



**SARGENT'S
COURT
REPORTING**

Quality Work. Quality People.

Transcript of the Testimony of Robert Hardman

Date: June 4, 2010

Case:

Printed On: May 25, 2011

Sargent's Court Reporting Services, Inc.

Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

CONTINUED STATEMENT UNDER OATH
OF
ROBERT HARDMAN

taken pursuant to Notice by Alicia Brant, 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, June 4, 2010, beginning at 1:20 p.m.

Any reproduction of this transcript is prohibited without authorization by the certifying agency.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

ROBERT S. WILSON, ESQUIRE

U.S. Department of Labor

Office of the Regional Solicitor

1100 Wilson Boulevard

22nd Floor West

Arlington, VA 22209-2247

NORMAN PAGE

Mine Safety and Health Administration

[REDACTED]

[REDACTED]

PATRICK C. MCGINLEY

West Virginia Independent Investigation

West Virginia University College of Law

[REDACTED]

[REDACTED]

A P P E A R A N C E S (cont.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BILL TUCKER

West Virginia Office of Miners' Health,

Safety and Training

Welch Regional Office

891 Stewart Street

Welch, WV 24801-2311

DAN JARRELL

West Virginia Office of Miners' Health, Safety and

Training

137 Peach Court

Danville, WV 25053

ALSO PRESENT:

DAVID STEFFEY

National Mine Safety and Health Academy

1301 Airport Road

Room C-137

Beaver, WV 25813-9426

A P P E A R A N C E S (cont.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ERIK SHERER

Mine Safety and Health Administration

1100 Wilson Boulevard

Arlington, VA 22209-3939

CELESTE MONFORTON, MPH, DRPH

West Virginia Independent Investigation

2100 M. Street, NW

Suite 203

Washington, DC 20037

SANDIN E. PHILLIPSON, PH.D.

Mine Safety and Health Administration

Roof Control Division

Pittsburgh Safety and Health Technology Center

[REDACTED]

[REDACTED]

SUZANNE M. WEISE, ESQUIRE

[REDACTED]

[REDACTED]

I N D E X

1		
2		
3	OPENING STATEMENT	
4	By Attorney Wilson	7 - 9
5	WITNESS: ROBERT HARDMAN	
6	STATEMENT	
7	By Mr. Hardman	9 - 10
8	EXAMINATION	
9	By Mr. Page	10 - 21
10	DISCUSSION AMONG PARTIES	21 - 25
11	EXAMINATION	
12	By Mr. McGinley	25 - 49
13	EXAMINATION	
14	By Mr. Farley	49 - 53
15	RE-EXAMINATION	
16	By Mr. Page	53 - 67
17	RE-EXAMINATION	
18	By Mr. McGinley	67 - 73
19	RE-EXAMINATION	
20	By Mr. Page	74 - 75
21	CERTIFICATE	76
22		
23		
24		
25		

1	EXHIBIT PAGE		
2			PAGE
3	NUMBER	DESCRIPTION	IDENTIFIED
4	Three	7/15/04 memorandum	25
5	Four	One-page E-mail	25
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25	Exhibits not attached		

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ATTORNEY WILSON:

Good afternoon. My name is Bob Wilson.

I am with the Office of the Solicitor, United States Department of Labor. Today is June 4, 2010, approximately 1:20 in the afternoon. We're here to continue the investigation interview of Robert Hardman that was started on May 27 of 2010. With me is Norman Page, accident investigator with the Mine Safety and Health Administration. There are also officials with the State of West Virginia who will be participating in the questioning, and I'll ask that they restate their appearance for the record.

MR. MCGINLEY:

Patrick McGinley, the Governor's independent investigation team.

MR. TUCKER:

Bill Tucker, West Virginia Office of Miners' Health, Safety and Training.

MR. JARRELL:

Dan Jarrell, Miners' Health, Safety and Training.

ATTORNEY WILSON:

There are several other members of the

1 investigation teams present in the room. I'm not sure
2 if everyone that's here was here last time, so I will
3 restate the confidentiality statement. All members of
4 the Mine Safety and Health Administration Accident
5 Investigation Team and all members of the State of
6 West Virginia Accident Investigation Team
7 participating in the investigation of the Upper Big
8 Branch Mine explosion shall keep confidential all
9 information that is gathered from each witness who
10 voluntarily provides a statement until the witness
11 statements are officially released. MSHA and the
12 State of West Virginia shall keep this information
13 confidential so that other ongoing enforcement
14 activities are not prejudiced or jeopardized by a
15 premature release of information. This
16 confidentiality requirement shall not preclude
17 investigation team members from sharing information
18 with each other or with law enforcement officials.
19 Everyone's participation in this interview constitutes
20 their agreement to keep this information confidential.

21 For the record, I'll go ahead and

22 identify the other MSHA people who are present in the
23 room, Dave Steffey, Erik Sherer and Sandin Phillipson.
24 All three are members of the accident investigation
25 team. Do you want to identify the members of your

1 team in the room?

2 MR. MCGINLEY:

3 Yes. Celeste Monforton and Suzanne
4 Weise.

5 ATTORNEY WILSON:

6 Mr. Hardman, I remind you that you are
7 still under oath, and I'll turn it over to Norman to
8 begin the questioning.

9 -----

10 ROBERT HARDMAN, HAVING BEEN PREVIOUSLY SWORN,
11 TESTIFIED AS FOLLOWS:

12 -----

13 A. I'd like to, before we start, if it's okay,
14 Norman, clear up a couple things from the last
15 interview. And there was three questions that ---
16 concerning manpower of our mines, and --- but I want
17 to --- you know, I want to state those with accuracy
18 for the record. And one of the questions that was
19 asked of me during my last interview session were ---
20 was how many inspectors were in and out of our office
21 in the inspection work groups, and I said it averaged
22 ten. And we have ten inspectors in Work Group One,
23 and we have nine --- one of those nine's a trainee, in
24 Work Group Two. So it's nine and ten. Nineteen (19)
25 is that total.

1 I was also asked how many underground mines did we
2 have in District 4, and that underground mine total is
3 160. And the current --- we currently have 246
4 underground MMUs, about --- oh, maybe two and a
5 quarter times the next district, which is District
6 Six. That's the --- you can make a comparison in
7 coal, the size of District 4, with those numbers. But
8 I did want to go on the record accurately because I
9 didn't have that exact data with me during the last
10 session. And so I want to, again, do that for the
11 purpose of accuracy.

12 ATTORNEY WILSON:

13 Thank you.

14 A. Uh-huh (yes).

15 EXAMINATION

16 BY MR. PAGE:

17 Q. Since you brought up your manpower and stuff, Bob,
18 could you tell me what the average years of experience
19 you have in the Mount Hope office?

20 A. Yes, I can.

21 Q. In the field office.

22 A. In the field office. The average is probably ---
23 again, I don't know that exact figure, but I'll give
24 you a ballpark. That average is probably three years.
25 And to give you an idea, I think the oldest inspector

1 in that entire office is somewhere around five years
2 in the agency. So it's a very, very young workforce.

3 Q. Is that pretty much a representative of the
4 district ---

5 A. Yes.

6 Q. --- in each field office?

7 A. We've lost --- you know, we've lost a lot of folks
8 and we were extremely shorthanded back through
9 2006/2007, and we had a large group of inspectors in
10 training during that period of time. And that's
11 pretty well representative across the inspection force
12 in the district.

13 Q. Okay. I think the last time --- about the time
14 that we broke --- you know, broke the interview off,
15 we just --- probably just finished discussing about
16 the memos on the floor outburst.

17 A. We talked about that. Yes, we talked about that.

18 Q. And I was wondering if you had brought any plans
19 in or anything ---. That happened in 2004; am I
20 correct?

21 A. I'll have to look. Hang on just a second, and
22 let's go back and touch on that.

23 Q. I was wondering if you had any copies of any plans
24 pertaining to the longwall and ---.

25 A. I have a group, a large group of plans with me.

1 And hang on --- hang on just a second.

2 Q. What I was looking for, Bob, is if you could
3 answer the question, what was done to address those
4 memos? I know you was not the district manager and
5 you've lost your ventilation supervisor by the end ---
6 I mean, you got a different one, too.

