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**Transcript of the Testimony of Michael Ellison**

**Date:** August 20, 2010

**Case:**

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Phone: 814-536-8908

Fax: 814-536-4968

Email: [schedule@sargents.com](mailto:schedule@sargents.com)

Internet: [www.sargents.com](http://www.sargents.com)

STATEMENT UNDER OATH

OF

MICHAEL ELLISON

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Friday, August 20, 2010, beginning at 10:30 a.m.

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1                   A P P E A R A N C E S

2

3   DEREK J. BAXTER, ESQUIRE

4   U.S. Department of Labor

5   Office of the Regional Solicitor

6   1100 Wilson Boulevard

7   22nd Floor West

8   Arlington, VA 22209-2247

9

10   TERRY FARLEY

11   West Virginia Office of Miners' Health,

12   Safety and Training

13   1615 Washington Street East

14   Charleston, WV 25311

15

16   ERIK SHERER

17   Mine Safety and Health Administration

18   1100 Wilson Boulevard

19   Arlington, VA 22209-3939

20

21   CELESTE MONFORTON, MPH, DRPH

22   West Virginia Independent Investigation

23   2100 M. Street, NW

24   Suite 203

25   Washington, DC 20037

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25

BARRY KOERBER, ESQUIRE  
West Virginia Office of Miners' Health,  
Safety and Training  
1615 Washington Street East  
Charleston, WV 25311

ANTHONY SALVATORE, ESQUIRE  
Hewitt & Salvatore, PLLC  
204 North Court Street  
Fayetteville, WV 25840  
Representing Michael Ellison

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\* Exhibit not attached

## P R O C E E D I N G S

1  
2 -----  
3 ATTORNEY BAXTER:

4 My name is Derek Baxter. Today is August  
5 20th, 2010. I'm with the Office of the Solicitor,  
6 U.S. Department of Labor. With me is Erik Sherer, an  
7 accident investigator with the Mine Safety and Health  
8 Administration, MSHA, an agency of the United States  
9 Department of Labor. Also present are several people  
10 from the State of West Virginia. I ask that they  
11 state their appearance for the record.

12 MR. FARLEY:

13 I'm Terry Farley with the West Virginia  
14 Office of Miners' Health, Safety and Training.

15 ATTORNEY KOERBER:

16 Barry Koerber, Assistant Attorney  
17 General, assigned to represent the West Virginia  
18 Office of Miners' Health, Safety and Training.

19 MS. MONFORTON:

20 And I'm Celeste Monforton, and I'm with  
21 the Governor's independent team.

22 ATTORNEY BAXTER:

23 There are also members of the  
24 investigation team present in the room today. Mr.  
25 Sherer, Mr. Farley and Ms. Monforton will be

1 conducting the questioning today. Would you please  
2 swear the witness in?

3 -----

4 MICHAEL ELLISON, HAVING FIRST BEEN DULY SWORN,  
5 TESTIFIED AS FOLLOWS:

6 -----

7 ATTORNEY BAXTER:

8 Barry?

9 ATTORNEY KOERBER:

10 Sir, would you please state your full  
11 name for the record and spell your last name?

12 A. Michael Sean Ellison. The last name is  
13 E-L-L-I-S-O-N.

14 ATTORNEY KOERBER:

15 And would you please state your address  
16 and your telephone number?

17 A. Address is [REDACTED]

18 [REDACTED] . Phone number is [REDACTED] .

19 ATTORNEY KOERBER:

20 And do you have an attorney with you here  
21 today?

22 A. Yes.

23 ATTORNEY KOERBER:

24 And would you identify him or point to  
25 him?



1 A. Anthony Salvatore.

2 ATTORNEY KOERBER:

3 Sir, would you please state your name and  
4 the firm you're with?

5 ATTORNEY SALVATORE:

6 Anthony Salvatore, Counsel for Mr.

7 Ellison, with the law firm of Hewitt & Salvatore,  
8 PLLC, offices in Beckley and Fayetteville, West  
9 Virginia.

10 ATTORNEY KOERBER:

11 And Mr. Salvatore, is Mr. Ellison your  
12 client?

13 ATTORNEY SALVATORE:

14 He is.

15 ATTORNEY KOERBER:

16 Mr. Ellison, are you appearing here today  
17 because you received a subpoena?

18 A. Yes, sir.

19 ATTORNEY KOERBER:

20 And is that a copy of the subpoena that  
21 you got?

22 A. Yes, sir.

23 ATTORNEY KOERBER:

24 You may not have seen the green card, but  
25 I believe your wife's name is [REDACTED] ?

1 A. Uh-huh (yes).

2 ATTORNEY KOERBER:

3 And she signed for it --- there's no  
4 delivery date, but she signed for it at some point in  
5 time in the past?

6 A. Yes, sir.

7 ATTORNEY KOERBER:

8 Could this be Exhibit One and Exhibit  
9 Two?

10 (M. Ellison Exhibits One and Two marked  
11 for identification.)

12 ATTORNEY KOERBER:

13 Mr. Ellison, the statute that authorizes  
14 the Director to issue subpoenas requires the Director  
15 to offer to each subpoenaed witness a \$40-a-day  
16 witness fee to go with mileage to and from your home  
17 to here at the rate of 15 cents a mile and  
18 reimbursement for any tolls that you may have passed  
19 on the way here and back. In order to receive that  
20 money, we have two forms that must be filled out, one  
21 of which is an IRS Form 79 that requires you to  
22 provide your Social Security number. Would those be  
23 forms you would like to fill out at the end to receive  
24 money ---

25 A. No.

1 ATTORNEY KOERBER:

2 --- or would you prefer to decline?

3 A. Decline.

4 ATTORNEY KOERBER:

5 Okay. Thank you, sir.

6 ATTORNEY BAXTER:

7 All members of the Mine Safety and Health

8 Accident Investigation Team and all members of the

9 State of West Virginia Accident Investigation Team

10 participating in the investigation of the Upper Big

11 Branch Mine explosion shall keep confidential all

12 information that's gathered from each witness who

13 voluntarily provides a statement until the witness

14 statements are officially released. MSHA and the

15 State of West Virginia shall keep this information

16 confidential so that other ongoing enforcement

17 activities are not prejudiced or jeopardized by a

18 premature release of information. This

19 confidentiality requirement shall not preclude

20 investigation team members from sharing information

21 with each other or with other law enforcement

22 officials. The team members' participation in this

23 interview constitutes their agreement to keep this

24 information confidential.

25 Government investigators and specialists

1 have been assigned to investigate the conditions,  
2 events and circumstances surrounding the fatalities  
3 that occurred at the Upper Big Branch Mine-South on  
4 April 5th, 2010. the investigation is being conducted  
5 by MSHA under Section 103(a) of the Federal Mine  
6 Safety and Health Act and the West Virginia Office of  
7 Miners' Health, Safety and Training.

8 We appreciate your assistance in this  
9 investigation. You may have your personal attorney  
10 present during the taking of this statement or another  
11 personal representative, if MSHA has permitted it, and  
12 may consult with your attorney or the representative  
13 at any time. Your statement is completely voluntary.  
14 You may refuse to answer any question and you may  
15 terminate your interview at any time or request a  
16 break at any time. Since this is not an adversarial  
17 proceeding, formal Cross Examination will not be  
18 permitted. However, your personal legal  
19 representative may ask clarifying questions as  
20 appropriate. Your identity and the content of this  
21 conversation will be made public at the conclusion of  
22 the interview process and may be included in the  
23 public report of the accident, unless you request that  
24 your identity remain confidential or your information  
25 would otherwise jeopardize a potential criminal

1 investigation.

2 If you request us to keep your identity  
3 confidential, we will do so to the extent permitted by  
4 law. That means that if a judge orders us to reveal  
5 your name or if another law requires us to reveal your  
6 name or if we need to reveal your name for other law  
7 enforcement purposes we may do so. Also, there may be  
8 a need to use the information you provide to us or  
9 other information that we may ask you to provide in  
10 the future in other investigations into and hearings  
11 about the explosion. Do you understand?

12 A. Yes, sir.

13 ATTORNEY BAXTER:

14 Do you have any questions?

15 A. No.

16 ATTORNEY BAXTER:

17 And I made a statement about it being  
18 voluntary, but as Mr. Koerber said, this is actually a  
19 subpoena.

20 After the investigation is complete, MSHA  
21 will issue a public report detailing the nature and  
22 causes of the fatalities in the hope that greater  
23 awareness about the causes of accidents can reduce  
24 their occurrence in the future. Information obtained  
25 through witness interviews is frequently included in

1       these reports.  Since we will be interviewing other  
2       individuals, we request that you not discuss your  
3       testimony with any person, aside from your personal  
4       representative or counsel.

5    A court reporter will record your  
6       interview.  Please speak loudly and clearly.  If you  
7       do not understand a question asked, please ask me to  
8       rephrase it.  Please answer each question as fully as  
9       you can, including any information you've learned from  
10      someone else.

11   I would like to thank you in advance for  
12      your appearance here.  We appreciate your assistance  
13      in this investigation.  Your cooperation is critical  
14      in making the nation's mines safer.  After we have  
15      finished asking questions you will have an opportunity  
16      to make a statement and provide us with any other  
17      information that you believe to be important.  If at  
18      any time after the interview you recall any additional  
19      information that you believe might be useful, please  
20      contact or have your representative contact Norman  
21      Page at the telephone number or e-mail address  
22      provided to you.

23   Any statements given by miner witnesses  
24      to MSHA are considered to be an exercise of statutory  
25      rights and protected activity under Section 105(c) of

1 the Mine Act. If you believe any discharge,  
2 discrimination or other adverse action is taken  
3 against you as a result of your cooperation with this  
4 investigation, you are encouraged to immediately  
5 contact MSHA and file a complaint under Section 105(c)  
6 of the Act.

7 You stated earlier that you do have a  
8 personal legal representative, Mr. Salvatore. Did you  
9 voluntarily choose to have him as your personal legal  
10 representative?

