signature stamp and a sheaf of blank forms.

Johnson: Would you tell me what (this exhibit) C-11 is, please?

Lanier: That is the original document, a copy of the original document issued by Hampton Roads Testing for the motor vessel Aqua Glory.

Johnson: Did you sign the original?

Lanier: Yes, I did.

Johnson: Attached to it is (exhibit) C-11A (the document presented to the bank). That document purports to be a certificate of analysis issued by Hampton Roads Testing, signed by you, for the motor vessel Aqua Glory. Was C-11A issued by Hampton Roads?

Lanier: No, it was not.

Johnson: Did you ever sign that document?

Lanier: No, I did not.

Lanier went on to testify that the altered document showed a moisture content of 7.85%, while the document issued by Hampton Roads listed moisture content at 21.43% — almost nine percentage points above the rejection level. He also testified that the calorific value of the coal had been increased by 270 kilocalories per kilogram on the doctored certificate. He termed both alterations “significant changes.”

Johnson: . . . C-11 (a copy of the original document) declares the coal not in conformity with the contract and C-11A (the document presented to the bank) finds conformity and would demand payment . . . ?

Lanier: That is correct. C-11, obviously, the moisture content being 21.43 was a very high moisture content . . . .

Johnson: That is really 25 percent water?

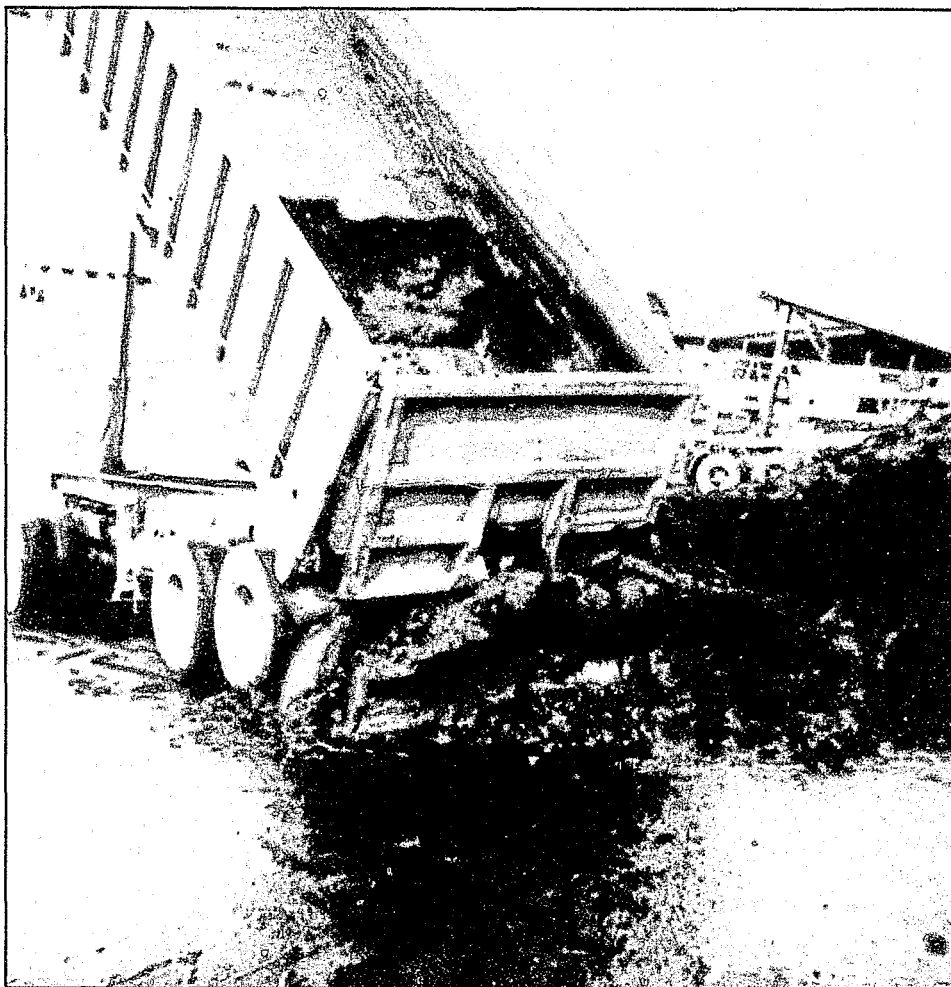
Lanier: Right.

Johnson: C-11A was presented to the bank and caused \$2 million to be released for that shipment of coal.

Lanier: Amazing.

Lanier was then shown the original and altered certificates of analysis for the Nan Feng shipment. Again, he testified that he had not signed the document that was presented to the bank and that the figures that had appeared on the original had been altered significantly on the phony document to conform to contract specifications — the moisture content dropping from 21.12 percent to 7.90 percent and the calorific value being increased by 300 kilocalories per kilogram.

The altered document was presented to Girard to secure the release of \$1.5 million. However, through penalties on other shipments, the Koreans eventually paid \$575,000 for the coal.



Coal silt, the consistency of pudding, is unloaded from a dump truck for shipment on the Motor Vessel Didymi. The ship left Camden, N.J., on Jan. 15, 1982, en route to Korea with 31,911 metric tons of silt.

In recapping Lanier's testimony regarding the James Martin coal shipments, Commissioner Alvin B. Lewis Jr. remarked:

“On these two ships . . . the Aqua Glory and Nan Feng—one resulted in somewhere up to \$2 million in fraud, and the other resulted in approximately \$600,000 in fraud. And that again defrauded . . . the government of Korea, and presumably the poor people in Korea that . . . got a poor quality of coal that burned at a lower heat because of the moisture and calorific value frauds in the analysis. Is that a fair summation of what you are talking about?

Lanier: “Also, you might say that they paid a whole lot of money for a whole lot of water.”

During its investigation, the Crime Commission was able to locate a former secretary of James Martin Coal Co. who told Commission agents that she had been instructed to type numbers on blank certificates of analysis bearing Hampton Roads' letterhead. She also stated that a rubber stamp bearing a signature facsimile of Robert Lanier was owned by James Martin Coal Co.

The secretary, Barbara Kowalczyk, testified at the Commission's public hearings. Excerpts of her testimony follow:

Johnson: Yesterday I showed you what has been testified to, and I marked it C-2, and is a small certificate of analysis issued by Hampton Roads Testing Laboratories, Virginia, is that correct?

Kowalczyk: Correct.

Johnson: And you have that in front of you?

Kowalczyk: Yes, I do.

Johnson: When you were employed by James Martin Coal Co., did you ever see any forms identical to C-2, the one in front of you?

Kowalczyk: Yes, I did.

Johnson: The forms you saw as secretary, were they blank?

Kowalczyk: Yes.

Johnson: Do you know if they were ever filled in?

Kowalczyk: Yes, they were.

Johnson: Who filled them in?

Kowalczyk: I did.

Johnson: Who told you to do that?

Kowalczyk: Mr. Y. N. Kim.

Johnson: Who is he?

Kowalczyk: Young Nam Kim. He was a general manager . . . .

Johnson: He would give you the blank Hampton Roads forms?

Kowalczyk: Yes.

Johnson: What would he tell you to do?

Kowalczyk: I was to type figures all the way across here.

Johnson: Did you ever ask Mr. Kim where the blank forms came from?

Kowalczyk: Well, I asked because I was curious as to why I was typing figures on Hampton Roads Testing papers, and he told me not to worry about it, that I get paid to do my job, so I just proceeded to type the figures as I was told to do.

Johnson: Did you ever learn of or find a facsimile stamp of Robert Lanier's signature while working at James Martin Coal Co?

Kowalczyk: Yes, it was found by Helen Kim. She was another secretary . . . .

Johnson: Where did she find it?

Kowalczyk: On her desk.

Johnson: Can you describe it?

Kowalczyk: It was a rubber stamp of Mr. Lanier's signature.

Johnson: How do you know it was Mr. Lanier's signature?

Kowalczyk: Because we stamped it.

Johnson: On what?

Kowalczyk: Piece of scrap paper.

The following is a comparison of the documents issued by Hampton Roads Laboratories for the Aqua Glory and Nan Feng and the counterfeit documents that were presented to Girard Bank. Again, the moisture rejection point was 12 percent and the minimum acceptable KCAL value 5800.

#### Aqua Glory

	Original Report #217493	Fraudulent Report #217622
Total moisture*	21.43%	7.85%
Ash	29.29	28.12
Volatile Matter	9.10	7.37
Sulphur	0.64	0.96
Calorific Value**	5538KCAL/KG	5803KCAL/KG

#### Nan Feng

	Original Report #217561	Fraudulent Report #217493
Total Moisture*	21.12%	7.90%
Ash	29.04	27.26
Volatile Matter	8.80	8.89
Sulphur	0.81	0.78
Calorific Value**	5608KCAL/KG	5911KCAL/KG

\*As received basis

\*\*Air dry basis

## Philadelphia Bank Loses \$614,000

On Oct. 22, 1981, James Martin Coal Co. entered a coal hauling agreement with Horwith Trucks, Inc., Coplay, Pa. The firm's president, Frank Horwith, agreed to deliver anthracite coal from Schuylkill County to Beckett Street Terminal in Camden, N. J., at the rate of \$12.20 per metric ton. Horwith hauled 30,911 metric tons of anthracite for the first shipment (the Didymi) and was fully compensated through an assignment of proceeds of the letter of credit with Girard Bank.

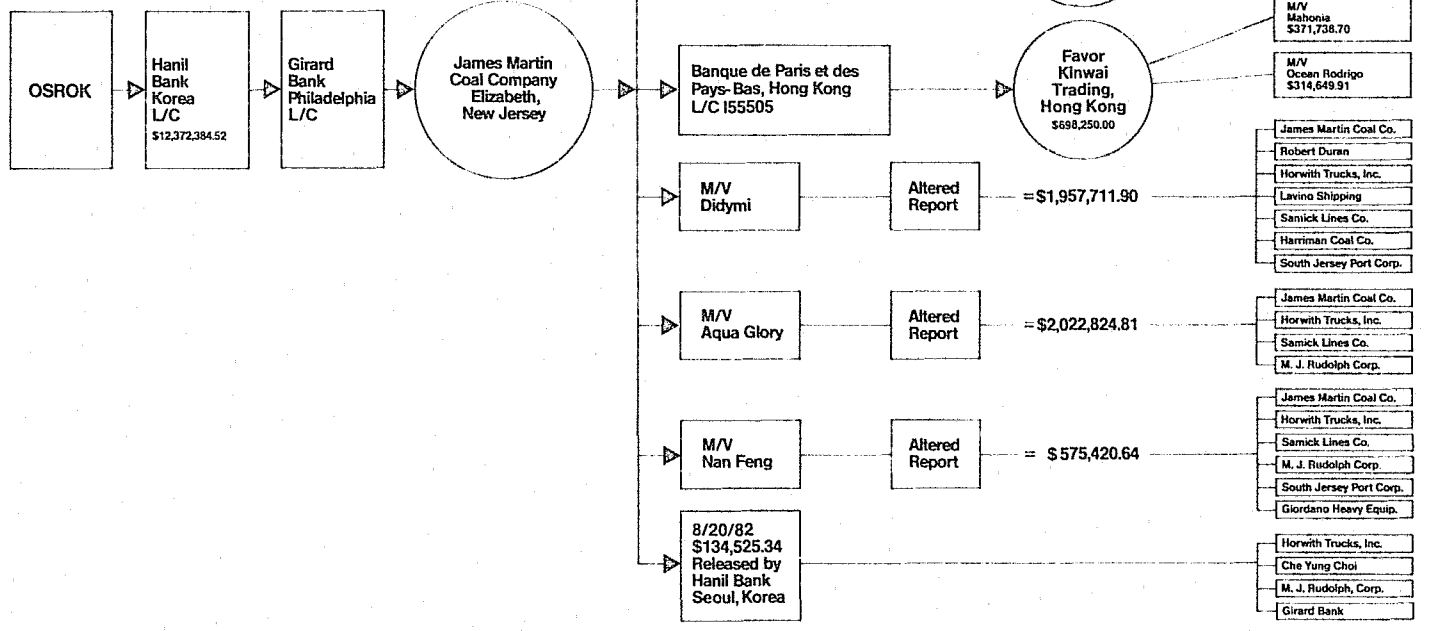
After the first shipment was completed, Yoo approached Horwith with a proposal that Horwith act as both supplier and hauler of coal for future shipments to Korea. Yoo advised that if Horwith agreed to contract for the purchase and delivery of the coal, James Martin Coal Co. would issue another assignment of proceeds against the letter of credit.

In order to obtain financing for the operation, Horwith took out a series of loans from Girard Bank totalling approximately \$1.4 million. As Horwith purchased coal and incurred expenses, Girard advanced him funds and documented the obligation to repay said advances with promissory notes. The notes were secured by the assignment of the letter of credit proceeds.

Horwith completed delivery of 38,001 metric tons of coal to Port Newark on Feb. 28, 1982, and 31,978 metric tons to the port of Camden on March 10, 1982. However, due to penalties assessed because of coal quality problems, Horwith was only partially compensated through the assignments and consequently was only able to pay off some \$600,000 of the bank notes.



# JAMES MARTIN COAL CO., INC. TRANSACTIONS



Horwith stated that he lost approximately \$692,000 in his dealings with James Martin Coal Co. He testified on Feb. 23, 1984, that he had recently negotiated a settlement with Girard Bank in which he paid an additional \$122,000 in return for dissolution of all judgments against him.

According to testimony at the public hearings, Girard Bank ended up in the red by some \$614,000 as a result of its involvement in the James Martin coal deals.

It soon became clear that there was a lack of concern for the quality of the coal being shipped to Korea, especially the moisture content.

On Aug. 25, 1983, Horwith testified before the Crime Commission on that subject:

Q. Was Mr. Yoo ever concerned with the moisture content on the first shipment?

A. No.

Q. Did he ever make statements to that effect to you?

A. Yes.

Q. Do you recall any of his comments?

A. He says, "Don't worry about the moisture."

Q. Was his attitude towards moisture the same for the final two shipments?

A. Yes.

Q. Did Mr. Yoo say, "Don't worry about the moisture because I can take care of it?"

A. That's right.

Q. Did Mr. Yoo explain how he could take care of it?

A. Through some friends, I guess, in Korea.

Q. Did Mr. Yoo tell you this?

A. He told me he had a lot of friends in Korea.

Q. Mr. Yoo indicated to you that his friends in Korea could take care of his penalties?

A. That is correct.

In a sworn Aug. 9, 1983, statement from Joseph Reitz, a coal supplier from Treverton, Pa., Reitz also stated that he had warned about wet coal in his dealings with representatives of James Martin Coal Co., particularly Duran. He said Duran's response was: "Just load it anyway." Reitz added: "Duran would have loaded rock off the road if he could have gotten away with it . . . . Throughout my dealings with Duran, Duran bragged about paying off the samplers at Camden Port."

Reitz' brother, Harry Reitz, also gave a sworn statement to the Commission, stating: "Early in the operation when we started supplying coal to Duran, I asked Duran about the moisture content of the coal, to which Duran stated, 'Don't worry, I'll take care of the tester.'"

The Reitz brothers supplied 372 metric tons of coal to James Martin Coal Co.

Joseph Reitz testified at the public hearings that in one deal he was paying Duran \$1 a ton brokering fee for a total of some \$12,000. This exchange took place between Commissioner Lewis and Reitz:

Lewis: What was Duran getting for his \$12,000?

Reitz: Well, he came into me to buy coal. He approached me as a broker. We set up a contract with him, and Palmco Corporation (a California coal brokering firm engaged in a separate Korean coal deal). Now, while I was loading the coal, one of the representatives of Palmco Corporation, I can't think of his name, anyhow, he came out while I was loading, and I got a chance to talk to him; and I told him that I was paying Duran a dollar a ton. He told me he was paying him \$1,000 a week . . . .

Lewis: So you were paying Duran as your broker to sell your coal?

Reitz: Yes.

Lewis: And someone else was paying him \$1,000 a week to buy your coal?

Reitz: Yes.

Duran appeared before the Crime Commission on Aug. 29, 1983, also testifying under oath. He denied ever having said he would or could pay off testers or that he could guarantee test results. He did, however, state that it appeared to be common practice for domestic coal brokers to make payments to Korean government officials in return for favorable treatment.

Q. Do you know of any payoff to any Korean government officials for favors relating to coal deals?

Duran: I was told by the Koreans—I am talking about Palmco, I am talking about James Martin, I am talking about United Young. They all claimed they paid people in Korea for this contract.

Q. Who from James Martin told you?

Duran: Mr. Choi and Mr. Yoo both when they renegotiated the contract.

An examination of James Martin Coal Co.'s bank records indicated that the firm received some \$500,000 on the Korean coal deals.

There were other apparent losers besides Horwith Trucking Co., Girard Bank, and the Korean people. However, the financial aftermath of the James Martin venture was somewhat tangled due to outstanding litigation and penalties assessed on the Asian shipments.

Fuel Engineering filed suit claiming it was not paid \$7,912 for testing services rendered. M. J. Rudolph Stevedoring, located in Newark, N. J., claimed there was a balance of \$48,116 due as a result of loading the

motor vessels Aqua Glory and Nan Feng. Samick Lines, a shipper that hauled James Martin coal to Korea, filed a civil suit against OSROK claiming it was owed \$711,000. And Joseph and Harry Reitz obtained a judgment against Duran based on their claim of non-payment of \$1,209.

It eventually was determined that the total penalty to be assessed against James Martin Coal Co. would be \$1,079,000, leaving a balance due of \$846,000. This balance was released by Hanil Bank to the assignees under the letter of credit whereupon Samick Lines immediately attached the \$711,000 it claimed it was owed. The remaining \$134,000 was released to the designated assignees.

On Feb. 1, 1984, the Samick Lines litigation was settled and the \$711,000 was divided among Samick, Horwith Trucks, Inc., M. J. Rudolph Corp., Choi, and a Korean law firm in Seoul.

## **Coal Brokers Indicted for Fraud**

It was in the fall of 1983 that the Pennsylvania Crime Commission referred its investigative findings in the James Martin Coal case to the U. S. Attorney's Office in Philadelphia. On June 13, 1984, U. S. Attorney Edward S. G. Dennis announced that a federal grand jury had returned an indictment against Yung Soo Yoo and Young Nam Kim charging them each with bank fraud, wire fraud, interstate transportation of securities obtained by fraud, and conspiracy.

On July 31, 1984, Kim pled guilty to one count of bank fraud and one count of conspiracy to commit mail fraud, wire fraud, and the interstate transportation of securities obtained by fraud. As part of a plea bargain agreement, the other counts were dropped after Kim agreed to cooperate fully with the federal government in the prosecution of Yoo.

On Oct. 19, 1984, Kim was sentenced to five years probation and fined \$2,000.

On Nov. 10, 1980, Lauer Investment Co., Inc. of Easton was incorporated in Pennsylvania with Mahlon H. Lauer, a onetime train conductor with a theft conviction, listed as president.<sup>7</sup>

On July 3, 1981, Sejung M. M. Company, Ltd., Seoul, Korea, appointed Lauer Investment as its sole representative to purchase anthracite silt from the United States.

Five ships sailed to Korea, carrying a total of 168,491 metric tons of coal. For all five shipments, documents pertaining to the coal's quality were forged. More bribes were offered.

As in the Korean coal deals already described, payment was tendered through letters of credit. The first was issued on Aug. 5, 1981, by the Korean Exchange Bank, Tokyo, to its New York branch in the amount of \$1,880,500. The money was to be released to Lauer Investment upon departure of the first ship, the Meihou Maru, and upon receipt by the bank of certain documents, including certificates of analysis attesting that the coal met contract specifications.

The Meihou Maru sailed for Korea on Aug. 28, 1981, carrying 29,603 metric tons of coal—27,576 metric tons supplied by Shamrock Coal Co., Ashley, Pa., and 2,027 metric tons supplied by North American World Trade Group, New York.

Joseph Mullins, president of Shamrock Coal, stated that he



Mahlon H. Lauer

Wide World Photos

entered a verbal agreement with Lauer in August of 1981 to supply coal. Mullins said that Lauer told him that the coal had to meet specifications contained in Lauer's contract with Korea, including a minimum calorific value of 5500 KCALs. However, Kevin Nelson, Shamrock's vice president, told the Commission that he got the impression Lauer would take any coal "as long as it was black."

Q. On April 27, 1983, . . . you stated that Lauer had told you that he had an "in" with Korea and that he didn't care what he shipped, that he could get by. Do you recall making that statement?

Nelson: Yes.

Q. When did Mr. Lauer make this statement?

Nelson: During the course of the transaction.

Q. You stated previously that Mr. Lauer made statements that

he did not care about the moisture content. (Did) this statement that he didn't care what he shipped concern other than moisture?

Nelson: Yes.

Q. Could you be more specific?

Nelson: Ash and BTUs also.

Q. Did Mr. Lauer state to you that he did not care what the ash content was of the coal?

Nelson: He just wanted it black. He wanted black material delivered to the port in sufficient quantity to load on the ship. He didn't care what it was . . . at several points he said he had paid off the Korean government so it really didn't matter, he just had to get the ship over there.

Nelson later was asked if Lauer had told him that he (Lauer) was paying off a coal tester. Nelson replied, "I think he did, yes." This exchange then took place.

<sup>7</sup> Lauer's arrest record dates back to 1956. On Nov. 17, 1974, he was arrested by the Pennsylvania State Police on charges of stealing \$32,000 worth of steel from a steel plant where he worked as a foreman. The thefts involved the doctoring of inventories and production figures. He was sentenced to two-to-four years in prison, being released on March 4, 1977.

Q. Do you know which tester Lauer was referring to that he was paying off?

A. I assume it was a Korean.

Q. You assume it was a Korean in the United States?

A. No, a Korean in Korea.

Q. What would Mr. Lauer be paying a Korean tester for in Korea to do?

A. To indicate that the shipment met specifications.

Q. In Korea?

A. Right.

Q. And that would cause the ship not to incur any penalties, is that correct?

A. That is right, especially with regard to moisture. He said he would not have to take the penalties.

On Aug. 31, 1982, the documents pertaining to the coal on the motor vessel Meihou Maru were presented to the Korean Exchange Bank's New York branch. Included among the documents was the forged certificate of analysis which showed the coal meeting contract specifications.

The altered document appeared to be a composite report which would represent the quality of the entire shipment—in this case 29,603 metric tons. Actually it was a doctored version of a subsample report that had been issued by Hampton Roads Testing Laboratories, Inc., Hampton Roads, Va., on Aug. 26, 1981.

Composite reports are drawn from numerous subsample reports which are derived from tests conducted of coal stockpiles at the mine site, at the pier, etc.

The alterations to the subsample report "were done and directed by Kevin Nelson," according to William Joseph, Lauer's brother-

in-law who performed odd jobs for Lauer Investment.

Joseph testified under a grant of immunity that Nelson used "white out" and "white out" tape to delete certain information, including the fact it was a subsample report, then typed in additional information. He further testified that the altered document was taken to W. E. Repro, a printing shop in Linden, N. J., for reproduction.

In a statement provided to the Pennsylvania Crime Commission, the owners of W. E. Repro confirmed that they had performed the work on the Hampton Roads document.

They said about 50 copies were produced, that a bill of approximately \$10 was paid, and that the printer who performed the work was then handed an extra \$20 by the customer. When the printer protested, he said he was told: "Keep it. You don't know it but you just saved me a million dollars."

Joseph was questioned about the altered document.

Q. Did anyone accompany Mr. Nelson to the printing shop?

A. I did, and Mal did originally.

Q. When, in order to get it printed, did Mr. Nelson talk to anyone in the store?

A. He just told them that he would like to have this document copied to look like an original.

Q. How much did he pay to have it printed?

A. I think \$30.

Q. Was \$30 a fair price for the number of copies made?

A. The price was higher than what would normally be paid for a copy.

Q. Why was that?

A. Because, I guess, it was

realized that what was being done wasn't legal.

The documents submitted to the Korean Exchange bank in New York by Lauer were forwarded to the bank's office in Tokyo. On Sept. 7, 1981, the Tokyo bank advised that there were discrepancies in several of the documents, including the certificate of analysis, and insisted that new documents be sent.

Eleven days earlier, Hampton Roads Testing Laboratories issued the composite analysis report for the Meihou Maru shipment showing that the coal did not meet specifications. This report was picked up by Joseph who returned to Easton, Pa.

Joseph testified that when Lauer saw this report he was visibly upset, telling Joseph "to change the document and modify the specific areas on it."

Q. Were you told how to change the report?

Joseph: As far as specific values to put in there, yes.

Q. Who told you that?

Joseph: I believe it was Mal.

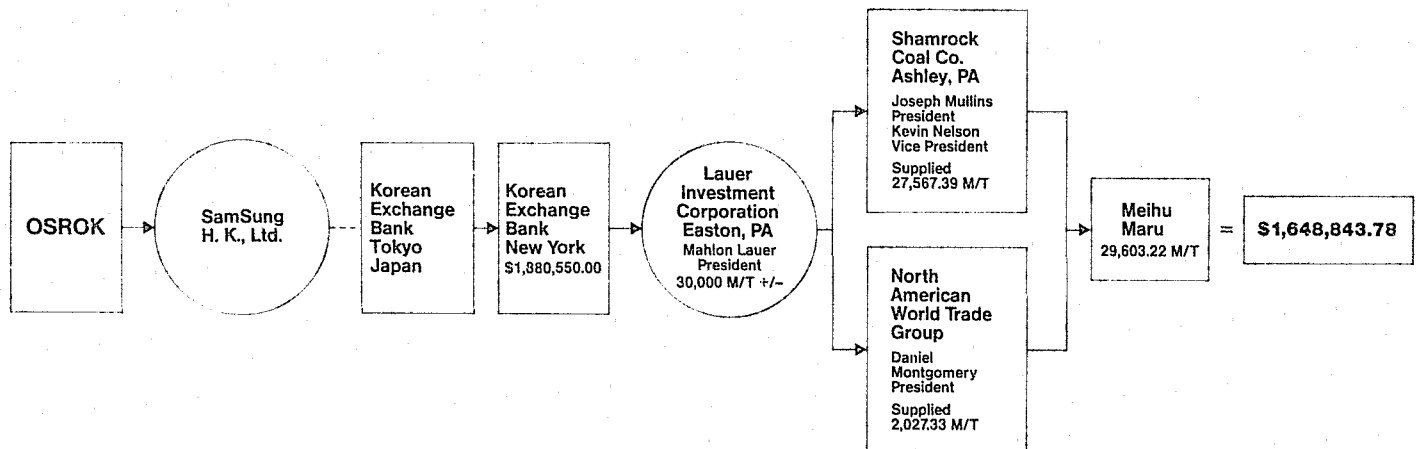
Q. Mal dictated to you what percentages to put on the new report?

Joseph: What new values to put in.



Walter Conrad

# LAUER INVESTMENT CORPORATION TRANSACTIONS



Joseph told Commission agents that he took the document to a friend, Walter Conrad, who ran The Printing Place in Easton. He said a white piece of paper was inserted over the information he wished to change and that the revised information was added to the white piece of paper. The altered document was then printed and sent off to the Korean Exchange Bank as one of the new documents that the Tokyo office had requested.

Joseph testified he paid Conrad between \$50 and \$150 for the work, the money being provided by Lauer. When questioned why he had paid so much, Joseph responded: "Because he had suspected it was something illegal, and I wanted to pay him that much money so that he wouldn't tell anybody what was going on."