7 A. Yes.

8 Q. I was wondering if we had a copy or anything in
9 your file to show what the plan was then and how to
10 address it with the prior --- or who was district
11 manager or acting ---?

12 A. I've not found any information to indicate that it
13 was addressed in any way.

14 Q. Okay.

15 A. And you know, I mean, the active records in the
16 Ventilation Department and the Roof Control
17 Department, I talked with my Technical ADM, and I have
18 not --- I can't say with a hundred percent certainty
19 that it wasn't in any manner, but I don't have any
20 plan to reflect a continuation up to the current
21 plans. I don't have any recollection by the roof
22 control supervisor or the technical ADM that it was
23 addressed in any way, and a thorough search of the
24 ventilation records, you know, has been conducted.
25 But again, that's all that I can say.

1 Q. Okay. Let me ask you another question pertaining
2 to that.

3 A. Uh-huh (yes).

4 Q. We don't know at this time what --- what caused
5 this explosion, but we do have these memos --- or
6 these reports. And in your opinion, what would you do
7 to address that ventilation plan prior to production
8 for the longwall?

9 A. Well, I'll tell you what, I ---.

10 Q. What do you think it needs?

11 A. Well, I'm going to tell you what I am going to do,
12 if --- irregardless of whether we find out that that
13 was the cause of this accident or not, I am going ---
14 I'm --- in fact, I have a draft of it. Right now I'm
15 going to ask Tech Support to give me a linear analysis
16 on every mine in District 4 that's in the Eagle seam,
17 number one. I have a list of those, and I've
18 developed a Memorandum of Request, not only UBB but
19 all mines in the Eagle seam. I'm going to ask Tech
20 Support to come in and look at each of those mines
21 individually and make recommendations that --- what
22 should be done. And then I'm going to get revisions
23 from the operators to address their recommendations.
24 You know, they're the experts in this area, and I'll
25 take it from there, Norman, ---

1 Q. Uh-huh (yes).

2 A. --- you know. And then, additionally, I'll look
3 from my perspective as a district manager and my
4 background and expertise within the agency and the
5 industry, in addition to that, at each of the mines
6 individually and require an appropriate revision to
7 address the issues at the mine. And in addition to
8 that, if it would include training and, you know, you
9 had a change-out of people at the mines and make sure
10 that they do conduct training and have a plan not only
11 to address the ventilation but address the other
12 parameters so that we don't lose this thing in the
13 cracks down the road.

14 Q. I was just wanting to address that, that report,
15 you know. And I thought you may have something, and I
16 was wanting to know what they done. And if they
17 hadn't done anything, then ---.

18 A. I have, again, at this point in time ---.

19 Q. When did you find out about the memorandum or the
20 report?

21 A. Actually, it would have been Thursday before last
22 that I was aware that it existed. And I was party to
23 a conversation that this came up during the
24 conversation and then ---.

25 Q. There's two reports; right?

1 A. There's two memorandums ---

2 Q. Yeah, memorandums.

3 A. --- and ---.

4 Q. One to John Pyles and ---.

5 A. There's one from Tech Support back to Steve
6 Gigliotti on July 15th, 2004. And then there's also,
7 earlier than that, a March 4th memorandum to --- from
8 Tech Support back through to the district manager.

9 Q. Is it May 4th or March 4th?

10 A. I've got March 4th on the copy that I have.

11 MR. MCGINLEY:

12 It's March 4th.

13 MR. PAGE:

14 Okay.

15 A. And then I have July 15th on the other copy.

16 BY MR. PAGE:

17 Q. Okay.

18 A. Is the ones you have different?

19 Q. I got a May 27th and a June --- July the 15th.

20 MR. MCGINLEY:

21 You have a May 27th?

22 A. You may have an additional memorandum. Who was it
23 sent from?

24 BY MR. PAGE:

25 Q. George Aul.

1 A. No. This one --- this one that I have, May 4th,
2 is from Sandin Phillipson.

3 MR. MCGINLEY:

4 Let's mark that May 27th memo for the
5 record. We don't have that yet.

6 ATTORNEY WILSON:

7 The witness doesn't have that.

8 MR. MCGINLEY:

9 I know.

10 A. I have this memorandum, which I gave --- I have
11 July 15th, ---

12 BY MR. PAGE:

13 Q. I got that one.

14 A. --- 2004.

15 Q. Okay.

16 A. I provided a copy of that one. I also have the
17 exact copy of this one. I have a --- I have two
18 memorandums that I identified during my last
19 testimony. This is July 15th, 2004. And then I have
20 March 4th, 2004. And this is a draft memorandum, but
21 I don't have that. I wouldn't have that, necessarily.
22 This is a signed memorandum. Is it the same thing?

23 Q. Yeah, it's the same thing.

24 MR. MCGINLEY:

25 Let's mark it, in any event. It's been

1 mentioned.

2 ATTORNEY WILSON:

3 We're not going to mark it. It's a
4 draft.

5 MR. MCGINLEY:

6 I'd like to have it marked.

7 MR. PAGE:

8 It's a draft.

9 MR. MCGINLEY:

10 I understand it's a draft, but it's also
11 part of the records. And, you know, we ought to be
12 able to look at it as part of the investigation, even
13 though it's identical ---.

14 A. Yeah, these are the ones I'm aware of.

15 MR. PAGE:

16 They're the same thing, so ---.

17 MR. MCGINLEY:

18 So let's mark this.

19 ATTORNEY WILSON:

20 We'll mark the ones that the witness has
21 seen.

22 MR. MCGINLEY:

23 Okay. Well, then I'll ask him questions
24 about the other one, because that's ---.

25 A. I provided copies the last time I was here of the

1 information that I had.

2 MR. MCGINLEY:

3 Fine. We can wait until ---.

4 A. I mean, that's --- now, I have an exact copy of
5 the memo that you got, the initial memo. I have a
6 copy of May 27th here, the draft. I didn't realize I
7 had that copy. And this one, that copy is contained
8 in a memorandum to me and to you. You have this.

9 BY MR. PAGE:

10 Q. I have a copy of it?

11 A. Yeah, you do. Additionally, within this, you
12 know, we're talking about --- we're talking about
13 these memos and there is an internal in the district,
14 which you also have a copy of this, Norman.

15 Q. Yes.

16 MR. MCGINLEY:

17 What is that?

18 A. This is an internal e-mail that is a two-sentence
19 e-mail which, you know, this team has a copy of
20 already.

21 MR. MCGINLEY:

22 Well, we don't have a copy of it, so you
23 know, we'll --- if you don't want to mark these now,
24 you have them, all these, including the May 27th memo,
25 in your possession, Mr. Hardman, and you've consulted

1 with them, so I'd like to put them in the record at
2 some point.

3 A. But that's my knowledge level of these
4 memorandums.

5 BY MR. PAGE:

6 Q. I was just trying to clear this up because there's
7 been some confusion, ---

8 A. Okay.

9 Q. --- and I was trying to clear it up and to see if
10 you had anything where someone else had addressed that
11 plan on the outburst.

12 A. Now, I have --- again, I'll repeat it again. I
13 have no indication, from the records within the
14 district, the active records within the district, or
15 archived records within the district, that it was
16 formally addressed.

17 Q. And this is the time that you was made aware of
18 it, and you're a ventilation supervisor?

19 A. Current ventilation supervisor.

20 Q. That's what I meant.

21 A. Uh-huh (yes).

22 Q. Yeah, you're current.

23 A. Yeah. I was aware of it --- again, I'll repeat
24 it. I think it should have been May the 20th, if that
25 was a Thursday. You know, in 2010 I became aware that

1 these memorandums existed and I got one copy on May
2 the 21st, which you guys have a copy of my notations
3 on the front of it. And I received another copy on
4 May the 26th. And I received yet another series of
5 information, basically the same information, again,
6 that you have, in a memorandum dated from --- on May
7 25th, which I didn't pick up that particular day, but
8 it's from my ventilation supervisor concerning the
9 records that are --- that are in the district.

