

1     **WEST VIRGINIA MINE SAFETY AND HEALTH ADMINISTRATION**

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4  
5     **IN THE MATTER OF:**

6     **THE INVESTIGATION OF THE**  
7     **APRIL 5, 2010 MINE EXPLOSION**  
8     **AT UPPER BIG BRANCH MINE.**

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15     The interview of **RAYMOND C. BRAINARD**, taken  
16     upon oral examination, before **Elizabeth A. Howd**,  
17     Registered Diplomate Reporter, Certified Realtime  
18     Reporter, and Notary Public in and for the State of  
19     West Virginia, Tuesday, October 26, 2010, at  
20     9:51 a.m., at the Mine Academy, 1301 Airport Road,  
21     Beaver, West Virginia.

22                   **JOHNNY JACKSON & ASSOCIATES, INC.**  
23                   606 Virginia Street, East  
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**Also Present:**

**John F. Godsey, MSHA**  
**Tim Watkins, MSHA**  
**Norman Page, MSHA**

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<b>1</b> Subpoena to Raymond Brainard	10

1           MR. KOERBER: My name is Barry Koerber.

2           I'm an Assistant Attorney General, and I'm  
3 assigned to represent the West Virginia Office of  
4 Miners' Health, Safety and Training.

5           Today is October 26, 2010. We are here to  
6 conduct an interview pertaining to the mine  
7 explosion that occurred at the Upper Big Branch  
8 mine on April 5th, 2010.

9           On behalf of the Office of Miners' Health,  
10 Safety and Training, I would ask those people  
11 representing that agency to identify themselves at  
12 this time.

13           MR. FARLEY: Terry Farley.

14           MR. O'BRIEN: John O'Brien.

15           MR. KOERBER: And we also have two other  
16 entities in the room participating in the  
17 interview, and I would ask that they identify  
18 themselves at this time.

19           MR. STOLTZ: Richard Stoltz with MSHA.

20           MS. HAMPTON: Pollyanna Hampton. I'm an  
21 attorney with the Office of the Solicitor with the  
22 Federal Department of Labor.

23           MR. MCGINLEY: I'm Patrick McGinley with  
24 the Governor's Independent Investigation Panel.

1 MR. KOERBER: We have three people in the  
2 back. I would ask that they identify themselves.

3 MR. WATKINS: Tim Watkins with MSHA.

4 MR. PAGE: Norman Page, MSHA.

5 MR. GODSEY: John Godsey, MSHA.

6 MR. KOERBER: We have a court reporter  
7 here today. She will be taking down everything  
8 that is said.

9 You need to speak and not nod your head.  
10 You need to answer affirmatively or negatively  
11 like, "yes," "no."

12 You need to speak loud.

13 You need to wait until the question has  
14 been asked before you begin to answer, and I will  
15 ask the interviewers to wait until you answer the  
16 question before they ask the next question so that  
17 nobody is talking over one another, because that  
18 makes it extremely confusing for the court  
19 reporter.

20 If there is something that she does not  
21 understand, she will jump in and ask you to please  
22 restate that. So just do so when she asks. Okay?

23 If at any time you need a break for any  
24 reason whatsoever, let me know. We'll take a

1 break.

2 We would request that you not discuss your  
3 testimony after you leave this building here today  
4 with anybody other than your attorney,  
5 Mr. McCuskey.

6 The court reporter will transcribe this  
7 interview by Friday. So anytime, beginning Monday,  
8 that you desire to read the transcript and make any  
9 corrections that you deem warranted on the errata  
10 sheet that will be appended to the original  
11 transcript, you need to call Johnny Jackson &  
12 Associates -- your attorney has their phone  
13 number -- to schedule a time Monday through Friday,  
14 whatever their business hours are, and you can go  
15 in with your attorney or by yourself, whatever you  
16 so choose, and read the transcript, make any  
17 corrections you deem necessary on the errata sheet.

18 However, you will not be allowed to take a  
19 copy home with you. So you'll have to do it at  
20 Johnny Jackson & Associates. It is located in  
21 Charleston, West Virginia.

22 I believe Ms. Hampton has a letter that  
23 she would like to identify for the record, so I ask  
24 that she do that now.

1 MS. HAMPTON: Yes, sir. I handed you a  
2 letter before we started the interview. Did you  
3 receive that letter?

4 THE WITNESS: Yes.

5 MS. HAMPTON: And you reviewed it?

6 THE WITNESS: Yes, I did.

7 MS. HAMPTON: Do you have any questions  
8 for me on that letter?

9 THE WITNESS: None whatsoever.

10 MS. HAMPTON: Okay. I just would like to  
11 point out that contact information for Norm Page --  
12 he is the team leader for the MSHA investigation  
13 team -- is contained in that letter.

14 So if after the time when you leave here  
15 today, if there are other thing that you would like  
16 to share with the teams, you may contact or have  
17 your attorney contact him and let us know if there  
18 are additional things that you would like to let us  
19 know. Okay.

20 MR. KOERBER: Would you please swear in  
21 the witness.

22 RAYMOND C. BRAINARD, WITNESS, SWORN

23 MR. KOERBER: Sir, would you please state  
24 your full name for the record and spell your last



1 name.

2 THE WITNESS: My name is Raymond C.  
3 Brainard, B-r-a-i-n-a-r-d.

4 MR. KOERBER: And would you please give me  
5 your home address and your telephone number.

6 THE WITNESS: My home address is

7

8

9 MR. KOERBER: Do you have an attorney with  
10 you here today?

11 THE WITNESS: Yes, I do.

12 MR. KOERBER: And would that attorney  
13 please identify himself.

14 MR. McCUSKEY: Yes. John McCuskey, law  
15 firm of Shuman, McCuskey & Slicer in Charleston,  
16 West Virginia.

17 MR. KOERBER: Is Mr. Brainard your  
18 client?

19 MR. McCUSKEY: He is.

20 MR. KOERBER: We also have another lawyer  
21 sitting at the table. I would ask that he identify  
22 himself, his firm, and the client he represents

23 MR. ALLEN: I represent the company. I'm  
24 Robert B. Allen with the firm of Allen, Guthrie &

1 Thomas .

2 MR. KOERBER: Mr. Brainard, are you  
3 appearing here today as a result of receiving a  
4 subpoena?

5 THE WITNESS: Yes, I am.

6 MR. KOERBER: I'm going to hand you a copy  
7 of that subpoena and ask whether or not you recall  
8 seeing that.

9 THE WITNESS: Yes, I have.

10 MR. KOERBER: I would like this to be  
11 marked as Exhibit 1, please.

12 (Exhibit No. 1 marked for  
13 identification.)

14 MR. KOERBER: I note for the record that  
15 that subpoena compels your attendance to an  
16 interview on October 19th and today is October 26.

17 Based on conversations I had with your  
18 attorney, we moved that interview from that date to  
19 today. Is your recollection as well?

20 THE WITNESS: Yes, it is. I appreciate  
21 that.

22 MR. KOERBER: Sir, on behalf of the Office  
23 of Miners' Health, Safety and Training, I would  
24 also like to provide to you a memorandum that

1 contains the address to the West Virginia Board of  
2 Appeals. They are the administrative tribunal that  
3 hears discrimination complaints, discrimination  
4 being anything anyone might do to you as a result  
5 of participating in this interview.

6 I'm going to give this to you. I'm also  
7 giving you the business card of Mr. Terry Farley,  
8 as well as Mr. Bill Tucker. Mr. Farley is the lead  
9 accident interviewer. Mr. Tucker is the lead  
10 underground investigator.

11 If there would be anything that would come  
12 to your mind later on that you would like to  
13 provide to the State, either of these two people  
14 would be a contact person for you.

15 I would also remind you that if a  
16 discriminatory event occurred to you as a result of  
17 participating in this interview, you must file your  
18 claim with the Board of Appeals within 30 days of  
19 the date the event occurs. Okay? So let me give  
20 you this.

21 At this point in time, I would turn the  
22 interview over to Mr. Farley to begin the  
23 questions.  
24

## EXAMINATION

1  
2 BY MR. FARLEY:

3 Q. Good morning, Mr. Brainard. Thank you --

4 A. Good morning.

5 Q. Thank you for coming.

6 Let's start with a little background  
7 information. Are you currently employed?

8 A. Yes, I am.

9 Q. Where are you currently employed?

10 A. At Route 3 Engineering, Performance Coal,  
11 on Route 3.

12 Q. Route 3 Engineering, is that a subsidiary  
13 of Performance Coal or a Massey --

14 A. I guess I would characterize it as the  
15 engineering group that performs the engineering  
16 functions for Marfork Coal Company, Elk Run Coal  
17 Company, and Performance Coal Company.

18 Q. Okay. How long have you worked in the  
19 coal mining industry?

20 A. Since 1971. What is it? Is it 39 years?

21 Q. According to my math, yes.

22 A. Yeah.

23 Q. Okay. Are you a Registered Professional  
24 Engineer?

1           A.    Yes, I am.  I have been since 1978.

2           Q.    Okay.  I assume that means you also have  
3 some type of engineering degree.  Is that correct?

4           A.    Yes.  From Michigan Tech in 1971, a BS in  
5 mining engineering.

6           Q.    Okay.  All right.  Thank you.

7                   How long have you worked for the Massey  
8 companies?

9           A.    Four and a half years.

10          Q.    What Massey companies, in addition to  
11 Route 3 Engineering and its area of responsibility,  
12 have you worked for?

13          A.    Actually, all of them.  All of Massey's  
14 operating companies, because I do tax work.

15          Q.    I'm sorry?

16          A.    Tax work.

17          Q.    Tax work?

18          A.    Yeah.

19          Q.    As in income tax type work?

20          A.    No.  As in property tax.

21          Q.    Okay.  All right.  So how would you define  
22 your position with Route 3 Engineering, as in your  
23 title?  What are you called there?

24          A.    I am called a special projects engineer.

1 Q. Now, as of April 5th of this year, who did  
2 you report to at Route 3 Engineering?

3 A. I had -- I guess I would characterize  
4 joint -- Paul McCombs. I would say Paul McCombs.

5 Q. Okay. Now, when you say -- you said  
6 joint. Was there some other person?

7 A. Well, there were some joint  
8 responsibilities between the two of us, but I think  
9 that you could characterize I was reporting to him.

10 Q. And what was Mr. McCombs' position and  
11 title?

12 A. He was chief engineer.

13 Q. For Route 3 Engineering?

14 A. Yes.

15 Q. And who did Mr. McCombs report to?

16 A. I believe the director of engineering, Ken  
17 Brown.

18 Q. Okay. Now, Mr. Brown, was he with Route 3  
19 Engineering or Massey?

20 A. No. He's with Massey Coal Services.

21 Q. Now, would Mr. Brown have worked out of  
22 their office in Lincoln County?

23 A. Yes, sir. Well, I think that's in Boone  
24 County, but --

1 Q. Or maybe Boone County. Excuse me.

2 A. Yeah.

3 Q. The facility along Route 119; is that  
4 correct?

5 A. Yes.

6 Q. Now, did your -- if you would, in your own  
7 words, explain your area of responsibility. What  
8 was your function with Route 3 Engineering?

9 A. Okay. When I first started, I can tell  
10 you there was another engineer. His name was Mike  
11 Milam. Mike explained to me that I was responsible  
12 for some of the engineering. The mines were kind  
13 of divided between us. I think I had Marfork.

14 My responsibility also included mentoring  
15 the new -- the young engineers and providing them  
16 with my insight or my experience in developing  
17 them.

18 And then, like I said, the property  
19 taxes. In West Virginia there's a tax on -- it's  
20 active coal reserves, mining that's taking place,  
21 you know, concurrently with paying the taxes. That  
22 started out just in that division or in those three  
23 divisions, then expanded to the whole company.

24 I also do the severance tax, the low-seam

1 severance tax, and just recently started the  
2 business personal property tax.

3 Q. Okay. Is that it?

4 A. Basically.

5 Q. Okay. You have indicated that you served  
6 as a mentor for younger engineers. What younger  
7 engineers did you actually mentor?