Conrad confirmed that he had performed the work for Joseph, a high school classmate who had recently made an unsuccessful bid for a seat on Easton's City Council. Conrad was asked who had changed the numbers on the documents that were brought to his shop. He replied: "Billy did with my typewriter."

Q. Would you explain . . . the procedure that you and Mr. Joseph used in creating the altered document?

Conrad: We retyped a section, pasted it up on the light table, and I have a photo offset process. All we have to do is shoot the original and we can reproduce it.

Q. Did you at any time . . . become suspicious that what you were doing might be illegal?

Conrad: Yes.

Q. What caused you to become suspicious?

Conrad: Just the way it was so systematic, always the same. There was never any time to really handle it like (in) a normal print shop. People running in and running out, paying me twice or three times.

Q. Two or three times what the job would normally require?

Conrad: Yes.

## Sampler Offered \$6,000 to Switch Coal

The coal supplied by North American World Trade Group contained a quantity of petroleum coke, a by-product of petroleum refining. It is a high sulphur, high BTU, low moisture material that is similar in size to coal silt, but is grayish in color. Due to its high sulphur content it can be harmful to humans when burned.

Daniel Montgomery, president of North American World Trade Group, confirmed the presence of "pet-coke" in the coal he sold to Lauer. He provided the Crime Commission with certificates of analysis showing the coal contained sulphur levels of six to seven percent. Pennsylvania anthracite normally maintains a sulphur content of about one percent.

# LAUER INVESTMENT CORPORATION

## CERTIFICATE OF ANALYSIS

### "Meihou Maru" Shipment

ORIGINAL

ALTERED

**HRT** HAMPTON ROADS TESTING LABORATORIES  
212474  
DATE OF REPORT: Aug. 26, 1981

**Certificate of Analysis**  
SAMPLE IS Anthracite Coal, (STOCKPILE)

DATE RECEIVED: Aug. 26, 1981  
SHIP: PIER #3 NEWARK, N.J. OSROK CONTRACT NO.  
MARK: KFX/P-KOS-7912127-SH  
SHIPPER: Samsung Moolan H.K. Ltd., Hong Kong  
FROM: Lauer Investment Corporation  
IMPORTER: OFFICE OF SUPPLY, Government of the Republic of Korea, Seoul, Korea  
ANALYST: ALE DEY

TOTAL MOISTURE	9.97	10.24	10.05
VOLATILE MATTER	9.22	10.24	10.05
FIXED CARBON	56.56	62.83	61.64
Ash	24.25	26.93	26.42
Calorific Value	100.00	100.00	100.00
Sulphur	0.47	0.52	0.51
Chlorine	9087	10093	9902
Calorific Value	5640	5607	5501

FREE SWELLING INDEX ASTM XXX  
ASH FUSING TEMPERATURE F. XXX  
SIZE 0 - 25mm

ROBERT F. LANIER, CHEMIST

**HRT** HAMPTON ROADS TESTING LABORATORIES  
212474  
DATE OF REPORT: Aug. 26, 1981

**Certificate of Analysis**  
SAMPLE IS Anthracite Coal, (STOCKPILE)

DATE RECEIVED: Aug. 26, 1981  
SHIP: PIER #3 NEWARK, N.J. OSROK CONTRACT NO.  
MARK: KFX/P-KOS-7912127-SH  
SHIPPER: Samsung Moolan H.K. Ltd., Hong Kong  
FROM: Lauer Investment Corporation  
IMPORTER: OFFICE OF SUPPLY, Government of the Republic of Korea, Seoul, Korea  
ANALYST: ALE DEY

TOTAL MOISTURE	9.97	10.24	10.05
VOLATILE MATTER	9.22	10.24	10.05
FIXED CARBON	56.56	62.83	61.64
Ash	24.25	26.93	26.42
Calorific Value	100.00	100.00	100.00
Sulphur	0.47	0.52	0.51
Chlorine	9087	10093	9902
Calorific Value	5640	5607	5501

FREE SWELLING INDEX ASTM XXX  
ASH FUSING TEMPERATURE F. XXX  
SIZE 0 - 25mm

ROBERT F. LANIER, CHEMIST

# LAUER INVESTMENT CORPORATION

## CERTIFICATE OF ANALYSIS

### "Meihou Maru" Shipment

ORIGINAL

ALTERED

August 20, 1981  
CERTIFICATE OF ANALYSIS - LAB. NO. 212648

Vessel: K/V MEIHOU MARU  
Port of Loading: Port Newark  
Quantity: 29603.72 M.T.  
Shipper: Samsung Moolan H.K. Ltd., Hong Kong  
Client: Lauer Investment Corporation  
Date of Sampling: August 20 & 21, 1981  
Date of Loading: Completed: August 20, 1981  
Commodity: OSROK, Office of Supply, Government of the Republic of Korea, Seoul, Korea.  
Contract No.: KFX/P-KOS-7912127-SH  
Description: Anthracite Coal of U.S.A. origin in bulk

**SPECIFICATIONS**

Total Moisture	10 max. (as received basis)
Ash	30 max. (air dry basis)
Volatile Matter	10 max. (air dry basis)
Sulphur	1 max. (air dry basis)
Calorific Value	5500 KCal/Kg min. (air dry basis)
Size	0-25mm

We hereby certify that the above described product has been analyzed and reported as follows:

**ANALYSIS**

Total Moisture	11.2 (as received basis)
Ash	26.42 (air dry basis)
Volatile Matter	10.05 (air dry basis)
Sulphur	0.51 (air dry basis)
Calorific Value	5501 (air dry basis)
Size	0-25mm

HAMPTON ROADS TESTING LABORATORIES  
BY: ROBERT F. LANIER, CHEMIST

**HRT** HAMPTON ROADS TESTING LABORATORIES, Inc.  
617 HANCOCK DRIVE • HAMPTON, VIRGINIA 23061 • (804) 896-9710  
August 20, 1981  
CERTIFICATE OF ANALYSIS - LAB. NO. 212648

Vessel: K/V MEIHOU MARU  
Port of Loading: Port Newark  
Quantity: 29603.72 M.T.  
Shipper: Samsung Moolan H.K. Ltd., Hong Kong  
Client: Lauer Investment Corporation  
Date of Sampling: August 20 & 21, 1981  
Date of Loading: Completed: August 20, 1981  
Commodity: OSROK, Office of Supply, Government of the Republic of Korea, Seoul, Korea.  
Contract No.: KFX/P-KOS-7912127-SH  
Description: Anthracite Coal of U.S.A. origin in bulk

**SPECIFICATIONS**

Total Moisture	10 max. (as received basis)
Ash	30 max. (air dry basis)
Volatile Matter	10 max. (air dry basis)
Sulphur	1 max. (air dry basis)
Calorific Value	5500 KCal/Kg min. (air dry basis)
Size	0-25mm

We hereby certify that the above described product has been analyzed and reported as follows:

**ANALYSIS**

Total Moisture	9.97 (as received basis)
Ash	26.42 (air dry basis)
Volatile Matter	10.05 (air dry basis)
Sulphur	0.51 (air dry basis)
Calorific Value	5501 (air dry basis)
Size	0-25mm

HAMPTON ROADS TESTING LABORATORIES  
BY: ROBERT F. LANIER, CHEMIST

SOCIETY MEMBER  
American Council of Independent Laboratories  
American Society for Testing Materials  
National Fire Protection Association  
Petroleum Industry Association  
Petroleum Institute  
Petroleum Institute of America  
Petroleum Institute of Europe



Kevin Nelson

Wide World Photos

In testimony before the Commission, Nelson stated that Shamrock Coal had shipped an additional 20,000 tons of coal to Port Newark that was consigned to Lauer. He said Lauer was to obtain another letter of credit for additional shipments. However, before the letter of credit was obtained, Shamrock Coal, according to Nelson, sold the silt to another firm.

Nelson testified: "He (Lauer) was absolutely furious when we sold the coal out from under him, fit to be tied."

Joseph, however, disputed that account, stating that Shamrock Coal wanted to supply additional anthracite silt, but that Lauer refused to do further business with Nelson.

At any rate, the deal had gone sour.

In correspondence with the Office of Supply, Republic of Korea (OSROK) through the United States Department of State, the Crime Commission determined that tests performed on the Meihou Maru shipment once it reached Korea showed the coal had a calorific value of 4900 KCALs—600 KCALs shy of contract specifications.

The Hampton Roads' test results indicated the moisture content of the coal at loading was 14.67 percent, better than twice the 7 percent level specified in the contract.



William Joseph

Wide World Photos

Following the guidelines of the letter of credit, a penalty of \$205,088 should have been charged for excessive moisture. However, due to the altered reports, only \$58,908 was paid, representing an ultimate loss to OSROK of \$146,180.

OSROK further advised the Commission that no penalty was assessed regarding the low KCAL content because the coal from the Meihou Maru was mixed with other high quality shipments to bring it within OSROK's specifications.

Joseph was asked if he had ever heard "from Mr. Lauer or Mr. Nelson or Mr. Yong Gun Kim (an associate of Lauer's) that anyone in Korea was offered money or anything of value to pass the Meihou Maru?"

He replied: "There were remarks made that it cost a lot of money to take care of the Meihou Maru, which to me indicated that apparently they had to make some payments over there."

One of the witnesses at the Crime Commission's public hearings in Harrisburg was Zigmund Zarko III, a coal sampler at Fuel Engineering who testified that Nelson once had offered him money, a car, and a job if he would switch some coal samples. He said the incident occurred during the fall of 1982 at Port Newark, N. J. This exchange took place:

Chief Counsel Johnson: Did he offer you money if you would agree to make that switch?

Zarko: Yes he did.

Johnson: Did he provide you with a specific dollar amount?

Zarko: Yes.

Johnson: What was that amount?

Zarko: He offered me \$2,000 when he confronted me, told me while they are loading the ship he would offer me \$2,000 more, and after it was done two more thousand.

Johnson: Did Mr. Nelson have the coal samples with him that he wanted switched?

Zarko: Yes he did. They were in the trunk of his car.

Johnson: Did Mr. Nelson stuff anything in your pocket at that time?

Zarko: Yes he did.

Johnson: What was that?

Zarko: It was a check.

Johnson: In what amount?

Zarko: \$2,000.



Zigmund Zarko III

Johnson: Who was that check made payable to?

Zarko: Myself.

Johnson: Do you recall which bank that check was drawn on?

Zarko: I just glanced at the check and I gave it right back to him.

Johnson: In addition to the monies, the \$6,000 that you have just testified to, did Mr. Nelson offer additionally to provide you with, to buy you a motor vehicle?

Zarko: Yes he did.

Johnson: Did he indicate what type?

Zarko: He said anything I wanted.

Johnson: Did Mr. Nelson tell you that he would give you additional new employment if you were fired as a result of taking the money and switching samples?

Zarko: Yes he did.

Zarko further testified that he notified his supervisor about the incident. He said that Nelson, when confronted by Fuel Engineering officials, denied he had ever offered anyone money.

Thomas Barrett Jr., the former Fuel Engineering coal sampler who said he was approached by Yoo during the James Martin Coal deals, also testified at the public hearings about his dealings with Nelson. He was asked if there was a specific conversation with the Shamrock Coal vice president about coal samples during August of 1982.

Barrett: Yes, there was. I was sampling in Newark, New Jersey, and I had never met Mr. Nelson before, and he came up to me that day and just basically asked me if there was anything I could do to change his results to lower his moisture in his coal, so, you, know, the test would be better for him.

Johnson: How did you respond?

Barrett: I thought about it for a little bit, and I said, okay, and we started talking price and all, and that was about it. We started talking about it and I got fired the next day (as the result of an unrelated event involving misuse of a company car).

Johnson: Did he ever give you any money?

Barrett: He gave me 20 bucks. That was it, 20 bucks.

Johnson: For the \$20, that was a down payment?

Barrett: Yes.

Johnson: How much were you to receive?

Barrett: Well, I was supposed to get \$50 a day for changing the preliminary results, or whatever, and then \$2,500 upon completion of the ship if the results were satisfactory to Mr. Nelson.

Johnson: You were only paid \$20?

Barrett: Yes, I left it go.

Johnson: So you never altered any samples or results?

Barrett: No.

Nelson appeared (under subpoena) at the public hearings. However, exercising his 5th Amendment rights, he refused to answer questions, explaining that due to the death of his father a week earlier he had not had time to consult with an attorney nor review relevant documents.

On April 27, 1983, the Pennsylvania Crime Commission subpoenaed the books and records of Shamrock Coal Co. Those documents were incomplete—many had been lost in a fire at Nelson's home.

Marine Industries, Ltd. entered a contract with Sejung M. M. Co., Ltd. whereby Sejung agreed to supply 132,415 metric tons of anthracite silt (plus/minus 5% at seller's option) to Korea Tacoma at \$67.68 per metric ton.

OSROK subsequently opened a letter of credit with the Korean Exchange Bank, Seoul, in favor of Sejung M. M. (USA), Inc. for \$9,409,939. The negotiating bank under the letter of credit was the Cho-Heung Bank, Ltd., San Francisco, Calif.

As mentioned earlier, Sejung had appointed Lauer Investment as its sole representative in the importation of U. S. anthracite to Korea.

In an interview, Lauer told Crime Commission agents that he had entered an agreement with Sejung under which the profits were to be divided equally between two groups—an American group and a Korean group. The American group was comprised of Lauer, Yong Gun Kim, Seung Kyu Kim, and an individual identified only as Mr. Kong. Members of the Korean group were identified as Hyun Sik Kim, Kwang Nam Oh, Young Tae Lee and H. C. Paik.

The bulk of the coal was brokered by Nugget Coal Sales, Inc., which was incorporated in Pennsylvania on Oct. 14, 1981. The president of Nugget was Matthew Whitaker, a convicted gambler and a onetime "foster" father to Lauer. According to Whitaker, the two men happened to meet in a coffee shop in a hotel in Pottsville in the fall of 1981.<sup>8</sup>

Whitaker testified at a private hearing that Lauer asked him during the chance meeting if he knew anyone who had coal. He said he did.

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<sup>8</sup> Whitaker has been arrested 15 times dating back to 1939. Many of those arrests were related to gambling. His latest arrest, which resulted in a conviction, occurred on May 24, 1982, when he was charged with pool selling and bookmaking in connection with a large scale gambling operation that stretched to Las Vegas.

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On Sept. 5, 1981, Korea Tacoma



Q. Were you involved in the coal industry prior to your dealing with Mal Lauer?

Whitaker: No.

Q. This was your first involvement in the coal industry?

Whitaker: (nods vertically). I wouldn't know if they were selling rock or coal.

The coal was supplied from various sources throughout the Pottsville area. It was shipped to Korea on four vessels: 34,649 metric tons on Nov. 7, 1981, on the Rimba Merbau; 35,699 metric tons on Dec. 9, 1981, on the Cresco; 33,773 metric tons on Dec. 26, 1981, on the Fort Calgary; and 34,767 metric tons on Jan. 24, 1982, on the Arlberg. The four ships sailed from Port Newark, N. J. According to Nugget, it brokered all but 13,398 metric tons of the coal, which was supplied by another Pennsylvania dealer.<sup>9</sup>

The first shipment was tested by Fuel Engineering Co.; the remaining three by Hampton Roads Testing Laboratories. All four composite analysis reports showed the coal to be below contract specifications and beyond the rejection point stipulated in the letter of credit. All four reports were forged and altered to bring the coal within contract specifications prior to being submitted to the Cho-Heung Bank.

Upon receipt of the altered documents, Cho-Heung Bank paid the amount due per invoice, then telexed the Korean Exchange Bank's New York office requesting reimbursement for funds extended and also certifying that all terms and conditions of the letter of credit has been complied with in full.

The following amounts were released: \$2,198,054 on Nov. 12, 1981; \$2,251,590 on Dec. 11, 1981; \$2,175,406 on Dec. 29, 1981; and \$2,019,711 on Jan. 29, 1982.

The alterations of the certificates of analysis resulted in a non-assessment of penalties and an ultimate loss of \$1,611,256 due to excessive moisture content.

Lauer stated that he had entered an agreement with Whitaker to receive one-third of Nugget Coal's profits. Whitaker denied that such a deal had ever been made, saying that any payments made to Lauer were "commissions" for shipping the coal.

Whitaker also stated that Lauer had never been an officer or partner in Nugget and that he had not been involved in the firm's operations. Whitaker's wife, however, who served as Nugget's secretary-treasurer, painted a different picture in testimony before the Commission:

Q. Did Mal Lauer ever make any decisions for Nugget?

Delores Whitaker: He ran the whole business really. He knew the business. That is what I should be saying. We didn't know anything about it. He knew the Koreans. He knew the coal. He knew everything about it. We were just to get the coal and give it to him. It was that simple. Then we were to give him so much money.

The Crime Commission subpoenaed the books and records of Nugget Coal Sales, Inc. The following "commission" disbursements were made to Lauer from Nugget via check payable to Lauer personally: \$10,100, dated Oct. 30, 1981; \$15,000, dated Nov. 6, 1981; and \$19,700, dated Jan. 8, 1982.

The following checks were issued as "commissions" to Lauer Investment Corp.: \$3,080, Oct. 22, 1981; \$12,160, Oct. 29, 1981; and \$2,000, dated Dec. 7, 1981.

The following disbursements from Nugget to Mal Lauer were marked loans: \$33,725, Nov. 18, 1981; \$8,000, Dec. 1, 1981; a second check for \$8,000, also dated Dec. 1, 1981; \$6,000, Dec. 31, 1981; and \$6,100, also Dec. 31, 1981. The loans totaled \$61,825.

In September of 1982, a Nugget Coal Sales, Inc. check for \$61,825 was issued to Lauer Investment Corp. for "payment of commissions." A check for the same amount was issued on the same day from Lauer Investment to Nugget for "repayment of loan."

The Commission determined this was a paper transaction to "wash" Nugget's records of the loans to Lauer. For one thing, there was not sufficient funds in either account to cover the checks.

Whitaker testified as follows:

Q. Do you know if Lauer Investment had \$61,825 in the account to back up that check?

A. I know everything balanced out.

Q. It balanced out because one (check) was a credit and one was a debit, if you want to call it that, is that correct?

A. I don't know. I guess if that is what you are trying to tell me.

Q. In effect they're just paper. They don't mean anything, is that correct?

A. We have to keep the books straight.

<sup>9</sup> It is interesting to note that, according to the Pennsylvania Department of Revenue, there is no record of Lauer Investment Co. filing a Corporation Tax Report for the tax year ending 1982.

Joseph told the Commission that he was amazed that Lauer had received any money from either Whitaker or Nugget Coal because at the time he (Joseph) was receiving barely enough money to get by on.

"... he (Lauer) knew of the financial situation I was in, and I think he would have made me aware even if it was a minimal amount of money that he received," Joseph testified. "I think he would have shared it with me at that time, but that—I am not so sure that is 100 percent true, either."

Joseph testified that he was questioned about Lauer's relationship with Nugget Coal by two Sejung officials (Seung Kyu Kim and Hyun Sik Kim).

Q. What did they ask you?

A. . . . whether he was receiving any kickbacks or anything like that. I told them that I honestly didn't know because I was isolated on the pier, and Mal was up in Pottsville.

Q. Did they use the word kickback?

A. They might have used it, something that connoted the same as that.

On Nov. 12, 1981, a Nugget Coal Sales check in the amount of \$8,800 was issued to Delores Whitaker for the purchase of a 1977 Cadillac. Within a span of six months that car possibly had as many as five owners. Possibly not.

Whitaker was asked about the Cadillac.

Q. You had a personal 1977 Cadillac limousine?

A. Right.

Q. You sold it to Nugget Coal.

A. Right.

Q. And then gave it to Mal Lauer to use?

A. Right, to transport the Koreans around.

Q. Somewhere along the line you lost this Cadillac. What did you do with the Cadillac?

A. It was sold.

Q. You sold it to Mal Lauer.

A. I could have.

Mrs. Whitaker testified as follows:

Q. You at some time owned a Cadillac . . . ? Then you transferred the car to the company, which you owned, so virtually you still owned the car. What happened to the car?

A. I never thought of it like that. Mal had it. That is the last I know.

Q. You don't know where the car is now, is that correct?

A. No, I don't.

The Crime Commission was unable to find the car either. It also was unable to find any evidence that the vehicle was ever sold to Lauer. It did discover that on May 15, 1982, the car's title was transferred from Delores Whitaker to Fries Cadillac Co., Bethlehem, Pa., with Lauer using it and a 1977 Plymouth as a trade-in on a new car.

### **An Early Christmas Present**

On Nov. 7, 1981, the motor vessel Rimba Merbau departed Port Newark, New Jersey, for Korea. The coal was tested by Fuel Engineering Co. which issued a certificate of analysis showing it to be below specifications and beyond the rejection point. However, the document submitted to the Cho-Heung Bank in San Francisco to release the funds was altered to make the silt meet "specs."

Joseph was questioned about the altered report.

Q. Were you given a Fuel Engineering Corporation certificate of analysis by either Mal Lauer or S. K. Kim to alter?

A. Yes.

Q. You were given that certificate to alter by Mal Lauer?

A. Most likely, yes.

Q. Did he, in fact, tell you to alter that document?

A. He would have given me the specific values that he would have wanted on the document, yes.

Q. Did he give you the values to put on that document?

A. Yes, he did.

Joseph testified that he returned to The Printing Place, Easton, paying Conrad between \$75 to \$100 in cash to alter then reprint the form. He said the original document was destroyed.

Michael Camanzo, a Fuel Engineering supervisor, testified on Nov. 7, 1983, that Lauer personally picked up a certificate of analysis (believed to be for the Rimba Merbau shipment) from the firm's office in New York during the fall of 1981 and that he brought along a present. Follows excerpts from his testimony:

Q. Did Mr. Lauer ever offer you anything of value to alter test results or to provide blank forms?

A. To answer your question, no. But I was offered a Christmas gift.

Q. What exactly did he state?

A. He said this is an early Christmas gift? He had a white envelope, but he didn't say anything like you are saying, change of analysis. I don't know what was in the envelope. I can imagine.

# SEJUNG M. M. (USA), LTD.

## CERTIFICATE OF ANALYSIS

### "Rimba Merbau" Shipment

ORIGINAL

Fuel Engineering Company of New York  
30 CLARKSON AVENUE • WOODBRIDGE, N.Y. 11793 • (516) 749-7800

Test Report # 326380 Sample Identification Vessel: "M. V. RIMBA MERBAU"  
Port of Loading: Port Newark, New Jersey U.S.A.  
Shipper: Sejung M. M. (USA) Inc.  
Shipper Client: Hwang Coal Co. / 34,649.79  
Sampled by: (USA) Date: 11/5/81  
BY: Tom Gonsky, Ron Hodgson & Tom Barrett

Date Received 11/9/81  
P.O. #

**CERTIFICATE OF ANALYSIS**

Approved by *[Signature]*  
Date Mailed November 10, 1981  
Date of Loading: Commenced: Nov. 5, 1981  
Completed: Nov. 7, 1981  
Consignee: Office of Supply Government of the Republic of Korea  
Contract #: K/PX/P-KDS-7909079-SH-B

Sejung M. M. Inc.  
122 E. 42nd Street, Room 502  
New York, New York 10168  
Attn: Mr. Yung Tao Lee

	AS RECEIVED	AIR DRY	DRY
Moisture	23.702	1.932	XXXXX
Ash	23.432	30.112	20.712
Volatile	8.632	8.532	8.712
Fixed Carbon	46.222	59.392	60.572
Sulphur	0.502	0.642	0.552
Heating Value	7564	9720	9915
K Calories	4202	5400	5507

**COPY**

ALTERED

Fuel Engineering Company of New York  
30 CLARKSON AVENUE • WOODBRIDGE, N.Y. 11793 • (516) 749-7800

Test Report # 326380 Sample Identification Vessel: "M. V. RIMBA MERBAU"  
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Shipper Client: Hwang Coal Co. / 34,649.79  
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Sulphur	0.502	0.642	0.552
Heating Value	7564	9720	9915
K Calories	4202	5400	5507

**ANALYSIS**

Total Moisture 10.47 (As received basis)  
Ash 24.41 (air dry basis)  
Volatile Matter 8.97 (air dry basis)  
Sulphur 0.66 (air dry basis)  
Calorific Value 5,815 (air dry basis)  
Size 0-25 m/m

We hereby certify that the above described product has been analysed and reported as follows:

The commodity described herein is in conformity with the commodity description in the contract, and marking requirements have been duly complied with under the contract.

Q. Did you accept it.

A. No.

Q. What happened?

A. We were walking out. I walked him out of the place. It was late, no one was around. He said, "This is an early Christmas gift." I told him it wasn't Christmas.

The remaining three ships, the Cresco, the Fort Calgary and the Arlberg, were, as previously stated, all tested by Hampton Roads Testing Laboratories, Inc. Again, the certificates of analysis were forged and altered to bring the silt within the "specs" set forth in the letter of credit. This work also was performed at The Printing Place.

The actual results certified by Fuel Engineering compared to the altered report follow:

The original report figures issued by Hampton Roads compared to the figures contained in the altered reports that were submitted to the Cho-Heung Bank follow:

#### M/V Rimba Merbau

	Actual Report #326380	Altered Report #326380
Total Moisture*	23.70%	10.47%
Ash	30.11	24.41
Volatile Matter	8.55	8.97
Sulphur	0.64	0.66
Calorific Value**	5400KCAL/KG	5815 KCAL/KG

\*As received basis

\*\*Air dry basis

#### M/V Cresco

	Actual Report #216335	Altered Report #216335
Total Moisture*	17.91%	9.91%
Ash	29.26	26.26
Volatile Matter	9.23	9.23
Sulphur	0.67	0.67
Calorific Value**	5623KCAL/KG	5823KCAL/KG

#### M/V Fort Calgary

	Actual Report #216577	Altered Report #216491
Total Moisture*	17.05%	9.23%
Ash	29.33	24.76
Volatile Matter	8.88	9.05
Sulphur	0.66	0.65
Calorific	5517KCAL/KG	6103KCAL/KG

## M/V Arlberg

	Actual Report #216990	Altered Report #226498
Total Moisture*	18.94%	9.23%
Ash	29.95	23.31
Volatile Matter	8.86	8.87
Sulphur	0.68	0.66
Calorific Value**	5477KCAL/KG	6073KCAL/KG

\*As received basis

\*\*Air dry basis

Representatives of Hampton Roads, shown copies of the certificates of analysis that were submitted to the bank, confirmed that they were never issued by the company. The signature of the lab's chemist was forged on all three documents.

Joseph testified that he had altered the records in order to help his brother-in-law and that Lauer knew about all the forgeries. "In regard to any person other than my brother-in-law asking me to commit a criminal act, normally I wouldn't do it, but given the content of the situation, I did not feel that the consequences were adversely affecting anybody that greatly, and whether it came directly from Mal or whether it came from S. K. Kim or H. S. Kim, I knew of the situation, and I knew of the structure of their group. So in order to help him, I would have to help his group . . .," Joseph stated.

Q. With respect to the falsification of the certificates of analysis, didn't you speak with Mr. Lauer regarding all of the falsifications that were completed by yourself?

Joseph: Either subsequently after they were falsified or in the majority of them previously to being falsified, Mal was aware that I was going to modify the papers, the certificates.

Q. And in all these situations, did he direct you as to how to falsify them and what figures to use to some degree?

Joseph: Yes.

Q. He was aware of all of them (from) beginning to end?

Joseph: Yes. I would have to say yes.

Commissioner Lewis: Mr. Joseph, I want to make sure I understand this. You go to work in the summer of 1981 for a company called Lauer Investment Corporation? Is that what you are telling us?

Joseph: yes.

Lewis: And some other people named who?