10 Q. And it also states in there that Bill Ross was the
11 ventilation supervisor at the time that ---?

12 A. I don't know whether it --- whether it actually
13 states that he was. And there was an e-mail from
14 George Aul to Bill Ross dated June the 4th, 2004, and
15 initial indication that instructions were given by
16 Bill Ross to put this in the company file for
17 Performance Coal Company. This is indicated on the
18 e-mail. And again, I don't have a clue. It doesn't
19 show that there was an attachment on the e-mail from
20 George. You know, I just have a copy of the e-mail
21 itself. So I don't know whether this was --- one of
22 these was an attachment. I'd be speculating. But
23 those instructions were given on 6/18/2004, and that's
24 the total extent of my knowledge concerning these ---

25 Q. Okay.

1 A. --- memorandums.

2 Q. Okay. The floor outbursts, who would --- which
3 department would handle that, or would both your
4 ventilation and roof be part of that?

5 A. It would be both departments, Norman, because ---
6 without doubt, initially both departments would be
7 involved in any plan, preparation or evaluations in
8 the mine because, you know, you would have to look at
9 an action plan. And once you became aware of it, you
10 know, the ventilation of the mine, you certainly would
11 want to take a look at that. And then you would want
12 to look at overburden pressures, abutment pressures,
13 those type of things. So it would have involved both
14 departments. It should have involved both
15 departments.

16 Q. Okay.

17 MR. PAGE:

18 Terry, you got any questions on ---

19 MR. FARLEY:

20 Not yet.

21 MR. PAGE:

22 --- the outbursts?

23 MR. FARLEY:

24 Not yet. Go ahead.

25 MR. PAGE:

1 Do you have any on ---?

2 MR. MCGINLEY:

3 Where are we going from here?

4 MR. PAGE:

5 Well, I was going to change subjects.

6 MR. MCGINLEY:

7 Well, yeah, sure, I have questions.

8 MR. PAGE:

9 Go ahead.

10 MR. MCGINLEY:

11 To correct the record, when Mr. Hardman

12 was here first, we deferred asking any questions about

13 the outbursts or these memorandums until we had an

14 opportunity to look at 'em, so they haven't been

15 explored. This is the first time the memo has been

16 explored, except for Mr. Hardman's statement about how

17 he received them on the first day of his testimony.

18 Does anyone have any different recollection of that?

19 MR. PAGE:

20 They were discussed the last time you

21 were interviewed.

22 A. You'd have to look at the record.

23 MR. MCGINLEY:

24 Well, The record will speak for itself.

25 I do have questions. Terry, do you want to go first

1 or ---

2 MR. FARLEY:

3 Go ahead.

4 MR. MCGINLEY:

5 --- because they're going to go on ---?

6 MR. PAGE:

7 Yeah. That's why I asked.

8 MR. MCGINLEY:

9 First of all, let's mark these documents

10 that you were looking at, Mr. Hardman, as exhibits.

11 And whether you want to mark them as 1A, B and C or

12 independent exhibits, that's up to you.

13 ATTORNEY WILSON:

14 Were the memos marked as exhibits the

15 last time?

16 MR. PAGE:

17 No.

18 ATTORNEY WILSON:

19 Okay. So ---.

20 MR. MCGINLEY:

21 We didn't even have the memos. They were

22 copied, you know, in the course of Mr. Hardman's ---.

23 A. I gave you copies for your use.

24 MR. MCGINLEY:

25 Sure. But we didn't have them at the

1 time you began your ---

2 A. That's correct.

3 MR. MCGINLEY:

4 --- testimony. Let's mark them all.

5 A. You guys have them. Whatever you need to do,
6 that's fine.

7 ATTORNEY WILSON:

8 We need to make copies of stuff.

9 MR. FARLEY:

10 This appears to be something different
11 than what I already have, something a little
12 different. This is --- I have, of course, copies of
13 what Bob provided last time, some e-mails and stuff,
14 and this one we didn't see before.

15 ATTORNEY WILSON:

16 Okay. All right. Let's go off the
17 record.

18 OFF RECORD DISCUSSION

19 SHORT BREAK TAKEN

20 (Hardman Exhibits One and Two marked for
21 identification.)

22 ATTORNEY WILSON:

23 Back on the record. We marked the March
24 4, 2004 as Hardman Exhibit Two. The map was
25 previously marked as One. We'll mark the July 15 memo

1 as Exhibit Three and then the one-page e-mail as Four.
2 (Hardman Exhibits Three and Four marked
3 for identification.)

4 ATTORNEY WILSON:

5 Were you questioning?

6 MR. MCGINLEY:

7 Yes.

8 EXAMINATION

9 BY MR. MCGINLEY:

10 Q. Mr. Hardman, from reading the documents and
11 memorandums from March 4th and July 15th, 2004 that
12 have been marked for identification as Exhibits Two
13 and Three, they discuss methane outbursts at the Upper
14 Big Branch Mine that occurred in February of 2004 and
15 July of 2003; is that correct?

16 A. I'd have to look at these. The documents are what
17 they are.

18 Q. Have you read these documents?

19 A. I've looked at 'em, but I've not analyzed 'em
20 thoroughly. I'll have to go and take a peek here.

21 Q. Well, for the record, I've read them and that's
22 what they say. We don't have to waste time. You
23 know, they'll speak for themselves.

24 A. Okay. Then if you've read 'em, and if you say
25 that's what they say, then ---.

1 Q. Okay. That was just to sort of lead into ---

2 A. All right.

3 Q. --- my question. So at the very least, you have
4 read the memoranda and you know that they are
5 discussing methane outbursts at the Upper Big Branch
6 Mine; right?

7 A. That is correct.

8 Q. Okay. Now, those --- from the tenor of the
9 discussion of the memoranda, were those outbursts a
10 matter of minor concern, moderate concern or major
11 concern to the drafters of those memos, if you can
12 tell?

13 A. I have no idea. I mean, I'm looking at the
14 memorandums and looking at the assistant district
15 managers as they requested assistance, and I can
16 only ---. I can only state that they were requests
17 from Tech Support and Tech Support's recommendation.

18 Q. Well, in your testimony --- in your first day of
19 testimony you said that had you been aware of those
20 memorandums, things would have been done differently
21 or something to that effect. Do you recall that?

22 A. I said that, had I been aware of these
23 memorandums, I certainly would have taken actions to
24 address them as a district manager. I did say that.

25 Q. Okay. Well, you would have taken action to

1 address them because they were matters of serious
2 concern or, you know, what level of concern did these
3 memos reflect, or haven't you been able to observe
4 them enough to say?

5 A. Well, they are an area of concern and --- but you
6 know, it's hard to put a moniker on it as far as, you
7 know, rating 'em low, medium, high or however you're
8 trying to lead me into this. There's some --- it
9 would have been an area of concern for me, without a
10 doubt. You know, I mean, that's close as I can say.

11 Q. For the record, I'm not trying to lead you into
12 anything.

13 A. Yeah. But I don't have --- I don't have --- other
14 than memorandums, I'm not knowledgeable, number one,
15 in the conditions in the mine at that particular time.
16 And there would be --- you know, I would --- it would
17 be an area of concern with just what I'm reading here
18 on the memorandums. There would have been other
19 factors that may have brought it into an extreme
20 concern, a gas outburst in a mine. We had an
21 accident. And all accidents, you know, are causes for
22 concern.

23 Q. Okay. Well, you read the memo. What does a
24 methane gas outburst mean to you, given your
25 experience?

1 A. Well, a methane gas outburst to me would be more
2 than normal liberation. Normal liberation, you plan
3 your ventilation system and mine design to have normal
4 rate of methane gas liberation as you mine coal. An
5 outburst is something that's above that. It's an
6 abnormal occurrence.