8 A. Some of them are gone.

9 Q. Let's say from the time frame of 2009 and  
10 2010. Let's limit it to that.

11 A. Keith Lilly. Matt Walker. Eric Lilly. I  
12 can't think of any others.

13 Q. Now, how many people reported directly to  
14 you?

15 A. I never thought of that. I don't think  
16 any. I mean, I have got a girl that works on  
17 taxes. She does. The CAD operators, you know.  
18 Yeah.

19 Q. Now, did your area of responsibility,  
20 aside from the tax work, include the Upper Big  
21 Branch mine in any way?

22 A. Yes. I certified the maps.

23 Q. Now, what beyond that did you do in your  
24 service for the Upper Big Branch mine?



1           A.    I guess I was in on certain discussions,  
2 changes in the plans and things like that.

3           Q.    Did you ever -- were you ever actually  
4 employed, physically employed, at the UBB mine?

5           A.    No, sir.

6           Q.    Did you ever travel underground at the  
7 Upper Big Branch mine?

8           A.    Yes.  I had been associated with the  
9 property since 1975, so various times I had been.  
10 I worked for someone else, but it happened to be  
11 the land company that owned the property that Big  
12 Branch was located on.

13          Q.    Now, when you traveled -- occasionally  
14 traveled underground, was this once a year, 10  
15 times a year?  Is there some way to quantify it?

16          A.    Once every couple years probably.

17          Q.    Okay.  That gives me a sense of it.

18                Now, my question is, how many mines or  
19 facilities were included in your area of  
20 responsibility?

21                Now, did I understand you to say that your  
22 responsibility included the entire Massey Energy  
23 mining system with tax responsibility?

24          A.    Yes, sir.  Yeah, with respect to the

1 taxes.

2 Q. Did that take you on the road some out of  
3 your office --

4 A. Of course.

5 Q. -- at Route 3 Engineering?

6 A. Yes, it did.

7 Q. How frequently were you away from the  
8 Route 3 Engineering facility?

9 A. I'm gone a few days a week, but normally  
10 I'll come in in the morning and do my traveling in  
11 the afternoon. Okay. And I tell them where I'm  
12 going.

13 Q. Now, can you give me some sense of how  
14 often you traveled during a typical week prior to  
15 April 5th? About how many days were you out of the  
16 office?

17 A. Two.

18 Q. Now, during your time with the Route 3  
19 Engineering group, do you have knowledge of an  
20 event that occurred in July of 2003?

21 We have documented evidence to confirm  
22 that an inundation or outburst of methane or  
23 natural gas occurred on the headgate 16 longwall  
24 panel in July of 2003 at the Upper Big Branch

1 mine. It was determined that the gas came from the  
2 mine floor.

3 Do you have any knowledge of that event?

4 A. No, no direct knowledge.

5 Q. Do you recall, were you with the company  
6 when it happened?

7 A. No, sir.

8 Q. That's prior to your arrival with Route 3  
9 Engineering?

10 A. Say that again.

11 Q. Prior to your arrival with Route 3  
12 Engineering?

13 A. Yes, it was.

14 Q. There was a similar event in February 2004  
15 on the headgate 17 longwall panel at Upper Big  
16 Branch. Do you have any knowledge of that event?

17 A. No, sir, no direct knowledge.

18 Q. Again, would that event have occurred  
19 before your arrival at Route 3?

20 A. Yes, it was.

21 Q. Did anyone ever discuss those events with  
22 you, meaning your superiors?

23 A. It wouldn't have been -- I wouldn't  
24 characterize it as a discussion. It had been

1 mentioned.

2 Q. Now, when it was mentioned to you, did  
3 those who mentioned it describe the nature of the  
4 events?

5 A. Not really.

6 Q. Now, what was your understanding of the  
7 events based on these conversations?

8 A. That the floor cracked and they had an  
9 inundation of gas at a couple locations.

10 Q. Do you know if -- based on your  
11 conversation, do you know if either event brought  
12 about any changes in the UBB longwall ventilation  
13 system?

14 A. Absolutely not. No knowledge.

15 Q. Now, were you -- how often or were you  
16 involved in any of the mine planning at UBB?

17 A. I would say that maybe long-term planning,  
18 the 10- and 20-year plans; but year to year, no, I  
19 wasn't.

20 Q. So now more specifically, did you sit in  
21 on any meetings to discuss ventilation plans, roof  
22 control plans, or any planning meetings regarding  
23 the return of the longwall to Upper Big Branch in  
24 2009?

1           A.    I would say that we were all involved in  
2 the return of the longwall.  Everybody was.

3           Q.    When you say "all" or "everybody," can you  
4 define that for me?

5           A.    Basically, the engineering office, the CAD  
6 operators, the engineers, the surveyors.

7           Q.    Common knowledge among the entire group?

8           A.    Yeah, truly.

9           Q.    Now, was there an engineer who was  
10 specific -- engineer or engineers who were  
11 specifically assigned to the UBB mine, that had it  
12 as an area of responsibility?

13          A.    Yes.  It was Eric Lilly.  I think for  
14 probably more than a year that he had been moved up  
15 to the mine.  So yeah.

16          Q.    Do you recall when he would have been  
17 moved to the mine location?

18          A.    When?

19          Q.    Yes.

20          A.    It might have occurred while I was absent  
21 last summer.  I had [REDACTED]

22          [REDACTED] was gone for three months.  I think when I  
23 went back Eric had moved up during that period of  
24 time.

1 Q. Okay. Sorry to hear about your illness.

2 Do you know when the planning started to  
3 return the longwall to Upper Big Branch?

4 A. Say that one more time.

5 Q. Do you know when planning started? When  
6 was the decision made to return the longwall to the  
7 Upper Big Branch mine?

8 A. I'm going to say sometime during 2007, but  
9 that would be the -- as narrow as I could get it.

10 Q. Okay. Now --

11 A. The reason I say that is for tax purposes,  
12 you know, you have to include coal reserves. And I  
13 took those out and then I put them back in in, I  
14 think, 2007. So that would be the only way that I  
15 could relate them returning the longwall.

16 Q. Well, let me back up a little bit then.

17 Do you recall when the longwall left or  
18 moved from the Upper Big Branch mine and moved to  
19 Logan's Fork?

20 A. Yes, I do. I remember that distinctly  
21 because they had to put it down -- some of the  
22 equipment down the shaft.

23 Q. Do you recall when? Can you give me that  
24 date or your estimate approximately?

1           A.    That was late 2006, I believe.

2           Q.    Okay.  Do you know who the foremen's  
3 president might have been at that time when the  
4 longwall left, 2006?

5           A.    I believe it was Craig Boggs.

6           Q.    Now, you indicated that you think that the  
7 decision to return the longwall to Upper Big Branch  
8 occurred in 2007.

9                    Now, who do you recall as being the  
10 Performance president at that time?

11          A.    I don't know if it was Craig Boggs or  
12 Chris Blanchard.

13          Q.    But do you recall when Mr. Blanchard  
14 assumed the presidency for --

15          A.    I know he did, but I couldn't give you a  
16 time period.

17          Q.    Would it have been prior to 2009, you  
18 think?

19          A.    Yes.

20          Q.    Now, when a decision was made to return  
21 the longwall to Upper Big Branch mine, who took the  
22 lead in those discussions?  Who was the driving  
23 force behind the process?

24          A.    I couldn't answer that.  I do not know.

1 Q. You have clearly told us that your primary  
2 responsibility was tax matters, but I want to ask a  
3 few questions about matters at the mine in the  
4 event that you may know.

5 A. Okay.

6 Q. Now, during the planning stages for the --  
7 well, here it is -- for the longwall that was in  
8 operation at UBB on April 5th, during the planning  
9 stages for that longwall, do you know if an  
10 analysis of retreat mining pillar stability,  
11 commonly referred to as ARMPS, was done to  
12 determine proper headgate and tailgate pillar sizes  
13 during the planning stages?

14 A. I saw some letters, but I believe they  
15 were from prior, the longwall prior to that date.

16 Q. Now, the longwall prior to that date, if I  
17 remember correctly, we determined that it left  
18 there sometime in 2006. Is that correct?

19 A. Yeah.

20 Q. So this stability analysis was done for  
21 the prior longwall? Is that what you saw?

22 A. Yes. I think the letters were dated  
23 2005. And I do remember them doing some drilling  
24 to facilitate a report in the new areas.



1 Q. Now, do you know if the presence of  
2 over-mining was factored into those pillar  
3 stability analyses?

4 A. No, I do not know.

5 MR. McCUSKEY: Terry, may I ask for  
6 clarification? Are you talking about the 2005  
7 pillar analysis?

8 MR. FARLEY: Yes.

9 THE WITNESS: I don't know that.

10 BY MR. FARLEY:

11 Q. Now, was any such analysis, other than the  
12 one you're aware of for 2005, done after 2005 which  
13 you're aware of?

14 A. No, I'm not aware of anything. Like I  
15 say, I believe they did some drilling in connection  
16 with doing that, but I don't know.

17 Q. Do you recall any discussions regarding  
18 the pillar size and the projected longwall headgate  
19 entries?

20 A. No.

21 Q. Now, we understand that the UBB longwall  
22 in operation at the time of the event on April 5th  
23 went online or started up sometime in early  
24 December -- or early September 2009. Is that --

1           A.    Yes, that's correct.

2           Q.    -- the way you remember it?

3                    Okay.  Now, based on review of some  
4 violations that were cited, we understand that the  
5 longwall headgate began to deteriorate due to the  
6 presence of water and ground control problems  
7 during the late fall, early winter, November,  
8 December 2009.

9                    Do you recall anything about that?

10           A.    Only that it was -- it was a matter that  
11 was discussed.  I don't know of what outcome, what  
12 became of it.

13           Q.    Were you aware of water accumulation  
14 problems in the UBB longwall headgate entries at  
15 that time?

16           A.    That I cannot say.  I don't remember.

17           Q.    We have heard considerable testimony from  
18 a number of people during this investigation that  
19 there were ventilation problems on the headgate 22  
20 section in the Upper Big Branch mine.

21                    Prior to the April 5th explosion, did  
22 anyone ever approach you and tell you that that  
23 section had particular ventilation problems?  Did  
24 you ever hear that discussed?

1           A.   Not -- that was never discussed as far as  
2 somebody saying there was problems there.

3           Q.   Now, when you say that it was never  
4 discussed, do you mean it was never discussed with  
5 you personally?

6           A.   Exactly.  Exactly.

7           Q.   But it is possible that others may --

8           A.   Sure.

9           Q.   -- have discussed it?

10          A.   Yes, it is.

11          Q.   No miners ever approached you with a  
12 complaint?

13          A.   No.

14          MR. KOERBER:  You need to answer yes or  
15 no, sir.

16          MR. McCUSKEY:  I think he did, but it was  
17 so faint that maybe the court reporter didn't pick  
18 it up.

19          THE COURT REPORTER:  I got it.  He said,  
20 "No."

21          Q.   Do you know if the -- would it be your  
22 understanding that the deterioration of the UBB  
23 longwall headgate panel beginning in late fall of  
24 2009 led to the decision to develop a new tailgate

1 section on this 22 tailgate?

2 A. I could assume that, but I don't -- I have  
3 no direct knowledge of that.

4 Q. Were you party to any discussions in  
5 planning that?

6 A. I don't believe so.

7 Q. Now, based on your understanding of the  
8 events resulting from the deterioration of the UBB  
9 longwall headgate entries and the obvious need to  
10 develop the 22 tailgate section, did that in your  
11 mind create a situation where the longwall panel  
12 would have no immediate place to go once it  
13 completed mining of the existing panel?

14 A. No.

15 Q. Around that time in November or December,  
16 did you notice any change in the management  
17 philosophy for the UBB mine or for the Route 3  
18 Engineering? Was there a renewed sense of urgency  
19 because of the longwall problems? Was there a  
20 shift in priorities?

21 A. No, not that I remember.

22 Q. As of April 5th of this year, did you have  
23 any knowledge of pumps located throughout the UBB  
24 mine, location of pumps?

1           A.    Not the exact location, but I do remember  
2 the discussion of the pumps that were down there.

3           Q.    What's that discussion that you recall?

4           A.    Normally, I think that when they were  
5 having some difficulty with the pumps or something,  
6 that's when they broached that subject.