Joseph: Yong Gun Kim, S. K. Kim, H. S. Kim, Mr. Lee, Mr. Yo, and various other people in Korea who I don't know.

Lewis: For this enterprise, you go to Virginia and into Easton to a print shop, and you get at least five documents altered, correct?

Joseph: Correct.

Lewis: Counterfeited in a sense?

Joseph: Yes.

Lewis: In every sense, right?

Joseph: Yes.

Lewis: You knew what you were doing, and you knew it was illegal, in fact, criminal?

Joseph: Yes.

Lewis: I think you also told us you participated in the forgery of Robert Lanier's signature, right?

Joseph: What do you mean by forgery?

Lewis: Didn't you tell us you cut out his signature and reprinted it on these documents?

Joseph: Yes.

Lewis: He, Mr. Lauer, came . . . with you . . . at least one time that you went into Conrad's print shop, right?

Joseph: Right.

Lewis: Did he know what you were doing?

Joseph: Yes.

Lewis: Did he know you were involved in counterfeiting and forgery at that point, altering the documents?

Joseph: Yes.

Lewis: You said that at one time you were told . . . that if there was any problem, the Koreans would fix it. What did you understand by that?

Joseph: That whatever had to be done, if officials had to be bribed or reports had to be changed, or whatever it took to get shipments accepted, it would be done.

Lewis: Do you mean in Korea or here.

Joseph: In Korea.

**"Mal, You Know,  
We Can Go to Jail . . ."**

At a private hearing before the Crime Commission on Oct. 24, 1983, Joseph stated that he had discussed with Lauer the fact that a crime was being committed.

Joseph: I had indicated to him that I felt uncomfortable and I thought it was something illegal, and that I didn't like doing it . . . .

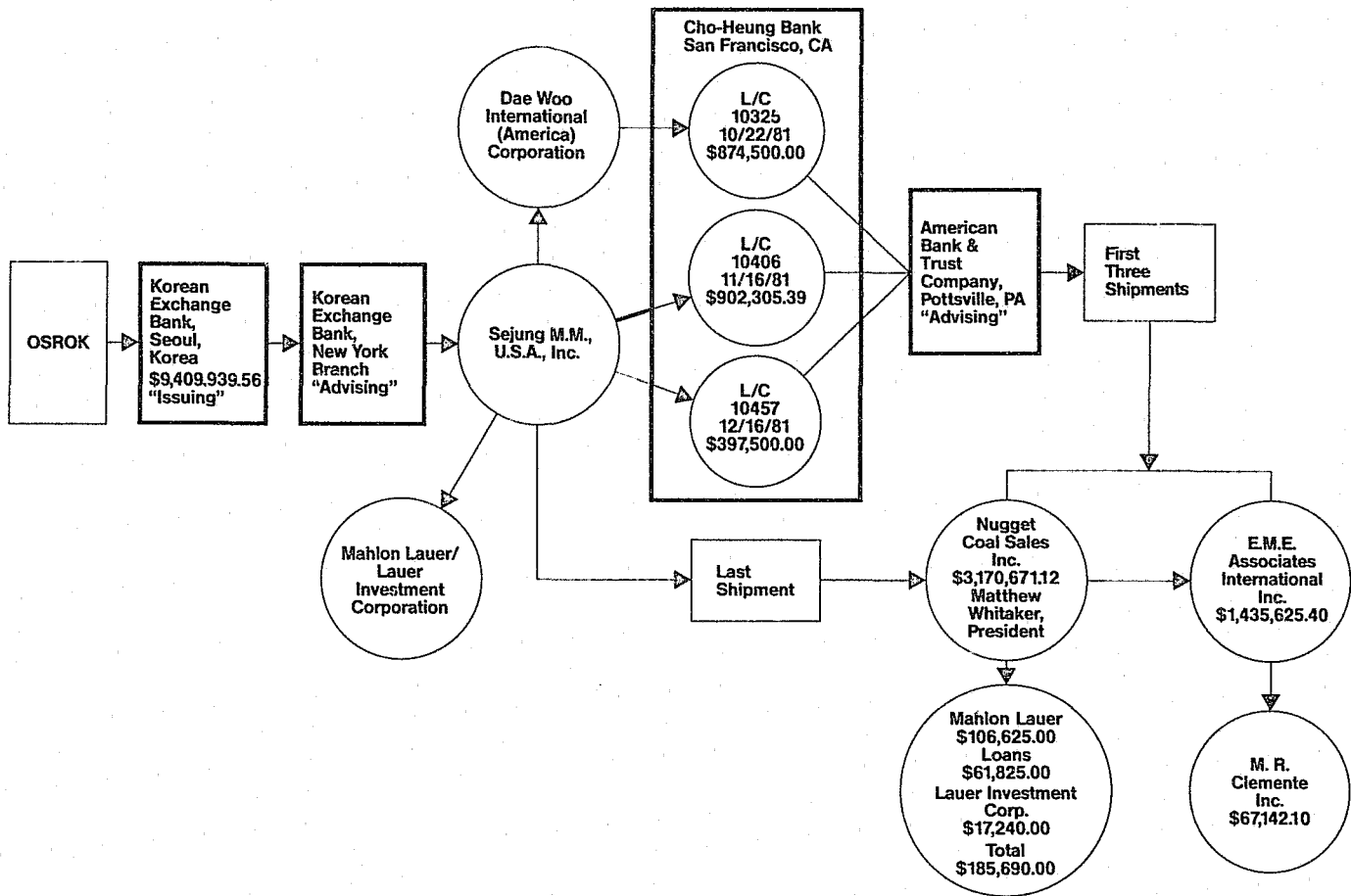
Q. What did he tell you?

A. I don't recall his response to it.

Q. Did he encourage you to hang in there and keep doing it . . . ?

A. Along those lines.

# NUGGET COAL SALES, INC. TRANSACTIONS



Q. Am I jogging your memory a little bit?

A. For me to recall exactly what he said, I would have to recall the instance in which it occurs, and I can't relate that specifically. I don't think there was a specific instance. I think it was something that might have been ongoing that I communicated to him, like "Mal, you know, we can go to jail for what we are doing."

Q. What was his general response to you?

A. I will take care of it. The general response would be sort of like, don't worry about it. It will all work out in the end.

Lauer cooperated with Crime Commission agents during the early stages of its investigation,

submitting to interviews about how the coal deals were structured. However, when subpoenaed to appear at a private Commission hearing on Aug. 24, 1983, he invoked his 5th Amendment rights, refusing to answer any questions. He also exercised those rights at the Crime Commission's public hearings in Harrisburg during February of 1984.

Due to the low calorific value of the coal, OSROK assessed a penalty of \$232,346, of which, according to corporate papers, \$71,000 was eventually passed on to Nugget Coal.

Nugget said it was owed a balance of \$139,855 from Sejung M. M. Nugget in turn passed its claimed losses along to the truck-

ing companies that had hauled the coal, refusing to pay outstanding invoices. The Crime Commission has determined that trucking firms in Pennsylvania and New Jersey incurred losses of approximately \$102,000 as a result of the Lauer-Nugget coal deals.

In addition, a law suit filed in Northumberland County Common Pleas Court by the Savitski Brothers Coal Co., Atlas, Pa., against Nugget Coal, claimed an outstanding balance of \$19,793 for coal supplied to Whitaker's company.

As stated earlier, the alterations and forgeries of the certificates of analysis for the four shipments resulted in non-payment of penalties and ultimate loss of \$1,611,256 due to excessive moisture content of the coal.

A comparison of the moisture content reported on the forged documents and the consequential penalties, with the moisture content reported on the authentic documents and the penalties that should have been assessed, follows:

#### M/V Rimba Merbau

Reported — 10.47%	Actual — 23.70%
\$2,345,091.69*	\$2,345,091.69
x 3.47%** =	x 28.4%*** =
Penalty Paid of \$81,374.68	Penalty Due of \$666,006.03

**\$584,631.35 Difference**

#### M/V Cresco

Reported — 9.91%	Actual — 17.91%
\$2,416,128.62*	\$2,416,128.62
x 2.91%** =	x 16.82%*** =
Penalty Paid of \$70,309.34	Penalty Due of \$406,392.83

**\$336,083.49 Difference**

#### M/V Fort Calgary

Reported — 9.23%	Actual — 17.05%
\$2,285,810.78*	\$2,285,810.78
x 2.23%** =	x 15.30%*** =
Penalty Paid of \$50,973.58	Penalty Due of \$349,729.04

**\$298,755.46 Difference**

#### M/V Arlberg

Reported — 9.23%	Actual — 18.94%
\$2,353,071.17*	\$2,353,071.17
x 2.23%** =	x 18.88%*** =
Penalty Paid of \$52,473.48	Penalty Due of \$444,259.83

**\$391,786.35 Difference**

**Total Difference: \$1,611,256**

\*Figure obtained by multiplying the unit price \$67.68 by the tonnage shipped.

\*\*Figure obtained by subtracting the maximum contract moisture specification, 7%, from the reported or actual moisture content.

\*\*\*Figure obtained by using the following formula contained in the letter of credit: For moisture content in excess of 7% up to 12%, the invoice amount shall be reduced by the percentage (for C and F value of the shipment). In excess of 12% up to 15%, the invoice amount shall be reduced by double the percentage (for C and F value of the shipment). In cases where moisture content exceeds 15% commodity will be rejected at time of loading.

Note: By computing the moisture level of the coal not paid for due to the falsification of analysis reports and subtracting the percentage of moisture from the total amount of coal on the shipment, the actual tonnage would be reduced by the following: Rimba Merbau 4,584.15 metric tons; Cresco 2,855.94 metric tons; Fort Calgary 2,641.11 metric tons; and Arlberg 3,375.93 metric tons for a total of 13,457.13 metric tons.

At the conclusion of its Lauer Investment/Nugget Coal investigation, the Crime Commission turned its findings over to the Northampton County District Attorney's Office for review.

On Dec. 7, 1984, Lauer was arrested and charged by that office with conspiring with members of Sejung M.M. (USA) Inc. to assist in the altering and uttering of forged certificates of analysis pertaining to the coal shipments.

As mentioned previously, losses incurred by shippers, suppliers and others—including honest Pennsylvania business persons and unknowing Korean taxpayers—totaled more than \$4 million. And that's only for the three coal deals the Crime Commission investigated. There were probably other deals, other victims.

Not all the losses can be measured strictly in dollars and cents. Reputations were damaged as well. The potential for future business in some cases was undermined.

The blackballing of Hampton Roads Testing Laboratories is one example.

It wasn't long before the Korean government began to suspect Hampton Roads had a hand in the misrepresentation of the coal's quality. After all, it was Hampton Roads that was testing the lion's share of the anthracite silt. It was Hampton Roads' documents that

were releasing the money from the banks. Or so the Korean government thought.

Officials of Hampton Roads, on the other hand, had no way of knowing that such sentiment was building overseas, and spreading back to America. They had no way of knowing their documents were being forged. All they knew was that business pertaining to Korean coal shipments was falling off sharply.

Robert Lanier, Hampton Roads' vice president who testified at the Commission's public hearings, said the blackballing lasted about one year. He estimated his firm may have lost between \$50,000 and \$75,000 in potential business before learning of the forgeries from a Crime Commission special agent and a lawyer in Hong Kong.

This exchange took place at the public hearings between Lanier and Wallace P. Hay, the Crime Commission's executive director:

Hay: Would this have come to your attention? Do you ever see any of these documents after you issue them out to the shipper?

Lanier: No, we do not see the documents any more.

Hay: This could have gone on, and you would have had no way to basically detect or learn of this?

Lanier: The only way that we could have learned basically would be say if the documents were presented to the bank, and the bank called us and asked to see if these numbers jibe with our numbers or something like that.

Hay: Banks do that very frequently?

Lanier: No, they do not.

Throughout his testimony, Lanier depicted a coal shipping industry in which attempts to fudge figures were rather commonplace. As he put it:

**EDITOR'S NOTE:** James Hooton, executive director of the Pennsylvania Senate Environmental Resources and Energy Committee, testified at the Crime Commission's public hearings in Harrisburg on the Korean coal deals. Excerpts of his testimony, presented Feb. 22, 1984, follow:

Anthracite coal (to stage a comeback) has to be attractive in the two ways most important to government and industry decisionmakers; namely price and reliability. Efforts to keep anthracite's price competitive may be beyond the scope of this testimony, but please realize that the anthracite industry's reputation for reliability is really what this investigation is all about.

Anthracite's customers should not have to be concerned that they aren't getting the quantity and quality of coal they paid for. If the fraud your investigations have uncovered goes unchecked, the reputation of the industry as a whole could suffer; and our hopes for future expansion could be undermined.

Export sales, a market with real potential for growth, are especially linked to the reliability issue. The industrial countries of western Europe and Asia are looking again at American coal, not because of its low price, but because of the demonstrated unreliability of the oil flow from the Persian Gulf.

The political stability of the U. S. is an important buying consideration to, for example, Koreans and West Germans; but Pennsylvania's anthracite industry could be left out of the equation. The industry simply cannot afford a reputation for dishonesty.

Sen. (D. Michael) Fisher (this committee's chairman) and I are confident our state's anthracite industry is not, indeed, fraught with fraud. We know the vast majority of persons connected with the industry are honest. This panel, as it roots out the few, very few one would hope, bad apples, is taking the kind of positive steps necessary to bolster our state's valuable anthracite industry; and for that, we commend you.

"In the coal business, when people deal with people in shipping coal, they are always trying to get you to change this document, change that document. They are always telling you how much money you are costing people; so it is part of the business going on 30, 40 years that Hampton Roads is familiar with."

At one point Chief Counsel Johnson asked Lanier if he recalled a conversation with Lauer concerning the contents of a certain lab report. His reply provided additional insight into the world of coal: "Well, the statement was made something to the effect that things would be taken care of in Korea, but in the coal industry, as I told you, there are all sorts of things. Everybody has their agent overseas here, there, and elsewhere; and they say, 'My agent will take care of the problem we have,' or that sort of thing."

Johnson: Do you think Mr. Lauer was referring to his agent or to people who for some of the money would interfere if any complaints were made about the coal quality . . . ?

Lanier: In my opinion, knowing the way business is done in Korea, there would be probably exchange of monies taking place.

Johnson: In fact, regarding the James Martin Coal Co., Mr. Yoo, chief operating officer, he came right out and invited your business associate, Mr. (Jay) Williams, to change a certificate of analysis, did he not?

Lanier: Yes. Basically, he wanted us to present a subsample as an entire vessel.

Johnson: Not unlike what we saw . . . with the (motor vessel) Meihu Maru?

Lanier: Right.

Johnson: Analyze a pebble and claim it's a mountain.

Lanier: In other words, people bring coal to us and say, "Hey, this coal represents this boat." This is happening not only in this business, but in several businesses. They will say this 100 pounds of coal represents this boat. Well, that is fine but we will have to mark that sample "as submitted." In other words, we didn't sample it. It was submitted to our laboratory, so that we cannot say we sampled something we didn't.

### **Coal Sampler: Bribe Offers Not Unusual**

Thomas Barrett, the former employee of Fuel Engineering who testified that he was twice approached about changing documents, stated that such incidents were not unusual. This exchange took place between Barrett and Commissioner Lewis:

Lewis: Was this the only time (the Kevin Nelson incident), other than the Yung Soo Yoo conversation, that you were asked to alter documents or alter samples for money?

Barrett: No, I had been asked about it before, but not by any of these (people). I had been asked many times.

Lewis: Many times?

Barrett: Well, you know, but I never took any but one time, but none of these guys had anything to do with that.

Lewis: Mr. Barrett, without getting into specifics, are you suggesting that this is something of a common practice that you were engaged in, receiving bribe offers; this is nothing unusual for a coal sampler?

Barrett: Did I receive the offers?

Lewis: To be made the offers.

Barrett: No, it is not unusual at all.

Lewis: It happens all the time?

Barrett: Not all the time, but a good bit of the time.

Lewis: So it suggests to you that people who are making these offers thought there may be some hope of success—that you might receive and change this sample?

Barrett: Yes.

Hampton Roads Testing Laboratories, after knowledge of the forged documents became public, eventually was able to rebuild a brisk business testing Korea coal shipments. The climate of mistrust was changing and so was the way of doing business.

For one thing, the Dai Han Coal Corp., the government agency in Korea that was responsible for monitoring incoming coal, opened a lab in New Jersey. This lab, which does its own testing, gets “splits” or portions of all Korean-bound coal that is sampled by independent testing companies like Hampton Roads. The Korean government also has begun making on-site inspections at U. S. ports.

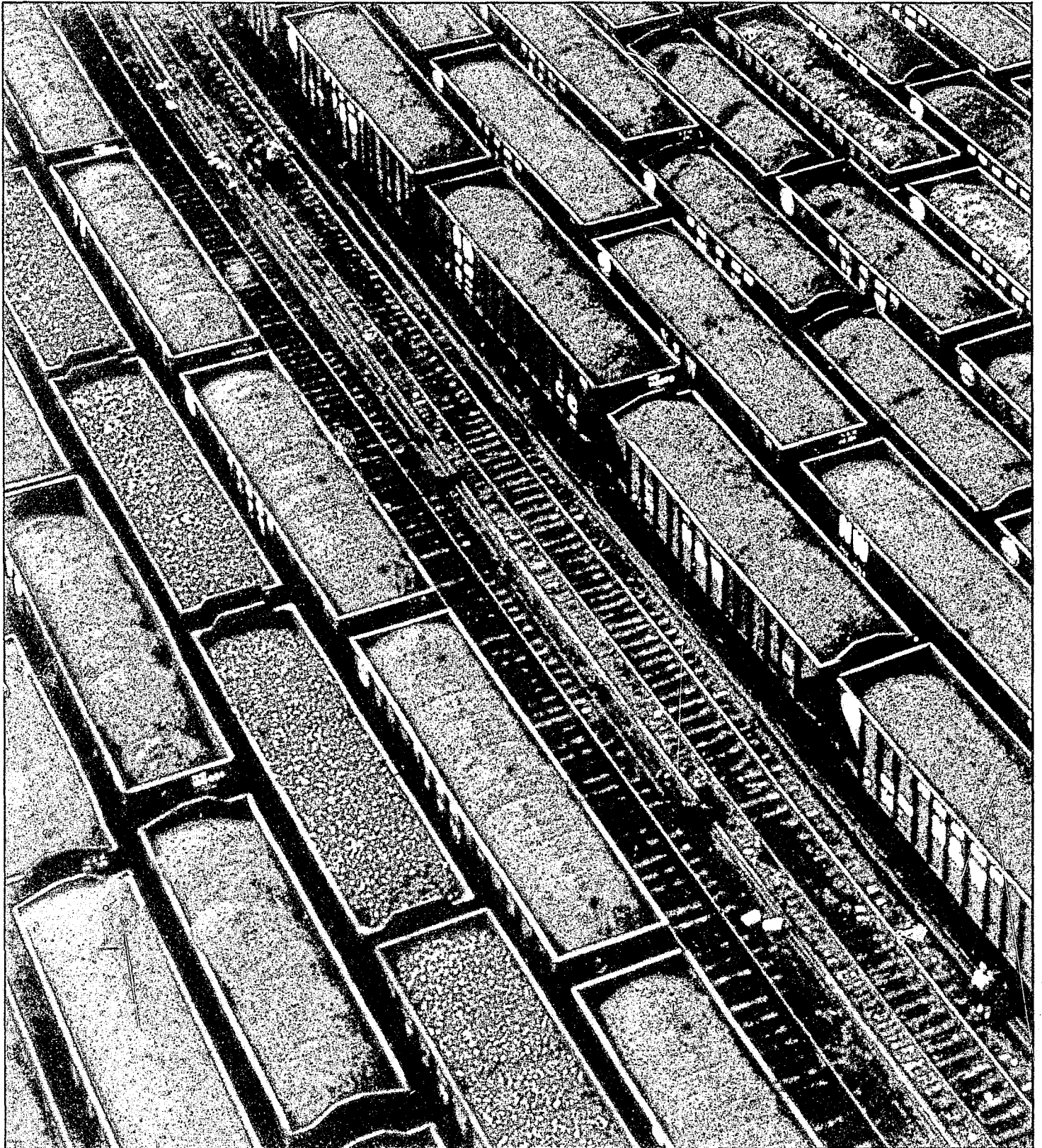
During the three coal deals dissected by the Crime Commission, the certificates of analysis were issued directly to the seller, who in turn then submitted them to the bank. That also has changed: the documents now are first submitted to Dai Han Coal Corp., which checks them for accuracy.

Hampton Roads Testing also made some internal changes. Their certificates of analysis were revamped so as to clearly distinguish whether coal that was tested had been sampled by the firm or by the customer. And their paper stock now carries a watermark, making documents it issues much more difficult, if not impossible, to counterfeit.



# 3

## *Coal Tax Shelters: Mining Investors, Not Coal*



In 1974, the U. S. Securities and Exchange Commission adopted Regulation 230.146, known as Rule 146. It was designed to spur investments in such vital but lagging industries as housing, or the exploration of coal, oil and gas.

Under Rule 146, private offerings of securities were made easier and less costly by exempting them from registration with the S.E.C. A private offering of any amount could be made to an investor who had "such knowledge and experience in financial and business matters that he (was) capable of evaluating the merits and risks of prospective investment" or was "able to bear the economic risks of the investment."

Whether or not an investor was qualified or not was left up to the promoter of the investment scheme.

Exemption from S.E.C. registration eliminated many costs and delays. It also meant, however, that it was more difficult for the S.E.C.'s enforcement arm to detect and prevent violations of the law.

At the time the S.E.C. adopted Rule 146, the Internal Revenue Service relaxed certain tax laws to likewise encourage investment in coal.

Under certain I.R.S. rulings, a taxpayer could invest, for example, \$10,000 in cash in a coal mining venture, plus \$40,000 in a non-recourse promissory note (which attached no personal liability) and be able to deduct the entire \$50,000 from his taxes in the year he made the investment.<sup>1</sup>

With arithmetic like that, coal tax shelters were soon booming, but they weren't spurring coal production. Instead crooked promoters were pocketing the cash

portion of the investments and moving on to a new deal.

And most investors didn't care. They weren't really interested in coal, only in the "tax profits" the schemes generated.

Michael J. McGinty Jr., a tax shelter coordinator assigned to I.R.S.'s Philadelphia office, testified at a Crime Commission hearing in February of 1982 that of some 400 coal tax shelters his office had examined, only one appeared to be legitimate.

By the fall of 1976, fraudulent coal tax shelters had become so epidemic that the I.R.S. rescinded some of its previous rulings, including the provision that non-recourse notes could be used in engineering the huge tax write-offs.

A year later, the U. S. Securities and Exchange Commission issued a rare warning to the American public about fraudulent coal schemes.

Most of the coal deals were syndicated as private offerings in the form of limited partnerships, a recognized legitimate business entity consisting of a general partner or partners and a number of limited partners.

The main legal advantage of a limited partnership is that it restricts liability. In a general partnership, each partner is equal and liable for all the debts. A limited partner is liable only up to the amount of his investment.

## *Churchill Coal*

It was during the late 1970s that the Pennsylvania Crime Commission, through its membership in the Leviticus Project, began to investigate a series of suspect tax shelters involving coal property in Pennsylvania.

After extensive review of financial documents and numerous interviews with the persons involved, the Commission con-

cluded that the scheme mustered revenues in excess of \$10 million for the promoters, in excess of \$5 million in tax write-offs for the investors—and not one shovel-full of coal.

Potential mining jobs were lost. Small surface property owners lost expected royalties.

Perhaps more importantly, investor confidence was undermined, discouraging future commitments of fresh capital to expand coal production.

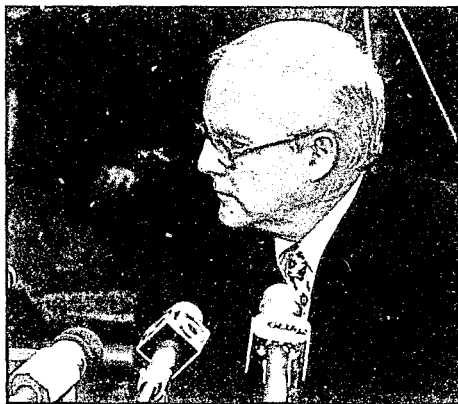
The investment scheme investigated by the Commission was shielded by a tangled web of interrelated "shell" companies that were engaged in an elaborate paper shuffle designed to keep the promoters well-insulated not only from the investors, but from regulatory and law enforcement agencies.

During the early 1970s, Starford Coal Corp. acquired mineral rights to 1,200 acres of bituminous coal-bearing land in Pennsylvania's Cambria County from Eastern Associated Coal Corp. Under terms of the agreement, Eastern held an option to repurchase the tract.

By 1976, Starford was in financial trouble. Its president and chief shareholder, August A. Andre, began looking for a buyer, or for financial backing to help acquire the type of equipment needed to mine at greater depths.

It was about this time that Churchill Coal Corp., a New York-based firm, began syndicating tax shelter investments in coal mining ventures in Pennsylvania. Churchill had syndicated similar tax shelters in Kentucky and had been involved in movie

<sup>1</sup> By signing a non-recourse promissory note an investor did not take on any personal liability to repay the note from his own assets, only from whatever assets the coal venture might accumulate. In most coal deals examined by the Leviticus Project, the promoters never had any intention of calling in these notes.



August A. Andre

tax shelters during the mid-1970s—a business venture that resulted in two of the firm's representatives later being convicted of tax and mail fraud.

Churchill Coal needed land to put its latest deal together. In the summer of 1977, Placido "Pat" Calantoni, a transplanted New Yorker who passed himself off as Churchill's vice-president, was introduced to Andre and negotiations began for Churchill to acquire Starford's Cambria County holdings. Eastern, because of its re-purchase option, was drawn into the negotiations.

On Nov. 21, 1977, Eastern re-acquired Starford's property, then leased the entire mining tract to Energy Mining Corp.—the first of three shell companies that would be created by Churchill. Andre said that as part of the deal, Churchill negotiated an agreement under which it would pay Starford Coal \$650,000 if Starford would agree to act as contract miner for several of the tax shelter programs.<sup>1</sup>

The lease between Eastern and Energy Mining was for 30 years or until coal reserves were exhausted. It required Energy Mining to pay a minimum annual royalty of \$50,000 to Eastern, the royalty being owed regardless of



Placido "Pat" Calantoni

whether any coal was mined or sold. If Energy Mining did mine and sell coal, it was required to pay a royalty to Eastern in the amount of eight percent of the net sales price per ton of coal. The minimum annual royalty was recoupable against the per ton royalty.

At the Nov. 21, 1977, closing, Energy Mining paid the \$50,000 royalty for 1978. However, it failed to pay the following year. On May 3, 1979, Eastern terminated the lease.

Shortly after the lease was executed, Energy Mining subdivided the property and subleased to investors undivided fractional working interests in four parcels: Adams Properties Program (91.7 acres), Raven Properties Program (92.7 acres), Hedge Properties Program (91.3 acres) and Logan Properties Program (159.7 acres).

Each sublease provided for the payment of a minimum annual royalty to Energy Mining—\$203,000 each for the Adams, Raven and Hedge programs and \$328,000 for Logan, with almost twice the acreage and stated reserves. The subleases required that the minimum annual royalties for the first 11 years be paid in advance. Consequently, in late 1977, 143 investors turned over to Energy Mining in excess of \$10 million.