7 Q. It's an abnormal occurrence to have methane levels
8 such that require the withdrawal of miners from a
9 section or mine; is that ---?

10 A. That's not a correct statement. That is not a
11 correct statement.

12 Q. I'm trying to understand.

13 A. Yes. All right.

14 Q. So why don't you correct me.

15 A. In mining, you know, it's --- there are certainly
16 occasions that methane liberation in a face area of a
17 coal mine may stir it above the standards, and those
18 are --- can go up and include withdrawal of the
19 miners, you know, removal of power. There's --- you
20 know, varying degrees. If they occur consistently,
21 then something needs to be addressed in the
22 ventilation scheme of the mine. An outburst is
23 something above what would occur normally, again,
24 during extraction of coal and the normal rate of
25 liberation for that particular coal seam.

1 Q. Would you expect that if a methane outburst
2 occurred, production would stop in the area where the
3 gas was liberated?

4 A. And that's a fair statement. If you had an
5 outburst that the methane rose above the statutory
6 provisions we have, we have actions in the ventilation
7 regulations that require certain things, and that can
8 be as low as adjusting the ventilation controls on the
9 face to withdrawal and the removal of power. An
10 outburst, in my opinion, would be something that would
11 be greater than the ventilation systems and the scheme
12 for the mine would handle maybe for a short period of
13 time.

14 Q. Okay. Of course, you're familiar with MSHA
15 regulations and definitions at Part 50, definitions
16 50.2?

17 A. Uh-huh (yes).

18 Q. The definition of accident?

19 A. Right.

20 Q. Subsection (h). Take a look at (h)(2). Are you
21 familiar with that provision?

22 A. Yes, I am.

23 Q. The two methane bursts that are discussed in
24 Exhibits Three and Four --- Two and Three, I'm
25 sorry, ---

1 A. Uh-huh (yes).

2 Q. --- they qualify as accidents under this
3 definition?

4 A. (h)(2) you're referring to?

5 Q. No, (h)(4), unplanned inundation of a mine by gas.

6 A. I would say yes. If that --- if that outburst of
7 methane was sufficient to inundate, I would say yes.

8 Q. So how do you define inundation? Or from your
9 experience, what will you call the inundation of the
10 mine with gas?

11 A. Well, I go back --- I would go back again to just
12 what I said earlier. That would be a rate of
13 emissions of gas that would overwhelm the ventilation
14 system, and the ventilation system wouldn't be
15 adequate to dilute and render harmless. That would be
16 an inundation of gas, and it would rise above the
17 statutory provisions of the ventilation subpart 75.3.

18 Q. Have you had any --- recently in your district,
19 any reports of methane bursts in any mines?

20 A. Yes. We've had --- we've had some inundations,
21 but I'd have to go in and do some research to tell
22 you. But I would answer that, since I've been a
23 district manager in District 4, yes. I would answer
24 it that way.

25 Q. Have you had any recently in the last six weeks,

1 month?

2 A. I'd have to --- I would have to go back again and
3 search the data to provide you with an accurate
4 answer.

5 Q. Is a methane burst unusual?

6 A. Is a methane burst unusual? I would say it's not
7 common, you know. I mean, you know, it's not a common
8 --- it's not a common occurrence.

9 Q. By not common, you mean happens once a year, once
10 every five years?

11 A. No. I can't put that kind of a time frame on it.

12 Q. The memos, Exhibits Two and Three, describe
13 conditions in the mine. Do you recall that part of
14 them, where there was, for example, a fracture in the
15 floor behind the shields reportedly up to 240 feet
16 long?

17 A. Which memorandum are you referring to?

18 Q. This is, I'm sorry, on Exhibit ---.

19 A. Which exhibit, specifically?

20 Q. Exhibit Two, that's the memorandum of March 4th,
21 2004.

22 A. That does say that, 240 feet long.

23 Q. Is that unusual? In your experience?

24 A. Let me say this. Depending on conditions in the
25 mine, it's not unusual to have --- to have bottom

1 cracks.

2 Q. Uh-huh (yes).

3 A. And it's not unusual to have long bottom cracks
4 because of the pressures that you have on the face
5 area of the longwall. It depends on, again, the
6 amount of overburden and the integrity of the
7 underburden of the mine floor ---.

8 Q. This particular event, on February 18th, 2004,
9 that created the 240-foot long fracture behind the
10 shields, according to the memorandum, the shields were
11 taking weight and yielding before and after the
12 outbursts. The employees working at the headgate
13 section on the opposite side of the subsequent
14 longwall panel from the outburst area heard a thump.
15 The shearer had been down 20 minutes preceding the
16 event. Is that more unusual than most methane bursts?
17 You say you have ---?

18 A. Now, let's clarify something here.

19 Q. Okay.

20 A. We were talking ---. We were talking about cracks
21 in the wall ---

22 Q. Correct.

23 A. --- up until this point, and the methane outbursts
24 --- you know, you're tying that in, and I need for you
25 to clarify --- repeat what your question is.

1 Q. Sure. You're absolutely right. What we're
2 talking about was the fracturing, and then I've added
3 to that the circumstances represented in this March
4 4th memo, Exhibit Two. The heave reported at the face
5 tilted the longwall shearer away from the face toward
6 the shields, and at the same time there was a big
7 thump. See that, page two, under background, first
8 paragraph?

9 A. Yes, I do.

10 Q. What I'm really trying to get at here, Mr.
11 Hardman, is the events reported in these memos, were
12 they unusual and a matter of concern, given the facts
13 that are reported in these memos are different than
14 what you generally see with regard to either
15 fracturing or methane outbursts or the combination of
16 the two?

17 A. Yes.

18 Q. Now, Exhibit Four is basically a cover letter that
19 was sent back in June of 2004, sending a draft of what
20 turned out to be Exhibit Three, the July 15th memo.
21 And it was sent by George Aul to William Ross. And
22 that's not particularly noteworthy except for the
23 handwritten statement there which you mentioned, I
24 think it was on the record, a note to Doris,
25 handwritten 6/18/94 --- or '04, I'm sorry, please

1 place into company file for Performance Coal Company.

2 And you testified today about what was in that file.

3 So the only thing --- let me --- strike that.

4 These two memos marked Exhibit Two and Exhibit

5 Three, were they in the Performance Coal Company file

6 or were they in some other file?

7 A. Okay. Let me ---. Let me repeat what this says.

8 It says, please put into company file, company file is

9 underlined, for Performance Coal Company. And I think

10 he stated the place, which I'll correct that. The

11 file did not contain these memorandums.

12 Q. Okay. And just from also Exhibit Four it appears

13 that Pete Stone was looking at archived files in his

14 office and found this --- these memos. Is that a fair

15 reading?

16 A. It's my understanding that that is a fair

17 assumption on our part.

18 Q. Now, for the record, just to keep it clear, it's

19 not clear from this notation that this is referring to

20 just this one-page e-mail or if that's referring to

21 the memos? Okay. Do you know what that's referring

22 to?

23 A. Well, I would take this notation from my

24 perspective to mean that Pete Stone was looking for

25 information due to a request that had been received

1 from someone. Someone asked for specific information.
2 Pete would have been looking through every file source
3 available in that department, and that he would have
4 found this in the archived --- archived files. This
5 e-mail would have been somewhere in that department,
6 not in the --- not in the active file folder. It
7 would have been ---. It would have been warehoused
8 somewhere other than the active --- active files.
9 Does that answer your question?

10 Q. I think so. In any event, the two memos were not
11 in the Performance Coal Company file at least when you
12 asked people to look into it?