7           Q.    Now, did you have knowledge of pumps  
8 located near the Bandytown fan?

9           A.    No, but I know there's a discharge point  
10 there that -- near the fan and a pump.

11          Q.    Do you know if there were pumps in the  
12 area of the Bandytown fan inby the longwall as of  
13 April 5th?

14          A.    I believe that, yeah, there's one on the  
15 map. I mean, if you look at the map everything is  
16 dipping that way, so I guess you would assume  
17 there's some water down there.

18          Q.    Okay. Were you a party to any discussions  
19 as to how to manage that water in that area at any  
20 time?

21          A.    No.

22          Q.    Did you become aware at any time of any  
23 instances where water in that area of the mine may  
24 have roofed, having an impact on ventilation?

1           A. I remember that subject, but I do not  
2 believe it was at UBB that my memory -- that that  
3 occurred there. It was someplace else.

4           Q. Well, we'll try to limit our discussions  
5 to this accident.

6           A. Yeah.

7           Q. During your time with Route 3 Engineering,  
8 are you aware -- were you aware of any ventilation  
9 surveys or simulations conducted for the UBB mine?

10          A. No. No, I am not.

11          Q. Is it possible someone may have been --  
12 such things may have been conducted without your  
13 knowledge?

14          A. Oh, certainly.

15          Q. Under whose purview would that have --

16          A. I don't know.

17          Q. Who would have handled that?

18          A. I'm going to guess Bill Ross, but I don't  
19 know that.

20          Q. What was Mr. Ross's position, if you know?

21          A. I thought he was like the ventilation guy,  
22 engineer or something.

23          Q. Now, the ventilation guy or engineer. Was  
24 he with Performance Coal or Massey Coal Services?

1           A.   Massey Coal Services, but he's located at  
2 Marfork.

3           Q.   Okay.  Meaning his daily place, his place  
4 where he reports on a daily basis, is at Marfork,  
5 he maintains an office there?

6           A.   I believe that's true, because that's  
7 where his phone number is.

8           Q.   Okay.  Did you happen to work at  
9 Performance or UBB or Route 3 Engineering on  
10 Sunday, April 4th?  That would have been Easter  
11 Sunday.

12          A.   I don't remember.

13          Q.   Would you typically -- that was a holiday  
14 weekend, obviously.

15          A.   Yeah.

16          Q.   Did you typically work on weekends?

17          A.   Yeah, I did.

18          Q.   How often?

19          A.   There's a few months when I worked just  
20 about every one, but --

21          Q.   Did it typically include -- did the  
22 weekend work include Sundays typically?

23          A.   Yeah.  Yeah, it did.

24          Q.   But you don't recall if you worked --

1           A.   No, I don't.  When I had to work on the  
2 weekends, it really was for tax purposes.

3           Q.   Okay.  Do you know if anybody else from  
4 Route 3 Engineering may have worked during the  
5 weekend of April 3rd or April 4th?

6           A.   No.  I have no knowledge of -- all I know  
7 is that Paul McCombs was a frequent -- he was a  
8 hard worker and he was there a lot of Saturdays.

9           Q.   You indicated earlier that you had served  
10 as a mentor for Keith Lilly, Matt Walker, Eric  
11 Lilly.  Are all those individuals still employed  
12 with Route 3 Engineering?

13          A.   No, they aren't.

14          Q.   Who among them is no longer employed?

15          A.   Eric is no longer employed.

16          Q.   Do you recall when Eric may have departed?

17          A.   It was a month or so after April 5th.

18          Q.   Do you recall the -- do you know the  
19 reason for his departure?

20          A.   I was never told why.

21          Q.   Do you know the manner of his departure?  
22 Did he resign?  Was he --

23          A.   No.

24          Q.   -- terminated?



1           A. I was not privy to any of that  
2 information.

3           Q. If we're correct, Mr. Lilly would have  
4 been specifically assigned to the Upper Big Branch  
5 mine. Is that correct?

6           A. Yes.

7           Q. Were you working anywhere on Massey  
8 property on Monday, April 5th, 2010?

9           A. I was at Performance, and that was one of  
10 those days I know that I traveled someplace. I  
11 can't tell you where. Because I was not there when  
12 everything occurred.

13          Q. Do you recall where you were?

14          A. All I know is I heard about it when I got  
15 home.

16          Q. And can you give me an approximate time as  
17 to when you got home that day?

18          A. Oh, 5:00, 6:00.

19          Q. And you live in Winfield?

20          A. Yes.

21          Q. Now, how did you learn of the event when  
22 you got home?

23          A. I think the lady that worked for me called  
24 me and said, "Have you looked at" -- "Have you seen

1 what happened on the news?" And I hadn't turned on  
2 the TV, so I hadn't seen that. But I think she  
3 told me.

4 Q. You think it was approximately 5:30? Did  
5 you say that?

6 A. Yeah.

7 Q. 5:30 p.m., that is, of course?

8 A. Yes, that evening.

9 Q. And who is the lady who called you?

10 A. Deanna Beck. She's my property  
11 technician.

12 Q. Did she maintain an office at Route 3  
13 Engineering?

14 A. Yes.

15 Q. What was her description of the events?

16 A. She just -- all she knew was there was an  
17 explosion. That was the only thing that she could  
18 tell me.

19 Q. What did you do then? Did you go to the  
20 mine? Did you go to Route 3 Engineering?

21 A. I went to the mine the next day.

22 Q. Okay. What was your -- what were your  
23 duties the following day? Were you involved in any  
24 rescue/recovery work?

1           A.   No, sir.  I guess I helped produce some of  
2 the maps that they were needing.

3           Q.   So you arrived at Route 3 Engineering on  
4 April 6th?

5           A.   Yeah.

6           Q.   About your normal time or when?

7           A.   Yeah.  Yeah.  It was 6:00 or something,  
8 yeah, in the morning.

9           Q.   A.m.?

10          A.   Yeah.

11          Q.   During the day of April 6 at Route 3  
12 Engineering, did you make any written or recorded  
13 notes regarding the explosion?

14          A.   None.  None whatsoever.

15          Q.   Do you know if there has been an in-house  
16 review or investigation by Performance Coal or  
17 Massey Coal Services concerning the April 5th,  
18 2010, UBB explosion?

19          A.   Would you repeat that question, please?

20          Q.   Sure.  Do you know, has there been an  
21 in-house review or an investigation of the UBB  
22 explosion conducted by Performance Coal or Massey  
23 Coal Services?

24          A.   I believe there -- they have got someone

1 in charge of an investigation, Charlie Bearse. And  
2 they took a few of our CAD operators up there. So  
3 I believe they're performing some type of  
4 investigation.

5 Q. Now, have you seen any written report or  
6 document detailing findings or conclusions of that  
7 investigation?

8 A. No, I have not.

9 Q. On arrival at Route 3 Engineering on  
10 April 5th, or since then, have you learned of any  
11 calls made from underground at UBB to the surface  
12 on April 5th that might have expressed concerns  
13 regarding ventilation, methane, or any other  
14 problem?

15 A. No, I have not.

16 Q. I think I might have asked this question.  
17 I think I asked you earlier if any ventilation  
18 surveys were conducted at the UBB mine by Route 3  
19 Engineering. Did I?

20 A. I don't specifically remember Route 3  
21 Engineering, but yeah, you asked about ventilation  
22 surveys.

23 Q. Were any such surveys conducted?

24 A. Not that I'm aware of.

1 Q. Now, are you aware of any arrangement or  
2 agreement between Performance Coal or Massey Energy  
3 with a professor with the University of Kentucky  
4 regarding ventilation surveys?

5 A. No, I'm not.

6 Q. I think I may have asked this question.  
7 Do you know if any computer simulations were ever  
8 run on the UBB mine ventilation system?

9 A. I'm aware that one has been run now, but  
10 at the time, no.

11 Q. Now, the simulation that has been run now,  
12 did the simulation take into account the conditions  
13 prior to April 5th of this year?

14 MR. ALLEN: Let me just, Terry, speak up.  
15 To the extent that he has any knowledge as a result  
16 of meetings and conversations of counsel and part  
17 of the investigation team, we would object to this  
18 being a privileged area. Okay?

19 MR. FARLEY: Okay.

20 MR. ALLEN: I mean, unless he's got the  
21 knowledge -- you can ask him if he's got knowledge  
22 totally independent, but if he --

23 BY MR. FARLEY:

24 Q. Do you have knowledge of a ventilation --

1 of a -- excuse me. Let me start that again.

2 Do you have personal knowledge of any  
3 computer simulation run on the UBB ventilation  
4 system before or after the April 5th explosion?

5 A. Only what I have read in the press  
6 releases.

7 Q. Okay.

8 A. Okay?

9 Q. All right. I can read the newspaper  
10 myself.

11 MR. McCUSKEY: At your own peril.

12 Q. Your area of responsibility with Route 3  
13 Engineering pretty much covered the entire Massey  
14 Energy system. Okay. Is that correct?

15 A. Yes.

16 Q. Now, in terms of the typical day-to-day  
17 mine engineering work, surveying, preparation of  
18 maps, monthly take-ups, all those things, how many  
19 mines or operations did Route 3 Engineering  
20 actually serve as of April 5th of this year, if you  
21 know?

22 A. Okay. Their responsibility -- there's no  
23 surface mining that's done by Route 3. I'm going  
24 to say that between 12 and 14 mines over a period

1 of time. Some come, some go, but I think probably  
2 14. About 19 sections.

3 Q. There's something I left out. At the time  
4 the UBB longwall started up in September of 2009,  
5 do you know if any supplemental support was  
6 installed or utilized in the longwall headgate  
7 entries in advance of mining as the longwall  
8 progressed?

9 A. I do not know, no. I don't. I do  
10 remember some discussions about some cable bolts or  
11 something.

12 Q. Now, who from the Route 3 Engineering  
13 group might have knowledge of that, if anyone?

14 A. Matt Walker. Paul McCombs.

15 Q. What about Eric Lilly?

16 A. Oh, yes. I'm sorry. Yes. But I don't  
17 consider him because he's not an employee anymore.

18 MS. HAMPTON: If we could just take a  
19 two-minute break.

20 (Break.)

21 EXAMINATION

22 BY MR. STOLTZ:

23 Q. Mr. Brainard.

24 A. Yes, sir.

1 Q. I guess when was the last time you were  
2 underground at the Upper Big Branch mine?

3 A. Oh, gosh. It's probably been four years  
4 or more.

5 Q. Four years or more.

6 A. Certainly not there.

7 Q. And you mentioned that in '97 that there  
8 was discussions of bringing the longwall back to  
9 Upper Big Branch mine?

10 A. 2007.

11 Q. Sorry. 2007. Did you do any engineering  
12 work for that process?

13 A. No, sir. No, sir.

14 Q. You mentioned that you do tax work and  
15 that tax work would consist of -- do you do  
16 projections for that, any type of projections,  
17 five-year?

18 A. Just the year's worth. You put a year's  
19 worth of projections on the tax map, but nobody  
20 ever checks it. Okay.

21 Q. The projections then that you see on this  
22 mine map and the set up of the longwall, was that  
23 similar to your projections on the tax maps of  
24 2007, 2008, and 2009, or has it varied?



1           A.   No.  That's just about what's on there.  I  
2 mean, basically, what I do is I take their long-  
3 term projections and just cut them off and only  
4 show a year at a time.  Yeah.

5           Q.   So those long-term projections then that  
6 you recall, they're similar to what you see here?

7           A.   Yes, they are.

8           Q.   You mentioned that you mentored several of  
9 the younger engineers?

10          A.   Yeah.

11          Q.   Mr. -- both Mr. Lillys and Mr. Walker.  
12 How did that work?  Did you have daily interaction  
13 with them?

14          A.   First of all, I worked with them enough so  
15 I could feel comfortable with what their work  
16 product was.  I mean, I have to do that.  I was,  
17 you know -- I was basically certifying their work.

18                   I would say that a lot of it was them  
19 asking questions.

20                   There were some other engineers there.  I  
21 mean, I remember Mark Morris, he was a young  
22 engineer.  He left.  You know, George Levo was  
23 there.  He died.  But it really got down to a  
24 fairly tight group over a period of four years or

1 something.

2 Q. Terry said that we're -- been made aware  
3 of or had numerous reports of ventilation problems  
4 at Upper Big Branch.