11 A. Yes.

12 ATTORNEY BAXTER:

13 Do you feel like you had a choice in the  
14 matter?

15 A. Yes.

16 ATTORNEY BAXTER:

17 Do you consent now to having Mr.  
18 Salvatore as your personal representative?

19 A. Yes.

20 ATTORNEY BAXTER:

21 Do you understand that Massey Energy, its  
22 affiliates or its officers or directors or attorneys  
23 may not represent or direct you in this matter?

24 A. Yes.

25 ATTORNEY BAXTER:

1 And Mr. Salvatore, are you legally  
2 representing the witness here?

3 ATTORNEY SALVATORE:

4 I am.

5 ATTORNEY BAXTER:

6 Do you understand that you may not  
7 communicate with Massey Energy, its affiliates or its  
8 officers or directors or attorneys concerning the  
9 substance of this representation?

10 ATTORNEY SALVATORE:

11 I do.

12 ATTORNEY BAXTER:

13 Are you being paid by a third party to  
14 provide such representation?

15 ATTORNEY SALVATORE:

16 I am not.

17 MR. FARLEY:

18 Mr. Ellison, I'd also like to inform you  
19 that the West Virginia Office of Miners' Health,  
20 Safety and Training and the West Virginia Code,  
21 Chapter 22A, Article One, Section 22, offers  
22 protection against discrimination for participation in  
23 these type interviews. I'd like to pass along to you  
24 some contact information for the West Virginia Board  
25 of Appeals. That's a body which hears complaints from



1 miners concerning discrimination. Should you have any  
2 problems, you can contact anybody listed on that memo  
3 I've just given you, and they'll try to assist you.  
4 Also I would advise you that should you need to file a  
5 discrimination complaint, you need to do so within 30  
6 days of the time it occurs. Okay?

7 A. Yes, sir.

8 EXAMINATION

9 BY MR. FARLEY:

10 Q. All right. Mr. Ellison, let me begin by, on  
11 behalf of my colleagues here, offering you our sincere  
12 condolences on the loss of friends and coworkers. And  
13 in terms of your appearing in response to a subpoena,  
14 we began issuing subpoenas primarily for scheduling  
15 purposes so we could get things done in an efficient  
16 manner and not based on any belief that you wouldn't  
17 cooperate with us.

18 A. Right.

19 Q. So we thank you very much for being here. Let me  
20 begin with some basic background information.

21 MR. FARLEY:

22 Did we swear him in?

23 ATTORNEY BAXTER:

24 Yes.

25 MR. FARLEY:

1 Okay. All right.

2 BY MR. FARLEY:

3 Q. How long have you been a coal miner?

4 A. Right at three years.

5 Q. Okay. How long have you been at Massey?

6 A. All three years.

7 Q. Okay. Were all three years at UBB?

8 A. No, sir.

9 Q. Where did you begin?

10 A. I began at Slip Ridge, which is on Marfork's  
11 property. I worked up there until about the beginning  
12 of January of '08, and then I went to Marsh Fork,  
13 which was just right across from slip Ridge. I worked  
14 there until approximately October of '08, and then I  
15 went to --- got sent to Charleston under Inman Energy  
16 and worked there until April of '09 --- or I mean,  
17 no --- yeah, '09. And then it was about the middle to  
18 the end in May I got transferred to UBB.

19 Q. May of 2009?

20 A. May of '09.

21 Q. Okay.

22 A. I worked on the south side, which was Three  
23 section, until approximately the beginning of the  
24 year, 2010, and I got transferred to the north side.  
25 And I got put up on Headgate 22.

1 Q. Okay. So you first began to work on the Headgate  
2 22 section early in 2010?

3 A. Yes, sir.

4 Q. Okay. All right. What was your job there? What  
5 were you assigned to do?

6 A. Roof bolter.

7 Q. Okay. All right. How much experience did you  
8 have as a roof bolter when you started on Headgate 22?

9 A. Probably approximately about --- off and on, about  
10 a year-and-a-half.

11 Q. Okay. All right. Now, who was your immediate  
12 supervisor on Headgate 22?

13 A. Dean Jones.

14 Q. I take it you worked on the dayshift?

15 A. Yes, sir.

16 Q. Did you rotate shifts or were you straight  
17 dayshift?

18 A. Straight days.

19 Q. Okay. Did you ever have any occasion to work as a  
20 foreman supervisor yourself?

21 A. No, sir.

22 Q. Do you have a mine foreman, fire boss certificate,  
23 anything like that?

24 A. No, sir.

25 Q. What other coal miner certifications do you

1 possess?

2 A. Just my underground card.

3 Q. Okay. All right. I was becoming eligible for my  
4 foreman papers.

5 Q. All right. Now, Mr. Jones was your supervisor.

6 Did you have confidence in Mr. Jones?

7 A. Fully.

8 Q. Do you think he made a solid effort to comply with  
9 health and safety regulations?

10 A. Yes, sir. He was --- Mr. Jones was the best boss  
11 I ever worked for since I began in the mines.

12 Q. Okay. I mean, for what it's worth, we've heard  
13 many good things about Mr. Jones. Did Mr. Jones  
14 usually go over some portion of the roof control plan  
15 with you and the other roof bolt machine operators on  
16 a daily basis?

17 A. Yes, sir. We had a safety meeting every morning  
18 when we got off the mantrip.

19 Q. Okay. Can you --- what was the type of the roof  
20 bolt machine that you operated?

21 A. Roof Ranger II.

22 Q. Was it ---?

23 A. I think it was a Fletcher.

24 Q. Okay. What was the last shift you worked prior to  
25 April 5th?

1 A. Saturday, May 3rd.

2 Q. And was that dayshift?

3 A. Yes, sir.

4 ATTORNEY BAXTER:

5 Is that April 3rd?

6 A. Yes, sir.

7 BY MR. FARLEY:

8 Q. April 3rd. Okay. Now, what do you recall about  
9 Saturday, April 3rd, that shift? Can you just give me  
10 some sense of what you experienced throughout that  
11 shift?

12 A. It was no different from any ordinary day. We  
13 didn't have --- I'm sure you heard from other people,  
14 we didn't have very good ventilation on that section.

15 Q. Okay.

16 A. The air was, you know --- it was about the same as  
17 it always was. And right before we left I think we  
18 was in Two Right, getting ready to punch into Three,  
19 we encountered --- we found just .6, .7 percent  
20 methane.

21 Q. 0.6?

22 A. Yes, sir.

23 Q. Okay.

24 A. And that was right before the end of the shift.

25 We ventilated. You know, we hung all of our curtains

1 up. We checked everything else before we left the  
2 section. Everything was fine before we left. Had it  
3 open --- I mean, the air blowing the best that it  
4 could. But I've been up there since. Like I said,  
5 I've been up there since the beginning of the year,  
6 and there was several times that people would say  
7 something about the ventilation and something about,  
8 you --- when I first started up there they told me I  
9 better grab me a gallon of water. And I said, no, I  
10 said, I've got plenty of drinks in my bucket and  
11 stuff. And they said, no, you really better grab you  
12 a gallon of water. I said, okay, I said, I'll get a  
13 gallon of water. And I got up there and I couldn't  
14 believe it. It literally felt like you were melting.  
15 We got up there and usually we would get started by  
16 about 15 after 7:00 of the morning, and by 8:30 all of  
17 us looked like we had been standing out in a  
18 rainstorm, just soaking wet.

19 Q. Now, would that include everyone or just the roof  
20 bolt operators?

21 A. Pretty much everyone. The mine operators, roof  
22 bolters, Mr. Jones. I'm just, you know --- he walked  
23 around and did his checks like he was supposed to. He  
24 fire bossed. He put everything in the face. Like I  
25 say, he was --- he didn't let anybody intimidate him.

1 If he thought something wasn't right, he did not do  
2 something. There was several times that it would be  
3 9:30, ten o'clock in the morning and we would get  
4 calls inside wanting to know why we're not running  
5 coal. And he would say, because we ain't got no  
6 ventilation, trying to get air, you know, and he would  
7 come back down and he would walk past and he would be  
8 ranting and raving. Never really disclosed with us  
9 what they said, but he would just make remarks that he  
10 wasn't running coal until things were right. And  
11 sometimes we wouldn't run coal at all.

12 Q. Okay. Let me ask this. Now, when you ---  
13 typically you arrived on your section, and whether it  
14 was April the 3rd or a month before. Now, did Mr.  
15 Jones routinely examine his faces before you began  
16 producing coal?

17 A. Yes, sir.

18 Q. Okay. And it would be helpful here if we can be  
19 as specific as possible. Can you remember any  
20 specific dates, as close as possible, where Mr. Jones  
21 examined his faces at the beginning of the shift, came  
22 to you guys and said, hey, we don't have sufficient  
23 air for ventilation to operate? Can you narrow that  
24 down for me? Now, I know you may not be able to say  
25 that it was February the 4th, 2010, but any way you

1 can narrow that down and be specific would be  
2 extremely helpful.

3 A. If my memory serves me correctly, there was a time  
4 about three weeks before April 5th we went in and  
5 Number One entry was let down. After he got finished,  
6 we was about to go in and finish bolting One up. And  
7 we got up there --- and our roof control plan called  
8 --- we was supposed to have 3,500 cubic feet behind  
9 the line curtain to bolt. We didn't even have 3,500  
10 behind the line curtain. So he said, you know, we're  
11 down. You can't bolt. Don't start nothing. And we  
12 were just all --- we worked on ventilation, trying to  
13 get our air right. That was one time that I knew for  
14 sure. Then there was --- I can't remember the date,  
15 but there was --- there were several times when we  
16 would be in a cut, you know, and all of a sudden it  
17 just would get --- the whole section would be dusted  
18 out, couldn't see nothing, and we would shut down  
19 until the dust cleared, until we got re-ventilated,  
20 something to where we could see what we was doing.  
21 And that happened several times throughout the time  
22 that I was up there. But I can remember the only  
23 thing that I actually I could say for sure was about  
24 bolting Number One. I'm pretty sure it was about  
25 three weeks before the explosion.



1 Q. Okay. Now, how was the 22 Headgate section  
2 ventilated? Was it split ventilation or sweep?

3 A. It was sweep.

4 Q. Okay. the intake came up, I believe, the middle  
5 entry; is that correct?

6 A. Yes, sir, it came up Number Two.

7 Q. Now, did you ventilate from left to right?

8 A. We ventilated --- yes, sir. We had the air coming  
9 around. It would come up into One and then work its  
10 way back around into Two and Three and down the  
11 return.