13 A. They were not in the active file for Performance
14 Coal Company, that is correct.

15 Q. You said you had 160 underground mines within
16 District 4?

17 A. Yes.

18 Q. How many of those are active and actually
19 producing coal or does that reflect ---?

20 A. Hold on just a second and I'll answer that
21 question. Just give me a moment.

22 WITNESS REVIEWS DOCUMENT

23 A. Of those mines, 114 would be active, producing,
24 and 46 would be inactive status and nonproducing.

25 BY MR. MCGINLEY:

1 Q. Thank you. Now, I understand that you haven't
2 thoroughly reviewed Exhibits Two and Three, but there
3 are statements in both of these documents relating to
4 information that Performance Coal Company had
5 developed that related to the methane burst. Do you
6 recall that?

7 A. Specifically what area ---?

8 Q. Well, they say the mines prepared a variety of
9 maps to portray overburden, innerburden, overmining,
10 and structural contour relationships appeared to be
11 devoted --- and appears to be --- have devoted
12 considerable effort to understanding the control on
13 the floor bursts. That's on page two of Exhibit Two,
14 at the top of the page, the first full paragraph.

15 A. That's what it says.

16 Q. And none of that information --- none of those
17 documents are in MSHA files, as far as you can tell at
18 this point?

19 A. That's a correct statement. As far as I can tell
20 at this point, you know, I have no knowledge that they
21 are.

22 Q. And this document --- well, I should say both
23 Exhibits Two and Three indicate that the information
24 in these memoranda were shared with Performance Coal.
25 And on page two, a senior mining engineer at

1 Performance Coal, longwall coordinator and mining ---
2 oh, there was a mine engineer of CNS, an agent,
3 District 4 present as well. And then on document,
4 Exhibit Three, an indication that three --- four
5 Performance Coal Company personnel had attended a
6 meeting and the information in this memorandum was
7 shared with them. That would be on page five of
8 Exhibit Three.

9 A. Exhibit Two states that --- refers to three
10 individuals that were present during discussions. One
11 would be a senior mining engineer for Performance Coal
12 Company, George Levo, that the other document, Exhibit
13 Three, refers to four individuals. And we had ---
14 Performance Coal Company representative by the name as
15 George Levo, senior mining engineer; Mike Millen, from
16 Performance Coal, Upper Big Branch Mine, and a Bill
17 Potter, from Performance Coal, Upper Big Branch Mine.

18 Q. Okay. So Performance Coal personnel knew both
19 about the bursts, they developed information about the
20 bursts, maps and so forth. They discussed them with
21 MSHA personnel on a couple of occasions, reviewed the
22 information in these two memoranda?

23 A. That's what the --- that's what the documents
24 state.

25 Q. Right. Right. So there's no doubt that --- that

1 Performance Coal management were very aware of the
2 fact that these coal bursts had occurred and the
3 potential for additional coal bursts?

4 A. Based on the language of these documents, then I
5 would say yes.

6 Q. And there were suggestions made, I think, in
7 the --- I believe in Exhibit Three, the July 15th,
8 2004 memo, under the title, considerations, on page
9 three, continuing on page four, that suggest
10 contingency plans to mitigate methane bursts. Do you
11 recall that? That's starting on page three, the
12 middle.

13 A. Documents --- Exhibit Three does contain
14 recommendations.

15 Q. Okay. And Massey may or may not have adopted some
16 or all of those recommendations, you don't know?

17 A. I have no knowledge of that.

18 Q. On Exhibit Two there's a statement that --- at the
19 top of page two, first full paragraph, mine personnel
20 reported that in the subsequent wall panel
21 degasification wells will be developed at the lower
22 Eagle seam in an attempt to decrease the potential for
23 future outbursts. Your records don't reflect whether
24 they did that, or would they reflect it?

25 A. I have no --- no records, once more, for this

1 record of this interview, to show actions.

2 Q. Well, but if Performance Coal was going to drill
3 the gas wells, they'd have to get the approval of MSHA
4 and it would have to be on their maps, wouldn't it?

5 A. That would be a correct statement.

6 Q. That's all I'm ---

7 A. Yeah.

8 Q. --- trying to ---.

9 A. That would be correct.

10 Q. And for example, some of these recommendations in
11 Exhibit Three, relating to increased airflow at the
12 longwall face, for example, that would be incorporated
13 into Performance Coal's ventilation plans so you could
14 determine whether there was changes made in response
15 to this memo or at least it might be possible to
16 determine that; is that correct?

17 A. I would answer that, yes, if those records
18 existed.

19 Q. Well, MSHA would have records going back. How far
20 back do you go back in terms of ventilation plans at a
21 particular mine?

22 A. I'd have to ---. I'd have to research that. It's
23 probably somewhere in the neighborhood of a three-year
24 retention on those.

25 Q. Do you still have a system called IPAL or

1 something like that?

2 A. IPAL is the --- we have --- yes, we use IPAL.

3 Q. Inspectors use that. They've got software and
4 computers and supervisors can look at records from
5 each mine, is that the way IPAL works?

6 A. IPAL ---. IPAL contains some data that you can
7 mine --- contains a few reports, but primarily the
8 function of IPAL is a vehicle for ---. That software
9 primary function is to provide a vehicle to issue
10 citations, orders, subsequent actions and upload it to
11 our data system. That's the prime function of IPAL.

12 Q. Are inspectors and supervisors --- do they use
13 IPAL to review the violation history of a particular
14 mine, especially of people who are new? A new
15 inspector going into a mine, want to familiarize
16 themselves with a history of a mine, would they be
17 using IPAL?

18 A. IPAL provides some information relative to the
19 history of a mine. It's limited --- you know, it's
20 limited in several respects. And some of the data's
21 in a 24-month history. That's the data sets, 24
22 months, and chop off the back, add it to the front.

23 Q. So is there another computerized system or
24 database that inspectors and MSHA management can use
25 to look at a more complete picture of the inspection

1 and enforcement record of a particular mine?

2 A. The data's available, but you're getting ---
3 you're getting away from the inspector's ability to do
4 that. You're talking about --- we have access to the
5 data set. It's a warehouse of data on a server, and
6 it's et al. queried. You have access to it, but it's
7 not something that the average CMI or the average
8 supervisor has capabilities of doing. You're getting
9 into some complicated ---

10 Q. Sure.

11 A. --- software and queries when that happens.

12 Q. So with regard to these methane outbursts that
13 occurred in 2003 and 2004 at the Upper Big Branch Mine
14 --- now, you became the district manager in 2006; is
15 that right?

16 A. Yes.

17 Q. And you really --- you didn't know about this
18 until the memo appeared under your door a couple weeks
19 ago; right?

20 A. That's correct.

21 Q. Had you known about it, would you want --- would
22 you have wanted your inspectors that go to the Upper
23 Big Branch Mine to know about that as well?

24 A. Absolutely.

25 Q. Is there any mechanism that inspectors could have

1 used to determine or to find this information that
2 would tell them that there had been methane outbursts
3 at Upper Big Branch, you know, in 2003 or 2004, that's
4 readily available to them?

5 A. No.

6 ATTORNEY WILSON:

7 Now, we've been going about an
8 hour-and-a-half. Why don't we just take a ---

9 MR. MCGINLEY:

10 Sure.

11 ATTORNEY WILSON:

12 --- short break?

13 MR. MCGINLEY:

14 Mr. Hardman should tell us, too, ---

15 ATTORNEY WILSON:

16 Yeah.

17 MR. MCGINLEY:

18 --- if he wants to break.

19 A. I'm fine, but if you guys want to take a
20 break ---.

21 ATTORNEY WILSON:

22 We'll just stretch.

23 SHORT BREAK TAKEN

24 ATTORNEY WILSON:

25 All right. Everyone's ready? We'll go

1 back on the record.

2 BY MR. MCGINLEY:

3 Q. Mr. Hardman, with regard to the considerations
4 that were mentioned in Exhibit Three, the memo of July
5 15th, 2004, if Performance Coal had implemented any of
6 those, would you expect there to be --- Performance to
7 have records of such implementation?

8 A. Would I expect them to have records?

9 Q. Yeah.

10 A. I can't answer that question. I mean, that would
11 be speculation on my part. I really wouldn't want to
12 answer that. You would have to ask Performance Coal
13 that question.