5 How would that process work? I mean,  
6 would mine management make Engineering Group 3  
7 aware that they're having ventilation problems and  
8 you-all do something, or does the engineers do  
9 something on their own?

10 A. They would be made aware of it by the  
11 people at the mine. I don't recall that there were  
12 a lot of occasions when the engineers made the  
13 corrections. A lot of it was made by the mine  
14 personnel.

15 Q. So there was no engineering work, you're  
16 saying, per se. It was all done --

17 A. Not all of it. I'm saying that a lot of  
18 it was done at the mine.

19 Q. At the mine?

20 A. Yeah. I mean, some of it was no more than  
21 moving the regulator or something or, you know, try  
22 it and see if it worked.

23 Q. Okay. How about in the same context then  
24 of roof support, ground control? I mean, with

1 ground control issues, would mine management notify  
2 Route 3 Engineering, or how would that process  
3 work?

4 A. If it necessitated something from the  
5 engineers, a change in the mine plan, change in  
6 size of the pillars or something, yeah, they would  
7 discuss that with the engineering group.

8 Q. Okay. Then the engineering group would  
9 then do ARMPS or ALPS or some sort of program --

10 A. Right.

11 Q. -- to try to change?

12 A. Yeah. I don't recall a lot of problems  
13 there.

14 Q. You mentioned that you would review  
15 Mr. Walker's and both Mr. Lillys' work during this  
16 mentoring program.

17 A. Yeah.

18 Q. Okay. Naturally, young engineers, they  
19 gravitate to -- some are good at ventilation, some  
20 are good in roof control.

21 I mean, if you truly had a ground control  
22 problem or a ventilation problem, who would be  
23 your -- you know, you would feel of the engineers  
24 who you would go to?

1           A.    Paul McCombs.

2           Q.    Paul McCombs?

3           A.    Yeah.  Well, Mike Milam when he was there,  
4 but he was only there for a short time.

5           Q.    You mentioned that you were responsible  
6 for certifying mine maps?

7           A.    Yes, sir.

8           Q.    Did you ever certify a mine map at Upper  
9 Big Branch?

10          A.    Yes, sir.

11          Q.    Recently?

12          A.    I do so many that -- but, yes, I'm -- I  
13 might have certified the one in January, you know.  
14 I don't -- You have got your progress maps twice a  
15 year, then your annual ventilation map.  So  
16 depending on the date when they were due, I might  
17 have certified those maps.

18          Q.    And you mentioned the last time you were  
19 in at Upper Big Branch underground was about four  
20 years ago.

21          A.    Four or five, yeah.

22          Q.    When you are provided a mine map then to  
23 be certified and you put your stamp on it, your PE  
24 stamp, what are you certifying?

1           A.    I am certifying --

2           Q.    What do you feel you're certifying?

3           A.    I feel like I am certifying the conditions  
4 as they exist at a moment in time.  And that moment  
5 being this is the way it was, because you're never  
6 going to get this is the way it is.

7           Q.    Well, are you certifying the accuracy?

8           A.    Yes.

9           Q.    At that point in time are you certifying  
10 the accuracy of the mine map?

11          A.    Yeah.  I have got a checklist, a three-  
12 page checklist, that I go over to certify that that  
13 map meets those conditions on the checklist.

14          Q.    And that would include entry widths,  
15 pillar dimensions --

16          A.    Stoppings.

17          Q.    -- stoppings, regulators --

18          A.    Yes.

19          Q.    -- as shown on the -- if it's a  
20 ventilation map?

21          A.    Of course, it's getting -- you know,  
22 carbon monoxide detectors and -- yeah, it's getting  
23 to be rather lengthy.

24          Q.    Yes.

1           A.    Yeah.

2           Q.    I guess if you're certifying the mine map  
3 and its accuracy, do you have interaction with,  
4 say, the survey group or spad crew that's actually  
5 doing a survey?

6           A.    I have interaction with the people that  
7 work up the surveys.

8           Q.    Do you review their work to --

9           A.    I have reviewed their work.  Yes, I have.

10          Q.    And do you look at the accuracy?  Do you  
11 review that they have done a closed loop survey?

12          A.    Yes.

13          Q.    How about the projections as shown on the  
14 map?  There's numerous projections that are  
15 required to be shown.

16          A.    Well, I look at them, but the way I look  
17 at projections, they're subject to change all the  
18 time.  Okay.

19          Q.    Then I guess get back to, when you're  
20 given a ventilation map or 1200 map to certify, how  
21 does that process work?  Just walk us through it.

22          A.    Well, okay.  Basically, the engineer has  
23 already looked at the map.  Okay.  So when I look  
24 at the map, I am balancing the air.  I'm making

1 sure that the air going in is approximately the air  
2 going out, that it's -- it's measured at splits.

3 A ventilation map really is pretty easy to  
4 certify, because, like I say, you've got a check,  
5 in and out. And that would be a hard one to fool  
6 with.

7 Q. Well, since you brought up a ventilation  
8 map, but are you not certifying that the,  
9 basically, the ventilation controls are accurate?

10 A. Yes.

11 Q. How does that interaction work? I mean,  
12 you have already -- you told us that --

13 A. Okay.

14 MR. McCUSKEY: Let him finish.

15 THE WITNESS: Yeah.

16 Q. -- that the mine does a lot of the  
17 ventilation changes on their own. So how does that  
18 interaction between the mine and the engineering  
19 office and from there to be put onto a mine map and  
20 to you to be able to certify that it's accurate?

21 A. They're marking it on a map at the mine  
22 office. Okay.

23 Q. Okay. The 1200 map you're referring to at  
24 the mine office?

1           A.    Yeah.  So those changes should appear on  
2 the map.

3           Q.    Okay.  Well, how does that get transferred  
4 then from the 1200 map at the mine to the  
5 engineers -- to your engineer AutoCAD map?  
6 Basically that's what it is; it's an AutoCAD map.

7           A.    They go up -- yeah.  They go up there and  
8 get the changes.

9           Q.    When you say "they," I mean -- I'm just  
10 looking for the process.

11          A.    Yeah.  The surveyors may get it.  The  
12 engineer may get it.  It depends on when it's due.  
13 Okay.  They're all due at different times.  So, you  
14 know, there's no set time, period of time, that  
15 they would retrieve the information on those maps.

16          Q.    Yeah.  But when you put your stamp on it  
17 for that moment in time, you're stamping that it is  
18 accurate; true?

19          A.    Yes.  And I'm depending on a number of  
20 people to ensure that.

21          Q.    Okay.  Back to what I was asking.  You're  
22 relying then on the mine management to mark the  
23 1200 map and verify that whatever ventilation  
24 changes they have made is on the 1200 map, and then



1 an engineer or AutoCAD technician or somebody  
2 transfers that information then onto another map  
3 probably? Is it another map?

4 A. Yes.

5 Q. Which they bring back to the engineering  
6 office and then goes into AutoCAD and performs or  
7 makes those changes? Is that how the system works?

8 A. Yes, it is.

9 Q. Then once those changes are made by your  
10 AutoCAD technician or somebody, or engineer, then  
11 who reviews it to verify the accuracy, comparing  
12 that map then, the AutoCAD map, to the map, the  
13 1200 map, that's back hanging on the wall?

14 A. The engineer is looking at that.

15 Q. So he physically takes that map back to  
16 the mine and reviews the information?

17 A. I --

18 Q. I'm just asking.

19 A. Yeah, I don't know that. I don't know  
20 that. I'm not going to -- I'm not going to say  
21 anything because I don't know.

22 But the maps themselves, I mean, you're  
23 checking -- you've got some checks that you can do  
24 in the fire boss books and things like that. Okay.

1 Q. Is that part of the process also?

2 A. It is when something don't work. Okay.

3 Yeah. In fact, sometimes he has -- we have to send  
4 somebody back, the engineer has to go back and take  
5 measurements because it just doesn't make sense.

6 And that happens.

7 Q. Do you recall that happening, I mean,  
8 where you've had to send an engineer back?

9 A. Yeah. Yeah. Specifically here, no, I  
10 don't, but a lot of the mines have cut out a number  
11 of places. Okay. And a lot of the inaccuracies  
12 are because of those culverts they put in them and  
13 trying to measure the air coming out of a number of  
14 pipes.

15 Q. Do you recall -- and, again, this goes  
16 back to '97.

17 A. 2007?

18 Q. Oh, yeah. Man, I'm sorry. I keep saying  
19 that.

20 A. You're just 10 years off.

21 Q. That's a lot.

22 Do you recall in 2007 that -- if the  
23 company, engineering company, engineering took into  
24 account the mining in the upper seams in the

1 Powellton seam for this longwall?

2 A. No, I don't recall. I'm certain they did,  
3 but I don't know that.

4 Q. Day in and day out, I guess, working in  
5 the engineering office, did you have a -- was there  
6 a lot of interaction between your AutoCAD  
7 technicians, your surveyors, and your actual  
8 engineers? I mean, how did that play out?

9 A. There is a lot of interaction between the  
10 AutoCAD guys and the engineers. The surveyors,  
11 there's like 12 or 15 of them. Most of that is  
12 communicated through the guys that work up their  
13 surveys, Keith and Bull. But it's not a big  
14 office. There's a lot of talk.

15 Q. Then I guess back to surveying. I keep  
16 coming back to surveying. You said Keith or Bull  
17 would work up the surveys. Then you would have --  
18 one of the engineers probably would review -- would  
19 they review the survey's work, surveyor's work to  
20 verify?

21 A. Not unless there was a problem. It was  
22 placed on the map.

23 Q. As long as it looked good then?

24 A. Right. As long as it appeared to be

1 accurate. Now, that doesn't always work, and they  
2 had to do -- there were some check surveys that had  
3 to be run.

4 Q. I guess I have heard -- we have heard that  
5 it was not a normal practice to have an engineer at  
6 a mine, a Massey mine. Is that true?

7 A. No, it's not. In fact, in my experience,  
8 Eric was the only one that I knew was located at  
9 the mine.

10 Q. Why would you -- to me, it's something  
11 abnormal then. Why would you think Mr. Eric Lilly  
12 would be required to be at UBB then? Was it a  
13 promotion or just a lateral, up to the mine? I'm  
14 just curious.

15 A. I don't know the answer to that. I would  
16 like to think that they thought that the longwall  
17 deserved his total attention rather than being in  
18 our office and getting diverted to other things.

19 So that would be my guess, that it was  
20 important for them and they wanted somebody there.

21 Q. Was this longwall then the only longwall  
22 that Massey had that Route 3 took care of, the only  
23 mine with a longwall in it?

24 A. Logan's Fork was just about done.

1 Q. It was a longwall mine?

2 A. Yeah. Well, yeah. And it hadn't operated  
3 very long. Yeah. We had the equipment. We just  
4 didn't have a lot of places to put it.

5 Q. Did you have -- you said you were off for  
6 three months and then came back. Did you have any  
7 interaction with Mr. Lilly at the mine during that  
8 time frame once you came back, prior to --

9 A. He came down to the office. I mean, you  
10 go past our office and up the hill to get to the  
11 mine. So, basically, if he needed something, he  
12 was at our office.

13 Q. Did he ever come to you specifically or  
14 did you hear talk of any concerns from him  
15 concerning ventilation or roof control in  
16 particular?

17 A. No, I didn't.

18 Q. No other concerns?

19 A. No.

20 Q. Then if I heard you right then to Terry,  
21 that you never did -- never have worked on any  
22 plans associated with Upper Big Branch, roof  
23 control, ground control?

24 A. No, I haven't.

1 MR. STOLTZ: For now, go ahead.

2 MR. KOERBER: Let's go off the record for  
3 just one second.

4 (Off the record.)

5 EXAMINATION

6 BY MR. MCGINLEY:

7 Q. Mr. Brainard, when did you first come to  
8 UBB? I missed that in the earlier testimony.

9 A. For Massey?

10 Q. Yes.

11 A. It was June 1st of 2006.

12 Q. Now, you said your history at the UBB went  
13 way back.

14 A. Oh, yeah. Well, yeah.

15 Q. So roughly when have you worked at UBB,  
16 whether it was for Massey or for others?

17 A. When did it start?

18 Q. Well, at what points -- maybe another way  
19 to ask would be, from the time you started working  
20 in the coal mines, when were you not at UBB? Is  
21 that easier to answer?