12 Q. Okay. Now, I know you indicated that you heard  
13 Mr. Jones express some anger ---

14 A. Yes, sir.

15 Q. --- after talking to people outside about not  
16 having sufficient ventilation. Do you know who he was  
17 talking to when this would occur?

18 A. No, sir. We never knew. Unless we was the one  
19 actually on the phone, we never knew exactly who was  
20 calling in. Sometimes the superintendent would come  
21 in. Sometimes it would be the mine foreman.  
22 Sometimes it would just be the outside man calling in  
23 for, you know, report, checking to see --- if they  
24 hadn't heard from us, they would call in to see if we  
25 was running yet or not.

1 Q. Now, did you ever overhear any of these  
2 conversations in any way between Mr. Jones and his  
3 superiors?

4 A. No, sir.

5 Q. Did Mr. Jones ever specifically state that any  
6 particular individual had chastised him or threatened  
7 him in any way because he was expressing his concerns  
8 over ventilation?

9 A. He never expressed to us. He never said anybody's  
10 name for sure to us. He pretty much kept everything  
11 to himself. Everybody probably seen in the paper  
12 where he went home and expressed to his family such  
13 persons had threatened him and this and that, but as  
14 far as telling us a definite name, no, sir, ne never  
15 did. And I've heard other people saying that --- for  
16 instance, the mine foreman would say, you know, so he  
17 can't run coal in a stockpile. He can't do this and  
18 he can't do that. I guarantee I could go up there and  
19 run coal and this and that. And you know, that was  
20 due because we had bad top and ventilation --- you  
21 know, like I say, he would not run if it wasn't right.

22 Q. Okay. Now, even though Mr. Jones apparently  
23 didn't share the actual content of the conversations  
24 he had with these folks, was there any doubt in your  
25 mind that he was extremely upset after having these

1       conversations on the phone, when he was telling folks  
2       that his ventilation was not adequate?

3       A. Yes, sir. I mean, you could tell when he was  
4       upset.

5       Q. Okay.

6       A. I mean, he would be ranting and raving and  
7       cussing.

8       Q. Sure. Now, in addition to the fact that you felt  
9       that the quantity of air coming to the 22 Headgate  
10       section was insufficient, did you have occasions where  
11       the air was going in the wrong direction or in a  
12       direction it was not supposed to be going in according  
13       to plan?

14       A. There was --- I think it was in about the middle  
15       of January MSHA inspectors came in and found that they  
16       had the return air mixing in with the intake. I can't  
17       remember exactly what day it was, but they came in and  
18       found that and issued Massey a citation that day. It  
19       was a very large citation. The mine foreman had said  
20       that, you know, they had knew about it, it had been  
21       that way for about three weeks, and they was trying to  
22       work on correcting it.

23       Q. Who was that mine foreman?

24       A. Terry Moore.

25       Q. Okay. Did you overhear the conversation?

1 A. No, sir. I just heard people saying about the  
2 violation. And then I read in the --- it listed his  
3 name --- in the Register Herald it listed that exact  
4 situation in the Register Herald as to what happened  
5 and how much they was fined and ---.

6 Q. Okay.

7 A. Our air --- they had --- trying to do so much  
8 different things up there, they had our air so messed  
9 up at different times that nobody knew where actual  
10 air was, you know, coming in from. That's when we  
11 started --- when I started up there, they was having  
12 to split blocks of coal, put a new beltline in.

13 Q. Would that have been the location known as the  
14 Mother Drive construction area?

15 A. Yes, sir. That was --- it went --- it was going  
16 through the --- if I remember, I do believe ---.

17 Q. Can you identify that location on a map for me,  
18 please? It would be even better if you'd take one of  
19 these colored markers and even circle it. It might  
20 save you the trouble of having to describe it.

21 ATTORNEY BAXTER:

22 And we'll mark the map as Ellison Exhibit  
23 Three.

24 (M. Ellison Exhibit Three marked for  
25 identification.)

1 BY MR. FARLEY:

2 Q. The 22 Headgate belt travels right here.

3 A. Yes, sir. They was splitting blocks of coal right  
4 in this --- do you want me to mark it in this area?

5 Q. Please just circle the area where you think the  
6 work was ongoing.

7 A. I'm pretty sure that work was ongoing right in  
8 through here.

9 Q. Circle the area.

10 A. They was splitting blocks of coal to join the new  
11 belt up with the existing --- redirecting it. And  
12 they --- we had to put a set of doors in. There was  
13 no doors when we started. We had to put a set of  
14 doors in right --- that's an overcast; correct? Or I  
15 mean that's ---.

16 Q. Yes.

17 A. We put in one overcast there, right there, and we  
18 had a set of doors right there.

19 Q. Would you also circle those doors with a different  
20 color, please, that you installed?

21 A. We had to put this set of doors in and this set of  
22 doors.

23 Q. Now, is this --- when you say a set of doors, does  
24 each set represent one door or a set of doors?

25 A. We had one --- they had one set of doors that if I

1 remember correctly, they wasn't --- they was just left  
2 open when I got up there and seen everything. These  
3 two sets of doors was put up after we got there,  
4 because ---.

5 Q. Now, hold on. When you say we got there, you  
6 began working on 22 Headgate section in January; ---

7 A. Yes, sir.

8 Q. --- is that correct?

9 A. Uh-huh (yes).

10 Q. All right. Now, when did this construction  
11 project begin?

12 A. At the beginning, the beginning of the year.

13 Q. About the same time you arrived?

14 A. Yes, sir.

15 Q. Okay. Now, as best you can recall, when were the  
16 doors installed that you just identified?

17 A. The doors were installed --- we started putting  
18 them in probably about close to a week after I was up  
19 there. Because when I actually --- when I actually  
20 got sent up there, I got sent to work on this project.

21 Q. Meaning the construction project ---

22 A. Yes.

23 Q. --- at the Mother Drive area?

24 A. Yes. And they was having to --- you know, they  
25 needed things to be correct, and they brought a

1 gentleman off the section to run --- because he could  
2 run the miner and bolt.

3 Q. Who was that?

4 A. His first name was Dennis. I can't remember his  
5 last name.

6 Q. That's okay. What foreman or supervisor was in  
7 charge of this Mother Drive construction site?

8 A. Terry Moore.

9 Q. Okay. Was he normally present there on a daily  
10 basis?

11 A. Yes, sir.

12 Q. How many --- approximately how many days or weeks  
13 did you work on this Mother Drive construction area  
14 before you actually came up to Headgate 22 and worked  
15 as a roof bolter?

16 A. I probably only worked up here for about a week.

17 Q. Okay. All right.

18 A. And then that's when they switched us out.

19 Q. Now, after these doors were installed, did they  
20 remain open or closed? Again, the doors that you  
21 identified.

22 A. We would close them when we went down on the  
23 mantrip and sometimes when we would come back up at  
24 the end of our shift they would be standing wide open.

25 Q. Now, why would they be open?

1 A. Don't know.

2 Q. Now, after you left that construction site to work  
3 on the face of Headgate 22, did the work ongoing at  
4 this construction site or the opening and closing of  
5 the doors have a direct impact on the ventilation at  
6 22 Headgate section?

7 A. Yes, sir, because ---.

8 Q. Can you elaborate on that?

9 A. When I was working on the construction project,  
10 they called up there several times and they would say,  
11 hey, what's taking all of our air from us? Because  
12 they put --- they, you know, had to put some air up to  
13 here when they was cutting. They would call up and  
14 say, hey, we ain't got no air up on the section. You  
15 got to do something different. And that --- in the  
16 week I was up there it happened that I can recall  
17 about twice, two different days.

18 Q. Okay. Now, when was the last time that occurred  
19 that you could attribute some of your ventilation  
20 problems on the heagate section to that construction  
21 site?

22 A. I started up here on a Monday. I think the last  
23 day that that happened was on a Thursday that I can  
24 recall.

25 Q. Okay.



1 A. Like I say, then I went directly from that to the  
2 section.

3 Q. Okay. Now, as of your last shift on April 3rd,  
4 was there any construction work still ongoing in that  
5 Mother Drive area?

6 A. No, sir.

7 Q. Were they finished as far as you know?

8 A. Yes, sir, because our coal was --- I mean, that  
9 belt was running. That's where our coal dumped was on  
10 that belt.

11 Q. Now, as of your last shift or the week or so  
12 preceding the explosion, did you have occasion to find  
13 these doors open at any time that you just identified?

14 A. Yes, sir. The week of April the 3rd, I think it  
15 was a Tuesday --- let's see. Friday, April the 2nd,  
16 we came up, the doors were open. We came up on the  
17 3rd and the doors were open, on that Saturday.

18 Q. Now, did your mantrip travel through those doors?

19 A. Yes, sir.

20 Q. All right. Now, we've heard other testimony that  
21 sometime early in March, we think, a set of doors were  
22 constructed in the longwall headgate entries inby  
23 where the air splits there, and they were constructed  
24 in such a manner as to where the side partition of the  
25 door was left partially open to, in effect, regulate

1 the air. Now, early in March --- I know you said you  
2 experienced ventilation problems constantly on  
3 Headgate 22. Did you notice any improvement in the  
4 quantity of air coming to the 22 Headgate section?

5 A. Probably about --- I don't know, a couple weeks  
6 before the explosion, our air picked up a little bit.  
7 You could feel it get a little bit better. Some days  
8 it would be better. Some days it would be just like  
9 it was. I mean, now you've got the signs in your  
10 intake. The signs didn't even blow.

11 Q. Now, the sign, would that have been a sign near  
12 the power center on the 22 Headgate section?

13 A. Yes, sir. And they had like the little signs up  
14 that point over for a man door and things. I mean,  
15 they --- you could --- you didn't see them moving  
16 until about a couple weeks before the explosion, you  
17 could see them starting to move. We started getting  
18 some decent air. And then it just went right back  
19 that way again.