14 Q. For example --- and I appreciate that. Making
15 miners working at the longwall face, where conditions
16 that are associated with the occurrence of methane
17 bursts and ensuring that crews recognize that mining
18 could advance into a zone with a potential for a floor
19 outburst and ensuring that all crews understood the
20 plan with regards to, you know, what should happen
21 when there's an outburst, those are the things that it
22 would make sense for the coal company to implement if
23 it had experienced outbursts such as those described
24 in Exhibits Two and Three?

25 A. A prudent mine operator would take action in a

1 mine if you had an incident that this memorandum
2 describes.

3 Q. Well, I guess more specifically, would you expect
4 that miners working in areas where there is the
5 potential for a methane outburst, that those miners be
6 made aware of it and, you know, what they might do to
7 mitigate the impacts of it or to --- if there are
8 indications that outburst is about to occur, that they
9 can --- they can take certain action?

10 A. A prudent mine operator would --- would take such
11 action.

12 Q. The consideration number five on Exhibit Three,
13 that's on page four of the document, it says in the
14 third sentence, normally longwall recovery operations
15 are accomplished with reduced airflow because the
16 minimal mining alleviates methane problems. Longwall
17 face airflow similar to that used for mining may be
18 required during recovery. Do you have any idea of
19 what Performance Coal was doing at its longwall faces,
20 whether they --- the ventilation was consistent with
21 this recommendation?

22 A. That's a tough question to answer because to
23 answer that question, I would need to know back during
24 that period of time what the quantities were. And if
25 this were --- if this recommendation --- if I were

1 looking at it today, would tell me that you would need
2 to consider the face quantity to be during recovery
3 comparable to what's required during active mining.

4 Q. What's the difference, for the record?

5 A. During active mining you're extracting coal and
6 you recover a longwall face when it's completed to
7 whatever the stop point is in that block of coal.

8 That's retrieving the equipment off of the face.

9 Q. But in terms of the velocity of airflow, like
10 what's the difference or what --- numerically?

11 A. That's --- that is very mine --- that's mine-
12 specific, and you know, it has to be a velocity --- a
13 velocity that will dilute and render harmless for a
14 specific mine and even section conditions.

15 Q. Sure. But what this recommendation says is that
16 longwall face airflow should be --- should be
17 increased.

18 A. For the specific condition ---

19 Q. Right.

20 A. --- in this mine.

21 Q. Correct. That's what we're talking about here,
22 so --- does that make sense to you?

23 A. Does it make sense to me ---?

24 Q. Yeah. As a response to the knowledge that there
25 have been the type of outbursts, methane outbursts,

1 that were documented in 2003 and 2004?

2 A. The recommendation, yes, it does make sense to me.

3 Q. And there's recommendations regarding restricting
4 cutting and welding activities in areas that have a
5 high probability of floor gas outburst occurrence.

6 And that makes sense as well, would you agree with
7 that?

8 A. That makes sense in any area in the mine, period.

9 I mean --- you know, I mean, that's an activity in an
10 underground mine that you have ---

11 Q. Sure.

12 A. --- to control very carefully.

13 Q. And then they go on to say, well, you know, care
14 ought to be taken in checking for methane. And they
15 have a list of four bullet points here, including the
16 recommendation that the pan line be raised to allow
17 better access for testing under the pan line.

18 A. And again --- again, those are prudent things that
19 you do on any longwall. And those are areas --- those
20 are areas in a coal seam that liberates methane that
21 you're planning to have an accumulation during normal
22 mining. Those are just prudent things.

23 Q. So this should have been done. Notwithstanding
24 this memo, this should have been done at the Upper Big
25 Branch Mine, this type of test, raising the pan line,

1 for example?

2 A. Again, it depends ---. It depends on the problems
3 that they're having with methane. They're prudent
4 checks that any --- any face crew should perform.

5 Q. Okay. So they should be performing them at Upper
6 Big Branch?

7 A. And I would say yes to that.

8 Q. Okay.

9 A. As far as the checks go, I would absolutely say
10 yes.

11 Q. And on --- strike that.

12 In the March 4th, 2004 memo, Exhibit Two, on page
13 two, there's a mention of construction of a hazard
14 map. And that seems to be saying that it is possible
15 to develop a map that would identify areas of concern
16 for methane outbursts; is that --- is that fair?

17 A. Give me a second.

18 Q. Sure.

19 WITNESS REVIEWS DOCUMENT

20 A. Basically that is a ---. That is a fair
21 statement.

22 BY MR. MCGINLEY:

23 Q. So as part of this investigation, we might be well
24 advised to check with Performance and Massey to
25 determine if they have developed such a hazard map?

1 A. You've answered that. I mean, I can't --- you
2 know, I can't make a statement concerning what this
3 investigative team would do.

4 Q. Well, I understand. You don't know of any hazard
5 map because there are no records relating to this
6 gas ---?

7 A. I don't have knowledge of a hazard map at this
8 point in time.

9 Q. Okay. Was there a former District 4 ventilation
10 specialist or supervisor that is working for Massey
11 now?

12 A. Yes.

13 Q. Who's that?

14 A. The one that I'm aware of is Bill Ross works for
15 A.T. Massey at this point in time.

16 Q. Now, is he mentioned in Exhibit Four?

17 A. Well, Exhibit Four, the e-mail, was sent to
18 William L. Ross, who is Bill Ross.

19 Q. Okay. And he's working with Massey now?

20 A. He is, yes.

21 Q. With Massey or Performance, or do you have any
22 idea?

23 A. I have no idea who within that corporation he's
24 actually employed by. I don't --- I can't answer
25 that.

1 Q. I know. I understand. I'm just asking ---.

2 A. That's a question I can't answer, you know.

3 Q. Well, we do that, but we don't know in advance ---

4 A. All right.

5 Q. --- what you know.

6 A. All right.

7 Q. So in any event, William L. Ross, who worked for
8 MSHA in ventilation is now working for Massey. And he
9 certainly would have known about these gas outbursts
10 because these --- at least the July 15th memo and the
11 draft memo dated May 27th, 2004 are routed through
12 him?

13 A. I would say that's a correct statement.

14 MR. MCGINLEY:

15 I don't have any questions. Thanks, Mr.

16 Hardman.

17 EXAMINATION

18 BY MR. FARLEY:

19 Q. Bob, based on your reading of the memos we've now
20 referred to as Exhibits Two and Three, ---

21 A. Okay.

22 Q. --- in your opinion, these are memos which
23 document methane outbursts in July of 2003, in
24 February of 2004 at the Upper Big Branch Mine. Do
25 those memos, in your opinion, suggest that the gas

1 outbursts originated from the strata below the lower
2 Eagle coal seam?

3 A. Yes.

4 Q. Okay. Now, to follow that up, one of the --- one
5 of the memos mentions that the company was thinking of
6 degasification, undertaking some degas --- coal seam
7 degasification. In your opinion, would you think that
8 coal seam degasification of the lower Eagle seam would
9 have any impact on the gas contained within the strata
10 below the lower Eagle coal seam?

11 A. You're asking me --- let me see if I fully
12 understand what you --- the question you've asked me.

13 Q. Sure.

14 A. You're asking me if we limited our degasification
15 to the Eagle seam, would it have an impact on the
16 potential gas below the seam, ---

17 Q. Yes, sir.

18 A. --- in my opinion? In my opinion, no.

19 Q. Okay.

20 A. It would have --- it could have very --- it could
21 have an impact on the overall liberation of the mine
22 methane, but the potential that's in the underlying
23 strata, unless --- I can't say that for a hundred
24 percent certainty. It would depend on how porous the
25 strata below the Eagle seam was and how much it

1 could --- how well it was captured by the strata under
2 that seam of coal. That would be my answer
3 officially.

4 Q. Are you aware of any existing technologies that
5 would allow degasification of the strata, in this case
6 below the lower Eagle coal seam, to facilitate mining?

7 A. I'm not familiar with any --- anything along those
8 lines. That would be something that would certainly
9 --- if I were to have that question, I would refer
10 that to somebody that had the technical expertise to
11 get that answer for me.