22 A. I guess '71 till '75 I wasn't anywhere  
23 near there. Now, you know, I don't know exactly  
24 what year UBB started, but, you know, I --

1 Q. Sure. So have you worked anywhere else  
2 after '75 other than at the mine where UBB is  
3 located?

4 A. I worked for that company for 22 years.

5 Q. That company was?

6 A. Berwind Land Company. I guess I didn't  
7 have much to do with any of the mines in that area  
8 from '96 to 2000--something. I mean, I was  
9 consulting then, so I was everywhere.

10 Q. And who were you working for at that time?

11 A. Me.

12 Q. So how long were you a consultant?

13 A. Oh, seven years.

14 Q. 1990?

15 A. '6. No 1998 to 2005. For a couple years  
16 I did absolutely nothing.

17 Q. Sounds good. 2005 you stopped working for  
18 yourself as a consultant. What job did you take at  
19 that point?

20 A. Well, it was going to work for Massey.

21 Q. But you didn't start with Massey until --

22 A. Yeah.

23 Q. -- 2006?

24 A. Yeah.

1 Q. And the first place you worked was there  
2 in the office?

3 A. Right. Route 3 Engineering.

4 Q. Route 3 Engineering.

5 You said that was not a big office there  
6 at Route 3 Engineering. There was a lot of talk.  
7 You just said that. And --

8 A. Say that again.

9 Q. You said it's not a big office, there's a  
10 lot of talk.

11 A. Well, communication. I didn't mean talk,  
12 but communication.

13 Q. That's what I took you --

14 A. Okay.

15 Q. So there were just a few engineers, a few  
16 AutoCAD operators, a couple of surveyors, all in  
17 the same office; is that correct?

18 A. Yes.

19 Q. And while -- Eric Lilly you said was  
20 assigned to UBB about a year before the explosion,  
21 is that right, roughly --

22 A. To my best recollection, yes.

23 Q. Who was assigned to UBB earlier than that?

24 A. George Levo had been the engineer at UBB.



1 Q. And he had [REDACTED]

2 A. He had something, but the result being  
3 he's dead, yeah.

4 Q. Right. And so when he died, did Lilly,  
5 Eric Lilly, take over responsibility for UBB or  
6 were there shared --

7 A. Here's what I believe. I believe Mark  
8 Morris was still there then. I believe Mark was  
9 doing UBB for a little while and then he left and  
10 then Eric came. That's what I believe.

11 Q. Mark Morris and George Levo, they weren't  
12 located at UBB, were --

13 A. No, they weren't. They were at Route 3  
14 Engineering.

15 Q. You-all talked about your work because you  
16 worked in close quarters; correct?

17 A. Yes. That's correct.

18 Q. Do you have something where you print out  
19 maps in your office?

20 A. Yes.

21 Q. What do you call that?

22 A. The plotter.

23 Q. The plotter?

24 A. Yeah.

1 Q. Not a printer?

2 A. No.

3 Q. Never a printer?

4 A. If you make little things, you call them  
5 prints.

6 Q. Have you discussed with Matt Walker at all  
7 his interview here by this panel?

8 A. No.

9 Q. Did you know he was interviewed?

10 A. I know Keith was. I guess maybe I don't  
11 know, Matt, whether he was or wasn't.

12 They just told me to watch out for you.

13 Q. What did they say? What did they say?

14 A. Nothing. Nothing.

15 Q. So Eric Lilly, after he was assigned and  
16 left your office and went closer to the mine --

17 A. Yes.

18 Q. -- you said he would come back to your  
19 office when he needed to?

20 A. Probably almost on a daily basis.

21 Q. Well, that's what I was wondering about.

22 Did he also have a workplace in your office as well  
23 as the other place?

24 A. Well, yeah. He did. I mean, it wasn't

1 much, but yeah, he -- that's normally where you  
2 would see him.

3 Q. In your office, or that's where you would  
4 see him when he came to your office was --

5 A. When he came there, yeah.

6 Q. Was that an office that was set aside from  
7 the others?

8 A. It was kind of in the hallway, so you  
9 couldn't miss him.

10 Q. You said that you received your  
11 Professional Engineer's licenses --

12 A. License, yes.

13 Q. -- license in 1978?

14 A. Yes.

15 Q. To what extent do you use that license in  
16 working at UBB? I mean, is there any significance  
17 of that license in your work that you have done at  
18 UBB since 2006?

19 A. I guess I probably used it more there than  
20 anywhere.

21 Q. And for what purpose do you use it?

22 A. Well, the taxes. Taxes require the maps  
23 be certified too. The severance taxes require the  
24 maps be certified. And then MSHA and the Office of

1 the Miners' Health -- I mean, you've got all kinds  
2 of things that need certification. Your gas well  
3 locations. I mean, you name it.

4 Q. Okay. With regard to the tax  
5 certifications, those go to the State Tax  
6 Department; is that correct?

7 A. Say that again.

8 Q. They go to the State Tax Department?

9 A. Yes, it does.

10 Q. And under West Virginia state tax law,  
11 there is a requirement that active coal reserves be  
12 valued; is that correct?

13 A. Correct.

14 Q. And there's a methodology for that  
15 valuation the State Tax Department provides?

16 A. And they sure have convoluted it.

17 Q. It's changed from what it was 10 years  
18 ago; is that correct?

19 A. Yeah.

20 Q. At one point it was the value assigned to  
21 inactive reserves -- do you work on inactive  
22 reserve valuation?

23 A. Yeah. The inactive reserve valuation is  
24 still done by the landowners, so --

1 Q. Well, there's a methodology that the tax  
2 department utilizes to value inactive reserves. At  
3 one point it was looking at a whole bunch of coal  
4 leases and coal deeds and sort of dividing the  
5 acreage up with the sale or the lease price; is  
6 that correct?

7 A. Yes.

8 Q. But that changed; is that correct?

9 A. Yes.

10 Q. And with the active reserves, you  
11 mentioned that the planning to move the longwall  
12 back to UBB must have been decided in 2007 because  
13 of the work you did on the active coal reserve  
14 taxes.

15 A. Yes.

16 Q. And so what you meant there, the  
17 significance of that testimony was that someone had  
18 told you, We are going to go back into UBB, set up  
19 a longwall or not, we're going to go back into UBB,  
20 and so you have to report that as an active reserve  
21 to the State Tax Department?

22 A. Exactly. Yes.

23 Q. And who would have told you that?

24 A. I probably heard it from a CAD operator.

1 Q. Well, your company wouldn't want -- have  
2 wanted you to be sending in a report that would  
3 result in much higher taxes for what had been  
4 designated by you as inactive reserves unless you  
5 were sure of that; correct?

6 A. Yes.

7 Q. So --

8 A. I confirmed it probably with someone.

9 Q. Would that be in writing?

10 A. No.

11 Q. No?

12 A. No. I mean --

13 Q. How do you --

14 A. We're all right there.

15 Q. Well, I understand that, but whoever made  
16 the decision to go back, take the longwall back to  
17 UBB, wasn't working in your office, was he?

18 A. No, I don't --

19 Q. So how did that information get to your  
20 office so that you would know for sure to change  
21 the tax reporting to identify this area at UBB  
22 where the mining started up again and the longwall  
23 was moved in 2009? How would you know that?

24 A. Somebody told me.

1 Q. Somebody from outside your office?

2 A. Yes. Okay.

3 Q. So there would have to be -- wouldn't  
4 there be a paper trail, e-mails? I mean, you  
5 wouldn't just go off on your own and get a  
6 telephone call and go and change the inactive  
7 reserves to active reserves, would you?

8 A. Probably.

9 Q. You would?

10 A. Yeah.

11 Q. So when you say 2007, when are those  
12 tax -- that tax reporting, the changing from  
13 inactive reserves to active reserves, when is that  
14 supposed to --

15 A. July 1st of each year. July 1st. It's  
16 what you own July 1st, say 2010, but that's called  
17 tax year 2011.

18 Q. So when you say 2007, when did you report  
19 that?

20 A. 2008.

21 Q. By July 1st, 2008?

22 A. Yeah. And I'm sure by then I had  
23 determined that it was true.

24 Q. So it was likely you knew -- first learned

1 about going back into UBB and designating it an  
2 active mining operation, that you learned that in  
3 2008; is that correct?

4 A. In two thousand --

5 Q. 2008.

6 A. No. I think I probably heard about it in  
7 2007.

8 Q. You have some definite recollection?

9 A. Yeah.

10 Q. When in 2007 would that have been?

11 A. It was in the fall. That's the best I can  
12 tell you.

13 Q. You didn't mention Nick McCroskey who was  
14 killed in the explosion. Did he --

15 A. Nick worked with me or worked as a young  
16 engineer in the office for I think around six  
17 months.

18 Q. When would that have been?

19 A. Right in 2006. I think he might have  
20 started just a month or so after I did. And he  
21 found that he liked the hands-on work better than  
22 engineering work.

23 Q. What do you mean hands-on?

24 A. Getting dirty and going underground and



1 doing things like that.

2 Q. Did he get paid more?

3 A. You know, I don't know. I really don't.

4 I know when I -- I got an extra \$70 a month back in  
5 1972 for that, but I don't know if they got  
6 anything for it.

7 Q. Are you salaried or management?

8 A. Salaried.

9 Q. You're salaried.

10 You testified about the 1200 map. That  
11 1200 refers to the scale of the map?

12 A. No.

13 Q. What's it refer to? Explain that for the  
14 record.

15 A. It's --

16 Q. Why do you call it the 1200 map?

17 A. I don't know. But it's the map that is at  
18 the mine.

19 Q. Okay. And what does that map --

20 A. It's got everything.

21 Q. -- depict?

22 A. Everything on it.

23 Q. What's the scale on it? Do you know?

24 A. I'm guessing 400, 400 foot to the inch,

1 500 foot to the inch. I don't know.

2 Q. So what does that map at the mine  
3 represent? Is that the current approved mine plan,  
4 or does it also reflect unapproved changes that are  
5 being proposed?

6 A. I don't think it has anything to do with  
7 the mine plan.

8 Q. Well, what information do your engineers  
9 and CAD operators, surveyors, retrieve from that  
10 map to utilize?

11 A. Changes that occur they place on that map  
12 by pencil or pen or something like that.

13 Q. Are those changes --

14 A. It truly is a current map.

15 Q. Do those changes penciled in reflect  
16 changes that have been approved by MSHA and the  
17 State?

18 A. I can't tell you that.

19 Q. So would your engineers that go up there  
20 and retrieve the information know whether those  
21 markings are approved --

22 A. Yes.

23 Q. -- by MSHA and the State?

24 A. Yes.

1 Q. Do you ever ask them?

2 A. No.

3 Q. Do you know how they know that?

4 A. (Shaking head.)

5 Q. You have to respond.

6 A. No.

7 I'm sorry. It's hard to watch somebody  
8 sit there and move their head and you can't -- I  
9 move mine with it.

10 Q. So when you testified that ventilation  
11 changes were made by management and not by the  
12 engineers, I know you said that engineers play a  
13 role, but some changes --

14 A. Right.

15 Q. Management has a lot to do with it;  
16 correct?

17 A. Correct.

18 Q. And how were those changes made by  
19 management communicated to the engineers that work  
20 in your office?

21 A. Number one, they may be told that, I mean,  
22 but if it's not a serious change -- it may be, you  
23 know, a movement of a regulator. It's probably on  
24 the map.

1 Q. What about -- when you say "serious  
2 changes," how do you define that?

3 A. Well, direction of air, change the path of  
4 the air. Those would be serious changes.

5 Q. How were those serious changes  
6 communicated to --

7 A. They would come down and discuss them and  
8 more than likely they had to apply for -- apply for  
9 a ventilation change.

10 Q. Okay. So in applying for a ventilation  
11 change, is a map submitted to the regulatory agency  
12 showing those significant ventilation changes?

13 A. Say that again.

14 Q. When the company wants to make a  
15 ventilation change that requires regulatory agency  
16 approval, do you submit a map --

17 A. Yes.

18 Q. -- with the plan?

19 A. Yes.

20 Q. Where does the information that goes on  
21 that map come from? How is that communicated to  
22 your engineers and the AutoCAD operators from  
23 management?