20 Q. When did it go away again?

21 A. About --- I know probably about two weeks before  
22 the explosion happened, it was right back to the way  
23 it was when I first went up there.

24 Q. Okay. And did it remain that way until the time  
25 of the explosion?

1 A. Yes, sir.

2 Q. Okay.

3 A. See, I was --- after I got transferred onto this  
4 section, there was some days that --- it just all  
5 seems kind of like a blur. There was some days that I  
6 was out because I got diagnosed with [REDACTED]  
7 and I had missed some days. But you know, things  
8 would be --- for the days that I was out, when I would  
9 get back with my crew --- we talked every morning and  
10 I would always ask, you know, how are you doing, this  
11 and that, how did things go, and everybody --- you  
12 know, the same old thing, just another day.

13 Q. About how many days did you miss as a result of  
14 your illness?

15 A. Sometimes it was just a day. Sometimes it would  
16 be a couple days here and there. I know about --- I  
17 think it was as couple days before the explosion I had  
18 gotten put in the hospital because I had gotten --- I  
19 came home from work, I wasn't feeling good and I went  
20 to the hospital, and they said that I was severely  
21 dehydrated, and they put me in the hospital to pump me  
22 back of fluids. I just can't remember.

23 Q. All right. Now, also, as we understand it, the  
24 return air from the 22 Headgate section originally was  
25 coursed outby down Seven North in the Number One entry

1 and crossing over to the mouth of the longwall and up  
2 the longwall headgate. Now, we understand that that  
3 was changed around February 10th, specifically Super  
4 Bowl Sunday, to where the return was routed down  
5 through the crossover and then out entries Four and  
6 Five of the longwall headgate and across the mouth of  
7 the longwall. Do you recall when that air change was  
8 made or do you know anything about it at all?

9 A. I don't really know nothing specific about that.  
10 I just --- I know when the return air --- when this  
11 got switched, this is when the overcasts and  
12 everything was getting changed because we had to go  
13 up. We had to shut down and went up and helped with  
14 this, and the air was ---.

15 Q. When you say this, do you mean you assisted with  
16 the air change?

17 A. With having to put the overcasts up, I mean,  
18 because we had to put them --- they was constructing  
19 the overcasts when I went up there and we was doing  
20 this construction work up here for the --- splitting  
21 the blocks.

22 Q. Okay.

23 A. But the overcasts was being built as well. I  
24 don't know if that was then --- if that was  
25 pre-planning or whatnot for the return air to be

1 switched, but I know of twice, and this is still when  
2 I worked on --- I hadn't went to this side of the  
3 mountain yet, I was still on the south side, working  
4 on Three section. Twice for sure Massey did air  
5 changes with no approval. They didn't have paperwork  
6 or nothing because inspectors came in and nailed them  
7 in the middle of it. And they got on the phones and  
8 told us to get our butts outside right now, and we was  
9 shut down for a week because of it.

10 Q. Now, before I ask you to give me all the details  
11 on that, but let me --- let's finish this train of  
12 thought here and we'll get to that. First of all, our  
13 information that this switching of the return air  
14 course off Headgate 22 occurred on Sunday, February  
15 10th, is that right, as far as you know? Does that  
16 sound correct to you?

17 A. Yeah. I mean, it was --- I would say it was  
18 somewhere in that time frame because we had to --- our  
19 supply man, that's where he --- they put just  
20 different supplies out at different times where he  
21 would --- he could run and get what he needed. And  
22 when that switched there was a set of --- let's see.  
23 That was the doors right there.

24 Q. Now, you're pointing to a different set of doors  
25 now?

1 A. That's the doors in the return; correct?

2 Q. It looks like that could have been at some time.

3 Of course, this map reflects --- supposedly reflects  
4 what things were as of April 5th.

5 A. Right.

6 Q. So the return at that time would have ended up in  
7 the Number One entry of Seven North. Now, I don't  
8 remember precisely offhand where it crossed over  
9 there.

10 A. It crossed --- let me see. This is the old belt  
11 line right here; ---

12 Q. Yes.

13 A. --- correct?

14 Q. Yes.

15 A. Okay. The return air was coming back across  
16 because that was where our coal used to go. That's  
17 why we put that in. The return air --- the overcasts  
18 that they built for the return was supposed to have  
19 been coming right here because they put a set of ---  
20 there was as set of doors right there that got put in  
21 also, and it was supposed to be going out that way.

22 Q. All right. Now, one more question before we  
23 discuss the two other air changes you mentioned. Did  
24 this ventilation change, where it changed the  
25 direction of the returns, did that have any impact on

1 the 22 Headgate face ventilation? Did it make it  
2 better? Did it make it worse?

3 A. (Indicates yes).

4 Q. It stayed about the same?

5 A. Yes, sir. Didn't really have no effect.

6 Q. Okay. Now, you just mentioned earlier a couple of  
7 ventilation changes, major ventilation changes, that  
8 were apparently made with people working in the mine.  
9 Can you give me as much detail on those two incidents  
10 as you can?

11 A. I think I had been up on Three section for  
12 about ---.

13 Q. And when you say Three section, are you referring  
14 to the south end of the mine ---

15 A. Yes, sir.

16 Q. --- commonly known as the portal section ---

17 A. Yes, sir.

18 Q. --- by some people?

19 A. The way --- I mean, you know, the way it was, we  
20 had a portal straight across from each other. One  
21 went north and one went south.

22 Q. All right.

23 A. I think we had been up there or about three  
24 months. Somewhere in that time frame that the first  
25 ventilation happened, because we was on dayshift

1 working that day.

2 Q. Now, are we back in 2009 here?

3 A. Yes, sir.

4 Q. Okay. Can you be a little more specific possibly?

5 A. I would say it was --- it was after miner's  
6 vacation, so I would say it was in and around the  
7 August/September time frame.

8 Q. All right.

9 A. We were working, you know, up on our section and  
10 all of a sudden we got a phone call from outside to  
11 get everything shut down, get on a mantrip, get our  
12 butts outside right now. Nobody knew what was going  
13 on.

14 Q. Now, what shift was this when you got the call?

15 A. I'm pretty sure I was on dayshift.

16 Q. Okay. What time of day was it, roughly?

17 A. It was before lunch.

18 Q. Do you know who took the call?

19 A. We had so many different bosses within a time  
20 frame.

21 Q. I understand. Just please, if you can, stretch  
22 your memory there a little.

23 A. I think Kenny --- I always get Kenny, the guy I  
24 worked with, his name sticks in my mind. And I can't  
25 think of the other guy's last name.



1 Q. We can check our records on that. We may have  
2 violation records on that, so ---. But why did you  
3 get the call? Why were you ordered out of the mine?

4 A. Inspectors had came in and found them right in the  
5 middle of the air change and said, what are you doing?  
6 You don't have the permits for this. Get the mine  
7 shut down and get everybody out.

8 Q. Okay.

9 A. And like I say, we was shut down for a week ---

10 Q. Okay. I understand.

11 A. --- until they got everything put back the way it  
12 was supposed to be. And then they made them go  
13 through the mines, through the intake and everything.  
14 After they did that, they started walking and finding,  
15 you know, stoppings that had holes in them, stoppings  
16 that the plaster was no good anymore. Tried to seal  
17 it back up and make the air better.

18 Q. Okay.

19 A. The second time that that happened, I know it was  
20 towards the end of the year, but I can't remember. I  
21 can remember the first one, but I can't remember the  
22 exact time frame on the second one.

23 Q. Okay. That's fine. All right. Now, let's go  
24 back to Headgate 22. In your daily travels this year  
25 at Headgate 22, as best we understand it, you would

1 --- traveling along the track you would have traveled  
2 through a number of doors; is that correct?

3 A. Yes, sir.

4 Q. When I say a number I mean at least a dozen?

5 A. Well, see, at the beginning of the year, when we  
6 got transferred --- when I got transferred to the  
7 north side of the mountain, we also got put in a new  
8 bath house. They took all the guys that was working  
9 Headgate 22, the longwall, and put us a couple miles  
10 down the road at the new entrance and at the new  
11 portal.

12 Q. Is that the one called Ellis Portal?

13 A. Yes, Ellis.

14 Q. When did you guys move in down there?

15 A. At the beginning of the year we moved into that  
16 bath house.

17 Q. Okay.

18 A. We went through one, two ---.

19 Q. You don't have to remember the number of doors.

20 If you can, that's wonderful. But if not, you know,  
21 my question is more about the condition of the doors.

22 A. The condition of the doors were, you know, pretty  
23 much like they've been in any mines I've been in.

24 some of them is banged up. Some of them is bent.

25 Q. How often --- I'm sorry. Go ahead.

1 A. They --- I don't know as to why, but like the  
2 doors, they didn't have power hooked up on them and  
3 this and that. We would get up there and somebody  
4 would have to, you know, get out and open them and  
5 close them as we went by. But some of them --- most  
6 of them closed pretty good, but there was one set of  
7 doors that the bottom was kicked out. It was bent and  
8 it didn't close real well.

9 Q. Do you recall where that door was?

10 A. I think it was the second set coming inby from  
11 outside. Because we only --- after we moved to this  
12 side, when we came in ---.

13 Q. Go ahead. I'm sorry.

14 A. What I can remember, we only went through --- it  
15 would have been five sets of doors.

16 Q. Okay.

17 A. You had the two up here.

18 Q. And when you say up here, you're pointing to the  
19 mouth of the 22 Headgate?

20 A. Yes, sir. And then we had --- back outby we  
21 had ---.

22 Q. Were there doors at a location known as 78?

23 A. Yes, sir.

24 Q. Okay. Are those possibly the doors that you might  
25 have seen that had the bottom damaged?

1 A. That was the --- I was trying to think of that.

2 Yes, sir. The second set coming inby from Break 78  
3 was the doors that I was talking about.

4 Q. Okay. Now, did you have occasion to notice those  
5 doors open, just come upon them and they would be open  
6 when maybe they should be closed?

7 A. Not that I recall. Every time that we went  
8 through there, we would have to stop and get out and  
9 open them.

10 Q. Okay.

11 A. Because to my understanding, right there at Break  
12 78 is where we met up at, where everybody had to  
13 switch and you'd call for the record and make sure it  
14 was clear.