These payments (\$1.7 million in cash and \$8.6 million in non-

recourse notes) were the basis for the tax deductions. The investors were advised to deduct the entire amount of their investment from their 1977 gross income for federal income tax purposes, according to an investor who was interviewed. This resulted in a \$4 to \$5 write-off for each dollar put up.<sup>2</sup>

## Coal Reserves Understated

The subleases provided the investors with the right to mine and remove all of the coal in a particular seam underlying their respective parcels. Each investor was told that the parcel contained an estimated minimum tonnage of recoverable and marketable steam coal.

These tonnage estimates were based on coal "studies" prepared by Brian H. Sanden, a Canadian mining engineer who had no experience in the bituminous coal industry, who was not licensed to practice engineering in Pennsylvania, and who never made on-site inspections of the properties being "studied."

Sanden, hired by the Churchill Coal conglomerate, told the Crime Commission that it was Calantoni who decided what names to use for each section (Adams, Raven, etc.), as well as the tonnage figures for each section (924,000 tons for Adams, 935,000 tons for Raven etc.). Sanden said the figures were derived by using a seam thickness of 72 inches for all the coal underlying the properties, a figure he said Calantoni, who had no experience in mining coal, also had supplied.

<sup>1</sup> In addition to the rights to the coal underlying the land acquired from Eastern, Energy Mining acquired the surface rights by way of assignment from Starford. Starford had obtained those rights pursuant to agreements with several surface property owners.

<sup>2</sup> Investors received tax advice from a New York law firm, Esanu, Katsky and Korins. Initially the firm advised that the entire investment was deductible from the investor's gross income in the year of the investment. However, in light of changes in the tax laws, the firm revised its opinion, noting that such a deduction was subject to challenge. Nevertheless, the investors, who were all believed to be in the 50 percent tax bracket, deducted the full amount (a total in excess of \$5 million) from their 1977 gross incomes. The IRS has challenged those deductions, offering to accept the cash portion while disallowing the note portion—a position that some of the investors are fighting.

# SANDEN REPORTS

	Raven <sup>1</sup>	Adams <sup>2</sup>	Logan <sup>3</sup>	Hedge <sup>4</sup>
Total Acreage	92.75	91.7	159.7	91.3
Coal Acreage	92.75	91.7	159.7	91.3
Coal Thickness (inches)	72	72	72	72
In-Place Reserves (Tons)	935,000	924,000	1,610,000	920,000
Minable Reserves (Tons)	-	924,000 <sup>5</sup>	-	-
Economically Minable Reserves	-	924,000 <sup>5</sup>	-	-

<sup>1</sup> Extracted from "Study of Coal Reserves — Raven Section — November, 1977," prepared by Brian H. Sanden.

<sup>2</sup> Extracted from "Study of Coal Reserves — Adams Section — December, 1977," prepared by Brian H. Sanden.

<sup>3</sup> Extracted from "Study of Coal Reserves — Logan Section — November, 1977," prepared by Brian H. Sanden.

<sup>4</sup> Extracted from "Study of Coal Reserves — Hedge Section — November, 1977," prepared by Brian H. Sanden.

<sup>5</sup> Extracted from "Confidential Descriptive Memorandum — Adams Properties Program.

## CHURCHILL COAL CORPORATION'S CAMBRIA COUNTY TAX SHELTERS — COAL

### Federal Income Tax Aspects of Investment in Programs

PROGRAM	AMT. OF INVESTMENT IN INTEREST IN SUBLEASE <sup>1</sup>			AMOUNT OF DEDUCTIONS <sup>2</sup>	AMOUNT OF LOST REVENUE <sup>3</sup>
	CASH	NOTES	TOTAL		
ADAMS	\$ 350,000.	\$1,885,888.	\$ 2,235,888.		
RAVEN	350,000.	1,885,888.	2,325,888		
HEDGE	350,000.	1,885,888.	2,325,888.		
LOGAN	625,000.	2,985,750.	3,610,750.		
	\$1,675,000.	\$8,643,413.	\$10,318,412.	\$10,318,413.	\$5,159,201.

<sup>1</sup> Eleven years advance minimum royalty.

<sup>2</sup> Assumes total amount of investment was deducted.

<sup>3</sup> Assumes entire investment was improper

At a Crime Commission public hearing in Johnstown (Cambria County) on Jan. 19, 1983, Sanden was questioned about his "studies" by then Leviticus counsel Robert A. Graci.

Q. To arrive at the tonnage calculations in each of these programs, particularly these four, Adams, Raven, Logan and Hedge, you assumed, did you not, that there was a consistent seam of coal, 72 inches thick, underlying every square foot of land owned or leased by the specific programs; is that correct?

A. Yes, sir.

Q. Is using a 72-inch seam underlying the entire property a reasonable engineering assumption?

A. No, sir.

Q. Was it a reasonable assumption in 1977?

A. No.

Q. But you based all of your calculations on that assumption?

A. Yes.

Q. You state in the Adams report, page 18, that, and I quote, "From regional information on the Lower Freeport (D) vein, a vein thickness of 72 inches was used in tonnage calculations;" is that accurate, sir, page 18?

A. Yes, sir.

Q. Now, none of the Pennsylvania official books or the U. S. Geological Survey show a 72-inch seam in that area, do they?

A. No.

Q. As a matter of fact, your own report at page 10 shows a range in thickness of the Lower Freeport seam to be about 30 inches; is that correct?

A. Yes.

Q. You used a 72-inch seam?

A. Yes.



Brian H. Sanden

Q. The regional information to which you refer is a statement by Gus (August A.) Andre that he had intersected 72 inches; is that correct?

A. Yes, sir.

Q. He never told you that was consistent under the entire property, did he?

A. No.

Q. You made that unreasonable assumption . . . .

A. Yes.

Q. . . . you, as a professional engineer?

A. Yes.

Q. It was based on Pat Calantoni telling you to use 72 inches; was it not?

A. Yes.

Later in the hearing, then commission chairman Malcolm L. Lazin remarked to Sanden:

"I mean, as I gather, what you did is you just did some simple multiplication, that is what it seems to come down to.

To which Sanden replied, "Yes, sir."

Investors in the four coal programs were told, based on the Sanden reports, that the properties they were subleasing contained an estimated minimum of approximately 4.4 million tons of recoverable and marketable steam coal.

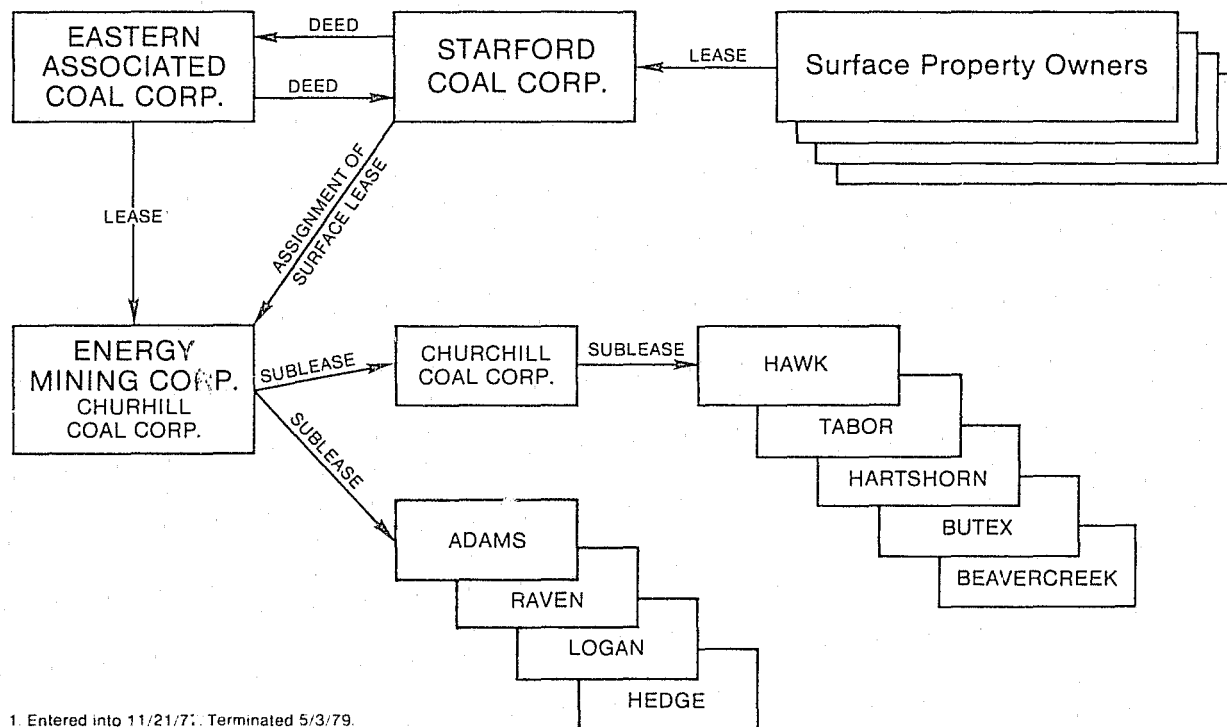
Sanden's reports, however, listed the tonnage figures as maximums, not minimums. They never claimed the coal to be marketable, nor did they offer an opinion as to whether it was economically feasible to extract it from the earth.<sup>3</sup> Language from one of the Sanden reports follows:

"This study indicates that the *total probable potential recoverable* coal reserves of the Adams Mining Section . . . will be *in the neighborhood* of 924,000 gross raw tons." (emphasis added)

Roderick Fletcher, a mining engineer employed by the Harrisburg consulting firm of Skelly and Loy, was retained by the Crime Commission to evaluate the properties reported on by Sanden. He testified at the hearings that "there was no support whatsoever for a seam thickness of 72 inches," that it was nearer 35 to 40 inches. He concluded that mineable reserves on the four programs amounted to only 652,000 tons—less than 15 percent of the total 4.4 million tons promised investors! Moreover, Fletcher stated that it would be economically feasible to extract only

<sup>3</sup> Sanden said he received approximately \$29,000 for his services, two-thirds of which he said he "kicked back" to Calantoni and a friend of Calantoni's, Casimir "Casey" Mrowka. Records subpoenaed by the Crime Commission show payments to Mrowka in the amount of \$16,333.33. Mrowka stated that he gave half of what he received from Sanden to Calantoni and that Churchill Coal was not aware of the agreement. Calantoni admitted receiving a share of Sanden's fee, but insisted it was only a couple hundred dollars. Mrowka also admitted during private hearing testimony that he set up Casper Coal Co., one of his "corporations," to enable him to avoid paying taxes on the full amount obtained from Sanden.

# CHURCHILL COAL CORPORATION CAMBRIA COUNTY LAND TRANSACTIONS



47,000 tons, or just a shade over one percent of the "total probable potential recoverable" coal touted in the Sanden reports.

Fletcher's conclusions should have been of little surprise to anyone associated with either Starford Coal or Churchill Coal. In 1976, a year before Sanden conducted his "studies," Andre, Starford's president, commissioned Edward Hellenic, a registered surveyor, to determine recoverable tonnages on the entire property—of which less than a third was used for the tax shelter programs.

Hellenic concluded that there remained 1.8 million tons of strip-pable coal reserves if stripping was conducted to a 90-foot depth. However, he stated that in order to reach that depth, a miner would need a rather sizeable and expensive piece of equipment called a dragline. Without it, the reserve estimate would be

considerably less. Starford Coal, the contract miner for the tax shelter programs, did not own a dragline.

Andre testified at the public hearings that he had given the Hellenic report to Churchill Coal officials during their negotiations with Eastern and Starford.

## Investors Misled on Mining Activity

Not only was the amount of coal inflated, so apparently was the price. Investors were told they could expect to receive \$24 per ton of coal mined and sold from the properties. Fletcher testified that the price was closer to \$18 to \$20 per ton.

There were other problems:

- The mineral rights underlying the Adams property had reverted to the county for unpaid taxes in 1972, according to Michael Sincak, the mineral coordinator for Cambria County.

- Other programs, according to Sincak, were placed on land that had been mined out; the boundaries of some programs overlapped thus diluting the interest held by the investors in those programs; some of the programs had been placed on property for which mining permits had not been obtained from the state.

Each program was administered under the terms of a joint operating agreement, administered by an operating manager, in this case Jackson Mining Management Corp. Jackson Mining, and its successor, Delta Energy Corp., were, like Energy Mining, shell companies.



The joint operating agreement required the investors to contract with a miner who would be selected by the operating manager. Under the terms of the mining services agreement, the contract miner was entitled to a fee of \$14.35 for each ton of coal mined. The contract miner, as previously stated, was Starford Coal.

Andre was questioned about the royalty payments at the public hearings:

Q. Now, under the mining services agreement, you (Starford) were to receive \$14.35 per ton of coal mined, is that correct?

A. That's correct.

Q. How much money did you receive under the mining services agreement?

A. Nothing.

Q. Why not?

A. There was no coal mined.

Yet between June 15, 1978, and Aug. 18, 1978, investors received at least three letters from Jackson Mining pertaining to the progress of mining activity. The letter of August 18 stated: "We are pleased to let you know that your mine is now in operation. The coal is presently being stockpiled and ready for shipment at the railroad siding."

Both Jackson Mining and Delta Energy were controlled by Churchill associates, particularly people like Larry Gordon, Churchill's president; Murray Glantz, its chief attorney, and Calantoni. The name Churchill Coal, however, was never disclosed to investors.

It is interesting to note that Calantoni insisted at the public hearings that he was never Churchill's vice president, despite the fact he carried business cards which said he was, despite the fact Gordon identified him as such in correspondence, and

JACKSON MINING MANAGEMENT CORP.

10 EAST 40TH STREET  
SUITE 1010  
NEW YORK, N. Y. 10016  
212 685-9782

ADAMS PROPERTIES PROGRAM REPORT:

WE ARE PLEASED TO LET YOU KNOW THAT YOUR MINE IS NOW IN OPERATION.

THE COAL IS PRESENTLY BEING STOCKPILED AND READY FOR SHIPMENT AT THE RAILROAD SIDING.

WE ARE PROCEEDING AS WE REPORTED TO YOU ON JULY 31, 1978 AND REMAIN EXTREMELY OPTIMISTIC THAT ALL OUR EFFORTS WILL CONTINUE TO PROVE FRUITFUL AND RESULT IN AN ONGOING SUCCESSFUL OPERATION.

SINCERELY YOURS,

JACKSON MINING MANAGEMENT CORPORATION

  
BRIAN KIRK,  
PRESIDENT

Dated August 18, 1978

Shown above is a copy of the Aug. 18, 1978, letter that Jackson Mining Management Corp. sent investors.

despite the fact he was so identified by Dun and Bradstreet.

This exchange took place between Calantoni and counsel Graci concerning his relationship to Churchill:

Graci: I asked, sir, if you were a vice president of Churchill Coal Corp.

Calantoni: I said I was not a vice president of Churchill Coal Corp.

Graci: Notwithstanding the fact that the president of the company identifies you as a vice president?

Calantoni: I don't care what he wrote.

Graci: Notwithstanding the fact that your business card stated vice president?

Calantoni: That's possibly true, yes, but there's vice presidents, every bank has vice presidents. Everyone's a vice president today, but I was not.

Graci: So you were a vice president of Churchill Coal Corp., sir?

Calantoni: I was not a vice president of Churchill Coal Corp.

By Donald E. Johnson, the Crime Commission's chief counsel: You just told people that?

Calantoni: I possibly did.

Johnson: You did and lied to them?

Calantoni: No, if someone asked me am I a vice president, I would say yes.

# SUMMARY OF STATISTICS<sup>1</sup>

	Raven	Adams	Logan	Hedge
Total Acreage	92.8	91.7	159.7	91.3
Coal Acreage	57.5	50.4	154.7	91.3
Coal Thickness (inches)	34	34	34	34
In-Place Reserves (Tons)	287,000	252,000	773,000	456,000
Minable Reserves (Tons)	47,000	-	330,000	275,000
Economically Minable Reserves	47,000	-	-	-

<sup>1</sup> Reproduced from "Assessment of Raven, Logan and Hedge Coal Programs" prepared for the Pennsylvania Crime Commission by SKELLY and LOY, Engineers — Consultants, dated November 12, 1982.

Graci: That is a lie if you are not.

Calantoni: It is no lie. What are you talking about, it is a lie?

Graci: It seems pretty clear to me.

Calantoni: Okay. If that's the way you want to do it, but I have never been an officer of Churchill Coal or any of their subsidiaries.

A review of correspondence to the investors indicates they were never told that the day-to-day operations of the programs were overseen by Calantoni. His identity was never disclosed, nor was Gordon's.

Investors apparently were never told that Eastern had terminated its lease with Energy Mining on May 3, 1979, because of the defaulted royalty payment.<sup>4</sup>

Investors apparently were not aware that the president of Jackson Mining, Brian Kirk, an Australian, made his home in that country, visiting the United States only three to four times a year.

(Kirk resigned his position with Jackson Mining by letter from Australia on May 18, 1979, stating he was unable "to obtain any information as to the progress of the company.")

Investors apparently were never told that a coal washing plant was needed to make the coal on their properties marketable. According to Andre, the promoters were aware of that necessity. Andre testified that he told both Calantoni and Gordon about the need early on in the negotiations.

As previously noted, Starford Coal was to receive \$650,000 from Churchill Coal in return for Starford acting as contract miner. Most of that money was used to satisfy Starford creditors, with \$100,000 being withheld by Churchill purportedly, according to Andre, to finance the acquisition of new mining equipment.

Instead, Calantoni decided to use the money to finance construction of the washing plant. Another \$100,000 in certificates of deposit, purchased with funds from the

Adams, Raven, Logan and Hedge programs, was used as collateral for the project. Investors apparently were never told that the money had been diverted.

In all, approximately \$625,000 was expended, including a \$402,000 mortgage from Laurel National Bank. Due to a substantial water problem, however, the plant never operated efficiently. The bank eventually foreclosed on the mortgage for lack of payment. All of the collateral was lost.<sup>5</sup>

<sup>4</sup> The four coal programs were moved from Cambria County to Northumberland County after Eastern terminated Energy Mining's lease. On June 23, 1982, Northumberland County terminated its lease with Croftshaw Coal Corp., yet another Churchill shell company, in an effort to prohibit other companies from acquiring county property without generating royalty fees. Investors apparently were never told that this lease had been terminated either. Also moved to Northumberland County in the late summer of 1979 were five limited partnership tax shelters that had been moved to Cambria County 14 months earlier from McCreary County, Kentucky.

<sup>5</sup> Andre, claiming he was entitled to this \$100,000, filed suit in Cambria County Commons Pleas Court in an effort to recover the money.



## Contract Miner Lacks Men and Equipment

Starford, as part of the \$650,000 deal, signed mining services agreements with investors in the four programs. The agreements contained a clause whereby Starford guaranteed it would mine a specified tonnage each year: not less than 249,000 tons in 1978, not less than 273,000 tons in 1979 and thereafter.

Andre admitted at the public hearing that he did not have the equipment to mine the amount of coal called for. He stated that this problem was discussed with Churchill Coal officials and with Joseph Wolf, president of Energy Mining.

Yet on Dec. 29, 1977, Andre, in a letter to Energy Mining officials, agreed to mine coal on not four but six properties (Adams, Logan, Raven, Hedge, Boone and Cedar) with separate men and equipment.

He was asked about the letter:

Q. In that letter, do you agree . . . to mine not only the Adams property parcel but five other local programs with separate men and separate equipment . . . ?

A. That's correct.

Q. This is after you told Mr. Calantoni you could not do this under the terms of the mining services agreement?

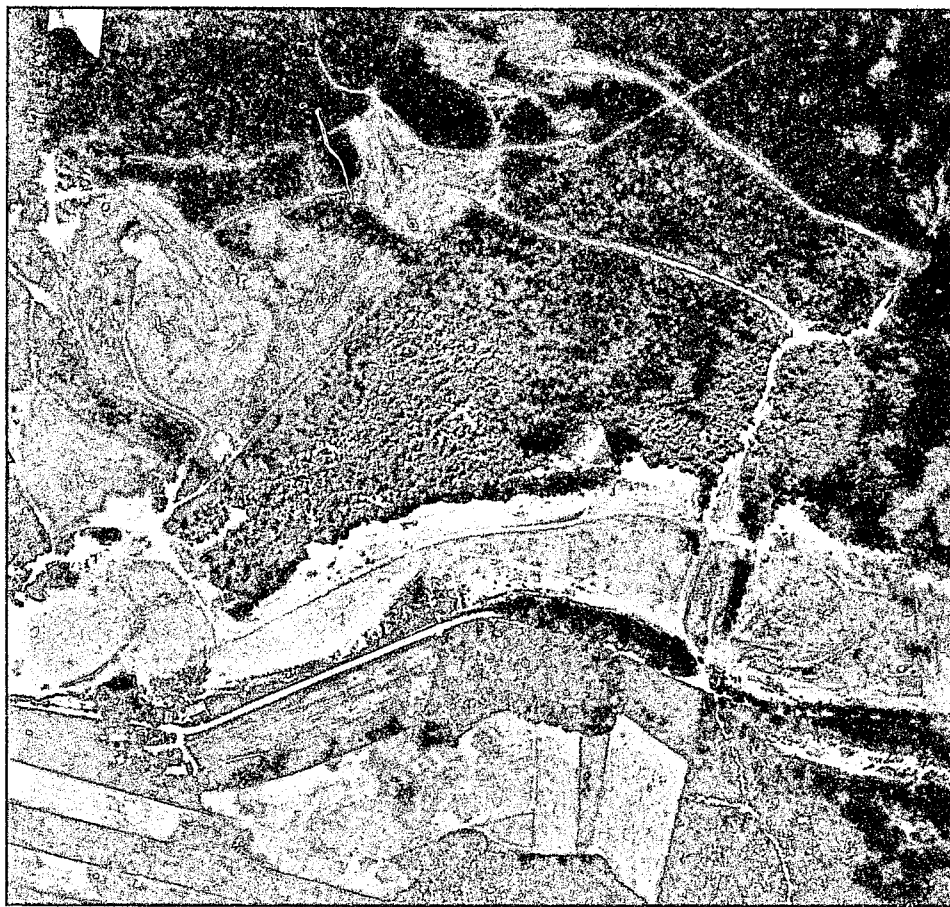
A. That is correct, and he said he has to have this to make the whole thing work, that it was very necessary for me to do this. It was dictated over the phone to Ebensburg (the Cambria County seat), it was typed in my office.

Q. Dictated by whom?

A. Calantoni . . . .

Q. You signed this letter even though you knew you could not fulfill your obligation under it?

A. That is correct.



Aerial photograph of the Starford Coal property taken June 28, 1978, from 6,920 feet shows non-reclaimed areas of the land. Contrasted in the lower portion of the photo is cultivated farmland.

Q. Because without this (letter) the \$650,000 agreement goes down the tubes.

A. That's correct.

Q. What were you told concerning this letter, what did Calantoni tell you?

A. That they had to have the letter, the lawyers in New York said they had to have this letter to make the thing work.

Q. You agreed to mine six separate programs, mining properties, with separate men and equipment. You received \$650,000, or an agreement to receive \$650,000, to mine the coal, you did not have the ability to mine any coal; is that correct?

A. Yes.

Commissioner Alvin B. Lewis Jr. questioned Andre as follows:

Q. You said, "The people I dealt with knew I couldn't perform." Who were those people you were referring to?

A. Nathan Thomas, Calantoni, Gordon, Glantz, and Joe (Wolf).<sup>6</sup>

Q. How did they know you could not perform?

A. I told them.

Q. In advance?

A. That's right.

Calantoni admitted at the hearing that Starford Coal was "just about bankrupt." Regarding the letter from Starford to Jackson Mining (which he admitted he might have dictated) the following exchange took place:

<sup>6</sup> Nathan Thomas, president of Elk Run Coal and Clay, was a "coal finder" who had entered an agreement to become the coal sales agent for the programs. It was Thomas who introduced Calantoni to Andre.

# ADAMS PROPERTIES PROGRAM<sup>1</sup>

CHURCHILL COAL CORPORATION  
(CCC)

Larry Gordon, President

SUBLESSOR

Energy Mining Corporation  
(EMC)

Joseph Wolf, President

OPERATING MANAGER

Jackson Mining  
Management Corporation  
(JMMC)

Brian Kirk, President

CONTRACT MINER

Starford Coal Corporation  
(SCC)

Gustave Andres, (August A. Andre),  
Owner

SALES AGENT

Elk Run Coal and Clay, Co., Inc.  
(ERC&C)

Nathan Thomas

CONSULTING  
ENGINEER

Brian Sanden,  
P.E.

COUNSEL

Murray Glantz,  
Esq.

SPECIAL TAX COUNSEL

Esanu, Katsky, & Korins  
Attorneys at Law

PENNSYLVANIA  
COUNSEL

Anthony Lupus (Lupas),  
Esq.

1. Extracted from Confidential Descriptive  
Memorandum and related documents provided to  
investors in Churchill Coal Corporation's Adams  
Properties Program.

Q. You knew (on Dec. 29, 1977) that (Starford) did not have enough equipment, that he (Andre) did not have the manpower to (perform)?

Calantoni: Exactly, and that's why we were giving him \$650,000 to do it. We gave him that money. We're saying, "Here, Mr. Andre, we're helping you out. You are going bankrupt. We think you can do the job. Here is \$650,000."

Churchill Coal, according to Andre, was well aware that Starford's financial condition was bleak. The investors apparently were not. To the contrary, they were advised that (while) "no assurance can be given as to the financial strength of (Starford), . . . (Starford) will be in a position to place sufficient men and equipment on the property to mine and remove the tonnage required of it."

Calantoni had an agreement with Gordon, Churchill's president, which entitled him "to receive one-third of all of the equity interest and profit of Churchill Coal Corp. arising out of any and all coal transaction(s)" that Calantoni brought to Churchill.

Calantoni was asked about the deal:

Lazin: Now, what was the upfront money that you got one-third of?

Calantoni: I never got my third.

Lazin: You never got your third?

Calantoni: No.

Lazin: You mean, are you trying to tell us that you never got any money from putting together these deals?

Calantoni: I did, but I never got my third.

Lazin: I see. How much money did you get?

Calantoni: I can't tell you exactly, I don't know.

Lazin: Well, can you give us a range as to what you received?

Calantoni: Maybe \$50,000 or \$100,000, I'm not sure.

Lazin: Maybe \$50,000 or \$100,000. I mean, do you have so much money that the difference between \$50,000 and \$100,000 is insignificant to you?

Calantoni: I don't remember.

## Churchill Barred From Selling Securities

As previously noted, investors wrote off \$5 million in taxes. Should those deductions be disallowed, the investors would be required to add the deduction back into their incomes for 1977 and to pay not only the tax due on those amounts, but also interest and possibly penalties. The tax alone would amount to approximately 50 percent of the amount invested.<sup>7</sup>

There are other victims of such schemes. Fletcher, the mining engineer, stated that had these four programs been legitimate mining operations — involving the reported guaranteed tonnages — they would have generated between 20 and 60 mine or mine-related jobs.

Richard L. Trumka, president of the United Mine Workers of America who testified at the hearings, also noted the trickle-down jobs that are lost through such schemes — the truck drivers who haul the coal to the rail sidings, the railroad workers who transport the coal, etc.

<sup>7</sup> It could be argued that some investors were not victims because their inducement to invest was not to make a profit but to reap tax benefits. Several investors interviewed stated that while the tax break was their primary reason for investing, they eventually expected to profit from a mining operation.

The small surface property owners lost their expected royalties. Officials of Eastern estimated the firm lost \$1.5 million just in terms of the advance minimum royalty payments on which Energy Mining defaulted. Had Starford mined the tonnages guaranteed to each of the programs, royalties to Eastern would have climbed to \$15 million.<sup>8</sup>

In March of 1979 the Crime Commission referred its investigative findings involving Churchill's ventures in Cambria and Northumberland counties to the U. S. Attorney's Office in Harrisburg and to the F.B.I. in Williamsport.