12 Q. I'm looking at page two of Exhibit Two, which
13 would be the memo dated March 4th, 2004.

14 A. Okay.

15 Q. Under background, about the fourth line down, it
16 reads, gases issued from a fracture in the floor
17 behind the shields that was reportedly up to 240 feet
18 long. Now, should we interpret that to mean that the
19 fracture might have been possibly less or possibly
20 more, or does it seem to suggest that we --- that the
21 writer didn't exactly know the exact dimensions of
22 this fracture? Is that ---?

23 A. It just says up to 240 feet long. And I really
24 --- I really can't read into what the writer meant by
25 that. Literally taken, put a limit on it, but it

1 doesn't have an exact measurement on the crack, yes.

2 MR. MCGINLEY:

3 For the record, there is a map appended

4 to Exhibit Two that purports to represent locations of

5 gas outbursts. And then the original copy apparently

6 is color coded to that effect, for the record.

7 MR. FARLEY:

8 Are you talking about this map?

9 MR. MCGINLEY:

10 Yes.

11 MR. FARLEY:

12 Okay.

13 BY MR. FARLEY:

14 Q. The events addressed in the memorandums now known

15 as Exhibits Two and Three occurred in 2003 and 2004.

16 Are you aware of any similar events at the Upper Big

17 Branch Mine after 2004?

18 A. I'm not personally aware, no.

19 Q. Okay. By the way, we've had a previous question

20 about Mr. Bill Ross. Do you know when Mr. Ross ended

21 his employment with MSHA?

22 A. I don't know that exact date. I'd have to

23 research that.

24 Q. Okay.

25 A. If you want me to do that, I certainly will.

1 Q. Okay.

2 MR. FARLEY:

3 That's it.

4 RE-EXAMINATION

5 BY MR. PAGE:

6 Q. To follow up on Terry's question, was Mr. Ross
7 here when you became district manager?

8 A. Yes, he was the supervisor when I came back to the
9 district in 2006, when I came back acting ---.

10 Q. Approximately how long did he work for you,
11 roughly?

12 A. A year, 18 months. I'm not sure, Norman. I'd
13 have to think a little bit on that. Again, I'd have
14 to get you those dates.

15 Q. Okay. So approximately a year?

16 A. A little more than a year. Yeah, more than that.
17 I'm trying to think. I've been at this --- I was ---
18 I came back here acting in August of 2006. And I
19 don't recall --- I do not recall the exact date when
20 he left. And I really wouldn't want to answer that.
21 I can get it for you or you can request it from the
22 district.

23 Q. No. I think we need to ask Mr. Ross some
24 questions when it comes his turn.

25 A. But he did work for me for a period of time.

1 Q. Yes. Okay.

2 A. I'll answer it that way.

3 Q. Okay. That's good enough. Do you know if the
4 safety precautions and the requirements for the
5 longwall, were they in place today the same as they
6 was when you came here or when Mr. Ross was working
7 here? Have they been upgraded or been changed, the
8 longwall portion of your ventilation plan?

9 A. I'd have to go and --- again, it would take me a
10 moment to go through the revisions and to answer that,
11 Norman. And I have a list of those, if you'll give me
12 a moment.

13 Q. Yeah, we'll give you a moment.

14 A. You know, I mean, it's --- I have to go in and
15 actually take a look.

16 WITNESS REVIEWS DOCUMENT

17 A. There's been some ventilation revisions approved.
18 And going backward in time, the --- we would have
19 had --- we would have had two that comes to memory.
20 One would have been out there on this particular ---
21 particular longwall.

22 BY MR. PAGE:

23 Q. Was that the disapproval on 11/20/09?

24 A. That would ---. That would be that one.

25 Q. Okay.

1 A. And then we had quite a few plans submitted, but
2 that one would have been --- would be the main one
3 that we would have dealt with that would have been
4 related directly to that longwall.

5 Q. When did this longwall start back up by, the
6 approximate time?

7 A. I think it was in August of last year that they
8 started --- the ventilation, Bandytown fan. You know,
9 that fan came online somewhere in that neighborhood,
10 and it was December, if I recall correctly, of last
11 year when we dealt with the longwall itself.

12 Q. Okay. You know, I've just pulled some data, and
13 it may not be correct, but my data shows no approvals
14 on the longwall since '05 or somewhere in there.

15 A. There's been nothing that would have changed in
16 the ventilation scheme.

17 Q. Okay.

18 A. These were --- you know, these were belt air, you
19 know, that would be certainly ---.

20 Q. I was wondering if they had something in there
21 that had changed anything on the wall since it started
22 back up?

23 A. I would say no.

24 Q. Okay. That's what I was getting at.

25 A. Okay. That's the question I was answering.

1 Q. That's what I was ---.

2 A. Okay.

3 Q. So most likely, this plan was in place when Mr.
4 Ross was there, on the longwall?

5 A. I would say yes. Yes.

6 Q. Okay. That helps me on the memo.

7 A. Okay.

8 MR. PAGE:

9 That's all the questions I've got on the
10 memos.

11 ATTORNEY WILSON:

12 Okay. Terry, any follow-up?

13 MR. PAGE:

14 Any follow-up on the memo?

15 MR. FARLEY:

16 No.

17 ATTORNEY WILSON:

18 No. All right.

19 BY MR. PAGE:

20 Q. Let's talk a little bit about the overlays, Bob,
21 and the area that --- of the longwall when they drove
22 this headgate up. And could you tell me --- explain
23 to me about your SOPs, or who handles the overlays and
24 how do you evaluate when they submit, like in this
25 situation, a roof control plan for this longwall

1 panel?

2 A. I can, and just give me a moment.

3 Q. Sure.

4 A. While I'm going into this stack of SOPs, I want to
5 clarify something that was on the record the last time
6 I was interviewed. And you may be leading me in that
7 direction, I don't know, but that was a statement by
8 the interview panel about the ARMPS in this area, ---

9 Q. Uh-huh (yes).

10 A. --- and were these pillars adequately sized.

11 Q. Uh-huh (yes).

12 A. And were the --- the question was on the adjacent
13 headgate --- or excuse me, Tailgate 22, the initial
14 --- the initial entries headed in that direction and
15 were they adequate. And the ---.

16 Q. Basically my question is, they drove this up, and
17 you had --- you had those projections. You knew that
18 this was going to be a headgate over --- this wall.

19 A. That's correct.

20 Q. They should have gave you that information so you
21 could evaluate it.

22 A. And they ---.

23 Q. And I want to know how you --- how District 4 does
24 that.

25 A. Okay. And I'll get there. The statement, again,

1 during my last interview session was that these pillar
2 sizes were inadequate, and that statement was made by
3 the interview team, if I recall correctly. You can
4 research the record. The requirements for that area,
5 the company did submit an analysis and we --- I have a
6 copy of that, and I'll go into the figures in a
7 moment.

8 Q. I mean, you can walk us through how they do it. I
9 mean, I don't have to see the ---

10 A. SOP?

11 Q. --- SOP myself.

12 A. All right. What ---.

13 Q. You can explain it.

14 A. All right. What they ---

15 Q. That's fine with me if it's fine with everyone
16 else.

17 A. --- we have is they submit --- they submit
18 projections for mining. And the analysis --- we
19 require them to submit to us the analysis. Now, I
20 have the analysis for Headgate 21. That's the
21 headgate entry that we're talking about, ---

22 Q. Okay.

23 A. --- which is the active longwall. This analysis
24 was submitted to us on December 14th, 2009.

25 Q. Along with the plan?

1 A. Yes. And I have a copy of ---

2 Q. The roof control plan.

3 A. --- the roof control plan for the mine.

4 Q. Okay.

5 A. The roof control plan was approved by me December
6 23rd, 2009. All right. The stability factor for
7 Headgate 21, without any additional supplemental
8 support factored in, the requirement for that was
9 1.13, one point 13-hundredths. The stability for the
10 pillar factors themselves was 1.12.