15 Q. All right.

16 A. And that's where we split. That's where we went  
17 towards our section, and the longwall went that way,  
18 and then Head's crew went --- where we split, they  
19 went straight, went back up, and I think they was  
20 driving --- had started driving the tailgate.

21 Q. Now, when you say Head, do you mean Steve Harrah.

22 A. Yes, sir.

23 Q. Let's go back to Headgate 22. Now, you stated  
24 earlier that near the end of your shift on Saturday,  
25 April 3rd, at approximately 0.6 to 0.7 percent methane

1 was detected in the face of the crosscut turning to  
2 the right of the Number Two entry; is that correct?

3 A. Yes, sir.

4 Q. Do you recall any quantities of methane, either  
5 more or less than that amount, being detected during  
6 that April 3rd shift on the 22 Headgate?

7 A. Not that I was aware of.

8 Q. Now, you and your roof bolt partner would have had  
9 a methane detector at your disposal; is that correct?  
10 Or did you?

11 A. Yes and no.

12 Q. Okay. Can you ---?

13 A. There was three of us.

14 Q. Okay.

15 A. There was me, there was Howard --- Boone Payne,  
16 and there was Kenny Chapman. They had methane  
17 detectors. I would usually have to go back and forth  
18 and bum one because ---.

19 Q. But was there always a detector available for the  
20 roof bolt machine?

21 A. Yes, sir.

22 Q. Now, during the time that you worked on the 22  
23 Headgate, during January through April 3rd of 2010,  
24 what is the highest concentration of methane that you  
25 or any of the other roof bolter operators ever

1 detected?

2 A. April the 3rd was the only thing that I had been  
3 made aware of.

4 Q. Okay.

5 A. Because I would --- I had heard people talking. I  
6 heard the crew saying, you know, when they was over  
7 here driving the panel for the longwall, that they  
8 had --- because I was still on the south side then,  
9 that they had hit so much methane up on this panel,  
10 that they thought it was just going to be a bust, that  
11 they didn't think they was even going to be able to  
12 put the longwall up there. And then that's when the  
13 return air --- the return fan went into Bandytown,  
14 when they drove that up there to put the return in.  
15 And I had never really heard anybody say anything  
16 about the methane up on this Headgate 22. I know  
17 sometimes when I would be bolting, you know, there was  
18 cracks in the floor in different places, and there  
19 would be water a good bit of the times.

20 Q. How often did you experience cracks in the floor?

21 A. Just about every day ---

22 Q. Okay. Now, ---.

23 A. --- there was ---.

24 Q. I'm sorry. Go ahead.

25 A. Every day there was --- the bottom would be busted

1 up in Three, in One, because the miner man, Steve  
2 Griffith, you know, he would always be fussing about  
3 the amount of water in Three. And when I would be ---  
4 when I would bolt in One, I would see the water  
5 bubbling and I would get the detector and I would go  
6 down and check --- go down and check to see if any was  
7 coming out. And I never found methane actually coming  
8 out at the time, just I guess that was bubbling  
9 because of the cracks in the floor.

10 Q. Now, if I understand you correctly, the 0.6 to 0.7  
11 percent CH<sub>4</sub> is the most that you or any other roof  
12 bolter detected on Headgate 22 section?

13 A. That's the most that I had.

14 Q. Okay. Did anyone detect a higher quantity that  
15 you're aware of?

16 A. Not that I'm aware of.

17 Q. What about the continuous miner operators or the  
18 foreman, Mr. Jones?

19 A. Not on our shift.

20 Q. Okay. And what do you know about the other shift?

21 A. I was talking to a lady a couple weeks ago that  
22 was Howard Payne's --- I guess it was his fiancée.  
23 Their crew followed us on April the 3rd. And she was  
24 telling me that that night they hit 1.7 percent.

25 Q. 1.7 percent, okay.

1 A. Said that it had continuously stayed at, you know,  
2 like .6, .7 and it started trickling up and it went to  
3 1.0 and it started flashing. They did some --- trying  
4 to ventilate. She came back in. It was 1.4 and then  
5 it went to 1.7 just like that, and she flashed the  
6 miner man off and told him, you know, better back out,  
7 that it was 1.7 percent.

8 Q. Did she specify that the 1.4 to 1.7 percent, was  
9 it being detected by the methane monitor on the  
10 continuous mining machine?

11 A. On the continuous miner.

12 Q. Okay. And who was the miner operator at the time,  
13 do you know, or did she say?

14 A. There was so many people up on that side that I  
15 couldn't keep track of --- the only people that I got  
16 to know really, really well was my crew. And some of  
17 the other people I had knew just from talking to, but  
18 I'm horrible with names. As far as their names, I  
19 couldn't tell you their first and last name.

20 Q. Okay. Now, what type of methane detector did you  
21 have available on the roof bolt machine on the 22  
22 Headgate?

23 A. Just had the --- it was just the normal ---.

24 Q. Do you know what brand it was, by chance?

25 MR. SHERER:



1 Was it green? Did it have a green  
2 display?

3 A. It was silver.

4 MR. SHERER:

5 Okay.

6 BY MR. FARLEY:

7 Q. Okay.

8 A. I know we had just methane detectors. And like  
9 the boss or the scoop man and everything was supposed  
10 to have three gas testers.

11 Q. Did you carry the detectors in and out of the mine  
12 or were they charged --- was there a charging station  
13 for them on the section?

14 A. Not that I know of on the section. The only place  
15 I know there was a charging station was in the mine  
16 office.

17 Q. Okay. Do you know who might have been responsible  
18 for calibrating the instruments?

19 A. No, sir.

20 SHORT BREAK TAKEN

21 BY MR. FARLEY:

22 Q. Mr. Ellison, ---

23 A. Yes, sir.

24 Q. --- during the time that you worked on the 22  
25 Headgate section at UBB are you aware of any methane

1 monitoring systems on any of the mining machines being  
2 bridged out, defeated or manually overridden in any  
3 way?

4 A. No, sir, not on --- not that mines while I was up  
5 there.

6 Q. Are you aware of any instances where there was a  
7 methane monitor on any of the machines which  
8 malfunctioned?

9 A. I think if I remember right, it was the right  
10 miner, the methane monitor on it sometimes would mess  
11 up and our electrician had called out. I think this  
12 was --- this was a little bit before the explosion.  
13 It had messed up and he called out for a new monitor  
14 to see if they could bring one in or whatnot. And  
15 they said we didn't have a spare at the time, so he  
16 tried to --- he got his calibrating machine and tried  
17 to, I guess, see if everything was okay with it and  
18 everything like that, but we didn't shut down. I  
19 mean, after they was done, he kept running coal with  
20 the miner.

21 Q. Okay. With the same miner?

22 A. Yes, sir.

23 Q. Okay. Now, was he able to repair the methane  
24 monitor and make it operational again?

25 A. As far as I'm aware of. I didn't know a whole lot

1 about the calibrating and everything like that. As  
2 far as I'm aware of, yes. I can't remember what it  
3 means. I was trying to think of what it means, but  
4 sometimes, every once in a while, and I've seen them  
5 on some of the different miners at the other  
6 operations of Massey, but the miner, it will just ---  
7 the monitor will go off and it will flash F4.

8 Q. Okay.

9 A. And I think that has something to do with the  
10 sniffer or something like that from what best serves  
11 my memory correctly. But it had said F4, and I think  
12 he had gotten it fixed or whatnot because, like I say,  
13 that crew, they had all been in the mines for years  
14 upon years. That was the best crew that I've ever  
15 worked with hands down, and they didn't take no  
16 shortcuts. I don't think that he would have let it  
17 run if it wasn't right while he was there.

18 Q. Okay. All right. Do you recall when this  
19 occurred approximately?

20 A. It was before --- it was back in March. It had to  
21 be back in March sometime.

22 Q. All right. Now, I don't want to put any words in  
23 your mouth at all, but do you believe that he was able  
24 to repair the monitor and make it function as  
25 designed, if you know?

1 A. I would think, yes, but you know, whenever  
2 something goes down, you're supposed to call outside  
3 and tell them, that way they can put it on a report.

4 Q. Okay.

5 A. Unless somebody said, you know, make it look as  
6 best you can and put it back in the coal.

7 Q. All right. I'm just looking for accuracy here.  
8 To your knowledge, did he in any way bridge it out,  
9 override it or defeat it in some manner as to where it  
10 wouldn't function like it was supposed to?

11 A. Not that I'm aware of.

12 Q. Okay.

13 A. Because when you bridge it out, don't you have to,  
14 I mean --- I know there's several different ways you  
15 can affect a monitor. You --- I've heard people say  
16 you can put bags over them. And bridging them out,  
17 that means you have to --- you literally have to put a  
18 jumper in there to make it not work right. Like I  
19 say, I wasn't around the miners a whole, whole lot  
20 because I was always --- I was like a walking bolt  
21 man.

22 Q. Okay.

23 A. Boone was on the right side, Kenny was on the left  
24 side, and I just went back and forth. But I wouldn't  
25 think that he would.

1 Q. Okay. All right. You indicated there were two  
2 continuous miners on the Headgate 22 section. Did you  
3 ever observe both machines operating at the same time?  
4 And when I say by operating, I mean cutting coal.

5 A. Right. Not exactly at the same time. Like as  
6 soon as --- because we had to sweep. As soon as ---  
7 this miner over here, as soon as he called for his  
8 last buggy and said that he was done, the other miner  
9 man had his --- I mean, he was starting it up, ready  
10 to go.

11 Q. Okay. All right. Since the accident on April  
12 5th, have you been interviewed by any other person or  
13 agency or organization?

14 A. I've been interviewed by MSHA, and the FBI came to  
15 my house, but I wasn't home. And from what I know, he  
16 had just called --- he called the house and I was at  
17 work, and my wife said that he just said that, you  
18 know, if I needed anything or anything ever happened,  
19 I got threatened or anything like that, just call him.