On July 13, 1983, Murray Glantz, Churchill's attorney, pled guilty to conspiracy to commit mail fraud and filing false tax returns and was sentenced on Dec. 7, 1983, to three and one-half years imprisonment.

David Dart Queen, the U. S. Attorney for the Middle District of Pennsylvania, said the guilty plea stemmed from Glantz' involvement in "a massive fraudulent coal tax shelter scheme" carried out by a syndicate in Kentucky, West Virginia, and Pennsylvania.

Queen noted that "by means of fraudulent deductions, Glantz and his associates were able to reap huge profits from their coal investments." He added that in working with the Internal Revenue Service, his office was able to freeze over \$60 million in assets held by syndicate members.

Queen said other individuals connected with the syndicate had been targeted for investigation.

During 1982, Glantz and Gordon, Churchill's president, along with two associates, were convicted on various charges stemming from their involvement in movie tax shelters. They were sentenced on Nov. 8, 1982: Gordon to one month (plus weekends for six months) imprisonment, a fine of \$210,000, plus three years probation; Glantz 30 months imprisonment, four years probation, and a \$250,000 fine.

On Aug. 25, 1983, the Pennsylvania Securities Commission entered orders against Delta Energy Corp., Churchill Coal Corp., Gordon, and Norman Bloom (president of Delta) barring them from offering and/or selling securities in Pennsylvania for a period of ten years. They also were barred for ten years from associating with any broker-dealer, agent, or investment advisor offering and/or selling securities in Pennsylvania. And Gordon and Bloom were barred (for ten years) from holding a position as officer, director or control person in any company, corporation, or business entity offering and/or selling its securities in the commonwealth.

The Securities Commission had charged that Churchill, Delta Energy, Gordon and Bloom had violated registration and anti-fraud provisions of the Pennsylvania Securities Act of 1972 through the offer and sale of securities in the form of limited partnership interests of Hartshorn Mining Co., Hawk Coal Program and Mason Coal Program, all of New York City.

The Securities Commission alleged that in 1976 and 1977 eight Pennsylvania residents were solicited by the three coal syndicates, investing \$127,000 with a four-to-one tax write-off that resulted in a loss of tax revenues of \$508,000. Those deductions, according to the Securities Commission, were disallowed by the Internal Revenue Service—an action that was appealed.

Among those testifying at the Johnstown hearing was Mark N. Cohen, the Securities Commission's director of enforcement.

Cohen stressed that sales programs such as those launched by Churchill "thrive and build upon the public's constant exposure, through legitimate media, to the existence of fantastic tax write-offs or predictions of dramatic price movements of scarce resources in an uncertain economy.

"The public pre-disposition to focus on coal, especially during the oil embargoes and the rising prices of natural gas, turns a sales pitch on coal into a method of increasing a sizable return on an investment and provides the illegal sales operation with a receptive audience upon which to prey," he said.

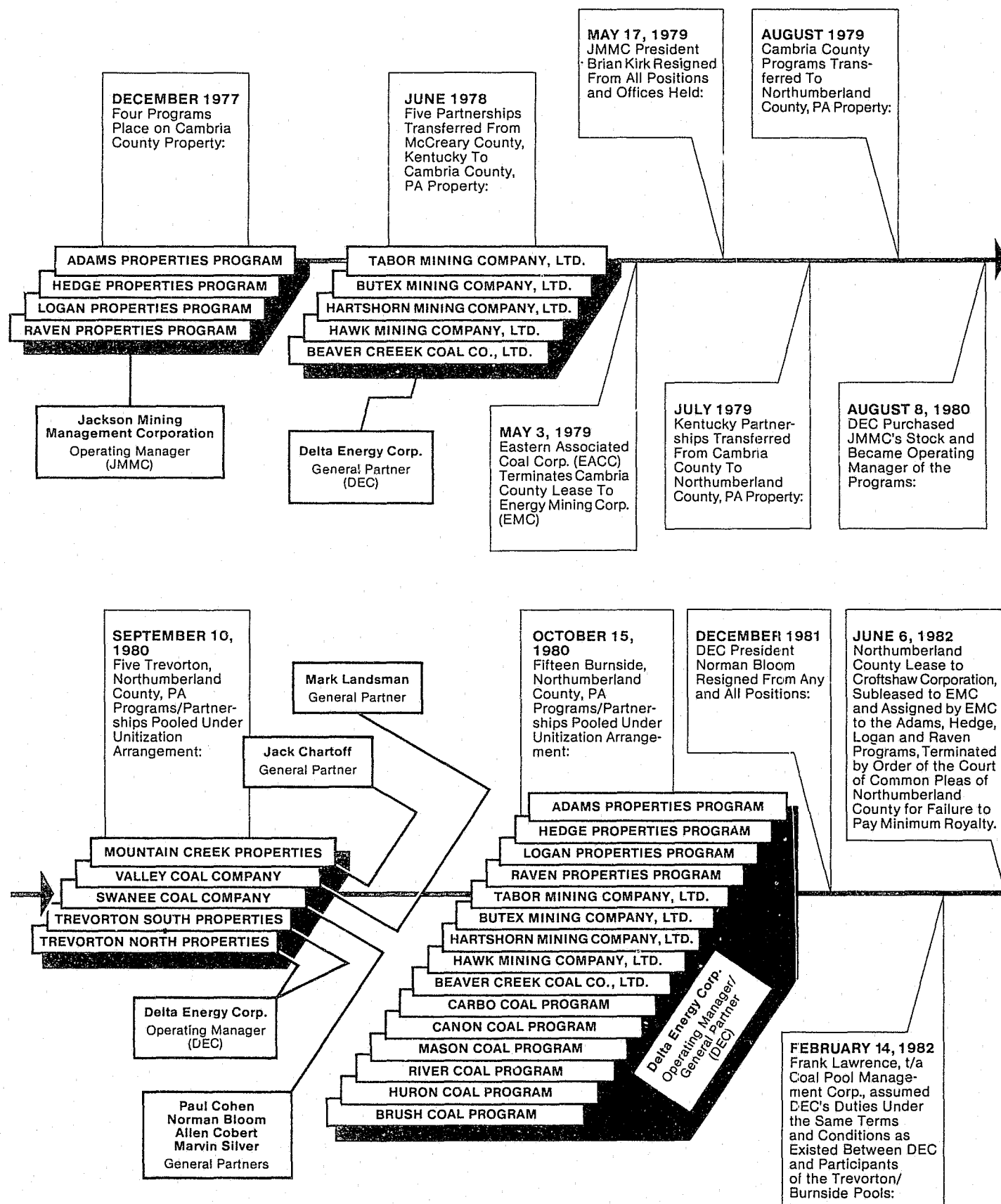
"Today, you might hear that such investments are equivalent to an IRA with growth and tax advantages and a vehicle to shelter income with the advantages of 'rollover' procedures," he added.

Cohen listed ten guidelines for potential investors to follow:

1. Be extremely cautious if a stranger makes contact by a "cold" phone call, unannounced visit to your home, or contacts from a mailing list.
2. Get the name of the caller, his company, the company's location and phone number and ask for written information concerning the company and the investment opportunity.
3. Don't be intimidated by high pressure sales techniques "requiring" that your money be sent, that "tomorrow is too late," or that "this is too good to be put in writing." "Too Good to be True" offers usually are just that.

<sup>8</sup> That figure assumes that guaranteed tonnages could be mined from the properties and that the coal would sell for \$24 per ton.

# CHURCHILL COAL CORPORATION SYNDICATIONS CAMBRIA COUNTY, PENNSYLVANIA



4. Do not send money or sign a purchase order or contract to pay for an investment until after the offering material is examined by you and is further checked out by your lawyer, accountant, banker, the Better Business Bureau or state securities commission.

5. Check to see if the company and/or its agent is registered with any federal or state agency. While such agencies can't act as your investment advisor, they can tell you of any adverse public information or of a failure to properly register.

6. Be wary of investments being sold on the basis of rumor, tips, or "inside information."

7. Deal with established businesses whose reputations are known in the community.

8. Be wary of deals, especially in the area of future delivery contracts, in which you are promised verbally that the sale and delivery of the coal will be made to a commercial user. Some contracts provide for delivery to your home.

9. Fraudulent investment and sales programs rarely register with the Securities and Exchange Commission, the Commodity Futures Trading Commission or state securities commissions. And they rarely are members of national securities or commodities exchanges.

10. When in doubt, wait. If something smells fishy, if your questions are not satisfactorily answered, don't commit your money.

The state Department of Environmental Resources estimated it would cost between \$250,000 and \$300,000 to complete the reclamation of Starford's abandoned permit sites.

J. Anthony Ercole, then director of DER's Bureau of Mining and Reclamation, testified that on

*EDITOR'S NOTE: Richard L. Trumka, president of the United Mine Workers of America, testified at the Crime Commission's public hearings in Johnstown on Jan. 19, 1983. Excerpts of that testimony follow:*

A great deal of money must be invested to upgrade existing mines and develop new mines. Similarly, we must raise capital for power plant conversion and construction of loading, storage and handling facilities. And we must encourage investment in our coal transportation network, both domestically and overseas.

An important factor in raising the necessary capital to carry out this program is investor confidence. I read with concern the documents submitted to me by this Commission that suggested that the financial community is becoming wary of investments in the coal industry. Investor confidence . . . must be increased, not destroyed. For the investor community is an integral part of the total picture if we are to achieve energy independence.

April 19, 1979, a notice of violation was issued to Starford declaring the operations abandoned and indicating DER's intent to forfeit performance bonds unless an immediate program to remedy the violations was implemented.

Ercole testified that Starford never replied to the notice of violation; that notices sent by certified mail were returned as undeliverable.

DER subsequently declared the bonds forfeited in the full amount of \$62,725 — far short of the estimated \$250,000-\$300,000 needed to complete reclamation.

"The crux of the problem facing the commonwealth as a result of these forfeitures is the department's (DER's) inability to reclaim the forfeited areas because of insufficient funds," Ercole testified. "Historically, bonding rates have been (too) low."

As we are painfully aware, the U. S. is experiencing record numbers of business failures . . . The coal industry, of course, is no exception to this severe economic problem. Numerous coal company bankruptcies are causing substantial hardships on the workers that I represent. In many cases, the bankruptcies are due to difficult economic circumstances and soft coal markets.

I fear, however, that some of the coal companies have gone belly-up intentionally, leaving the miners with unpaid wages and benefits and stiffing the states for unpaid taxes, unemployment insurance payments, and workers' compensation premiums.

These types of operations are often characterized by an elaborate corporate paper shuffle that insulates and protects the owners of the company. We have seen one bankrupt coal company that had established over ten corporations to operate one coal mine property.

Each of the corporations had a different function at the mine; one held title to the lease, one leased the equipment, another produced the coal, another served as broker, another was responsible for reclamation, and so on. The apparent purpose of this corporate web was to protect the owner of the company when he finally pulled up stakes and left owing the miners thousands of dollars in unpaid wages.

The financial and psychological damage that this situation causes for the miner cannot be overstated. The economic and social problems that accompany (the resultant) unemployment lead to bitter anger and frustration and too often are vented on the worker himself and on his family. And while the workers watch their wages and dreams fall apart, the real perpetrators of the scam—the fly-by-night coal operators—count their undeserved and illegal profits.

## Bitumco

One of the Crime Commission's earliest Leviticus Project investigations involved the creation and sale of interests in 21 limited partnership coal tax shelters based on coal reserves in Pennsylvania, West Virginia and Kentucky. A total of \$20 million in cash was put up by 541 private investors from 29 states who then wrote off an estimated \$42 million in tax deductions.

The promoters, armed with a national network of brokers and wholesalers, provided the investors with offering memoranda claiming the 11,493 acres of land involved held some 30 million tons of coal. In actuality, much of it was not economically recoverable or had a high sulphur content which drastically reduced its market value.

Based on an analysis of royalty payments, only 508,880 tons of coal were mined. Of that amount, the investors received royalties on only 334,000 tons (or one percent of the total touted by the promoters). As in most limited partnership coal tax shelter cases examined by Leviticus Project members, the Commission's investigation uncovered deceptive if not illegal business practices, a string of companies which gave the appearance of legitimate and distinct mining ventures, and the eventual collapse of those mining ventures in February of 1980.

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In 1976, William L. McKenna, Richard D. Wellbrock and Richard A. Heitmeyer filed in Bergen and Essex counties, New Jersey, for the formation of nine limited partnerships which went under the names Alphex Associates, Welrex Associates, Deron Associates, Setna Associates, Bettex Associates, Cameron Associates, Elm Associates, Grove Associates and Main Associates.

Investors were provided a tax write-off in 1976 of, on the average, 3.76 to 1, effected through the use of non-recourse promissory notes and advance royalty payments.

In 1977, 12 additional limited partnerships promoted by McKenna, Wellbrock and Heitmeyer were also filed in the state of New Jersey bearing the names Aspen Associates, Birch Associates, Cyprus Associates, Fir Cone Associates, Hemlock Associates, Hickory Associates, Larch Associates, Maple Associates, Oak Associates, Redwood Associates, Sequoia Associates and Spruce Associates. They came to be known as the "Tree Deals."

With changes in the federal tax laws that went into effect in October of 1976, these 12 limited partnerships began utilizing full recourse promissory notes in conjunction with investments in high-risk U. S. securities for additional tax leverage. Investors in these 12 limited partnerships, which had acquired property rights to seven leases and five deeds in Knox and Perry counties, Kentucky, had, on the average, tax write-offs of 1.7 to 1 in 1977.

McKenna, Wellbrock and Heitmeyer promoted these 21 limited partnerships through ten companies.

The companies, which acted as sublessors of coal leases to the limited partnerships or investors, were Atlantic Energy Associates, Atlantic Energy Group, Atlantic Energy Ltd., Bitumco Associates, Bitumco Properties, Inc., Conenco Associates, Gilcrest Management, Inc., Pennco Associates, Pittco Associates, and Shaco Incorporated. (These firms will hereafter be referred to in this report as Bitumco affiliates.)

According to one of the wholesalers who was familiar with the deals, the 21 limited partnerships were managed by either Caldwell Management, Inc. or Gilcrest

Management, Inc., firms set up specifically for this purpose. They were operated by Gilbert Shelton, a friend and associate of the promoters.

Securities law requires that promoters in such deals (situations where the promoters want to insulate themselves from liability) must keep an "arms length" distance from the activities of the limited partnerships they promote.

It is thus interesting to note that the ten corporations created by the promoters (McKenna, Wellbrock and Heitmeyer) initially used the same address as the two management firms—16 Evergreen Drive, North Caldwell, N.J.

It is even more interesting to note that 16 Evergreen Drive, North Caldwell, N. J., was Heitmeyer's home address. There's a house there, not an office building. Shelton also lived there.

In 1981, George Poggel, a general partner who was involved in brokering some of these coal tax shelters, told the Crime Commission:

"See, what the Wellbrock, Heitmeyer, McKenna group has done for years was put deals together as syndicators, packagers, or promoters, and these things fall apart. They seem to lack substance.

"Now anybody, God knows, can have a business failure, it is possible. It is very difficult to run a business these days and do it right, and profitable, and everything else. But when you run, 20, 30, 40 (businesses), or whatever, and every one fails . . . There is a pattern here."

There was a pattern, indeed, in the 21 limited partnerships examined by the Crime Commission.



Shown above is a piece of heavy mining equipment that was repossessed after Jefferson-Clearfield Coal Co. liquidated its assets. Dwarfed by the mammoth machine is a 6-foot-2 man.

Three contract miners were hired to run the coal operations—one miner for the West Virginia operation, one for Pennsylvania and one for Kentucky. None was in a position to take the job, however, lacking either sufficient time, money or equipment. The promoters promised them “start-up” funds, but did not deliver. The contract miners eventually defaulted on the contracts.

The two management companies then informed the investors that they planned to streamline the partnerships’ holdings, using a process they called “unitization.” As a result, potential investor profits and promoters’ costs were both slashed. Eventually all the coal leases promised the investors ended up in a small geographical area in three adjacent counties (Cambria, Jefferson and Clearfield) in western Pennsylvania.

## 9,000 Tons of Mined Coal Reburied

The final step for the promoters was to create and operate their own mining company, a firm to be known as Jefferson-Clearfield Coal Co., Inc. In addition to Jefferson-Clearfield receiving the standard fee per ton of coal mined, the firm passed along additional “actual mining costs” to the investors. The promoters also created a second company, Bitumco Collieries, Inc., which marketed the coal their mining company mined.

Jefferson-Clearfield Coal Co. eventually shut down, undergoing “orderly liquidation.” The company claimed it had been pushed to the brink of bankruptcy by a depressed coal market, problems with mining permits and with strict environmental laws.

There were other indications, however, that the company had no intention of staying in business. Former employees said the firm had been healthy with new equipment and a good cash flow when it started operations.

They told of intentional setbacks such as cutting work shifts, turning down new coal leases, and ceasing payment on leased mining equipment, thus forcing repossession.

In one case they recounted the actual reburial of 9,000 tons of mined coal.

In no instances, did these former employees ever believe that Jefferson-Clearfield Coal Co. had lost any money on mining jobs.



In 1976, four of the ten Bitumco affiliates acquired an assignment of a lease on a 1,000-acre tract of land located in Pennsylvania's Jefferson and Clearfield counties from Intercoast Coal Co.

The property was divided into four separate parcels with mining rights being re-assigned through the four Bitumco affiliates to the limited partnerships of Alphex, Deron, Setna and Welrex.

A geological survey, paid for by Jefferson-Clearfield Coal Co., estimated there were 4.1 million tons of recoverable metallurgical grade coal on the entire property. This survey was based on researching old government surveys and studying outcroppings.

However, a later study consisting of core drillings and lab analyses estimated that less than 521,000 tons of coal could be mined economically. It also indicated that the four tracts contained steam coal, not metallurgical coal, and that the steam coal had a high sulphur content.

After the original contract miner (Inter-American Fuels, Inc.) defaulted, the investors were told that their four general partners (persons picked by the promoters to oversee the limited partnership operations) had decided to "unitize" the interests in the four parcels "in order to diversify the risks of the investors and create a more manageable mining operation."

Under this "unitization," each limited partnership would be given an "undivided fractional interest" in the overall operation of the land based on a ratio equal to that designated by the coal reserves each partnership held an interest in. For the four Pennsylvania tracts it broke down this way:



Shown above is a tract of Jefferson-Clearfield Coal Co. land located in Clearfield County's Sandy Township bordering Jefferson County. The topsoil erosion depicted in the foreground resulted in a notice of violation being issued by the U.S. Office of Surface Mining.

Tract	Reported Reserves in Tons	% of Undivided Fractional Interest
Alphex	1,380,000	33%
Deron	1,205,000	29%
Setna	950,000	23%
Welrex	600,000	15%

Under this arrangement, the contract miner would be required to mine coal on only one parcel at a time, as opposed to four parcels, thus reducing current mining costs. Conversely, the investors in the four limited partnerships would end up with substantially smaller interests in smaller pieces of the pie. They could only hope that all parcels eventually would be mined.

Unitization appears to violate a U. S. Securities and Exchange Commission regulation dealing with "integration" that prohibits a single offering from being artificially divided by the issuer in an effort to qualify as several offerings that would be exempt from registration.

In 1976, Interstate Resources Corp. (an Illinois corporation) acquired the mineral rights to 3,000-acres of land in Randolph County, W. Va. The land subsequently was divided into five separate tracts with each tract

being assigned to a Bitumco affiliate which in turn re-assigned the rights to the limited partnerships of Bettex, Cameron, Elm, Grove and Main Associates.

Again the contract miner, in this case P&L Coal Corp., defaulted.

In November of 1977, investors in Bettex, Cameron, Elm and Grove were informed that their four general partners intended to unitize the four tracts, a venture that was accomplished (again in apparent violation of SEC regulations) but which produced no coal.

In March of 1978 the West Virginia investors were informed of the prospect of acquiring interest in two mining ventures in Pennsylvania's Jefferson and Clearfield counties with estimated recoverable reserves of 2.3 million tons.

## Mining Ventures Abandoned

A year later, these same investors were told that rights to the land in Clearfield County (known as the Carns Property) had not been acquired because the contract miner (Jefferson Clearfield Coal Co.) had determined that the reserves were less than previously believed and that the coal on the Jefferson County tract (known as the Gaffney Property) contained a

high sulphur and ash content. The mining ventures were thus abandoned.

There is no doubt that investors in these coal tax shelter schemes often were lulled along by letters from the promoters (through the management companies and general partners) promising greener pastures ahead. There also is little doubt that these letters helped create an appearance of legitimacy, thus discouraging inquiries by law enforcement and regulatory agencies.

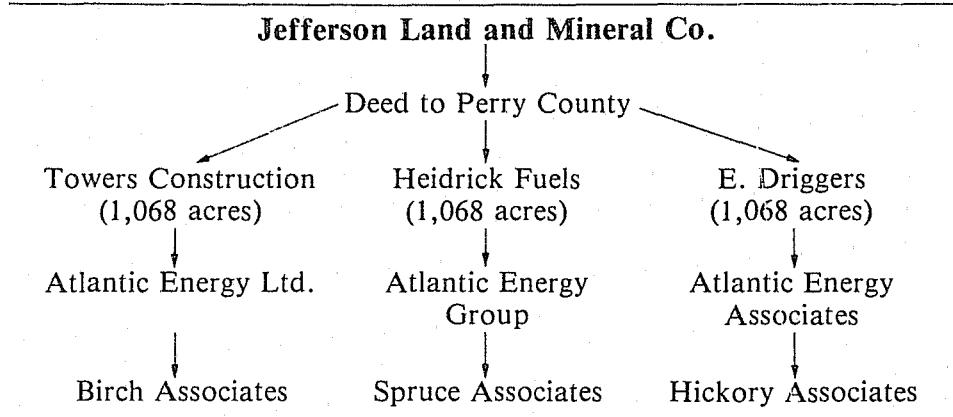
Nor is there any doubt that the promoters, the general partners and the management companies were closely entwined.

In the majority of these 21 limited partnerships, the general partners, who had no experience in the coal industry, were actually brokers who were rewarded by the promoters for obtaining substantial numbers of investors.

General partners who acted as brokers were required to invest an initial \$500 or \$1,000 in the limited partnership they controlled, according to a former general partner who was interviewed. Once a limited partnership had been filled and formally capitalized, the promoters returned the \$500/\$1,000 investment. The general partner then collected a \$10,000 "general partner's fee" which came from the capitalization of his limited partnership. In other words, it was the investors who were rewarding him for his sales acumen, not the promoters.

With the \$10,000 fee in hand, the general partners immediately delegated all management responsibility to one of the management companies, which, as pointed out earlier, were operated by a friend of the promoters.

The management companies then charged the investors a fee of \$300 a month for each limited partnership.



The fifth limited partnership in the West Virginia operation, Main Associates, turned out to be an "insiders deal" between brokers and promoters intent on sheltering their own money. Under such an arrangement, investor costs are reduced significantly by eliminating finders (brokers) fees as well as expenses for offering memoranda, legal and tax opinions.<sup>1</sup>

This provided more working capital at risk which afforded these investors a 6-to-1 tax write-off ratio, as opposed to the average 3.7-to-1 write-off attained in the other eight 1976 deals.

In 1977, Edwin T. Driggers, a coal mine operator from the Corbin, Ky., area, acquired seven coal leases and three deeds that Bitumco affiliates then syndicated through 12 limited partnerships, referred to earlier as the "Tree Deals." Driggers said he was introduced to promoter Wellbrock by an individual named Marvin H. Stone. Driggers was instructed by Wellbrock to divide one of the deeds (from Jefferson Land and Mineral Co. for a 3,204 acre plot of land in Perry County, Ky.) into three separate parcels. Driggers stated he also was instructed by Wellbrock to create two corporations, Heidrick Fuels, Inc. and Towers Construction Co., and to deed the three separate parcels jointly in his name and in the names of the two companies.

The remaining two deeds and the seven leases acquired by Driggers were subleased through Heidrick Fuels, Inc., which, when coupled to the above transaction, gave the appearance of seven leases and five deeds or 12 separate deals. This same technique was used to divide the Pennsylvania properties from one to four tracts and the West Virginia properties from one to five tracts.

Driggers stated that he agreed to act as contract miner for the 12 "Tree Deal" limited partnerships, doing business as Driggers Equipment Co., Inc. However, he later defaulted, claiming that the promoters had broken a commitment to provide funds to cover start-up costs, a contention that Bitumco principals disputed.

From this point on, the "Tree Deals" took the same course as the earlier deals in Pennsylvania and West Virginia. Proposals were made to the investors to give up their interests in Kentucky and acquire undivided fractional interests (again unitization) in supposed coal-rich land in Pennsylvania's Cambria and Clearfield counties. Once again there was less coal in the ground than originally stated. Once again the mining operations collapsed with the investors failing to net profits.

<sup>1</sup> Of the \$20 million in cash put up by the 541 private investors, it is estimated that only 40% of it was used for working capital, while the other 60 percent was used for formation or promotion fees.

There also was another "insiders deal" (Sequoia Associates) in which investors enjoyed a tax write-off of 15-to-1 and which appeared to run afoul of federal regulations. Under U. S. Securities and Exchange Commission rules, only 35 investors were permitted in a private offering limited partnership; there were 78 in Sequoia Associates. There also is no indication that Sequoia Associates ever registered with the SEC or filed for an exemption, as required.

One of the brokers who invested in the Sequoia "insiders' deal" told the Crime Commission that he knew it was not a legitimate tax shelter. But he said he also knew that it would take the Internal Revenue Service years to discover the abuse and collect the unpaid taxes. As he looked at it, the "tax profit" he had realized (a \$50,000 write-off for a \$3,333 investment) was simply a cheap way of borrowing money because the government penalty was much lower than the current prime interest rates for personal loans.

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The Pennsylvania Crime Commission referred its investigative findings to numerous state and federal law enforcement and regulatory agencies throughout the United States. Included were U. S. Securities and Exchange Commission offices in Washington, D. C., New York, and Seattle; the U. S. Attorney's Office in Lexington, Ky.; state Securities Commissions in Montana, Oregon, Alabama and Utah; the New Jersey Attorney General's Office; and the Montana Department of Revenue.

The Crime Commission also referred its findings regarding the estimated \$42 million in tax write-offs to the Internal Revenue Service.