24 A. It comes from management.

1 Q. How do they do that? Do they do it in  
2 writing?

3 A. A lot of times they come down to the  
4 office and they talk to them.

5 Now, as a result of that, there may be a  
6 map produced as they're speaking, and then it's  
7 transferred to AutoCAD and on a map. I don't think  
8 those maps need to be certified, if I'm not  
9 mistaken.

10 Q. But they are submitted to regulatory  
11 agencies; is that correct?

12 A. Yeah.

13 Q. And the regulatory agency has the  
14 expectation that those would be correct and  
15 accurate; is that correct?

16 A. That's correct.

17 Q. Just they don't need a Professional  
18 Engineer's seal; is that correct?

19 A. I believe that's correct.

20 Q. So who is it that would come down, say in  
21 the last two years at UBB, when ventilation changes  
22 that had to be submitted to the regulatory agencies  
23 were being made to do what you have just described?

24 A. I'm guessing Everett Hager came down.

1 Q. Well, it's a small office, so who came  
2 down? Everett Hager?

3 A. Most of the time I would see Everett Hager  
4 there. Okay.

5 Q. Did any other management play any role in  
6 communicating what management wanted in terms of  
7 ventilation, significant ventilation changes?

8 A. He may have sent someone else, but I don't  
9 know who they were.

10 Q. Did you ever talk to any of the management  
11 about ventilation changes?

12 A. No.

13 Q. Did you ever talk to management about the  
14 ventilation plan that you certified?

15 A. Ventilation plan that I --

16 Q. Do you certify, you said, the yearly  
17 ventilation plan, the map?

18 A. Oh, yeah, I did.

19 Q. Who did you talk to?

20 A. I would have talked to -- I would have  
21 said something to Leon.

22 Q. Leon?

23 A. No. Everett. Matt. I can't remember.

24 First names, I have probably got them, but I

1 don't -- the superintendents.

2 Q. The superintendents. How about the  
3 president and the vice president?

4 A. Pardon?

5 Q. Did you ever talk to the president or vice  
6 president?

7 A. I talked to them, but not specifically  
8 about that.

9 Q. And so did you certify the ventilation map  
10 that accompanied the ventilation plan when the  
11 longwall moved back to UBB?

12 A. I do not know if I did or not.

13 Q. Because you were out sick, you can't  
14 remember that?

15 A. Well, there's just so many of them.

16 Q. So --

17 A. If you could get the map or something, we  
18 could check.

19 Q. Sure. So you certified maps using your  
20 Professional Engineering seal for, at one time or  
21 another, all the mines within the purview of  
22 Route 3 Engineering. Is that accurate?

23 A. That's probably true.

24 Q. Others did it as well, I mean, at least --

1 who else had a PE stamp?

2 A. Paul.

3 Q. Paul McCombs had it. Anyone else?

4 A. Oh, George did until he died. Let me  
5 think. I don't think there was anybody -- Mike  
6 Milam did, but he left.

7 Q. So really the responsibility for  
8 certifying all these maps rested on you and Paul  
9 McCombs; is that correct?

10 A. Yeah. Yes, it did.

11 Q. And did one of you do more than the other  
12 in terms of certifying?

13 A. He was awful busy with permit issues,  
14 outside environmental issues, so I probably did a  
15 few more than he did.

16 Q. So with regard to -- what were you saying,  
17 16 or 18 mines within Route 3 Engineering?

18 A. 14. 14. 12 to 14 mines and 19 sections,  
19 I believe.

20 Q. So that's a lot of maps that you were  
21 certifying; is that correct?

22 A. It certainly is.

23 Q. How many would you estimate in a year that  
24 you would certify?



1           A.    How many?

2           Q.    Maps did you certify with your PE stamp?

3           A.    In a year?  Goodness.

4           Q.    Just a ballpark.

5           A.    You realize that there's probably seven  
6 maps for each one.  I mean, that's how many  
7 copies.  Probably 500.

8           Q.    Okay.  So --

9           A.    And that's not counting tax maps now.

10          Q.    Okay.  But including copies?  The 500  
11 includes the copies or not?

12          A.    Of tax maps?

13          Q.    No, no.

14          A.    Yes, it does.

15          Q.    The 500 doesn't include the tax maps?

16          A.    No.

17          Q.    And how many of those do you do?  Many  
18 more tax maps you certify than --

19          A.    Well, probably six or seven hundred.

20          Q.    So all told in a year you certify --

21          A.    A thousand.

22          Q.    More than a thousand?

23          A.    Yeah.

24          Q.    Is that fair?

1           So that doesn't give you a lot of time to  
2 review the maps?

3           A. No, that's not true. The map was reviewed  
4 thoroughly before I ever signed it.

5           Q. And what do you review it for? You've got  
6 the checklist?

7           A. I've got the checklist.

8           Q. Do you review it for anything that isn't  
9 on the checklist?

10          A. I can't -- sorry?

11          Q. Do you review the map for anything that  
12 isn't on the checklist?

13          A. I'm pretty sure our checklist is very --  
14 is comprehensive enough that it covers everything.

15          Q. You say it's three pages?

16          A. Yes.

17          Q. What are the things that are on the  
18 checklist? You have obviously done it thousands of  
19 times.

20          A. Yeah. You're going through to make sure  
21 the seam is there, the coordinates at the entry, at  
22 the opening are on the map. You're making sure  
23 that the topographical features are there. You're  
24 making sure that the air readings are taken at

1 splits, at EPs.

2 Goodness. I wish I had one, but I don't.

3 Q. What is there on the checklist that deals  
4 with ventilation?

5 A. I'm sorry?

6 Q. What is there on the checklist that deals  
7 with ventilation? What items on the checklist deal  
8 with ventilation?

9 A. Oh, the EP points, the air readings.

10 Yeah. The fan pressures.

11 Q. Anything else? EP points, air readings,  
12 fan pressures.

13 A. You've got -- arrows have got to be  
14 everywhere. You've got to know the direction of  
15 the air. Your fresh-air escapeways. Belt.

16 Track. Ventilation doors.

17 Q. Overcast?

18 A. Yeah. Yeah. Overcast.

19 Q. You had a lot more ventilation doors than  
20 overcasts at UBB; is that correct?

21 A. Yes.

22 Q. Do you know why that is?

23 A. Just the way they laid it out.

24 Q. So you didn't have anything to do with the

1 choice between ventilation doors and overcasts?

2 A. No, sir.

3 Q. Who would have made that decision?

4 A. I have no idea.

5 Q. You said that's the way they laid it out.

6 A. Yeah. I'm guessing that decision was made  
7 many years ago.

8 Q. Were there more overcasts at UBB before  
9 the new part of the mine was open than there were  
10 doors? I'm talking about when the longwall came  
11 back in late summer of 2009 there was a mine plan  
12 that included more doors than overcasts,  
13 significantly more. Is that correct?

14 A. I do not know that.

15 Q. The mine before the longwall came back,  
16 before the longwall left, were there more doors  
17 than overcasts?

18 A. I do not know that.

19 Q. So when you say air readings, you  
20 certify -- the checklist has air readings, what  
21 does that mean?

22 A. Volumes of air.

23 Q. What do you put on the map in terms of  
24 volumes of air?

1           A.    How many CFM.

2           Q.    Is what?  Expected there?  That will be  
3 there?  Are you certifying that's the amount of air  
4 that will be delivered?

5           A.    That was the amount of air that was there  
6 at the time they took the reading.

7           Q.    And how do you know that?

8           A.    Because, first of all, you've got to trust  
9 that they're doing what they're supposed to be  
10 doing.

11          Q.    That's what I mean.  You get the  
12 information from someone else?

13          A.    Yes.

14          Q.    How does that come to you?

15          A.    On the map.

16          Q.    Who puts it on the map?

17          A.    They do.

18          Q.    So who is "they"?

19          A.    The men -- the foreman, superintendent,  
20 whoever was in the mine assigned to those  
21 particular points to get the air readings at that  
22 time.

23          Q.    So is there a document that -- well, who  
24 makes that map up?  Is it your people, the

1 engineers, that would put that number there?

2 A. They may give them a piece of a map and  
3 say they need those readings at those locations.

4 Q. These are the readings that we just took,  
5 and you're going to put it -- put it on the map  
6 that you're going to certify?

7 A. Right.

8 Q. So you get the information from mine  
9 management, foremen, somebody in the mine; correct?

10 A. Yes. And in some cases, when it doesn't  
11 look right, the engineer goes back and takes the  
12 reading or asks someone else to go back and take a  
13 reading.

14 Q. When wouldn't it look right? How would  
15 you know if it doesn't look right?

16 A. Well, maybe there was too much air coming  
17 in and not enough going out. I mean, it's a  
18 balance, so you've got an idea how -- about how  
19 much it should be.

20 Q. Okay. So there's documentation of what  
21 mine management said was the air flow at the  
22 individual points that went into the map you  
23 certified; is that correct?

24 A. I believe it's in their fire boss books

1 too.

2 Q. So we could look at the fire boss books at  
3 the time when you certified the maps and compare  
4 the ventilation, the airflow indicated on the maps  
5 with what the fire boss said about those particular  
6 points; is that correct?

7 A. Yes, sir, you should be able to do that.

8 Q. And they should be the same, essentially  
9 the same?

10 A. Well, it's close. Okay.

11 MR. McCUSKEY: Professor, do you have any  
12 idea how much longer you're going to be?

13 MR. MCGINLEY: Just a couple of minutes.

14 Q. Did you ever talk to Eric Lilly after the  
15 explosion?

16 A. Say that --

17 Q. Did you ever talk to Eric Lilly after the  
18 explosion?

19 A. I probably did, but not necessarily about  
20 the explosion.

21 Q. Let me ask you this. You had a small  
22 office. There was a lot of talk among the group  
23 that worked closely together. After the explosion,  
24 did you-all talk about the possibility that there

1 were ventilation problems there that contributed to  
2 the explosion?

3 A. No.

4 Q. You never talked about that?

5 A. No.

6 Q. You weren't --

7 A. I was not privy to any of that information.

8 Q. I'm just talking about the people that you  
9 regularly work with.

10 A. No. I think there was more concern about  
11 the families and doing what we could. I mean, they  
12 opened up the safety building for the families, and  
13 a lot of us were going down there and helping out  
14 down there. It was a grim time.

15 Q. No, I understand that. But after -- I  
16 completely understand that. You wouldn't have been  
17 talking about ventilation or whatever. You're  
18 concerned about the family.

19 But there came a point in time where you  
20 got back to doing work as usual, and you had the  
21 backdrop of that was an explosion that killed 29  
22 men.

23 You folks worked on ventilation plans.  
24 I'm just wondering if there was ever any discussion



1 about the role ventilation might have played in the  
2 explosion amongst those of you who worked on the  
3 ventilation plans.

4 A. I guess, truthfully, they -- those  
5 articles, those press releases and things, I'm sure  
6 those were discussed, you know, as they appeared or  
7 whatever.

8 Q. You mean press releases in the sense of  
9 Massey's press releases or newspaper reports?

10 A. Whoever's they were, yeah. MSHA's or ...

11 Q. Okay. Let me ask you, just in closing, a  
12 couple of questions.

13 I'm going to read you a few sentences  
14 here, and tell me whether each sentence is -- you  
15 agree with it and it's true or it's not true or you  
16 don't know.

17 A. Okay.

18 Q. Okay. "At Upper Big Branch, we complied  
19 with MSHA safety orders even when we strenuously  
20 disagreed with them and believed them to be  
21 detrimental to the health and safety of the mine."

22 A. My choices are?

23 Q. True, not true, I don't know.

24 A. I don't know.

1 Q. "In particular" -- another sentence. "In  
2 particular, we disagreed with MSHA's ventilation  
3 plan for the Upper Big Branch mine."

4 True, false, you don't know?

5 A. That's true.

6 Q. What disagreement was there with regard to  
7 MSHA's ventilation plan for the Upper Big Branch  
8 mine?

9 A. It was compared to mines in the north that  
10 there was a lot more gas at those mines. I think  
11 the plan, they cut back the flow of air.  
12 Therefore, they cut the pressure against the gob,  
13 so it allowed more gas to build up.

14 Q. So was -- if --

15 MR. McCUSKEY: Would you clarify who  
16 you're talking about, "they"? I think that will be  
17 important. When you said "they did this," who  
18 you're talking about.