20 Q. Were you interviewed by any attorneys or  
21 representatives of Performance Coal or Massey Energy?

22 A. They tried to.

23 Q. Okay. When?

24 A. It was three weeks ago. About three weeks ago.

25 Q. Okay. All right.

1 ATTORNEY KOERBER:

2 Was it in August or in July?

3 A. I think it was towards the end of July. Sometime  
4 around the end of July, beginning of August.

5 ATTORNEY KOERBER:

6 August 6th is a key date in my mind. Do

7 you know --- that would have been a Friday two weeks  
8 ago. Was it before that or after that? It was two  
9 weeks ago today August 6th.

10 MR. SHERER:

11 Can I ask you to check on that and get  
12 back to us?

13 A. I was going to say, can I ---?

14 ATTORNEY KOERBER:

15 Would you have something at home that  
16 would tell you for sure?

17 ATTORNEY SALVATORE:

18 I can tell you for sure what the date  
19 was. Just give me a minute.

20 ATTORNEY KOERBER:

21 Okay. Yeah, if you can check on that and  
22 get back to us. Terry Farley's card or my card ---.

23 BY MR. FARLEY:

24 Q. At the end of your last shift on Saturday evening,  
25 April 3rd, or could it have possibly been into the

1 morning of April 4th?

2 A. No. No, it was April 3rd.

3 Q. Okay. When you left the mine that day, did you  
4 observe any people that you would not --- excuse me.  
5 You left the mine on the dayshift; right?

6 A. Yes, sir.

7 Q. Excuse me. Did you observe any people that you  
8 didn't routinely see, such as upper management folks?

9 A. No, sir.

10 MR. FARLEY:

11 Erik.

12 EXAMINATION

13 BY MR. SHERER:

14 Q. I got several follow-up type of questions and some  
15 additional questions, so I'm going to apologize in  
16 advance because I'm going to jump around a little bit.  
17 I'm not trying to confuse you, but ---.

18 A. That's fine.

19 Q. You mentioned that several times when you were on  
20 the section bolting you'd get dusted out when you were  
21 talking to Terry. What do you mean by dusted out?  
22 Where was the dust coming from; do you know?

23 A. It was just from the miner cutting. I mean, it  
24 just didn't have --- didn't have enough air pushing  
25 through it to go out the return.

1 Q. Okay.

2 A. I mean, you know, there would be times when we  
3 would start running and we would have, you know, the  
4 legal amount that you're supposed to have, and then  
5 when we would get dusted, there just --- there  
6 wouldn't be no air there. It was just like it went  
7 away.

8 Q. Okay.

9 A. I know --- I think Massey is supposed to have such  
10 a higher amount of air than what we're really supposed  
11 to have. You're supposed to have 20,000 in your last  
12 open break. Never had that.

13 Q. So you never had the Massey quantity of air in the  
14 last open break. Was that common at this mine?

15 A. From the time that I was on that section, I'd say  
16 it would have to have been common up there.

17 Q. Okay. Thank you. Do you think somebody was  
18 making air changes or opening doors or what do you  
19 think was causing this fluctuation in the ventilation?

20 A. This is just my thought. I mean, you can see how  
21 huge the mine is.

22 Q. Sure.

23 A. And I just --- I've asked the question, you know,  
24 as far back as we was, even after we went to the new  
25 side of the mountain, it still took us about an hour



1 to an hour and 15 minutes sometimes to get back to our  
2 section.

3 Q. Sure.

4 A. They said coming from the other end when they was  
5 still all at the south side and going in from the same  
6 bath house it took longer than that.

7 Q. Sure.

8 A. It just seems to me like they outdrove the fans.  
9 It was just too far back in there for the --- I mean,  
10 you had our section. You had the tailgate section.  
11 You had the longwall. And they was even in the  
12 process, they said, of getting another section started  
13 before this happened. And that just seems like a lot  
14 of different places that far back in there for the air  
15 to go, you know, to have the amount of air at every  
16 section that you're supposed to have.

17 Q. Okay. Sure.

18 A. Like I say, when we would go down on the --- to  
19 the section, Headgate 22, of the mornings we would  
20 shut the doors, and then sometimes when we would come  
21 back out both sets of doors would be standing wide  
22 open.

23 Q. Who do you think would open those doors?

24 A. I don't know if it was supply men coming down and  
25 they just didn't close them behind them or if --- you

1 know, somebody would say, hey, we ain't got enough air  
2 over here or we've got this going on over here, and  
3 somebody would come through and open up to try to fix  
4 something somewhere else or what.

5 Q. Okay.

6 A. But I mean, you know, I know everybody knows that  
7 once the doors are shut, they're supposed to stay  
8 shut.

9 Q. Who was in charge of ventilation in this mine?

10 A. Terry Moore was the mine foreman. I don't think  
11 they necessarily had --- just like different mines  
12 have, just ventilation foremans. And so on --- I  
13 don't think they actually had a ventilation foreman.  
14 It all just kind of fell on the mine foreman to make  
15 sure everything was going right. And the safety  
16 director sometimes would come up and walk through,  
17 different things. Probably about, I don't know, a  
18 month before the explosion happened, we seen --- there  
19 was, you know, upper management and stuff in there at  
20 different times. I don't know if they was just coming  
21 in to look at things or see how we was progressing or  
22 whatnot because, you know, as you can look at this and  
23 tell, we was supposed to have been a lot further  
24 up ---

25 Q. Sure.

1 A. --- on our panel than what we was, and there just  
2 wasn't no way for you to run. We was lucky to run a  
3 hundred and some foot a shift, if that. The longwall  
4 was almost out of room. I mean, they didn't have a  
5 whole lot to go and they was going to be finished and  
6 wasn't going to have no way to go.

7 Q. Sure.

8 A. And that had a lot of people scrambling, had a lot  
9 of people saying, you know, we need to get this done.

10 Q. Do you feel there was an inordinate amount of  
11 pressure just to run coal at this mine?

12 A. Yeah. There was --- at any mines that I've worked  
13 at for Massey there was always --- you know, I've  
14 talked to different people that's left Massey and went  
15 to work at different places. They're like, you should  
16 come over here. You should really try, because this  
17 is so different. You don't have people calling in on  
18 the mine phone, wanting to know how much coal you've  
19 got, why don't you have this amount. You know, there  
20 ain't no pressure. What you run is what you run.  
21 They pat you on the back and tell you good job. If  
22 you didn't run a good bit of coal on any shift, there  
23 was usually questions, problems, wanting to know, you  
24 know, why. And they wanted us to run coal on that  
25 panel. That's --- you know, they needed to have it

1 ready for the longwall to go somewhere.

2 Q. Now, do you think that this upper management that  
3 you're talking about, do you feel like they knew that  
4 you didn't have enough air?

5 A. I don't see how they couldn't have known.

6 Q. Do you think that Mr. Jones told them that?

7 A. Yes, sir.

8 Q. Do you think he told them that several times?

9 A. Yes, sir. I know for a fact because about --- I  
10 think it was about two weeks before we --- before the  
11 explosion we had our annual retraining, and they was  
12 talking about, you know --- Boone Payne --- Howard  
13 Boone Payne asked where we was going to be going after  
14 we got done with this panel. And the management, they  
15 said, well, said, as much coal as you all was running  
16 up here on this panel, you guys will be here until  
17 Christmas. And that made him mad. That made Boone  
18 mad, and he stood up and he said, well, he said, I can  
19 tell you one thing. He said, if you F'n think you can  
20 do any better, he said, you come up there with bad  
21 top, no air, and see what you can do.

22 Q. That's pretty straightforward.

23 A. He was very straightforward.

24 Q. What was management's response to that?

25 A. I don't think they knew what to say.

1 Q. Who was there that day? Who represented Upper  
2 management?

3 A. Chris Blanchard was there. There was the safety  
4 director. I can't remember his last name. His first  
5 name was Berman.

6 Q. Cornett.

7 A. Yeah. He was --- I mean, as far as I know, Berman  
8 tried to make sure things went right. You know, he  
9 didn't --- that was --- Blanchard was the one that  
10 asked that, and that's who Boone referred that  
11 towards. Berman and them, they --- the guys from the  
12 safety didn't really say nothing about that. But I  
13 don't think as far as Chris really knew what to say.

14 Q. You said that Upper management had been coming in  
15 the mine about a month prior to the explosion. Did  
16 they have maps with them. Did they have anemometers?  
17 Do you think they were trying to do something with  
18 ventilation?

19 A. Just about every boss that I knew of had an  
20 anemometer. There would be some times that they had  
21 maps and there would be some times they didn't. And  
22 the reason they might have been in the mines was  
23 because from where they were getting ready to open up  
24 that other section, because that's the way they was  
25 always in or around about that area.

1 Q. Now, you said that the ventilation would vary on  
2 the section while you were in there. The sign would  
3 swing sometimes. Sometimes it wouldn't. You would  
4 get dusted off. Do you think somebody was opening ---  
5 knocking out a stopping or building a stopping or  
6 doing something like that that may have caused that?

7 A. Possibly. I'm not --- I mean, ---.

8 Q. You never talked to anybody that said we ---?

9 A. After we got sent to that side of the mountain ---

10 Q. Okay. You just didn't talk to most folks, yeah.

11 A. --- we just didn't --- I mean, the only people ---  
12 when we would get --- you know, the other crew was  
13 coming in, so we would meet them on the track. And  
14 the longwall crew, they never --- well, they never  
15 came off of the section until we was already outside.  
16 And we never got to talk to them until, you know, in  
17 the mornings, but in the mornings everything was  
18 hectic. Everybody was trying to run around and get  
19 ready to get on the mantrip and go.

20 Q. Sure.

21 A. And the other side of the mountain we never got to  
22 talk to.

23 Q. Sure. Having talked a lot about ventilation, do  
24 you think that the ventilation was adequate in this  
25 mine?

1 A. No, sir.

2 Q. Okay. Thank you. Terry spoke to you about  
3 methane monitors and you were talking about I think  
4 the right side miner was down for a while with an F4  
5 failure of the methane monitor itself. Did you go  
6 around that machine when it was having problems?

7 A. I never --- I mean, I never really got to go over  
8 there and stay while he was actually working on it  
9 because ---.

10 Q. No, not stay, just did you even walk up there?

11 A. I just walked --- I walked by there, but I didn't  
12 --- I mean, ---.

13 Q. Did you notice if they had pulled the cover off of  
14 the methane monitor display or he pulled the display  
15 out totally?