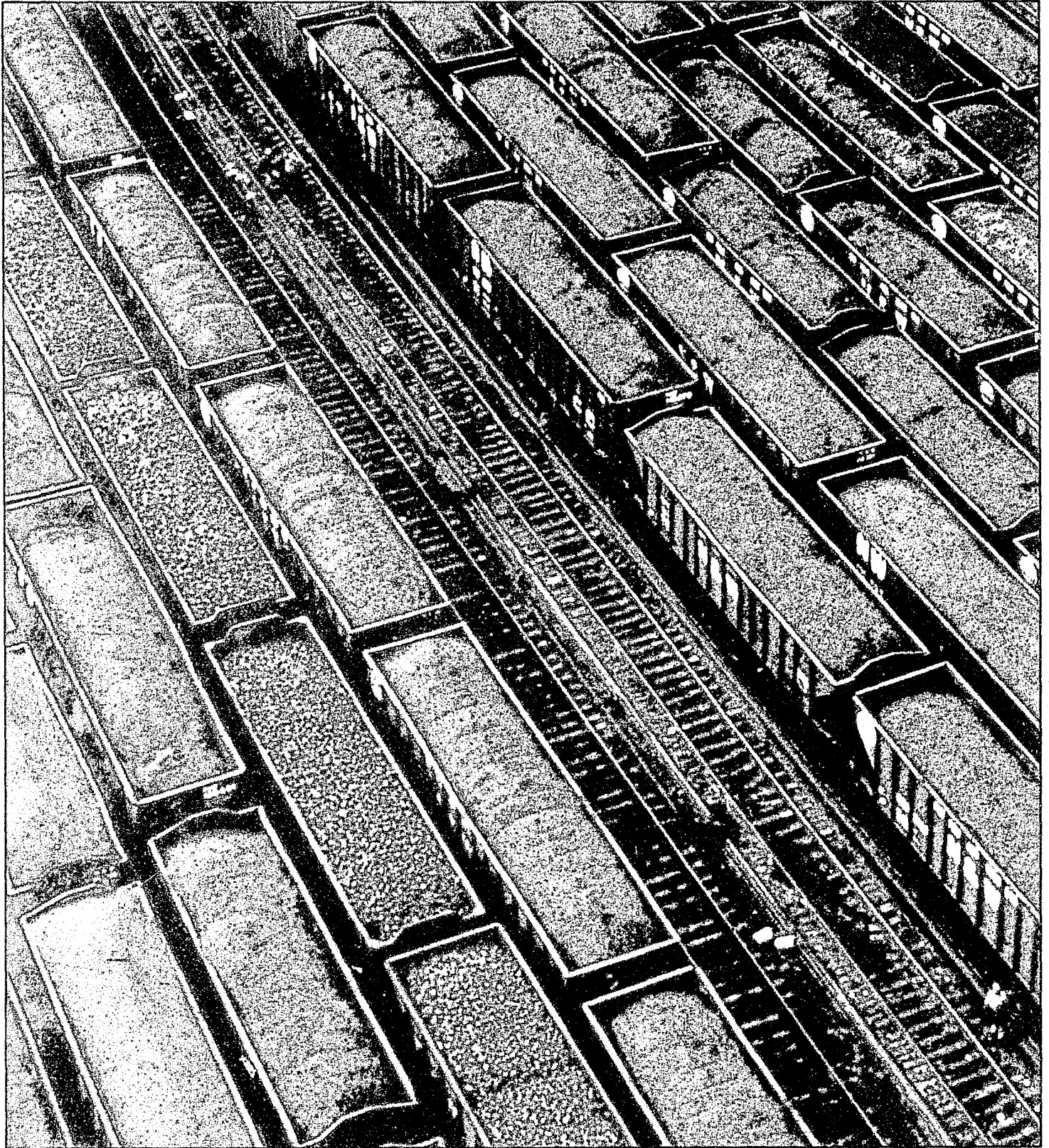
On May 18, 1982, federal grand jury indictments were handed down in London, Ky., against Marvin H. Stone, Edwin T. Driggers, and Roy K. Cornellius, who had provided the coal reserve estimates for the Kentucky properties. They were charged with four counts each of mail fraud and conspiracy.

On Nov. 3, 1982, Cornellius was dismissed from prosecution due to poor health. Driggers and Stone were convicted on Nov. 24, 1982, in U. S. District Court. On Jan. 3, 1983, Driggers was sentenced to five years in prison for each of the four counts and fined \$4,000 and Stone was fined \$10,000 and sentenced to three years imprisonment.

The prosecuting U. S. Attorney, in a letter dated Jan. 20, 1983, thanked the Crime Commission for its assistance, stating, "... the advice rendered and materials furnished were exceptionally valuable in helping put the case together."

# 4

## *Corporate Looting: Pocketing the Profits*



## West Pine

Between 1979 and 1984 there were at least 116 Pennsylvania coal companies that went bankrupt, some as a result of fraudulent schemes that funneled corporate funds into people's pockets. Others were driven deep into the red by con artists who bled off profits.

Coal miners and creditors both suffered.

It was in February of 1983 that the Pennsylvania Crime Commission began an investigation into a bankrupt strip mine coal company located in Pennsylvania's Schuylkill County known as West Pine Construction Co., Inc.

The investigation was launched after the Commission received information from the Philadelphia District Attorney's Office that some of the stockholders had criminal records and links to organized crime; and after the Leviticus Project alerted its members to be on the lookout for fraudulent bankruptcies involving coal companies.

As a result of its investigation, the Commission concluded that over \$370,000 had been diverted, often through middlemen, from West Pine Construction Co.'s corporate coffers.

Coal was sold for cash that was not reflected as income in West Pine's corporate records and thus was shielded from federal and state taxing authorities.

While the money was being diverted—most of it to two of the firm's officers—bills mounted. By December of 1981 West Pine Construction Co. owed 58 businesses, government agencies and individuals over \$1.4 million. In February of 1982, the firm filed for bankruptcy.

Four of West Pine's 14 stockholders had criminal records, including John McCullough, an associate of the late Philadelphia mob boss Angelo Bruno. A former president of Roofers Union Local 30 in Philadelphia, McCullough was murdered gangland style in December of 1980.

In 1975, two men, Pasquale Quinn and William Gaskins, incorporated West Pine Construction Co., Inc. to strip mine coal on a leased tract of land in Shenandoah, Pa. Four years later they obtained a sublease on a tract of land owned by the Renninger Coal Co. in the town of Branchdale, not far from where McCullough grew up.

They began to mine the Branchdale property, but neglected to post a required land reclamation bond with the state. Consequently, an inspector for the Department of Environmental Resources (DER) ordered them to cease operations until the \$20,000 bond was obtained.

Gaskins and Quinn suddenly were strapped for money. Gaskins, who had been boyhood pals with McCullough, turned to his old friend for help and the labor boss, who by now had moved to Philadelphia, arranged for several acquaintances to invest in the coal company.

They included Joseph Crosley, a former Philadelphia Roofers Union organizer who became a West Pine stockholder and later served as a company director and vice president; and Thomas "Gooney" Walsh, another former Philadelphia roofer who at one time was listed as West Pine's treasurer.

Crosley has been convicted twice for assault and battery. Walsh has been convicted of possession of counterfeit currency and aggravated robbery. Another stockholder was Charles T. "Shotsie" Conwell, a Philadelphian who has been arrested eight times and con-



William Gaskins

(Photo courtesy of the Pottsville Republican)

victed twice for gambling offenses. Conwell served as West Pine's assistant vice president.

McCullough, through his friends, coaxed \$307,400 into West Pine over a two-year period.<sup>1</sup> The firm posted its DER bond. From January 1979 through December 1981, West Pine mined 38,135 tons of coal which it sold for \$878,559 to three coal breakers—Blaschak Coal Co. of Mahanoy City, DiRenzo Coal Co. of Minersville, and Olenick Brothers Coal Co. of Forestville.

In the Blaschak Coal transactions, checks totaling \$195,286.86 were made out to West Pine Construction Co. for coal purchased, money that apparently wound up in the company's coffers. Blaschak Coal, however, also wrote checks totaling \$22,383.20 to an individual named David Hobbs who Blaschak officials thought to be an independent supplier.

In fact, Hobbs worked for West Pine as a truck driver. He was Gaskin's brother-in-law. He was selling West Pine coal. He cashed the checks and gave the \$22,383.20 to Gaskins and/or Quinn.

<sup>1</sup> One of the backers of West Pine was Francis Rossetti, who loaned the firm \$50,000. Rossetti was involved in credit scams at two Las Vegas casinos during 1976, along with such Philadelphia organized crime figures as Victor DeLuca, Carl Ippolito and Frank Monte. See the Pennsylvania Crime Commission's "1980 Report, A Decade of Organized Crime," for additional detail.



In the DiRenzo Coal Co. deals, \$617,983.42 worth of coal was purchased from West Pine. Of that amount, \$305,494.22 was diverted through middlemen and make-believe companies to Gaskins, Quinn and Melvin Weir, a subcontractor who with another man had struck a deal with Quinn to mine part of the West Pine sublease in return for half of the coal produced.

Weir, who is McCullough's nephew, testified at public hearings the Crime Commission held in Pottsville on June 28, 1984, that he sunk his share of the money back into the mining operations, something he said that Quinn and Gaskins did not do. "I put it all back in," Weir stated. "I was stuck with all the costs of doing the strip mine operation, plus the DER, and we had equipment payments, we had our creditors which we had to pay."

The \$305,494.22 was siphoned off four ways.

In one instance, DiRenzo Coal simply made out a check for \$15,991.75 to Hobbs at Quinn's request. Hobbs cashed the check and gave the cash to Quinn and/or Gaskins.

In another, Quinn and Gaskins simply requested that a \$11,320.50 payment to cover coal delivery costs be made in cash. It was.

In a third deal, DiRenzo Coal Co. paid for West Pine coal with \$81,190.75 in checks made out to an individual named Martin Hanrahan, a friend of Weir's. DiRenzo Coal officials had been told by Quinn that there had been a change in West Pine's corporate officers, and that all checks consequently were to be made out to Hanrahan, who wasn't even a West Pine employee much less an officer.

Hanrahan cashed the checks and gave the money to Weir, who, under his agreement as sub-

contractor split it with Quinn and/or Gaskins.

In still another scheme to divert funds, Quinn demanded cash payments from DiRenzo Coal for all coal from a seam on the West Pine property known as the Mammoth vein. Quinn offered this higher quality coal at the same price that DiRenzo had been paying for coal of a poorer quality. DiRenzo agreed to the cash payments.

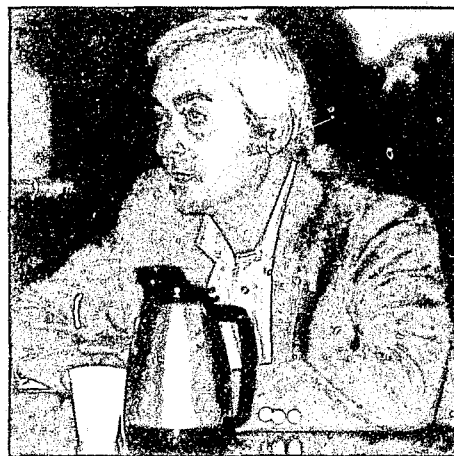
### **Fictitious Firms Mask Coal Sales**

From the start, Quinn had made it clear that he did not want any records kept of the cash transactions involving the Mammoth vein. To keep track of the money, DiRenzo Coal Co. listed the cash payments on its books as being made to three fictitious companies—Fallen Oaks 1, Fallen Oaks 2, and Tall Oaks. Under this arrangement, Quinn received \$196,991.22 in cash.

Paul DiRenzo, DiRenzo Coal's president, was asked about the creation of the fictitious companies at the Commission's public hearings by Leviticus Counsel Joan Weiner. This exchange took place:

Q. Can you explain how those names appear in your purchase journal?

A. Well, during the visit of late '78, a short time after that Mr. Quinn had stopped in the office and said to me that all the coal coming off of the Renninger lease will not be marketed solely under West Pine and that he has some shipments coming in that he wants to be paid cash for. I was reluctant to do this and I said I can't just go and disburse cash out of the company without having records for it. He says, well, do what you want to do. I said, well, I will identify my cash payments under these names, then. That is how I did it.



**Paul DiRenzo**  
(Photo courtesy of the Pottsville Republican)

Q. Whose idea was it to come up with these names?

A. I believe I suggested it.

Q. You suggested the names for your bookkeeping purposes?

A. That is right, for my disbursement records.

Q. And again, that was because Mr. Quinn did not want these sales of coal to appear under the name West Pine Construction?

A. That is right.

Weir was asked during the hearings if he had kept a record of the coal he and his partner mined from the Mammoth vein. He replied that he had.

Q. Did either Mr. Quinn or Mr. Gaskins know that you were keeping that record?

Weir: No.

Q. Did they ever find out that you were keeping that record?

Weir: Yes.

Q. What did they say?

Weir: They said to keep my mouth shut about Fallen Oaks.

Q. Did Mr. Quinn ever give you any other indication that he wanted you to keep extremely quiet about the operation that was going on on the Mammoth vein?

Weir: Sometime when we were working there he told me there was somebody coming to the job from Philadelphia or something, to hide the machine.

Q. He told you to hide the machine?

Weir: Yes.

Q. Why did he tell you to hide the machine?

Weir: Obviously he didn't want them to see who was there.

Q. He didn't want the people from Philadelphia . . . ?

Weir: To know what was going on.

West Pine coal valued at \$42,906.00 was sold to Olenick Brothers Coal Co. Included in the transactions were checks totaling \$27,353.75. These were made out to Hanrahan who cashed them and gave the money to Weir. The remaining money, \$15,552.25, was contained in checks payable directly to Weir, who in both cases again split it with Quinn and/or Gaskins. West Pine Construction Co. got nothing.

"In effect, the company (West Pine) was being sucked of its coal profits by these two individuals," Crime Commission Special Agent Victor DiCicco testified at the public hearings.

Regarding the checks made payable to Hanrahan, Weir testified before the Commission on Oct. 4, 1983, as follows:

Q. You have indicated that Mr. Quinn and Mr. Gaskins came to you and asked if you knew someone that could cash a check?

A. Yes.

Q. Was that a West Pine Construction Co., Inc. check?

A. No, it was a check issued right from the breaker, right from DiRenzo Coal Co., and there were a couple from Olenick Brothers.

Q. Do you know why they were made to Marty Hanrahan?

A. I guess they didn't want, you know, West Pine Construction Co.'s name on it.

Q. Why?

A. So nobody would know what was going on. They wouldn't have to enter it into the books. This way they put the money into their pockets.

Weir testified at the public hearings that Hanrahan was given several hundred dollars for cashing the checks. This exchange took place:

Q. Now Mr. Hanrahan was basically doing a favor by cashing these checks, is that correct?

A. A personal favor to me.

Q. Was he compensated for his efforts?

A. The most I know he got was \$200.

Q. Two hundred dollars. Was that \$200 in total . . . ?

A. In total.

Q. And that would be, what, \$10 here, \$20 there, that kind of situation?

A. More or less.

Q. Who would give him this compensation?

A. I did.

Hanrahan also testified:

Q. Did you receive any checks that were payable to you from DiRenzo Coal Company?

A. Yes, I did.

Q. Did you receive any checks that were payable to you from Olenick Brothers Coal Company?

A. I believe I did.

Q. Did you provide any goods or services to either DiRenzo Coal

Company or Olenick Brothers Coal Company, such that they would be paying you for those goods and services?

A. No I didn't.

Q. When you cashed these checks were you compensated for your trouble?

A. No, not necessarily. No set fee or anything, no money like that.

Q. Did you receive any occasional payment for cashing these checks?

A. Well, he (Weir) would take me out to dinner once in a while . . . .

Q. But on occasion would Mr. Weir or someone else slip you a ten dollar bill, twenty dollar bill . . . ?

A. No, I have owed him money and he said, don't worry, forget about it, or something like that. That is about all.

Q. The checks made out to you from DiRenzo Coal Company and Olenick Brothers Coal Company totaled \$95,300. You cashed all of them and gave the money to Melvin Weir, is that correct?

A. That is true. I didn't realize it at the time how much it was?

Q. This \$95,300 was not your money, was it?

A. No, positively not.

Q. We are talking about a substantial amount of money, \$95,300. Did you give all of that money to Melvin Weir?

A. Yes. Patsy (Quinn) and Billy Gaskins, or Billy, they were always together.

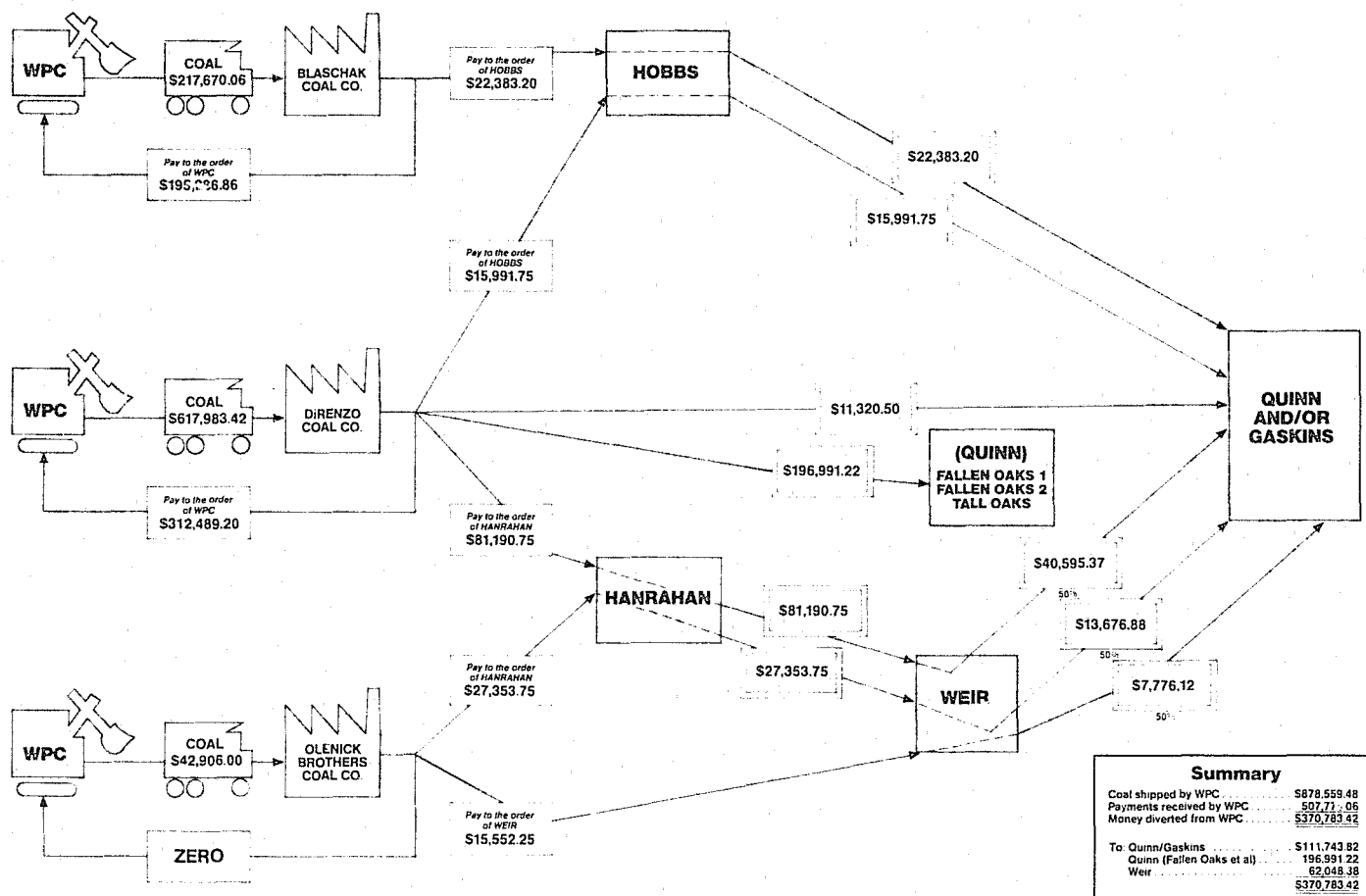
Q. They were present when you handed the money to Melvin?

A. Sometimes I went down and they were on the corner. They would come to the car and (I) would just hand it to them . . . .



# WEST PINE CONSTRUCTION CO., INC. (WPC)

## DIVERSION OF COAL RECEIPTS January 1979 Through December 1981



Q. The question is, to whom did you actually hand the money. Did you always hand to it Melvin?

A. Yes. He was always there getting it. I wouldn't have cashed it for anybody else.

Q. Did anyone at any time ever tell you why the checks were being made out in your name?

A. No, they didn't.

Q. Did anyone at any time ever tell you why they needed you to cash these checks?

A. No, and I guess I should have realized, I should have inquired more, but I didn't.

### West Pine Officials Take 5th

Gaskins and Quinn made every attempt to mask West Pine's true financial picture.

Stanley J. Bernstein, a certified public accountant who represented a West Pine shareholder/investor, told the Crime Commission that he had tried unsuccessfully to obtain information regarding West Pine coal sales. This exchange took place:

Q. During your association with West Pine Construction Co., Inc., did you formulate a procedure for the reporting of income to the corporation?

Bernstein: I attempted to . . . First of all, we prepared a sheet for the principals up there, who were basically Gaskins and Quinn . . . That sheet was supposed to give to us information relative to the sale, who (the coal was) sold to, the tonnage that was sold, that which was produced, the payroll, number of people on the payroll. We sent many hundreds of these sheets up to them because we asked for it on a daily basis and we never got the first sheet back.

Q. Who was supposed to fill those out, specifically.

Bernstein: Gaskins or Quinn.

Herbert Fisher, an attorney representing Roofers Union Local 30 in Philadelphia and a friend of McCullough's, also had prepared forms to be filled out by Gaskins or Quinn in an effort to monitor company transactions. Fisher, who owned five percent of West Pine's outstanding shares, testified at a Crime Commission hearing on Oct. 6, 1983:

Q. Do you know, Mr. Fisher, whether or not records were being kept as to how much coal was being produced and sold?

A. I don't know. I honestly don't know.

Q. Did you ever request to see any records of that nature?

A. I made up elaborate forms for them to send back, and they never did.<sup>2</sup>

Both Quinn and Gaskins refused to answer questions pertaining to West Pine Construction Co. at the Crime Commission's public hearing in Pottsville, citing protection from self-incrimination under the 5th Amendment.

Hobbs also invoked his 5th Amendment rights when asked if he had ever cashed checks for West Pine Construction Co. or if Blaschak Coal Co. owed him any money. Hobbs had answered those and other questions at a prior executive session hearing before the Commission.

After West Pine Construction Co. filed for bankruptcy, a Williamsport doctor, Douglas Colkitt, assumed control of the company by obtaining all of the outstanding stock. He continued to mine coal while the firm reorganized.

### **Pennsylvania Owed \$13,000 in Back Taxes**

The debts piled up by West Pine affected both the private and public sectors with the state and federal governments being owed in excess of \$79,000.

The Commonwealth of Pennsylvania was out \$13,183.07 in back corporate and personal income taxes; the state Bureau of Employment Security \$5,076.72.

The Internal Revenue Service lost \$46,049.53.

The federal Office of Surface Mining (O.S.M.) stood to lose \$14,745.42 which included a reclamation tax due on unreported coal sales. (Under the Surface Mining and Reclamation Act of 1977, coal companies must pay the O.S.M. a reclamation fee of \$.35 for surface mined coal and \$.15 a ton for deep mined coal.)

Big and small businesses also took it on the chin.

Leasing Service Corp., located in Pittsburgh, was left with an outstanding bill of \$114,988.86, according to bankruptcy papers. The Rockwood Insurance Co. of Pottsville was out \$5,292.32. Kramer's Arco Service Station in Orwigsburg lost \$1,894.31.

Paul DiRenzo lost \$95,000. He testified that he had advanced West Pine the money because it was experiencing financial problems and needed fresh capital. He said the \$95,000 was to be applied against future coal purchases, but that the coal was never delivered and he was stuck with the unpaid debt.

During the period that West Pine was experiencing financial difficulties, the Commission received information that certain stockholders were leasing through the corporation three Lincoln Continentals and two Oldsmobile sedans. The leasing company ultimately filed suit for \$32,265.00 for nonpayment.

Joseph Macaravage, an auditor with the Office of Surface Mining, Department of Interior, testified in Pottsville that coal company bankruptcies, especially those in which shoddy records

have been kept, can create significant problems for regulatory agencies. He said the problems involve: (a) locating the principals of the company; (b) receiving notification of the bankruptcies, (c) quality of the records that may be available, (d) gaining access to those records.

Q. Did you seek access to those records on a voluntary basis?

A. Yes, we do.

Q. Is there any other mechanism available to you whereby you can, in essence, compel disclosure of those records?

A. The only means available to me is by referring the matter to our counsel in Charleston, West Virginia, who may attempt to seek relief for me. But as an auditor, as compared to, for example, IRS, I have no subpoena, I have no authority to issue a federal summons to gain access to these records.

Q. How long would it take for you to gain access to someone's records if that person were not being cooperative and you had to go through your solicitor . . . . What is a ballpark amount of time for that?

A. Well, you are talking about months.

Q. And in the meantime, what is happening in terms of your ability to get these fees for the government? Is everything on hold?

A. That is correct. This may be the case.

Q. You mentioned that you do not have subpoena power. May I assume that if you did have such subpoena power your job would be a lot easier?

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<sup>2</sup> Bankruptcy records show that most of West Pine's books and records, including all cash receipts and ledgers, were in a construction trailer that was vandalized sometime after Feb. 5, 1982, by unknown persons. The bulk of the records were either destroyed or are missing.

# Summary of Losses

## West Pine Construction Co., Inc.

Acme Machine & Welding Co. (Purxsatawney)	\$ 23,344.76
Air Brake & Powder Equipment Co. (Pottsville)	57.91
Anthracite Development Corp. (Zerbe)	76,800.00
Stanley Bernstein, CPA (Philadelphia)	15,000.00
Blaschak Coal Co. (Mahanoy City)	50,712.71
Botts Auto Parts (Minersville)	1,465.76
Bressi Powder Co. (Mt. Carmel)	7,500.00
Bruno Auto Supply (Hazelton)	967.41
Chowansky Electronic Service (Frackville)	2,329.51
Douglas Colkitt (Williamsport)	25,000.00
Commonwealth of Pennsylvania (corporate taxes)	7,928.10
Commonwealth of Pennsylvania (personal income taxes)	5,254.97
Commonwealth of Pennsylvania, Bureau of Employment Security	5,076.72
Credit Alliance Corp. (Pittsburgh)	360,991.75
Joseph Crosley (Philadelphia)	70,808.00
D'Attilio's Auto Service (Minersville)	587.33
Paul DiRenzo (Pottsville)	95,000.00
Fidelity Fund, Inc. (Upper Darby)	487.30
Herbert K. Fisher (Philadelphia)	21,000.00
Frank Flannery (Philadelphia)	7,500.00
William Gaskins (Minersville)	9,500.00
Gerald Gatti (Hazelton)	1,842.35
Oscar Glassman (Philadelphia)	184,150.00
Ben Green (Philadelphia)	25,000.00
David Hammer (Pottsville)	1,277.95
Henny's Auto Parts (Schuylkill Haven)	450.54
David Hobbs (Pottsville)	7,200.00
Hubbard Coal Co. (Wilkes-Barre)	4,500.00
Internal Revenue Service	42,381.66
Internal Revenue Service (Excise Tax Due on Unreported Coal Sales)	3,667.87
Jack's Products Co., Inc. (Philadelphia)	28.33
Elmer Johnson, Inc. (Pottsville)	128.47
Kramer's Arco Service Station (Orwigsburg)	1,894.31
Leasing Service Corp. (Pittsburgh)	114,988.86
Liberty Air Compressor Co. (Philadelphia)	99.93
C. L. Mack, Inc. (Tremont)	11,000.00
Medico Industries (Wilkes-Barre)	6,025.76
Morgan & Halcovage (Minersville)	133.00
William R. Mosolino, Esq. (Orwigsburg)	1,300.00
Penn Equipment Corp. (Port Carbon)	3,501.90
Penna. Brake & Supply Co. (Hazelton)	1,074.00
Pasquale Quinn (Minersville)	9,500.00
Renninger's Garage (Tremont)	2,028.04
Renninger Coal Co. (Branchdale)	3,150.72
Rockwood Insurance Co. (Pottsville)	5,292.32
Rothstein Trust (Philadelphia)	30,000.00
George T. Seiler Welding Supply (Minersville)	70.68
Robert Shewokis Fuel (New Philadelphia)	2,907.94
State Equipment (Lancaster)	27,634.32
Swain Enterprises, Inc. (Philadelphia)	26,729.35
Ray Swenson, Inc. (Philadelphia)	5,536.44
Tallman Supply Co. (Tower City)	954.60
U.S. Dept. of Interior, Office of Surface Mining	9,610.40
U.S. Dept. of Interior, Office of Surface Mining (Reclamation Tax Due on Unreported Coal Sales)	5,135.02
Wagner Sales Co., Inc. (Winfield)	1,299.01
Joseph Walacavage (Pottsville)	40,000.00
John Walaitis Coal Co. (Branchdale)	85,313.36
West End Motor Co., Inc. (Pottsville)	173.01

**\$1,453,292.37**

A. In those cases where I was denied access, yes ma'am.

Macaravage, based in Wilkes-Barre, stated that he was the only auditor assigned by the Office of Surface Mining to monitor Pennsylvania's six-county anthracite region.