19 MR. MCGINLEY: Thank you. That's  
20 important.

21 MR. McCUSKEY: I think he would like --  
22 the record would be clarified. When you said "they  
23 made this and that change," who is "they"?

24 THE WITNESS: The change occurred, I

1 guess, because of MSHA's not approving our  
2 ventilation plan. And, therefore, the airflow was  
3 cut to the longwall face and it -- less pressure,  
4 more gas.

5 Is that better understood?

6 MR. MCGINLEY: I understand what you're  
7 saying.

8 BY MR. MCGINLEY:

9 Q. So did you certify a map reflecting the  
10 changes that responded to MSHA's actions?

11 A. I did if I certified the last map, but ...

12 Q. Would you or your engineers ever certify a  
13 map in connection with a ventilation plan or agree  
14 with a ventilation plan that was detrimental to the  
15 safety of the mine?

16 A. Of course not.

17 Q. So that the maps that were submitted to  
18 MSHA after MSHA had failed to approve changes in  
19 ventilation, the plans that you submitted you felt  
20 would protect the health and safety of the miners;  
21 is that correct?

22 A. I'm --

23 Q. Let me rephrase it if you don't understand  
24 it. Let me ask another question.

1           MR. McCUSKEY: How about we take a break  
2 for a minute or two? I need to make a call, to  
3 call the judge and tell him that this hearing has  
4 lasted a lot longer than it was supposed to, and I  
5 need to go to the bathroom, and he wants to ask me  
6 a question. So accomplish all three of those.

7                                 (Break.)

8 BY MR. MCGINLEY:

9           Q. Okay. Mr. Brainard, I was asking you to  
10 respond to some statements. The last thing we were  
11 talking about was ventilation plans and maps that  
12 were submitted to MSHA for approval.

13           A. Uh-huh.

14           Q. I think you testified that each and every  
15 ventilation plan and map that Massey would have  
16 submitted that Route 3 engineers would have played  
17 some role in, including the certification of maps,  
18 would not be detrimental to the health and safety  
19 of miners. Is that correct?

20           A. That's correct.

21           Q. So that even if the engineers in your  
22 office and other Massey officials strenuously  
23 objected to certain actions that MSHA took  
24 regarding ventilation, Massey's response and the

1 Route 3 Engineering response, UBB's response, was  
2 to submit ventilation plans that would protect the  
3 health and safety of the miners at UBB; is that  
4 correct?

5 A. Okay.

6 Q. Is that correct?

7 A. That's correct.

8 Q. So whether or not you disagreed with MSHA,  
9 MSHA decisions, that didn't interfere with your  
10 ability, and Route 3 Engineering at Performance  
11 Coal or Massey Coal Services, to come up with a  
12 ventilation plan that would protect the health and  
13 safety of the miners at Upper Big Branch; is that  
14 correct?

15 A. That's correct.

16 Q. Tell me whether this sentence is true,  
17 false, or you don't know.

18 A. Okay.

19 Q. "We opposed the changes because our  
20 engineers, meaning Massey engineers, believed they  
21 made the mine less safe, not because they were more  
22 costly or because they interfered with production."

23 A. That's true.

24 Q. How much less safe did changes in the

1 ventilation plan at UBB make the mine?

2 A. I don't know.

3 Q. That doesn't mean to say that the changes  
4 that Massey made in the ventilation plan at UBB  
5 made the mine unsafe; correct?

6 A. That Massey made --

7 Q. Yes.

8 A. Yes, that's correct.

9 Q. So in your view what MSHA did made the  
10 mine less safe, is that correct, but you can't say  
11 how much less safe?

12 A. That's correct.

13 Q. And it did not -- whatever MSHA did, did  
14 not result in the mine being made unsafe; correct?

15 A. That I don't know.

16 Q. Well --

17 A. I mean --

18 Q. The plans that your folks worked on at  
19 Route 3 Engineering, that Massey submitted, that  
20 were ultimately approved by MSHA, did not make the  
21 mine unsafe, is that correct, or you wouldn't have  
22 submitted them?

23 A. That's correct.

24 Q. When you certify a mine map to MSHA, for

1 submission to MSHA, that has to be done twice a  
2 year?

3 A. Yeah.

4 Q. That allows -- you're basically certifying  
5 that everything within a thousand feet, is that  
6 right, from the projections is safe?

7 A. Uh-huh.

8 Q. Is that correct?

9 A. Correct.

10 Q. And beyond that you're not certifying  
11 the -- If the mining goes beyond the thousand feet,  
12 you're not certifying, when you put your PE stamp,  
13 that any mining that is conducted will be safe?

14 A. Where do you get that?

15 Q. I'm just asking you.

16 A. No. Specifically, where --

17 Q. Do you know anything about the thousand  
18 foot certification?

19 A. No, sir.

20 Q. Not familiar with it?

21 A. No. I don't know who could certify a  
22 thousand foot of empty space that you can't see is  
23 safe. They better hire him instead of me.

24 MR. MCGINLEY: That's all I have. Thank

1 you, sir.

2 MR. STOLTZ: I've got a few, a couple  
3 quick follow-up questions.

4 EXAMINATION

5 BY MR. STOLTZ:

6 Q. You mentioned that you use a checklist.

7 A. I'm sorry. Yes.

8 Q. You mentioned --

9 A. Yes.

10 Q. -- about this checklist.

11 A. Yes.

12 Q. Who developed the checklist?

13 A. I can only guess. I don't know, but I  
14 think -- I think it's been added to over the  
15 years. Okay. It certainly was far from complete  
16 as you started, because MSHA -- there keeps being  
17 more requirements. So it's been added to.

18 Q. Have you ever personally went back then  
19 and compared -- I guess you're comparing your  
20 checklist to the regulations then?

21 A. That has been done.

22 Q. You have done it personally?

23 A. No, I haven't. I relied on Mike Milam.

24 Q. And do you know when the last review was?



1           A.    Yeah, I guess I do.  Mike Milam was still  
2 here.  About three years ago.

3           Q.    About three years?

4           A.    Yeah.

5           Q.    Would it have been -- would you or  
6 somebody else have updated it then for the changes  
7 in regulations after -- during that three-year  
8 period since he last reviewed it?

9           A.    I cannot answer that.  I don't know.

10          Q.    Because there have been reg changes.

11          A.    There probably have.  And I hope we have  
12 done that.

13          Q.    Curious.  Just curious.  What do you  
14 estimate for timewise that once you receive a map  
15 to certify, how long does it take you to review  
16 that map before you put your stamp on it?  I  
17 mean --

18          A.    This one?

19          Q.    Well, at UBB.  Say UBB then.  How long  
20 would it take you?

21          A.    Probably a good three hours.

22          Q.    Three hours?

23          A.    Yeah.  I mean, if you're going to follow  
24 everything, it will take that long.

1 Q. I guess when you say "follow everything,"  
2 what's your procedure or what's the process you  
3 walk yourself through?

4 A. You start with the arrows.

5 Q. Start with the arrows?

6 A. Start with the arrows and make sure they  
7 remain the right color and they turn the places  
8 they're supposed to turn and go out where they're  
9 supposed to go out.

10 Q. Do you physically then check the Q's?

11 A. I'm sorry?

12 Q. Do you actually physically have a  
13 calculator on hand to check the Q's? I'm just  
14 throwing that out.

15 A. Yeah.

16 Q. You punch through the Q's and check the  
17 ins and outs or splits, quantities?

18 A. Yes.

19 Q. Then walk yourself through the stoppings?

20 A. Yes. Because not every mine is as  
21 complicated as this one.

22 Q. Yes. Exactly right. Yes.

23 A. Some it's like checking three different  
24 things and you've got it.

1 Q. And some are more complicated, such as  
2 UBB.

3 A. They certainly are.

4 Q. So you would estimate about three hours  
5 for UBB then?

6 A. I think if -- yeah. For me. I may be a  
7 little slow.

8 Q. I guess do you have any idea of how the  
9 velocities on the longwall face were determined?

10 A. No. But I'm guessing -- no. I won't  
11 guess. I don't know.

12 Q. How about the -- curious -- I'm curious,  
13 because we show numerous gas wells here. How does  
14 that information get transferred onto your mine  
15 map? Who is responsible for that, or how does that  
16 get transferred?

17 A. It's probably about the same procedure.  
18 You have got your AutoCAD guy placing the  
19 measurements or the information obtained from the  
20 oil and gas section, the natural resources, and the  
21 engineer will check that, and then I'll look at it  
22 and certify it.

23 Q. So you have a written procedure then in  
24 the office for the engineer to --

1           A.    Yeah.  There's forms.

2           Q.    There's forms.  Okay.  Do you have any  
3   idea about the bleeder system of this, the current  
4   longwall at UBB?

5           A.    The what?

6           Q.    The bleeder system, the shaft, you know,  
7   who designed the shaft or the --

8           A.    No, I don't know.

9           Q.    Anything about the bleeder system?

10          A.    No.

11          Q.    Do you know a gentleman, Motombo Nambe?

12          A.    Say that again.

13          Q.    Motombo Nambe.  Nambe.

14          A.    Marcombo.

15          Q.    Marcombo?

16          A.    I think I do.

17          Q.    Okay.  Maybe that's his name.

18          A.    Could I look at it?

19          Q.    Well, no.  I just wrote it how -- how  
20   would you pronounce the name?

21          A.    Marcombo?

22          Q.    Okay.  Do you know him?

23          A.    Is he an engineer up at Progress?

24          Q.    He was an engineer.  Is he up at Progress

1 now, I guess?

2 A. If we're talking about the same guy,  
3 that's where I know him.

4 MS. HAMPTON: We have some information, a  
5 name was given to us, Motombo Nambe, and we were  
6 told that he might have filled in right after  
7 George Levo passed away, before the --

8 THE WITNESS: Oh, no, no, no. Wait.

9 MS. HAMPTON: And he might have moved to  
10 Texas.

11 THE WITNESS: You know, yes, he was.  
12 You're right. Okay. Yeah. The black guy.

13 MS. HAMPTON: Okay.

14 THE WITNESS: Yeah. But he wasn't here  
15 very long.

16 MS. HAMPTON: Okay. And is it your belief  
17 that he moved to Texas, or do you know?

18 THE WITNESS: Yeah. Yeah. I'll bet he  
19 wasn't there two weeks or something. Maybe less  
20 than that. He's Nigerian. Yeah. But the guy up  
21 on top of the hill is Nigerian, too, and almost has  
22 the same name.

23 BY MR. STOLTZ:

24 Q. Do you know who was responsible for the

1 ventilation information on the annual mine map?

2 A. The information?

3 Q. On the annual mine map, who is responsible  
4 for that?

5 A. If I'm certifying it, I think I'm  
6 responsible.

7 Q. Then there's a name provided on the annual  
8 mine map then that says --

9 A. It's me and the superintendent.

10 Q. You and the superintendent?

11 A. Yes.

12 Q. At each mine?

13 A. At each mine. Or Paul and the  
14 superintendent, you know.

15 Q. Are both names on the annual map or is  
16 just one?

17 A. Yes, they are.

18 Q. They both are?

19 A. Yes.

20 MR. McCUSKEY: When you said "both," did  
21 you mean the superintendent and one of the  
22 engineers?

23 MR. STOLTZ: Yes.

24 MR. McCUSKEY: Not both engineers?

1 MR. STOLTZ: No.

2 MR. McCUSKEY: Okay. I just wanted to  
3 make sure.

4 MR. STOLTZ: Sorry.

5 THE WITNESS: I knew what you meant.

6 MR. STOLTZ: Thank you.

7 BY MR. STOLTZ:

8 Q. Was there any sort of annual or periodic  
9 review of the general conditions or mine plans, say  
10 of Upper Big Branch, that you're aware of?

11 A. No. I am not -- not in our office. I'm  
12 not aware of it in our office.

13 Q. Would you with -- would you -- would you  
14 expect there was or would you think there would  
15 have been some sort of review between management  
16 and engineering?

17 A. I expect there was, and I expect it took  
18 place up on the hill.

19 Q. And then that person probably would have  
20 been Mr. Lilly since he was --

21 A. Yeah.

22 Q. -- the on-site engineer at the time?

23 A. Yeah.

24 Q. Would you have expected this meeting

1 taking place or this informational gathering would  
2 have been between Mr. Lilly and who? Who from  
3 management?