16 A. I think they had the display --- the whole thing  
17 loose because he was wanting a new one.

18 Q. Okay.

19 A. He was wanting to have one brought in or something  
20 to put on, and they didn't have any.

21 Q. Okay.

22 A. But even like to calibrate them and this and that  
23 that you have to do with them, I don't even know where  
24 you --- I don't know if you have to take the cover off  
25 for that or if you have to take it out or where you

1 even hook that up at.

2 Q. Okay. Thank you. Did you guys ever use  
3 explosives on the 22 Headgate?

4 A. No, sir.

5 Q. Did you know that there was a box of explosives  
6 that looked like it was stored just outby the mouth of  
7 22 Headgate?

8 A. No, sir.

9 Q. Okay.

10 A. That's what that was?

11 Q. It was found over in the crossover just by a big  
12 rock fall where the track went across it.

13 A. Uh-huh (yes).

14 Q. We found that during the mapping of the mine after  
15 the explosion.

16 A. I never was aware of that.

17 Q. Okay. Did anybody ever talk to you about miner's  
18 rights?

19 A. About what?

20 A. Miner's rights?

21 A. Yes, sir.

22 Q. Who did that?

23 A. Well, I mean, nobody, just in particular.

24 Q. Did anybody during your initial training talk to  
25 you about that?



1 A. Like when I was a red hat?

2 Q. Uh-huh (yes).

3 A. Yeah. The bosses and such would say, you know, if  
4 you don't feel something is safe, if you don't feel  
5 like is something --- if you just don't feel  
6 comfortable about doing it, then, you know, you  
7 shouldn't do it. Ask questions. Ask lots of  
8 questions. Find your black hat. Find your boss.

9 Q. Okay. Did you ever do anything like that?

10 A. There was a couple times not at UBB but at  
11 different places that if I thought something wasn't  
12 safe, then I would raise a concern about it and either  
13 they would --- they would ask them to help me or I  
14 didn't do it.

15 Q. Did you feel like you could do that at UBB?

16 A. Yes and no. You had --- I mean, you just --- you  
17 had so many people there. After everything started  
18 going south with, you know, mining and everybody knows  
19 that the mines got slow towards the end of '09, a lot  
20 of people got laid off and a lot of miners were  
21 looking for jobs, everybody kind of pretty much knew  
22 that and you kind of got reminded of that sometimes,  
23 that you know, it didn't matter to them, just as long  
24 as there was somebody there running coal. You could  
25 be gone tomorrow if you didn't want to do the job.

1       There --- and I never actually got threatened there,  
2       but they just kind of made it very well known.

3       Q. Do you think there was an atmosphere of  
4       intimidation?

5       A. There was to some point or amount there was ---  
6       there's intimidation at every mines I've been at with  
7       Massey. That's just the way --- I don't know if  
8       that's just the way they operated or whatnot, but if  
9       --- you know, it's just like --- I've seen it. It  
10      happened to me one time after I started. Somebody got  
11      hurt, and it wasn't life threatening. It wasn't bad.  
12      They was asked to at least come in and show up, keep  
13      it off of the lost time or whatnot and they would come  
14      in and show up for a little bit and they would go  
15      home. They didn't like to have lost time. They  
16      didn't like to have injuries on their --- if somebody  
17      got hurt bad, there wasn't no way to hide that. But  
18      there was ways to get around other stuff.

19      Q. Sure. Anybody ever tell you about a 1-800 number  
20      you could call to report any safety problems?

21      A. Yeah. Company inspectors sometimes would have  
22      cards, stickers, things like that, and some of the  
23      guys would go up and put stickers in the bath house.  
24      We would come back up from our shift and they would be  
25      gone. I don't really know who did that, but they

1 wouldn't be out there when we would come back from the  
2 end of the shift.

3 Q. Would it surprise you to find out that the last  
4 time MSHA got a call from this mine was, I think,  
5 three or four years prior to the accident?

6 A. What do you mean?

7 Q. The last time somebody called in a hazardous  
8 condition complaint on our 1-800 was about --- I think  
9 it was three or four years prior to the accident.

10 A. Yeah.

11 Q. Why do you think --- if you guys didn't have any  
12 air on this section, why didn't somebody call that in?  
13 I mean, we would have been out there if not that  
14 shift, the next shift.

15 Q. I really don't know. You know, just from hearsay  
16 of other guys and this and that, it wasn't at UBB ---  
17 like when I worked down at Charleston Inman Coal, we  
18 got blitzed. And I was there for a week and some of  
19 the guys would raise concerns. Some of the other guys  
20 was like, well, you better just keep your mouth shut.  
21 You better not say nothing. Don't cause a fuss about  
22 it because if you do, you know what's going to happen  
23 if your name gets back around that you was the one  
24 that said something. So I think everybody would kind  
25 of ---.

1 Q. So what was the fear, that if the company somehow  
2 found out you had called something in, they would  
3 retaliate against you?

4 A. (Indicates yes).

5 Q. What do you think they would have done?

6 A. You wouldn't have had a job.

7 Q. Okay. Thank you. Did ---?

8 A. Can I ask you something?

9 Q. Sure.

10 A. As far as you saying people calling in, like it  
11 wasn't four years ago that anything happened at the  
12 mine to where like a rock fall or roof falls or  
13 anything like that.

14 Q. No, the accidents ---.

15 A. You mean from the guys.

16 Q. No. The accidents have to be reported using our  
17 70001 form. Or if it's a certain type of accident, it  
18 has to be immediately ---

19 A. Right.

20 Q. --- called in. But aside from that, there's ---  
21 MSHA maintains a 1-800 hotline that anybody can call.  
22 It can be you. It can be a friend. It can be your  
23 wife. Anybody that calls in, I guarantee you that we  
24 will respond to that in a very quick manner. And we  
25 may send an inspector out, we may send a team of

1 inspectors out, and we try to take care of the  
2 problem. So it's on our web page. It should be up in  
3 the bath house. Anywhere you work, if you feel that  
4 there is a safety issue that's not being taken care  
5 of, and I first recommend that you talk it over with  
6 your immediate supervisor, give him the opportunity to  
7 correct it. And then if you're not satisfied, call  
8 us.

9 A. I haven't --- I ain't been back in the mine since  
10 that happened.

11 Q. I understand that, too. Again, I express my  
12 condolences. But even talking to somebody, tell them  
13 about it, because it's there, it's a tool, and we're  
14 glad to try to help out.

15 I've got two more questions --- well, three more  
16 questions. Excuse me. When you were in the mines,  
17 would anybody call in or did somebody ever come up to  
18 you and say we've got inspectors on the property?

19 A. Oh, yeah, all the time. They would --- I mean, as  
20 soon as they found the inspector on the property, they  
21 would get on the phone and start hollering at  
22 everybody. Hey, we got a man on the property. We got  
23 a man on the property. Better make sure everything is  
24 right.

25 Q. Do you think that the rock dust up around the 22

1 Headgate section, do you think that the rock dust was  
2 adequate?

3 A. Yes and no.

4 Q. Okay.

5 A. The bolt duster was supposed --- usually got run  
6 every couple days up around the faces and everything.  
7 It was kind of too like up there it just --- and I  
8 never paid attention to it until I was up there, but I  
9 would hear the guys fussing, everything always get put  
10 on this and this and that. It seemed like the buck  
11 just kind of got passed along until it got passed back  
12 to us, and then we would end up having to do it. I  
13 know our scoop man, he would bolt dust a lot. And  
14 there was sometimes --- you know, like if we was in  
15 between bolting or this and that and he would be up  
16 cleaning. While he was cleaning, sometimes I would  
17 take a bag of rock dust and I would dust and stuff  
18 just to try to help out. But in the same aspect, this  
19 --- you know, as dusty as it would get up there  
20 sometimes and the air being the way it was, I think  
21 that just kind of outweighed the ---.

22 Q. You'd get a lot of float dust?

23 A. (Indicates yes).

24 Q. Okay. Thank you. One last question. What do you  
25 think happened that caused the explosion? What's your

1 own personal opinion?

2 A. My own personal opinion is that it was --- I mean,  
3 there had to be, you know, some dust. There had to be  
4 --- I know there was a source of ignition, but I don't  
5 think there was enough air to dilute everything. I  
6 don't think there was enough ventilation to push out  
7 the gas. I asked --- the day after the explosion  
8 happened, I went down to see if I could be of any  
9 help. I went down and tried to help the families and  
10 stuff like that for a little bit. And I was asking  
11 about my crew, and they said that they didn't have no  
12 word yet. They said we haven't been able to get to  
13 your section. They said there's --- that's where all  
14 the bad gases are holding at. That's where all the  
15 dust and everything is at and the smoke and this and  
16 that and they said there just --- there ain't no way  
17 to get to it.

18 I said, no kidding. I said, there was never no  
19 freak'n air up there to begin with to push everything  
20 out. After an explosion, there sure as heck ain't  
21 going to be enough air up there to do anything with.  
22 And they kind of didn't like that. And I was going up  
23 to the --- to the mine site to see if I could talk  
24 with the superintendent, and he wasn't in there at the  
25 time. And Terry Moore was up there, and he said, what

1 are you doing up here? How did you get up here? And  
2 I said, well, I came across a bridge. He said,  
3 security didn't stop you? And I said, no, I told him  
4 who I was and that I was trying to come up here. And  
5 he said, well, get out of here, he said, you don't  
6 need to be up here. You don't need to be nowhere  
7 around this. He said, just go back home. And I went  
8 back home.

9 He said, if anything happens or anything, we'll  
10 stay in touch and this and that because that's what  
11 --- you know, they had told me that they was having a  
12 hard time --- which I'm glad I didn't, but they was  
13 having a hard time identifying people and such. And I  
14 said, well, I know where everybody on my crew was at,  
15 so I know where everybody sat. We sat in the same  
16 spots every day. If I can be of any help, you know,  
17 let me know, but --- so I'm glad I didn't, because  
18 that's --- just with everything that I knew and  
19 everything that happened and the whole crew being  
20 gone, I still have nightmares. I wake up in my sleep  
21 all the time. I see them in my sleep. And if I'd  
22 have had to do that, it probably would have been a  
23 doggone ---.