Also testifying were two representatives from the Pennsylvania Department of Environmental Resources, attorney James Morris and Gary L. Merritt, DER's Energy Program Coordinator.

Merritt stated that coal-producing states like Pennsylvania stand to lose large sums of money when coal companies understate the amount of coal mined because federal funds earmarked for state land reclamation are based on tonnage figures the states submit.

Merritt said that between 1979 and 1984 there were 186 Pennsylvania coal companies that forfeited land reclamation bonds worth an estimated \$8 million.

Of the 186 bond forfeitures, he said 116, or 62 percent, of the companies "were into bankruptcy in one manner or another."

Asked what problems are created for DER when a coal company goes into bankruptcy, Morris stated that "the result for the Commonwealth's regulatory program is, to put it bluntly, nothing short of disastrous."

He went on to explain that there have been a number of "disturbing lower court decisions" that essentially had short-circuited the enforcement powers of regulatory agencies like DER in bankruptcy cases. He also cited cases where bankrupt parties have been permitted to abandon assets which have been deemed worthless.

"... if all the bankrupt has to do is abandon the property to avoid any obligation, to comply with state police power enactments, you are facing an absolute irremedial disaster," he said.

In closing remarks, Leviticus Counsel Weiner noted:

"(West Pine) is an interesting story but it is really a sad story in the end because what happened was this company went bankrupt and left somewhere in the neighborhood of 58 people, companies holding the bag to the tune of over \$1.4 million.

"I would like the record to reflect that in preparation for this hearing I personally spoke to many of the creditors . . . Each and every one of those creditors in discussing this hearing here today said, 'Ms. Weiner, we understand your role and what you are supposed to do, but is there any way you can get money back for us?'

"Now in some instances we are talking about fairly large companies that can absorb those losses, but in many other instances we are talking about small operators, small businesses, individuals who provided either goods or services to this company and wound up with nothing in return, and are finding it difficult to deal with the fact that they were taken.

"They want repayment, and to be honest with you, I can't give them any idea of whether that repayment is forthcoming or not."

## *Kittanning Coal*

During the late 1970s, the F.B.I. and the Pennsylvania Crime Commission investigated a classic "bust-out" of a coal washing and processing plant located near the Armstrong County community of Adrian.

Almost \$.5 million was bled from the firm, Kittanning Coal Co., Inc., pushing it to the brink of financial collapse.

Some of the diverted money was spent at jewelry stores and travel agencies. Some was used to pay "ghost" employees, men with links to organized crime who handled such things as labor matters.

A New York investment house was hard hit financially.

Kittanning Coal had acquired the assets of Kitt Coal Co., which on Oct. 6, 1978, had been placed into involuntary bankruptcy by a federal judge in Pittsburgh.

According to a former employee:

— Kitt Coal Co. began operations in Armstrong County in October of 1975 and for the next two years made a profit.

— In 1978, however, the company's two owners (John W. Benson Jr., the majority stockholder with 60 percent of the shares and John H. McCann III, minority stockholder with 40 percent) began using Kitt Coal's profits to diversify into other industries and to finance a second coal company, Appalachian-Pocohontas Coal Co., Inc. of Beckley, W. Va. They also secured personal loans against Kitt Coal profits.<sup>1</sup>

On Feb. 1, 1979, Kittanning Coal Co., Inc. executed an acquisition agreement wherein it agreed to purchase the assets of Kitt Coal Co. for \$1.5 million.

Financing was arranged through Allen & Company, Inc. a New York-based investment banking firm, and Bally Coal Co., Inc. of Media, Pa. The details were spelled out in a stockholders agreement that was entered into on March 1, 1979, between Allen & Company and Peter Fitzpatrick and Joseph C. Ripp, officers and stockholders of both Bally Coal and Kittanning Coal.<sup>2</sup>

<sup>1</sup> In a civil suit filed in March of 1982 in federal court in Pittsburgh, McCann and Benson are accused of receiving kickbacks from the sale of Kitt Coal to Kittanning Coal by falsifying the list of Kitt Coal's creditors and thus artificially inflating the purchase price.

<sup>2</sup> Ripp, of Pompano Beach, Fla., has been identified as a business associate of Philadelphia La Cosa Nostra member Raymond "Long John" Martorano, convicted on July 31, 1984, in the murder of Philadelphia union boss John McCullough. Fitzpatrick, whose last known address was the New York Athletic Club, was convicted in Florida in the early 1980s for fraudulently selling unregistered securities and sentenced to five years in prison.

The stockholders agreement provided that:

1) Allen & Company would loan Kittanning Coal the \$1.5 million to enable Kittanning to purchase the assets of Kitt Coal;

2) Allen & Company would own a majority of the common stock of Kittanning;

3) Allen & Company would invest \$250,000 in securities of Kittanning to provide Kittanning with working capital to operate the new business;

4) Ripp and Fitzpatrick, on behalf of Bally Coal Co., would also invest \$250,000 in the securities of Kittanning for working capital;

5) Bally Coal Co. would own a minority of the common stock of Kittanning;

6) Bally Coal would manage the daily operations of Kittanning Coal through its designees—Ripp and Fitzpatrick.

Under the stockholders agreement, Fitzpatrick was designated as president of Kittanning Coal Co., Ripp as vice president and Robert H. Werbel, a representative of Allen & Company, as secretary.

The board of directors of Kittanning Coal (three designees of Allen & Company and two designees of Bally) resolved that:

1) Pittsburgh National Bank (PNB) would be designated as the depository for Kittanning's funds;

2) Ripp and Fitzpatrick would be authorized to withdraw Kittanning funds not exceeding \$20,000 from the PNB account (with Werbel's signature they could withdraw in excess of \$20,000);

3) No Kittanning officer had authorization to obtain credit from PNB.



Joseph C. Ripp

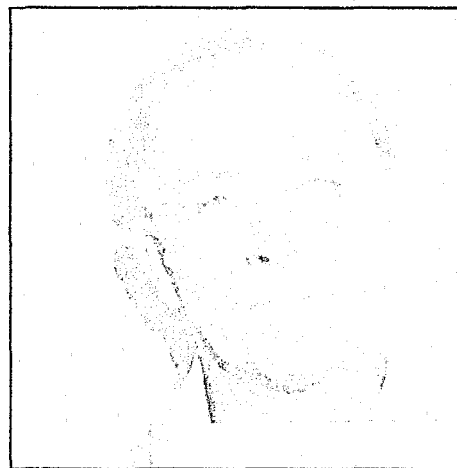
The \$250,000 in working capital provided by Allen & Company to assist in the start-up production at the coal washing plant was deposited in Kittanning's account at PNB. The \$250,000 Ripp and Fitzpatrick were to provide also was forwarded to PNB in the form of a bad check, apparently drawn on an unfunded, closed account at another coal company.

Allen & Company officials were not aware that the check, which they had been shown, had bounced. Nor did they have much contact with the operations at the washing plant as Ripp and Fitzpatrick handled the day-to-day finances, as outlined in the stockholders agreement.

Allen & Company subsequently put up an additional \$200,000 in working capital for Kittanning Coal with Ripp and Fitzpatrick to put up \$100,000. They never did, a fact that again was kept from Allen & Company officials.

Not only did Ripp and Fitzpatrick fail to put up any money, they diverted for their personal use and benefit most of the \$450,000 Allen & Company put up, using wire transfers and checks drawn on Kittanning Coal Co. accounts. In short, they were bleeding the firm to death.

Eight days after the stockholders agreement was approved, Ripp and Fitzpatrick, once again without the knowledge of Allen & Company or Kittanning Coal



Peter Fitzpatrick

Co.'s board of directors, used falsified documents to open three bank accounts in the name of "Kittanning Coal Co., Inc." at Merchants National Bank in Kittanning. Between March 9 and Oct. 17, 1979, Ripp and Fitzpatrick wired \$463,500 from the PNB account to the Merchant National Bank accounts.

### Checks Earmarked for Jewelry Stores

As a condition of the Kitt Coal sale, it was agreed that \$200,000 would be held in an escrow account at First Pennsylvania Bank to satisfy any creditors who might come forth after settlement. The money eventually was released to a firm identified as Pennsylvania Refrigeration Co., Inc., a corporation controlled by Ripp and which shared Ripp's home address.

From there it went to Andrew Chalako, an ex-convict and organized crime figure who opened an account at Continental Bank in Philadelphia in Pennsylvania Refrigeration Co.'s name.<sup>3</sup>

<sup>3</sup> In 1970, Chalako was convicted of conspiracy to extort money from several Camden, N. J., bars in an effort to settle a ten-week-long bartenders strike. At the time he was secretary/treasurer of Local 170, of the Bartenders, Hotel and Restaurant Employees Union in Camden. He received a four-year prison sentence and a \$2,000 fine. On March 25, 1980, Chalako was an usher at the wake of Philadelphia Mafia boss Angelo Bruno.

On June 26, 1979, the \$200,000 was deposited in the account and on the same day a check for \$150,000 was written to Continental in exchange for a treasurer's check in the same amount made out to Kitt Coal Co.

An analysis of the Continental Bank account covering the period from June 26, 1979, to June 22, 1981, showed that a total of \$219,000 (including the \$200,000 in escrow money) had been deposited. There were 56 checks written against the account, most appearing to pay personal bills, being made out to jewelry stores, air lines, travel agencies, and bank installment loan accounts. One check carried the notation: "For Lease Payment J. Ripp."

There were checks written to Chalako, to John McCann, to Kittanning Coal Co., to West Pine Construction Co.,<sup>4</sup> and to B.J.J., Inc., a corporation set up to manage a south Philadelphia bar owned by a man named William Jones.<sup>5</sup>

All of the checks were signed by Chalako.

In order to conceal the diversions and misappropriation of funds, Ripp and Fitzpatrick informed Allen & Company that they had hired a certified public accountant named Joseph P. O'Connor to look after Kittanning Coal Co.'s books. O'Connor, who was not a CPA and who had worked with Ripp in former deals, prepared three financial statements that were forwarded to the New York investment firm. They were inaccurate and misleading.

In the late spring of 1979, a Kittanning Coal Co. foreman said he discovered that coal suppliers were not being paid because of a shortage of cash. In July of that year Kittanning Coal virtually shut down operations.

A company consultant said he discovered through the foreman that certain people were being

paid on a weekly basis even though they weren't carried on the official payroll. The consultant said they included Chalako, Frank Vadino, a convicted narcotics trafficker; and Anthony D'Amato.

Ripp stated that he was introduced to Vadino by Philadelphia LCN member Ralph Natale, like Chalako a former secretary/treasurer of Local 170 of the Bartenders, Hotel, and Restaurant Employees Union in Camden, N.J.

Ripp said it was Natale who had pressured him to "hire" Chalako.

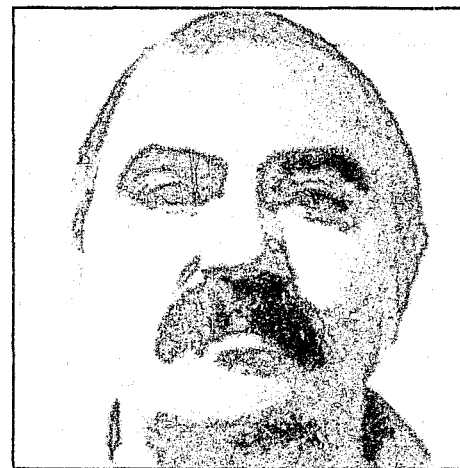
Ripp also stated that Natale, with the help of Philadelphia Roofer Union boss John McCullough, was instrumental in thwarting an attempt by the United Mine Workers to unionize Kittanning Coal Co. workers.<sup>6</sup>

According to a former Kittanning Coal employee, Chalako appeared at the plant about a half dozen times between March and October of 1979, frequently on days Kittanning was to receive payment for coal it had washed and processed. The former worker said Vadino and D'Amato spent more time at the plant, usually drinking coffee and lounging around the office.

### Investment Firm's Losses Approach \$.5 Million

On Oct. 17, 1979, Ripp and Fitzpatrick were removed as officers of Kittanning Coal by Allen & Company, which began an extensive audit of the firm's records. Allen & Company eventually estimated its loss at between \$400,000 and \$500,000.

On March 5, 1982, a civil suit was filed jointly by Allen & Company and Kittanning Coal in U. S. District Court in Pittsburgh. Included among the defendants were Ripp, Fitzpatrick, McCann, Benson, O'Connor, Pennsylvania Refrigeration Co., Inc., Kitt Coal Co., Inc., and Bally Coal Co., Inc.



Ralph Natale

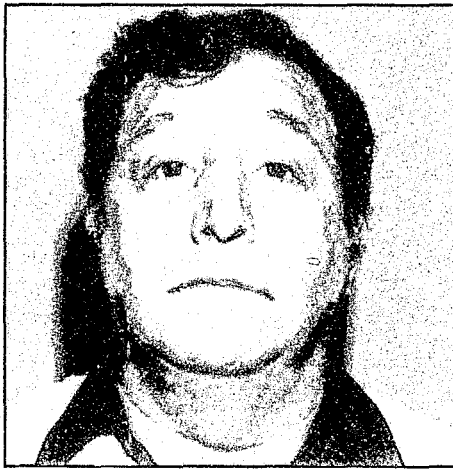
The suit, brought under the Racketeer Influenced and Corrupt Organizations Act, sought damages for violations of securities laws, alleging:

"Defendants and others devised and implemented a scheme and artifice to defraud Kittanning, Allen and others through a pattern of racketeering activity . . . by making a series of false and fraudulent pretenses, representations, promises, omissions and

<sup>4</sup> West Pine Construction Co., located in Schuylkill County, was the subject of a recent Pennsylvania Crime Commission investigation that revealed that close to \$400,000 had been siphoned from West Pine's corporate coffers into the pockets of several of the firm's officers. Details of that investigation are included in this report.

<sup>5</sup> Checks written on Kittanning Coal Co. bank accounts also were made out to either Jones' wife, Joyce, or B.J.J., Inc., which oversaw operation of the Packer Bar, located at 1531 Packer Ave., Philadelphia. Jones told the Crime Commission the checks covered the repayment of several loans totalling approximately \$40,000 he had made to Ripp in 1979 and 1980. It is interesting to note that Jones was the sole officer and incorporator of 211 J. J. Quince Corp. (t/a the Intermision Tavern, Philadelphia) which was a subject of a Crime Commission investigation involving the infiltration by organized crime of legitimate businesses. Details of that investigation are included in the Commission's 1984 Report.

<sup>6</sup> On Feb. 8, 1979, Natale, Vadino, D'Amato and five others were arrested and later indicted in Fort Lauderdale, Fla., in a conspiracy to sell \$900,000 worth of cocaine and other drugs. The arrest took place on the Danny Boy III, a yacht that was owned by the Bally Coal Co. Vadino and Natale were convicted on July 14, 1980; D'Amato was acquitted. On Jan. 13, 1982, Vadino was indicted by a federal grand jury in Philadelphia, along with Martorano and LCN associate John Berkery, in another major drug case. Vadino later was convicted and sentenced to a 5-year prison term.



Frank Vadino

concealments which constituted violations of federal statutes.

"The purpose of this scheme was to induce Allen to participate with the defendant Bally Coal in the joint acquisition of the assets of the insolvent Kitt Coal Co. Inc. . . . through the medium of Kittanning Coal Co., Inc. . . . and to thereafter defraud Kittanning and Allen by obtaining operating managerial control of Kittanning and then diverting and misappropriating its assets to the defendants' own benefit, while inducing Allen to invest additional sums in Kittanning for the purpose of increasing the assets available for diversion and misappropriation."

The suit alleges the defendants engaged in mail fraud, wire fraud, securities fraud, transportation of stolen goods and conspiracy. It also contends that Ripp and Fitzpatrick and others . . . "destroyed books and records of Kittanning (Coal) with the purpose and intention of concealing the diversion and misappropriation of Kittanning's funds."

The suit is still pending.

## Ripp and Fitzpatrick Indicted

In May of 1984, Ripp and Fitzpatrick were indicted by a federal grand jury in Pittsburgh on four counts of mail fraud and one count of interstate transportation of securities obtained by fraud.

The indictment stated that between March 7, 1979, and Oct. 17, 1979, Ripp and Fitzpatrick defrauded Allen & Co. and Kittanning Coal out of approximately \$475,202.05.

On Aug. 17, 1984, Ripp pled guilty to one count of mail fraud and on Nov. 13, 1984, was sentenced to four years imprisonment.

At the time of the indictment, Fitzpatrick was serving a five-year prison term in Butler, Fla., after being convicted in Palm Beach of selling unregistered securities in a deal involving a company in West Liberty, Ky. He was sentenced to the Florida prison term on Sept. 29, 1982.

On Nov. 14, 1984, Fitzpatrick pled guilty to mail fraud in the Kittanning Coal case. He received a six-month prison term and was placed on five years probation.

## U. S. Coal

The Leviticus Project has found that often times fraudulent collateral is used to obtain loans to finance coal deals.

One popular method is to use coal reserves backed by phony analysis reports. Another is to secure credit by putting up heavy mining equipment that doesn't exist.

In the following case, phony financial statements and a fraudulent bank document, along with the assignment of a debt allegedly owed by a former professional football player, were used.

In late 1982, an attempt was made to purchase U. S. Coal Co., located in Ridgeway, Elk County, Pennsylvania, by two men—George A. Janke Jr. and Rocco J. Molinari, a former associate of Philadelphia organized crime figure Michael Grasso.<sup>1</sup>

An investigation conducted by the Pennsylvania Crime Commission determined that \$140,000 in

loans to be used as partial payment had been collateralized with a falsified document and that misleading information had been provided to the sellers. Janke and Molinari eventually defaulted on the loans and attempts to secure payment were unsuccessful.

It was in November of 1982 that the owners of U. S. Coal, brothers David and Victor Aiello, were approached by Janke and Molinari, who was the principal officer of R.J.M. Financial Management, 1601 Packer Ave., Philadelphia. At the time, U. S. Coal was experiencing severe financial difficulties.

On Dec. 3, 1982, Janke signed a purchase agreement with the Aiellos. As a condition of purchase, Janke was to put up \$100,000 at the execution of the sales agreement and \$200,000 on or before March 1, 1983. This \$300,000 was to be used to pay U. S. Coal's current operating expenses. The total sales price was set at \$3.2 million.

The \$140,000 in loans (one for \$100,000, one for \$40,000) were obtained from Harvey Millier, a coal broker who operated Millier Marketing, Inc., located in Penn Wynne, Montgomery County.

The money was primarily secured by two documents: a purported \$270,000 term deposit drawn on the Royal Bank of Canada's branch in Freeport, the Bahamas, that reflected the depositor as Janke and/or Janke's wife, Michele; and an assignment of \$180,000 in commissions allegedly due Molinari from Joseph Lavender, a former professional football player with the Philadelphia Eagles and Washington Redskins.

<sup>1</sup> Grasso is the nephew of the late Angelo Bruno, who ran Philadelphia's Mafia crime family from 1959 until his death, gangland style, on March 21, 1980. In 1971 Molinari and Grasso were indicted on charges of submitting false applications for mortgages to the Federal Housing Administration. Grasso was convicted. Molinari was dismissed from prosecution on grounds of mental incompetency.



The Crime Commission, through correspondence with an official in the Royal Bank of Canada's main branch in Toronto, determined that the bank had never carried an account in Janke's name, nor had it ever issued a term deposit with the number 0401009, the figure that appeared on the Janke document. There were other indications that the term deposit was fake.

Lavender, interviewed at his home in Maryland on Nov. 17, 1983, denied owing Molinari any money, stating, instead, that Molinari owed him a considerable amount of cash, later estimated to be around \$100,000. Lavender explained that he had turned his Washington Redskins' paychecks from the 1980 and 1981 seasons over to Molinari who was to use the money to liquidate outstanding debts that Lavender had accrued. Instead, according to Lavender, Molinari pocketed the money.

Lavender further stated that Molinari had prepared his (Lavender's) 1981 federal tax return. Lavender said he never saw or signed the return, nor did he ever see or sign a refund check of \$10,535 that ended up in Molinari's business account.

To further establish their financial credibility, Molinari and Janke provided Millier with financial statements allegedly prepared by their accountants.

Janke listed his accountant as Arthur Reiss of Jenkintown, Pa. The Crime Commission interviewed Reiss on April 5, 1984, at which time he was shown a copy of the financial statement that had been presented to Millier. Reiss confirmed that he had prepared several pages of the statement, but emphatically denied ever preparing one page entitled, "The Analysis of Cash in Foreign Banks." Reiss said he did not know how Janke had obtained his letterhead stationery.

Reiss also stated that in another financial transaction that had occurred several years prior to the spring of 1984, Janke had completely falsified a financial statement, forging Reiss' signature on the document. Again, the phony information appeared on Reiss' letterhead stationery, which Reiss said he had not provided to Janke.

### **Signature Forged, Accountant Claims**

Molinari listed his accountant as Harry J. Goldberg of Elkins Park, Pa. Goldberg was interviewed on April 6, 1984, at which time he stated that he had not prepared the financial statement submitted by Molinari to Millier. Goldberg said his signature also had been forged.

Millier, the Aiello brothers, and two men who were operating U. S. Coal for them at the time—Joseph J. Hilliard III of Ridgway, and Joseph Rubino of Dauphin Township, Dauphin County, all believed Janke had millions of dollars at his disposal, and that he intended to infuse a considerable sum of personal money into the purchase and operation of U. S. Coal.

Millier, interviewed on Sept. 15, 1983, related that he had secured a contract in the fall of 1982 with Pittsburgh Power & Light Co. (PP&L) to supply the utility with coal. He further stated that he was anxious to purchase the coal from U. S. Coal because the company's mine site was only a few miles from the PP&L plant, a factor that would greatly reduce transportation costs.

Millier said that initial negotiations with David Aiello were unsuccessful because U. S. Coal was suffering significant financial problems at the time. Millier stated that in November of 1982 he was contacted by Rubino who presented himself as U. S. Coal's new owner and president.

Millier said he began to negotiate with Rubino and in subsequent meetings with Molinari, who was introduced as Rubino's partner. Millier further stated that meetings took place at Janke's residence in Southampton, Bucks County, and also at Millier's office in Penn Wynne, as well as at several other locations in Montgomery County. According to Millier, Janke was introduced by Rubino and Molinari as the future manager of U. S. Coal.

It was through these negotiations that Millier agreed to advance the two loans totaling \$140,000 to Janke. (Molinari co-signed with Janke on \$40,000 of these obligations.) It was Millier's understanding, through a written agreement, that the loans would either be repaid, or applied as advances against future coal deliveries to Millier Marketing, Inc.

As previously stated, the purchase agreement between Janke and the Aiello brothers was executed on Dec. 3, 1982, with Janke to provide \$100,000 as an initial deposit for current operating expenses. The Aiellos were not aware that the \$100,000 was a loan. When they found out, their attorney, Joseph E. Altomare of Titusville, attempted to terminate the purchase agreement, claiming there had been a deliberate misrepresentation of funds by Janke.

On Jan. 7, 1983, Altomare requested the issuance of a restraining order in Elk County seeking to bar the transfer of ownership. On Jan. 12, 1983, Janke filed a petition for Chapter 11 bankruptcy before Pittsburgh Judge Joseph L. Cosetti. The Aiellos then filed to have that petition stricken.

Two days later, Judge Cosetti ruled in favor of the Aiello brothers, stating that the ownership of U. S. Coal had not passed on to Janke because of several flaws in consummating the agreement.

ARTHUR REISS

*Certified Public Accountant*

GEORGE A. JANKE, JR.

ANALYSIS OF CASH IN FOREIGN BANKS

JULY 31, 1981

	(In U.S. Dollars)
Swiss Francs	\$ 522,270.00
West German Marks	507,424.00
U.S. Dollars	<u>274,555.00</u>
Total	<u>\$ 1,304,249.00</u>

ROCCO J. MOLINARI  
FINANCIAL STATEMENT  
MARCH 30, 1982  
T/A R.J.M. FINANCIAL MANAGEMENT

ASSETS

Cash	\$ 75,000.00
3144 Olympia Place	100,000.00
1982 Cadillac	22,000.00
1982 Cadillac	26,000.00
1982 Chevy Blazer	14,000.00
T.P.S. Enterprises Inc. (50%)	300,000.00
Q.T. Solid Waste Disposal Area Inc.	700,000.00
Brokers Financial Corporation	150,000.00
J & B Jewelers	175,000.00
Rockville International Inc. (due)	350,000.00
Accounts Receivable	240,000.00
Deferred income Washington Redskins	180,000.00
Sunny Isle Marina & Development Co., Inc.	750,000.00
U.S. Saving Bonds	10,000.00
Jewelry	100,000.00
Furnishings	<u>40,000.00</u>
TOTAL	\$3,232,000.00

LIABILITIES

3144 Olympia Place	\$ 7,000.00
Central Penn	<u>2,000.00</u>
TOTAL	\$ 9,000.00

NET WORTH \$3,223,000.00

*Harry J. Goldberg, Accountant and Auditor*

Millier never did receive the coal deliveries against which the \$140,000 in loans were to be applied. He subsequently filed suit against Molinari and Janke for damages. In January of 1983, the Court of Common Pleas in Philadelphia entered judgment in favor of Millier. However, as of September 1984, the loans remained unpaid.