4 A. Superintendent.

5 Q. Superintendent.

6 A. Or general superintendent. And I think,  
7 depending on the subject, probably Paul McCombs was  
8 there.

9 Q. Are you aware of any problems or  
10 misunderstandings between engineering and mine  
11 management at Upper Big Branch, I mean, your daily  
12 interactions or your interactions back and forth?

13 A. No, I'm not.

14 MR. KOERBER: Pat, got anything else?

15 EXAMINATION

16 BY MR. MCGINLEY:

17 Q. Let me just ask you, with regard to your  
18 testimony that there were engineers, management  
19 that disagreed with MSHA's actions regarding  
20 ventilation plans, was any of that -- were any of  
21 those objections ever reduced to writing? Was  
22 there an analysis done that indicated why the  
23 company believed that --

24 A. If there was, I'm not aware of it.



1 Q. So all that you know is that there was  
2 some talk that MSHA's decision might have made the  
3 mine less safe, but you don't know how much less  
4 safe; correct?

5 A. That MSHA's -- say that again.

6 Q. The only thing that you know about the  
7 engineers in Route 3 Engineering or the management  
8 at UBB's dislike of MSHA's actions regarding  
9 ventilation plans was just a matter of oral  
10 conversation?

11 A. Correct. Correct.

12 MR. MCGINLEY: That's all.

13 MR. STOLTZ: One more.

14 EXAMINATION

15 BY MR. STOLTZ:

16 Q. Just curious now. I have heard it a  
17 couple of times.

18 A. It's okay.

19 Q. Is there any -- this dislike I keep  
20 hearing, and in your position, is there any -- I  
21 guess what specifically was disliked? I mean, is  
22 there something specific? I hear a lot of  
23 generalities.

24 A. I think anytime you reduce airflow to the

1 face that you're going against engineering  
2 principles. I think that's the whole thing.

3 Q. You're referring to across the longwall  
4 face?

5 A. Yes.

6 Q. You're saying then that MSHA specifically  
7 dictated a reduction in airflow across the longwall  
8 face?

9 A. No, I'm not saying they specifically --

10 Q. Or it's just a --

11 A. But what -- their actions caused the  
12 reduction. That's only me. I'm not -- there's  
13 nobody else. I'm the only one here.

14 MR. McCUSKEY: Let the record reflect that  
15 Mr. Stoltz is grinning and laughing.

16 And that's certainly your right to do,  
17 sir, but he's giving an answer to your questions,  
18 and if you don't like them, I don't think your face  
19 gestures are appropriate to laugh at this witness  
20 who has come here today to try to give his version  
21 of the truth as he believes it and respond to your  
22 questions.

23 MR. MCGINLEY: Let me say that I disagree  
24 with that representation of counsel. I don't think

1 that's --

2 MR. McCUSKEY: Well, then we can ask the  
3 court reporter if he's here laughing or not.

4 MR. MCGINLEY: That's not an appropriate  
5 thing to ask the court reporter.

6 MR. McCUSKEY: Okay. It's not an  
7 appropriate for you to comment on either.

8 MR. MCGINLEY: Yes, it is, because I'm  
9 here just as well as you are, sir.

10 MR. McCUSKEY: Can you see his face?

11 MR. MCGINLEY: I disagree with you.

12 MR. McCUSKEY: Can you see his face?

13 MR. MCGINLEY: Reasonable people can  
14 differ. Yes, I can.

15 MR. McCUSKEY: On whether he's laughing or  
16 not?

17 MR. STOLTZ: I am not laughing at  
18 Mr. Brainard, nor his response. I'm trying to --  
19 I'm trying to think if I should say anything else,  
20 to have another question. And I'm sorry if I'm  
21 staring up at the lights, because that's what I  
22 was, and I am not specifically, never have --

23 THE WITNESS: No offense.

24 MR. McCUSKEY: I appreciate your apology

1 for intending to --

2 MR. KOERBER: Let's move on. Let's move  
3 on. Let's move on.

4 MR. STOLTZ: Apology.

5 Nothing more.

6 MR. MCGINLEY: Let me ask you a couple  
7 questions.

8 THE WITNESS: Me?

9 MR. MCGINLEY: Yes.

10 THE WITNESS: Oh, okay.

11 MR. MCGINLEY: I'm only asking questions  
12 of you. I'm only permitted to ask questions of  
13 you.

14 THE WITNESS: Okay. You weren't looking  
15 at me when you said that.

16 MR. MCGINLEY: You haven't looked at me,  
17 and you've been laughing a lot here, but we're  
18 cooperating and just trying to get information.  
19 You agree?

20 THE WITNESS: I agree.

21 EXAMINATION

22 BY MR. MCGINLEY:

23 Q. So you testified, sir, that your view was  
24 that whenever you have less air at the longwall,

1 that's not good. Is that basically the --

2 A. Yes. Yes, it is.

3 Q. And -- but you didn't -- strike that.

4 Your testimony was not that MSHA caused  
5 you to have less air at the longwall; is that  
6 correct?

7 A. There was less air at the longwall.  
8 That's all I know.

9 Q. And why -- was the amount of air provided  
10 to the longwall the amount that you certified and  
11 that Massey approved as safe for the longwall in  
12 response to MSHA's input about the ventilation  
13 plan?

14 A. We can phrase that in some kind of  
15 theoretical, because I don't know if I certified  
16 it.

17 Q. Okay.

18 A. Okay?

19 Q. Well, whether certified or not, the  
20 numbers, the airflow that was documented and  
21 submitted to MSHA by Massey that would be available  
22 on the longwall was an amount chosen by Massey; is  
23 that correct?

24 A. I cannot understand the "chosen by

1 Massey." I don't --

2 Q. Fine. Let me rephrase the question and we  
3 can get out of here.

4 A. Okay. Good.

5 Q. I'm just trying to --

6 A. Well, I know you are, but "chosen by  
7 Massey" doesn't relate.

8 Q. That's fine. I'll withdraw that.

9 Whether or not you certified a ventilation  
10 map, there was a ventilation map submitted to MSHA  
11 that reflected ventilation changes in response to  
12 MSHA's disapproval of ventilation plans.

13 A. Okay.

14 Q. Is that correct?

15 A. That's correct.

16 Q. And that map had an amount of air that  
17 would be at the longwall face; is that correct?

18 A. Yes.

19 Q. And that amount of air was the amount of  
20 air that Massey chose to put across the longwall  
21 and on the basis of Massey's evaluation of  
22 ventilation which would make the longwall in the  
23 rest of the mine safe; is that correct?

24 A. No. I think the amount of air going

1 across the longwall face was dictated by the  
2 controls that were placed in the mine. I don't  
3 think chosen is correct.

4 You make certain changes, you're going to  
5 make changes to the air.

6 Q. Well, the changes that were -- strike  
7 that.

8 The changes that were made by Massey and  
9 submitted as part of the ventilation plan that was  
10 approved by MSHA in 2010 --

11 A. Yeah. We're there. I got that.

12 Q. Okay. There's an amount of air in  
13 different places of the mine that would be  
14 delivered according to that plan; is that correct?

15 A. Okay. Yes. That is correct.

16 Q. And that amount of air was decided upon,  
17 and the flow of the air and so forth was the  
18 decision of Massey; is that correct?

19 A. It probably is correct, but with the  
20 caveat that that's probably the only choice they  
21 had.

22 Q. On what basis do you say that?

23 A. To get their plan approved.

24 Q. Was there any study, is there any written

1 report that documents the consideration of  
2 alternatives with regard to the ventilation plan  
3 that was submitted after MSHA's disapproval?

4 A. I do not know.

5 Q. Would you expect that you would know,  
6 considering you work in a small office and you-all  
7 talk together?

8 A. No. There's lots of things I don't know.

9 MR. MCGINLEY: Okay. Thank you very much,  
10 sir.

11 MR. KOERBER: Mr. Brainard, again, we  
12 would like to thank you or I would like to  
13 personally thank you for coming here today.

14 MS. HAMPTON: Just one second. I think we  
15 have one more question.

16 MR. STOLTZ: Apologize. I'm sorry.  
17 Ready?

18 THE WITNESS: We're all looking at you.

19 MR. STOLTZ: Ready for one more question?

20 THE DEPONENT: Yeah.

21 EXAMINATION

22 BY MR. STOLTZ:

23 Q. Quick question was, why was the  
24 ventilation to the longwall dropped from 2006?



1 When the longwall left, it was probably 100,000 CFM  
2 across the face; and when it returned to UBB mine,  
3 it was, I think, around 30,000 CFM is what it was.

4 A. That's not my understanding of --

5 Q. Initially during the startup, that's I  
6 guess --

7 A. I have -- in my opinion, it's been  
8 consistent at 100. So I have missed something  
9 somewhere.

10 Q. Well, even your examination records -- you  
11 say it's consistent at 100, but, you know, it shows  
12 that -- weekly exam records show that there's been  
13 at times drops down to 50,000. Then it went back  
14 up again to a higher quantity.

15 You're not familiar with that or --

16 A. No. No.

17 MR. STOLTZ: Okay.

18 MR. KOERBER: Okay. Mr. Brainard, thank  
19 you for coming today.

20 I just want to let you know that after all  
21 the interviews are over certain people may be  
22 re-called for a second interview because there may  
23 be some additional information that somebody deems  
24 necessary. So I just want you to be aware of that

1 potential.

2 I would also like to give you a moment or  
3 I would like to give you as much time as you need  
4 to make any comments, clarify anything on the  
5 record, or make any statement that you would like  
6 to make, or if you have anything to add that you  
7 believe this body needs to know that was not asked  
8 of you, now is your time to make that statement.

9 THE WITNESS: I don't really have anything  
10 to say, but I commend the effort being made to  
11 determine what happened at UBB. I mean, that's the  
12 reason that I'm here, and I hope that's the reason  
13 you're here.

14 MR. KOERBER: Yes, sir. Okay. Anything  
15 else you want to add? Anything?

16 MR. McCUSKEY: May I add my request to the  
17 record, on behalf of Mr. Brainard, that he would  
18 request that the court reporter send a copy of the  
19 transcript as soon as it's prepared to his home.

20 You gave your home address, I think,  
21 didn't you?

22 THE WITNESS: Yes.

23 MR. McCUSKEY: To him for his review.

24 THE WITNESS: I thought -- I thought he

1     **said --**

2                   **MR. McCUSKEY:**   That's what he said.  I'm  
3     talking about what you want, not what he wants.

4                   **THE WITNESS:**  Oh.

5                   **MR. KOERBER:**  For the record, I'll restate  
6     the transcript should be available at Johnny  
7     Jackson & Associates come Monday, November 1.

8                   Johnny Jackson & Associates is in  
9     Charleston, West Virginia.  I'm sure your attorney  
10    knows the telephone number and the location.

11                   Please feel free to contact them and set  
12    up a time where you can go to their office and  
13    review your transcript.

14                   Anything else?

15                   We're off the record.

16                                    (Interview of RAYMOND C. BRAINARD  
17                                    concluded at 12:18 p.m.)

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1 STATE OF WEST VIRGINIA, To-wit:

2 I, Elizabeth A. Howd, a Notary Public,  
3 Registered Diplomate Reporter, and Certified  
4 Realtime Reporter, within and for the State  
5 aforesaid, duly commissioned and qualified, do  
6 hereby certify that the interview of RAYMOND C.  
7 BRAINARD was duly taken by me and before me at the  
8 time and place specified in the caption hereof.

9 I do further certify that said proceedings  
10 were correctly taken by me in stenotype notes, that  
11 the same were accurately transcribed out in full  
12 and true record of the testimony given by said  
13 witness.

14 I further certify that I am neither  
15 attorney or counsel for, nor related to or employed  
16 by, any of the parties to the action in which these  
17 proceedings were had, and further I am not a  
18 relative or employee of any attorney or counsel  
19 employed by the parties hereto or financially  
20 interested in the action.

21 My commission expires the 5th day of July,  
22 2012.

23 Given under my hand and seal this 27th day of  
24 October, 2010.

Elizabeth A. Howd, Notary Public  
Registered Diplomate Reporter  
Certified Realtime Reporter