24 Q. We understand.

25 A. But I don't think --- you know, the air was the



1 --- everybody's biggest concern. And everybody made  
2 that aware. And I even asked, you know, the guys, I  
3 said, well, if everybody knows that there's not enough  
4 air up here and stuff, why don't they put another fan  
5 in? Why don't they do something from this side of the  
6 mountain?

7 Q. Sure.

8 A. And he said, buddy, he said, that's like talking  
9 to a --- talking to that wall right here. He said,  
10 we've said the same thing.

11 Q. Now, who told you that?

12 A. Boone.

13 Q. Okay. One last question. I mislead you a little  
14 bit. I've got four questions.

15 A. Okay.

16 Q. Did you ever feel lightheaded or real tired after  
17 working in the 22 Headgate?

18 A. I'd come home --- you know, I would come home  
19 tired a lot. And I didn't --- after, like I say, I  
20 got diagnosed with [REDACTED] and I --- they said it  
21 didn't take a whole lot of anything to throw your body  
22 off when you have that.

23 Q. Sure.

24 A. And as hot as it was up there, like I say, twice I  
25 know of when I got home I felt so bad and so sick that

1 I went and two times I was severely dehydrated and got  
2 admitted for that.

3 Q. When you were working up in that hot air, that  
4 didn't help you either.

5 A. And that's what, I mean, you know, if I did have  
6 to be out for a few days or something, I would be  
7 feeling a good bit better.

8 Q. Sure.

9 A. Then as soon as I'd go back to work, the day after  
10 I would go back to work and I'd come back home from  
11 work, I'd be right back in the same boat.

12 Q. Did the other men on this crew, did they complain  
13 about similar fatigue or feeling bad after the shift?

14 A. Yeah. Ronald Maynor, the scoop man, you know, he  
15 would say --- he would just be so tired sometimes when  
16 he would get home from work that he would just go home  
17 and pass out on the couch. He wouldn't even be able  
18 to do nothing. He didn't do nothing with the kids or  
19 anything. When he'd get home, he would just go pass  
20 out on the couch, and then his wife would wake him up  
21 when it was time to go to bed and tell him go get in  
22 the bed. He'd sleep the whole day away.

23 Q. Did you ever smell anything up on the section that  
24 was kind of kerosene-like smelling or petroleum  
25 smelling, anything like that?

1 A. I never really smelled anything like that. About  
2 the only thing I can say that you would smell  
3 sometimes, and it would be, you know, --- I didn't  
4 know if it was from the dust or what. When we would  
5 get dusted out sometimes, you would get a smell like  
6 of rotten --- to me it kind of almost smelled like  
7 rotten eggs, something like that.

8 Q. Do you know what hydrogen sulfide smells like?

9 A. I never really smelled kerosene or nothing like  
10 that.

11 Q. Okay. Thank you.

12 MR. SHERER:

13 That's all the questions I've got.

14 EXAMINATION

15 BY MS. MONFORTON:

16 Q. Mr. Ellison, I might have a couple of just  
17 questions for you to clarify the notes that I've taken  
18 here. You testified that you recall in mid-January of  
19 this year that MSHA came in and found the air  
20 reversal ---

21 A. Yes, ma'am.

22 Q. --- on the section and that you either read  
23 something or heard something that the mine foreman,  
24 Terrey Moore, admitted that it had been like that for  
25 about three weeks. Did you --- were you working on

1 the section where that air reversal was found?

2 A. Yes, ma'am. I had already been put up there.

3 Q. And did you realize that it was --- the air was  
4 going the wrong way for that period of time?

5 A. Then, that's what I was saying. They ---  
6 everything was so mixed up that didn't --- couldn't  
7 nobody give us a definite answer on anything. And you  
8 know, he had --- he had said it had been that way for  
9 about three weeks and that they had been trying to  
10 work on it and this and that. And then from what I  
11 understood, they pretty much told him that that was  
12 neglect and not a good enough answer. And I can't  
13 remember what it was. It was a huge fine that they  
14 fined them that day.

15 Q. So would it be fair to say that you and the other  
16 miners had some expectation about the way the air was  
17 supposed to go. But because things were always  
18 getting moved around and messed up, even if something  
19 was messed up, you didn't really know because you  
20 didn't know what to expect?

21 A. Right.

22 Q. Okay. When you were discussing with Mr. Farley  
23 this construction area here by the Glory Hole where  
24 they were putting in some new doors and the air was  
25 --- you had noticed some change in the air maybe a

1 month or so before the explosion, it picked up. I was  
2 trying to get a better sense of that time frame,  
3 because my notes say about two weeks prior to the  
4 explosion the air picked up a little, but then you  
5 also said later two weeks prior it went back to the  
6 way it was when I first started.

7 A. It was probably about a month beforehand we  
8 actually started noticing a little bit of change, but  
9 it was actually being able to feel some air and  
10 everything. And then about two weeks beforehand it  
11 went right back to the way it was before. You just  
12 --- you didn't have no air.

13 Q. Okay. You indicated that maybe about a month  
14 before you were working on the --- a month before the  
15 explosion you were working on the section and you saw  
16 upper management there in the mine. You said they  
17 were checking on things. Sometimes they'd have a map  
18 or they'd have other information. Do you recall who  
19 that was?

20 A. I seen Chris Blanchard in there. I seen Jason  
21 Whitehead in there. I see some of the other guys. I  
22 don't know who they was.

23 Q. Uh-huh (yes). Okay.

24 A. I don't even have a clue. But then just with the  
25 other --- with, you know, the regular management of

1 the mine and stuff would be in there.

2 Q. That's all.

3 MS. MONFORTON:

4 Those are the only questions I have.

5 Thank you.

6 A. Okay.

7 RE-EXAMINATION

8 BY MR. FARLEY:

9 Q. One more. On your last shift at UBB on Saturday,  
10 April 3rd, at any time during that shift were there  
11 any problems with the section's power center?

12 A. Not that I can remember.

13 Q. Okay. Thank you.

14 MR. FARLEY:

15 I'm done.

16 ATTORNEY SALVATORE:

17 I just want to ask one clarifying  
18 question.

19 EXAMINATION

20 BY ATTORNEY SALVATORE:

21 Q. Mr. Ellison, were you set to work the shift that  
22 was working when the explosion occurred?

23 A. Yes, sir.

24 Q. Why weren't you at work?

25 A. I woke up at --- I woke up ten minutes after 3:00

1       that morning and it felt like somebody shoved a pole  
2       right through the middle of my chest. I was sound  
3       asleep, and I jumped up out of the bed gasping for a  
4       breath. My blood pressure was sky high. I told my  
5       wife, I said, I don't feel good today. I'm just going  
6       to call in and take a personal day. And I called in  
7       and took a personal day. That's the only reason I'm  
8       here.

9       ATTORNEY SALVATORE:

10      That's it.

11      ATTORNEY BAXTER:

12      On behalf of MSHA and the Office of  
13      Miners' Health, Safety and Training, I want to thank  
14      you for appearing and answering questions today. Your  
15      cooperation is very important to the investigation as  
16      we work to determine the cause of the accident. We  
17      request that you not discuss your testimony with any  
18      person aside from your personal representative. After  
19      questioning other witnesses, we may call you if we  
20      have any follow-up questions. If at any time you have  
21      additional information regarding the accident that you  
22      would like to provide to us, please contact us at the  
23      contact information that was previously provided to  
24      you.

25      If you wish, you may now go back over any

1 answer you've given during this interview. You may  
2 also make any statement that you'd like to make at  
3 this time.

4 A. The only statement that I would like to make is  
5 just that, you know, they put stuff in the paper all  
6 the time. People say --- I've heard people saying  
7 that they was trying to pin this on the bosses and  
8 this and that, like Dean, where he's not here to take  
9 up for himself and this and that. And I know for a  
10 fact that he was the best boss that I ever worked for.  
11 He really cared about the men. He believed in doing  
12 things the right way and he stood up for what he  
13 believed in. I mean, he wouldn't let --- if it wasn't  
14 right, he wouldn't let them tell him that you better  
15 run coal or you're going to be fired or not have a job  
16 or nothing like that. He was a very good man. They  
17 lost a lot of very good, innocent people. They really  
18 --- it really bothers me when they put stuff in the  
19 paper about how that --- you know, the engineers from  
20 Massey's engineers told MSHA that, you know, the air  
21 wasn't going to be right or that they didn't agree  
22 with this or that MSHA was making them do things that  
23 they said wasn't going to be right, and then they  
24 don't put in there, well, you all was in there doing  
25 illegal air changes without MSHA even knowing about



1       it. MSHA didn't give you the report or the permit to  
2       do it, and you all was doing this. Why was you doing  
3       that? And them saying that they don't put safety ---  
4       or they don't put coal ahead of safety. With all the  
5       examples that I've seen, that truly right there is  
6       putting coal ahead of safety, you know. There ain't  
7       no other way to describe that.

8       It's really about the only statements I would have  
9       is just for the people just to know that --- I don't  
10      know really how to say it other than just that if they  
11      did it, Massey should just --- instead of trying to  
12      pin it on different things, like the act of God and  
13      this and that, own up to their mistakes and all these  
14      families' suffering and realize that they did a very  
15      bad thing.

16     ATTORNEY BAXTER:

17     Well, again, I want to thank you for your  
18     cooperation here today.

19                             \* \* \* \* \*

20             STATEMENT UNDER OATH CONCLUDED AT 12:33 P.M.

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CERTIFICATE

I, Alison Salyards, a Notary Public in and  
for the State of West Virginia, do hereby certify:  
That the witness whose testimony appears in  
the foregoing deposition, was duly sworn by me on said  
date and that the transcribed deposition of said  
witness is a true record of the testimony given by  
said witness;  
That the proceeding is herein recorded fully  
and accurately;  
That I am neither attorney nor counsel for,  
nor related to any of the parties to the action in  
which these depositions were taken, and further that I  
am not a relative of any attorney or counsel employed  
by the parties hereto, or financially interested in  
this action.



*Alison Salyards*