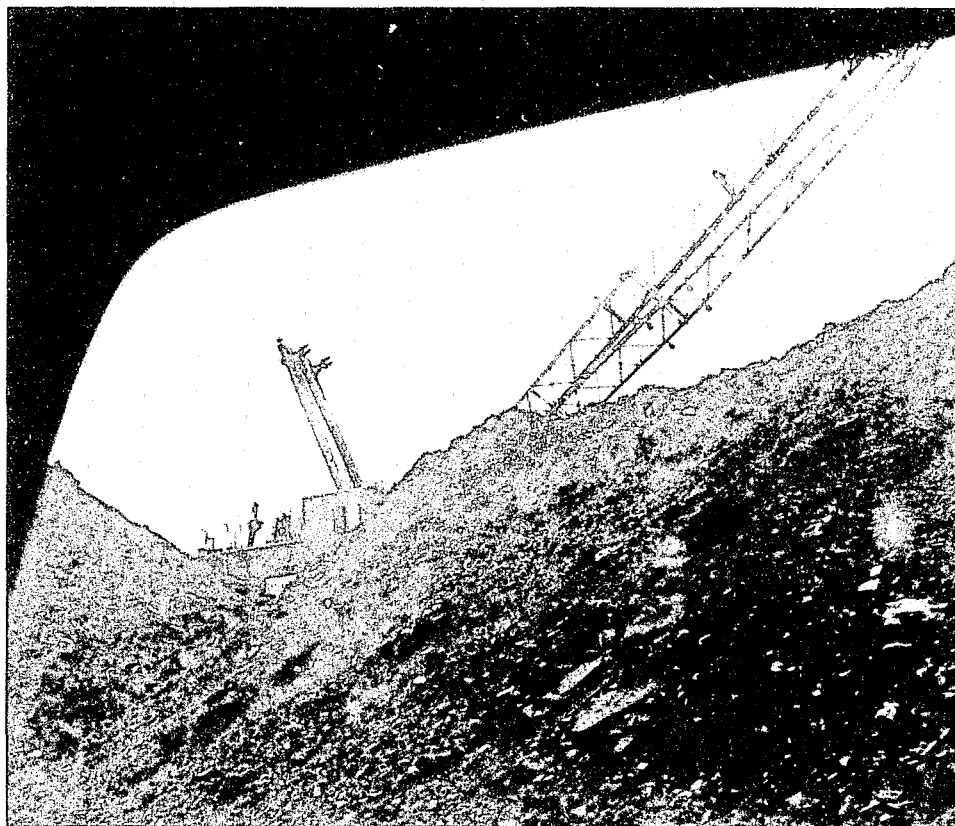
An analysis of the business account of (Molinari's) R.J.M. Financial Management was conducted to determine deposits and disbursements between Dec. 3, 1982, when the first loan (for \$100,000) was obtained from Millier and Jan. 14, 1983, when Judge Cosetti ruled that the Aiello brothers were to retain ownership of U. S. Coal.

On Dec. 3, 1982, the \$100,000 received by Janke from Millier was deposited into R.J.M.'s account. On Dec. 17, 1982, the \$40,000 received by Janke from Millier was likewise deposited. There were no other deposits into R.J.M.'s account between Dec. 3, 1982, and Jan. 14, 1983.

### Money Used for Personal Debts

Disbursements during the period in question totaled \$137,427. Of this, \$99,250 was disbursed to U. S. Coal and \$5,750 to Janke. The remainder, \$32,427, was disbursed either directly to Molinari or was used to pay off his personal financial obligations.

Hilliard, who with Rubino had been operating U. S. Coal for the Aiello brothers, was interviewed by the Crime Commission on March 7, 1984. He stated that during a conversation with Molinari regarding Janke's lack of knowledge about certain mining equipment, Molinari had remarked, "I'm really running everything, don't worry about him. I'm actually going to own the company."



The boom of a dragline juts above a mound of coal on a U.S. Coal mining site in Clearfield County. The photo was taken from inside the cab of another vehicle.

On March 16, 1984, Janke testified before the Crime Commission at which time he was shown a copy of the \$100,000 check Millier had written to cover the first loan. This exchange then took place:

Q. Mr. Janke, to whom was the check made payable?

A. George A. Janke.

Q. And the amount is \$100,000?

A. Right.

Q. Why was the check made payable to George A. Janke and not Rocco J. Molinari?

A. I don't know.

Q. Who was actually purchasing the company?

A. Mr. Molinari—me, or my nominee.

Q. Who would that have been?

A. That group that was going to put up the real money that we needed to operate it properly.

Q. Were you the one that was actually going to purchase the company, or was it, in fact, Mr. Molinari that was going to purchase the company and using you as a front?

A. That practically is what was happening.

Q. You were being used as a front, is that correct?

A. Correct.

Q. Who actually took possession of the \$100,000 check?

A. Who was it handed to?

Q. Yes.

A. I am not sure who he handed it to. I know that when we left there, we immediately went in and deposited it into Mr. Molinari's business account. I think it was his business account.

On May 26, 1983, Molinari provided a deposition to Millier's attorney, Hyman Lovitz. An excerpt follows:

Q. Who had to pay those bills for U. S. Coal?

A. The corporation.

Q. U. S. Coal?

A. Yes.

Q. Why would you worry about U. S. Coal's bills?

A. Mr. Janke was purchasing U. S. Coal on that day.

Q. On what day?

A. The day that the loan was made.

Q. So the loan was made to help Mr. Janke purchase U. S. Coal?

A. To the best of my knowledge, it was.

Q. And you had made the arrangements for the meeting on December 3rd, is that correct?

A. That's very possible. It's very likely. I don't remember.

Molinari was subpoenaed to appear before the Crime Commission, but was excused after his attorney, Samuel J. Hecht, advised in writing that Molinari would refuse to answer all substantive questions, invoking his 5th Amendment rights against self-incrimination.

At the conclusion of its investigation, the Crime Commission referred its findings to the Montgomery County District Attorney's Office for review, with additional funding to be provided to that office by the Leviticus Project.

## *Titan Coal*

In March of 1979, the Pennsylvania Crime Commission received allegations concerning fraudulent coal deals perpetrated by Robert Lee Todd, a coal broker from Vandergrift, Pa. Todd was accused of failing to pay coal suppliers who had furnished coal to utility companies. It also was alleged that coal suppliers who threatened to take legal action

against Todd were threatened with physical harm.

Todd conducted business under three trade names from 1976 through 1979—Titan Coal Co., Syndicated Coal and Minerals, and Fire Rock, Inc.

During that period the companies generated \$1,780,395 in coal sale revenues and ran up debts to coal producers of \$1,490,380.

The pattern, with slight variations, consisted of Todd using reputable people in the local coal industry as contacts with coal producers. He then informed the producers that he had a contract with a public utility company and arrangements were made to set up escrow accounts in local banks for the distribution of funds.

Written agreements were never used. Ordinarily, Todd submitted low bids to the public utility companies, then agreed to pay the producers a more than equitable market price for coal of a marginal quality.

Initially, some producers received partial payment for their coal through the escrow accounts and thus made additional deliveries. When the power companies complained about the inferior quality of the coal and subsequently enforced financial penalties, Todd accepted the revised payments, but did not pay the producers.

Instead, he told them they had delivered inferior coal in violation of the verbal agreement. At this point, business transactions with the producers were simply terminated by Todd.

Titan Coal operated from approximately May of 1976 until February of 1977 when the company was placed in receivership. During that period Todd agreed to supply coal to the West Penn Power Co. in fulfillment of a contract awarded Energy Services, Inc., a coal producer in Arm-

strong County. Coal companies in Armstrong and Lawrence counties were contacted and a verbal agreement was made to deliver coal.

Initial contacts in one instance were made on a referral from Sam Lanzino, a close associate of Gabriel "Kelly" Mannarino, a capo in the John LaRocca organized crime family who died in 1980.

Producers who dealt with Todd in this deal were owed over \$580,000. Several truckers also went unpaid.

One of the producers who supplied coal to Titan was Blaney Bowser from West Kittanning, Pa. Bowser received partial payment for coal shipped, then the payments stopped.

Bowser said a meeting was set up to discuss the matter. Those in attendance, he said, included Peter J. Mercurio Sr., who for a time served as president of Titan Coal, Richard Wolf (Bowser's accountant), and four unidentified men who had accompanied Mercurio to the meeting, held in a steak house in West Kittanning. Todd was not present.

Bowser said he told Mercurio he wanted his money and intended to press charges. Bowser further related that one of the men with Mercurio displayed a gun on his right hip, and that Mercurio stated that he had ways of "taking care of fellows" like Bowser.

Bowser said he did not press charges or make further attempts to recover his money because he did not want to risk physical harm or property damage.

Another producer who supplied coal to Titan was Jack Carlson, owner of Carlson Mining in New Castle, Pa. Carlson was contacted by Charles Barletto, a personal friend and owner of Barletto Equipment Service, also in New Castle. It was Lanzino who had put Barletto in touch with Todd.

Carlson submitted a bill for \$19,836.61 for coal supplied, which was not paid. He subsequently received a check for \$8,128.60 as partial payment, and later the balance after meeting with Barletto on several occasions. Carlson stated that during those meetings Barletto had phoned Todd, Lanzino and Mannarino.

## **The Threat of a Cement Overcoat**

Carlson said he began to re-ship coal to Titan after receiving the balance due on the first shipments and that he subsequently submitted bills for an additional \$115,979.25. When these bills also went unpaid, Carlson said he contacted other coal producers in the area and asked them to halt deliveries to Titan Coal.

A short time later, Carlson said, he received phone calls at his home from Todd and Mercurio who warned him he would end up in a "cement overcoat."

Carlson initiated civil proceedings in Lawrence County in an attempt to seek payment from Titan Coal. The suit is pending.

Todd formed Titan Coal Co. on Aug. 28, 1975, while an inmate at the State Correctional Institute at Greensburg where he was serving a term for passing a worthless check.

Todd was not a newcomer to the coal industry or to coal scams. Under a grant of immunity, he had testified in Allegheny County Court against a former business associate in a case involving a coal sample-switching scheme.

As a result of that testimony, which helped convict four men (Steven Levitt, Vincent Pecora, Raymond Shaw Sr., and [REDACTED]), Todd said he made Mercurio president of Titan Coal to provide protection in case of retaliation by the four defendants.

Todd also testified in July of 1980 against James Gabriel and Dennis Zack in U. S. District Court in Newark, N. J. The defendants were charged with transporting stolen securities with a face value in excess of \$15 million.

Todd told a Crime Commission agent that Titan Coal was formed as a coal brokerage business with Mercurio "to make money in any fashion that we could out of the coal business . . . ."

He said he did not deal with anybody not recommended by Mercurio, who, according to Todd, was to intimidate coal suppliers and threaten them and their families if they balked in financial disputes.

Todd, who once boasted to a Titan Coal employee that he was "connected to the Mafia," also stated that coal producers were instructed to write off their financial losses on their taxes.

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In the fall of 1976, Todd, Mercurio and Al Julian, a truck driver involved in transporting coal for Titan, contacted Donald Pripstein, manager of fuels for Allegheny Power Services, Corp., a firm which handled contractual arrangements for several public utilities, including West Penn Power.

Pripstein gave this account:

The three men wanted to enter bids to supply coal to West Penn Power Co.'s Hatfield Power Station. The bids were to be under the names of Titan Coal, Syndicated Coal and Minerals, and A. Julian, Inc. Todd was to represent all three.

The bids were accepted with the contract calling for delivery from November 1976 to March 1977. Pripstein later learned that one of the companies supplying coal, Cravat Coal Co. of Ohio, had not been paid by Todd. Pripstein

advised Cravat Coal Co. officials that Todd had been paid by West Penn.

In 1979 Cravat Coal filed suit against Todd, trading as Syndicated Coal and Minerals; Mercurio; Titan Coal Co.; Al Julian and A. Julian, Inc. The complaint stated that the company had sustained damages in the amount of \$374,504 as a result of a civil conspiracy entered into by the defendants.

A default judgment was entered against Todd. On May 18, 1982, a verdict was entered in favor of Cravat Coal for the full amount sought. Julian appealed the decision and on Feb. 15, 1983, a judgment in favor of Julian and A. Julian, Inc., was awarded by the court.

Titan Coal records show that Mercurio's three sons and his wife, Alice, were on the company's payroll. Todd said the sons seldom did any work.

Julian said that Mercurio and Todd were never concerned about penalties for inferior coal because they had no intention of paying the producers.

As stated earlier, Titan Coal Co. was placed into receivership in February of 1977. Two months later, Syndicated Coal and Minerals was registered in Westmoreland County with Todd listed as the sole owner.

Shortly thereafter, the secretary-treasurer of Syndicated Coal and Minerals, Valerie Smith, personally obtained checks totaling some \$42,000 from West Penn Power Co. for coal shipments and, at Todd's instructions, placed them in her personal checking account. She then wrote checks on that account to pay Todd's personal debts. None of the money was used to pay creditors.

Todd planned the formation of Fire Rock, Inc., while incarcerated in the Allegheny County Jail where he was serving a sentence for violating the work release program at the State Correctional Institute at Greensburg. The actual incorporation was carried out by Gary Knotts, who at the time was a supervisor at the jail with the rank of sergeant, and who recounted how Todd often had spoken about the millions of dollars to be made in the coal industry.

Knotts decided to go into business with Todd after Todd took him to the Cratty-Gour-High Duke Mine in Suttersville, Pa., and stated that a contract could be obtained from West Penn Power Co. to purchase the coal.

When released from jail, Todd acted as the agent for Fire Rock and obtained a contract from West Penn for the Cratty coal shipment. An escrow account was established at the Pittsburgh National Bank with funds to be withdrawn only by signature of all parties.

West Penn later cancelled the contract with Fire Rock because of poor quality coal. The utility company's records show that in December of 1977 a check for \$32,424 for the Cratty coal was deposited in the Fire Rock account in violation of the escrow agreement.

Cratty Mine officials stated that Todd had contracted with the coal firm to deliver 3,123 tons of coal valued at \$65,599.07. Fire Rock made two payments totalling some \$20,000, according to Cratty Mine records. No other payments were received by the coal company.

According to Knotts, it soon became apparent that Todd only wanted him as a front. Knotts stated that he had no control over the business transactions and resigned from Fire Rock after Todd attempted to withdraw Knotts' signature authority from checks.

During the summer of 1978, Todd, operating Fire Rock, did business with coal producers in southeastern Ohio who were led to believe that the firm had a three-year contract with the Tennessee Valley Authority. In reality, Fire Rock had several spot contracts, each for a four-week duration.

The coal producers delivered "un-sped" coal to a dock in East Liverpool, Ohio. As usual, an escrow account was set up at a local bank—this time the New Waterford Bank in Columbiana, Ohio.

Shortly after Fire Rock began the shipments, 26 barges of coal were refused by the TVA because of inferior quality. Eventually, the coal was re-routed to the Dairyland Power Cooperative in LaCrosse, Wisc., and sold for \$322,074—a sum substantially below the price agreed upon by the TVA.

Some of the producers received partial payment; others received no payment at all.

A financial analysis of Fire Rock, Inc.'s records indicated that approximately \$1,382,000 deposited in the firm's checking account was traceable to companies that had contracted for coal. The analysis also indicated that Fire Rock owed \$534,937 to coal producers.

Expenditures reflected payments to Mercurio of \$38,600 (a figure Todd disputes) and payments to Todd of \$51,100. Also, Kathleen Price (now Todd's wife), who was listed as a secretary, received \$11,134.

There were other persons who worked for and received payment from Fire Rock. However, there is no record of any employment taxes being paid to any government agency.

Fire Rock's records also reflect payments to vendors not involved in the coal industry. For instance, \$17,000 was paid to a service station in New Kensington. According to Todd, this bill was for repairs on the Mercurio family's automobiles.

Other records reflected payments to the Great Gatsby Bar in Harmarville as well as payments to a company which delivered carpet to the establishment.

Fire Rock paid for a room at the Holiday Inn in Harmarville for Mercurio, described by Todd as a consultant to Fire Rock.

In general, it appeared from the company's financial records that the principals of Fire Rock had no intention of operating an ongoing, profitable business.

## **Money Used to Refurbish Bar**

In April of 1977, Todd registered Syndicated Coal and Minerals, Co. in Westmoreland County, listing its address as P. O. Box 494, New Kensington, Pa. The corresponding street address was 865 Fifth Ave., New Kensington, the location of St. Anthony's, a private club that had been operated by Mercurio until September of 1975 when its liquor license was revoked.

In December of 1978, after the \$56,000 check from Dairyland Power Cooperative was deposited in the Fire Rock account, Todd began renovation of the Fifth Avenue property, which in early 1980 became the site of the Aluminum City Club.

Records which were submitted to the Pennsylvania Liquor Control Board (L.C.B.) by the Aluminum City Club indicated that \$57,688.46 in renovation costs were paid by Fire Rock. The documents also indicated that Fire Rock had charged the club a ten percent finance charge amounting to \$5,768.84. The total bill thus was \$63,457.30.

## CREDITS & DEBITS

	<i>Gross Income</i>	<i>Monies Owed Coal Producers</i>
Titan Coal	\$398,216.75	\$580,937.97
Syndicated Coal and Minerals		\$374,504.60
Fire Rock, Inc.	\$1,382,179.05	\$534,937.67
Total	\$1,780,395.80	\$1,490,380.24

Aluminum City Club records and interviews with its officers indicated that this money was never repaid to Fire Rock.

L.C.B. records also reflect that in September of 1979, a Thomas Whitney, who was listed as the club's secretary-treasurer, opened a checking account for the club at the Pittsburgh National Bank using \$3,500 of his own money as the initial deposit. The club became operational in January of 1980.

Todd, in a taped interview, was asked about Fire Rock's role in the club. Excerpts from that interview follow:

Q. How much money went into the (Aluminum City) club?

A. All right. \$65,000, approximately between \$65,000 and \$70,000 went into the club and another \$15,000 to \$20,000 went to Pete (Mercurio Sr.).

Q. Cash?

A. Cash.

Q. For operating expenses?

A. Yeah. Set up and operating. No, a portion of that might be in that \$51,000 of mine, but I have to go through it and figure it out.

Q. And his name obviously did not appear on the liquor license, and someone was designated to run the club for him as a straw party or a front?

A. Tom Whitney.

Q. Were a lot of funds diverted to the club?

A. Well, \$65,000 to \$70,000 on construction and equipment, and another \$15,000 to \$20,000 on operating—opening and operating expenses.

Q. And those funds could have been earmarked to pay producers, transport fees, and keep the business afloat?

A. They—or they could have represented profits to the coal company.

Whitney denied any involvement by Mercurio in the club. Since opening, the Aluminum City Club has received citations for after-hours activity. Two of its former officers have been arrested on narcotics charges. One was arrested with Gary Golden, an associate and cousin of Thomas "Sonny" Ciancutti, like Mannarino a member of Pittsburgh's LaRocca organized crime family.

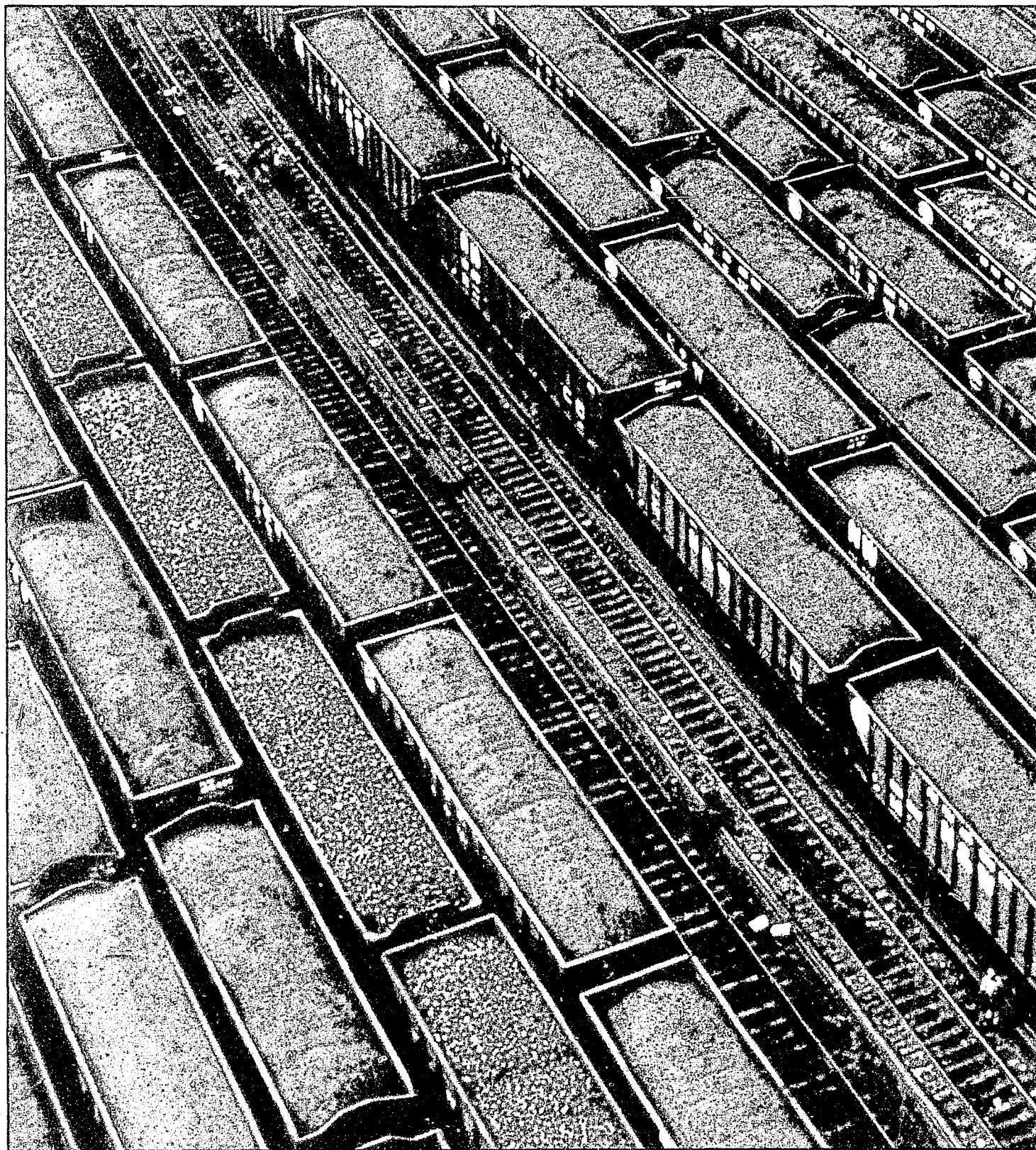
In June of 1983, a civil suit was filed against the Aluminum City Club, naming Mercurio as the operator. The attorney who filed the suit, on behalf of a professional football player who was severely beaten while on the premises, advised that it was common knowledge in New Kensington that Mercurio was the club's operator. The lawyer described the Aluminum City Club as merely an extension of the old St. Anthony's Club.

On July 25, 1984, Mercurio appeared at a private hearing before the Pennsylvania Crime Commission at which time he invoked his 5th Amendment privilege regarding any affiliations with Todd, Titan Coal, Fire Rock, Syndicated Coal and Minerals and the Aluminum City Club.



# 5

## *Theft: From Backhoes to Banks*



## Heavy Equipment Theft

Heavy equipment used in surface mining is quite expensive with some vehicles like bulldozers costing hundreds of thousands of dollars. It is estimated that heavy equipment theft losses for owners and dealers run around \$1 billion a year.

It also has been estimated that the recovery rate for stolen heavy equipment runs between 5 percent and 10 percent, compared to a 70 percent recovery rate for stolen automobiles.

The effects on the owners and operators of stolen equipment — including the cost of replacement, the cost of job delays, down time, higher insurance premiums, and the risk of cancellation of insurance policies or borrowing power — can be devastating.

Investigations conducted by the Leviticus Project have uncovered certain distinct patterns in heavy equipment theft. For one, the thieves frequently are members of small criminal clans that cross state lines and have established systems of communication that allow for rapid transactions and deliveries. These small conspiracies appear to be linked together in a loose-knit organizational structure that provides contacts throughout the country for procuring specific equipment and prospective buyers.

The equipment often is pre-ordered and then stolen outright. It is taken directly to a private or industrial site and sold at a substantial savings to willing buyers, including "legitimate businessmen" who don't allow their suspicions to get in the way of a good deal. Some of the stolen equipment is delivered directly to docks in

Florida and other ports for shipment overseas.

On Sept. 16, 1982, the Leviticus Project announced the arrest of five men charged in the theft of heavy strip mining and construction equipment in Virginia, Kentucky, Indiana and Pennsylvania.

The arrests stemmed from an 18-month-long investigation in which five other people already had been charged and almost \$700,000 worth of stolen heavy equipment and parts had been recovered.

Arrested were: Reed C. Melton, 37, Jeffersonville, Ind.; William Slaughter, 46, Louisville, Ky.; Wayne Chastaine, 45, also of Louisville; William F. Braham, 36, Independence, W. Va.; and Ralph E. Starr, 50, Clarksburg, W. Va.

Melton and Slaughter were charged with the theft of two backhoes valued at \$65,000. They also were charged, along with Chastaine, with the theft of a drilling truck valued at \$60,000. The thefts occurred in Clarksville, Ind., between July 1981 and September 1982.

Braham and Starr, who were arrested in Washington, Pa., were charged with receiving stolen property and conspiracy, relating to the possession and sale of a stolen bulldozer and a stolen transport truck, valued together at \$40,000. They also were charged with violating Pennsylvania's Corrupt Organizations Act, a seldom-used law that mirrors the federal Racketeer Influenced and Corrupt Organizations (RICO) Act.

This charge is based on additional sales of stolen heavy equipment, valued in excess of \$50,000, over an 18-month period. Virginia authorities also charged Braham and Starr with the theft of a bulldozer valued at \$44,000.

Starr pled guilty to the Pennsylvania charges on Feb. 9, 1983,

and was sentenced to an 18-month to three-year prison term. He and Braham later were released to Virginia authorities.

Melton, Slaughter and Chastaine also pled guilty to a variety of theft charges. Melton and Slaughter were fined and sentenced to prison terms; Chastaine received a four-year suspended sentence.

## Bank Theft

On Nov. 17, 1982, Leviticus' chairman, Manhattan District Attorney Robert M. Morgenthau, announced the indictment of seven men accused of stealing \$4.1 million from Chase Manhattan Bank. Included were two former bank vice presidents and two Pennsylvania businessmen. The bank officials also were charged with misappropriating an additional \$2.7 million in bank funds.

Indicted were Herbert S. Cannon, 51, Pompano Beach, Fla., an investment banker; Robert Duran, 51, Sunbury, Pa.; James J. Durkin Sr., Dallas, Pa.; former bank executives Michael Calandra, 53, Miami, Fla., and Jon Levine, 41, Commack, Long Island, N. Y.; Irvin Freedman, 47, a real estate developer from West Lake, Calif.; and Marvin Roseman, 53, a businessman from Floral Park, N. Y.

Calandra, Levine, Freedman and Roseman previously were indicted in May of 1982 on charges of stealing more than \$18 million from the bank during an 18-month period in 1979-1980.

According to Morgenthau, the seven defendants stole \$4.1 million from the bank by means of illegal loans granted by Calandra and Levine to American Coal and Energy, an apparent paper corporation controlled by Duran, Durkin and Freedman which lacked property, equipment or mineral leases.

The purpose of these loans was to guarantee repayment of a series of corrupt loans the bank officers had previously made to Cannon and to businesses he controlled, the indictment alleged.

The seven defendants were formally charged with three counts of grand larceny in the second degree and two counts of misappropriation of bank funds. In addition, Calandra and Levine were charged with 19 counts of falsifying business records and 19 counts of misappropriation of bank funds in connection with the Cannon loans.

As of Sept. 7, 1984, a trial date had not been set.

Durkin was convicted in December of 1978 of fraudulently receiving almost \$1,900 in unemployment checks while running an insurance business.

He has had numerous dealings with Pennsylvania coal companies, controlling firms that at one time owned vast coal-producing areas in the commonwealth.

According to the Pennsylvania Crime Commission's "A Decade of Organized Crime," issued in 1980, Durkin was a partner in Great American Coal Co. with Hyman Green, an acquaintance of Jimmy Hoffa, the missing former Teamsters' boss.

He also has had ties to organized crime figures, including a relationship going back 30 years with James Tedesco Sr., a convicted price fixer who has associated with former heads of the Russell Bufalino crime family.

### *Leviticus Brochure*

The Leviticus Project has available a brochure highlighting guidelines and warnings for potential investors in deferred delivery coal contracts and coal related tax shelters.

This brochure may be obtained from the Pennsylvania Crime Commission or by writing:

The Leviticus Project

New York District Attorney's Office

One Hogan Place

New York, N.Y., 10013

Leviticus' toll free number is: 800-221-4424.

In New York call 212-553-1376

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