11 Q. That's for advance.

12 A. This is the stability factor and the --- I don't
13 know whether it even gives you this, but it does
14 include the width of the gob in this calculation. And
15 it says ---

16 Q. Okay.

17 A. --- it says here, the width of the gob is going to
18 be 620 feet. And the age of the workings is
19 anticipated to be ten years. So they're saying it's
20 mined. That's the width of the gob. So it does
21 include --- it does include after the longwall has
22 been knocked, so it's sitting on top. It does take
23 that into consideration. So there's 100 --- this is
24 100 --- under 100 now, and then it goes into
25 recommendations to compensate if this literally is not

1 1.13. So the mitigating factors, that this says that
2 --- it says that the tailgate pillar stability factor
3 is less than the suggested value of 1.13. And then it
4 says, predicted conditions, development, green, a
5 major interaction is unlikely with 1.12. Now, it says
6 --- the tailgate, it says, a major interaction should
7 be considered likely unless a pattern of supplemental
8 roof support, cable bolts or the equivalent, is
9 installed. It's saying that an interaction --- a
10 major interaction should be considered unless
11 supplemental roof support is installed, cable bolts
12 or ---.

13 Q. What do you mean by major interaction?

14 A. That would mean that you could have --- that means
15 you could have --- could have crushing, rib sloughing,
16 rib sloughage and those things. And they talk about
17 ribs --- it says rib instability is also likely
18 without the supplemental support. Now, we go to the
19 roof control plan.

20 Q. Okay.

21 A. The roof control plan supplemental support in the
22 tailgate entries, which is headgate, would become the
23 tailgate.

24 Q. Uh-huh (yes).

25 A. So that would be --- that's an area where you

1 could have --- you know, the pressures would be
2 greater after you mined it out. We have the minimum
3 of the primary roof support, which is in this diagram,
4 and then we have cable bolts installed in between
5 every row of primary support. That's the minimums in
6 the roof control plan. And then --- and this
7 supplemental support, it consists of two cable bolts
8 in the center, two cable bolts, and they have to be
9 eight foot, with the option of putting standing
10 support in lieu of.

11 Q. That's in the new tailgate, the headgate entry or
12 in both?

13 A. That is the roof control plan for the tailgate
14 entry of a roof ---.

15 Q. That's this panel?

16 A. Yes.

17 Q. That's going to be ---.

18 A. That's going to be tailgate --- so this has to be
19 in there in the tailgate entry.

20 Q. So it's in both?

21 A. Yes. It would be ---.

22 Q. They do it in advance?

23 A. Yeah. It would have to be ---. It would have to
24 be in both because the headgate becomes the tailgate.

25 Q. I just wanted to make sure I understood.

1 A. Yes. And it has to be maintained a thousand foot
2 outby the longwall face at all times.

3 Q. Okay.

4 A. Do you follow that?

5 Q. So they don't have to put it in until they're
6 already longwalling, and they have a thousand feet
7 outby? They don't have to do it on advance?

8 A. That's correct.

9 Q. Okay. Okay. I understand.

10 A. Now, when we go into adjacent tailgate
11 entries, ---

12 Q. Uh-huh (yes).

13 A. --- now, when this becomes an adjacent tailgate
14 entry, in addition --- in addition to that support, we
15 have to have supplemental support in the form of a
16 ten-inch prop setter, a sand prop, or a four-point
17 crib. In addition to the support we've already
18 installed, now we're installing cribs. That's in
19 areas having less than a thousand foot of cover.
20 That's in low-cover areas. So that's in addition
21 to --- we're talking about the minimum difference
22 between 1.12 and a recommended 1.13.

23 In areas that are greater than a thousand foot of
24 cover, overburden, then we go to nine-point cribs or
25 Lincoln Log tri-set prop setters or tri-set sand

1 props.

2 Q. Do you know what the name of this program that
3 they ran?

4 A. Yes. It's --- it would be ALPS data, would have
5 been the data that they --- that I would take. It's
6 ALPS.

7 Q. Okay. That was running for a longwall or a pillar
8 section?

9 A. This was --- this is longwall because it's --- if
10 the width of the gob is 620 feet ---.

11 Q. What's the width of this gob?

12 A. I don't know. I'd have to scale it and measure.
13 You know, I don't ---.

14 Q. Okay.

15 A. But it is for --- you know, the calculations
16 are --- this will provide it looks like a stability
17 factor of 2.37 on advance, ---

18 Q. Yeah.

19 A. --- and then it comes in --- these are the
20 stability factors as they vary between the bleeder,
21 the tailgate, the headgate loading. I mean, there's
22 different calculations here, you know, in this. And
23 I'm not an expert on this program, but ---.

24 Q. Can you tell us what it is, Bob?

25 OFF RECORD DISCUSSION

1 A. This face right here, according to the scale on
2 the map, is approaching a thousand feet. It's under a
3 thousand, but it's approaching ---.

4 BY MR. PAGE:

5 Q. Nine something?

6 A. Yeah. That's what I would say.

7 Q. How do you --- how does the district verify those
8 numbers? Do you know someone that runs 'em or ---?

9 A. The Roof Control --- the Roof Control department
10 runs --- I think it may be ARMPS, on this.

11 Q. Okay.

12 A. That would be --- would be my answer.

13 Q. I guess my next question is, was it also taken
14 into consideration when they ran that, and I don't
15 know if it tells it or not, of any mining overtop of
16 it?

17 A. It does ---. It does take into account previous
18 seam parameters, and it took --- and I misspoke. The
19 panel with --- for the active longwall projection was
20 a thousand feet. The previously-seen parameter was
21 620.

22 Q. That's the ones above it.

23 A. That would be the one above it. That does
24 take --- this program does take into account the mined
25 areas above because it says the age of the workings.

1 And I misspoke on that because that was the age of the
2 workings in previous parameters. It takes into
3 consideration innerburden thicknesses, previous mining
4 gob layout. It takes into position active
5 undermining, if there would be any. And this is an
6 analysis of longwall pillar stability for the active
7 seam of the mine.

8 Q. Does it take into consideration areas where
9 barriers --- was crossing barriers? I know when a
10 longwall is mined out, it's one seam above it. But if
11 you have barriers ---.

12 A. And it takes into account loading factors, but
13 Norman, I don't have the information here ---

14 Q. Okay.

15 A. --- to tell me that it would tell you if there's a
16 pillar not mined in --- in the seam above.

17 Q. But that's where you would take an error factor in
18 consideration?

19 A. Yeah. And you ---.

20 Q. Would that have an error factor in it?

21 A. I'd have to look here again. I don't run ---. I
22 don't run this personally, but it does have an error
23 factor built into the calculations. I can tell you
24 that.

25 Q. Okay. With that mined out up above you,

1 what's --- in evaluating the plan, Bob, was there any
2 consideration or evaluation to where there would be
3 any kind of water above it or ---? Your roof control
4 person, he's interviewed.

5 A. That is reviewed for impounded water. And if
6 you'll give me your register just a second, I'll point
7 you to what's required. I think ---

8 Q. 1716.

9 A. --- we evaluate what the operator submits to us,
10 and then our personal knowledge of mining above, take
11 a look at the areas that would have the potential.

12 But again, the operator, by law, is required to
13 provide us with information concerning the potential
14 for impounded water in mined-out areas above. That's
15 a requirement by law. And you are --- and they're
16 required to submit a plan to mine under bodies of
17 water, if such areas are present. That's an operator
18 obligation to provide us that information.

19 Q. Okay. So ---.

20 BRIEF INTERRUPTION

21 A. You're okay. Go ahead.

22 BY MR. PAGE:

23 Q. Okay. I just wanted to see if this is an
24 emergency ---. It don't appear to be.

25 A. Okay.

1 Q. So you had someone to evaluate those numbers when
2 they submitted them to you?

3 A. That's correct.

4 Q. Okay.

5 MR. PAGE:

6 Bob?

7 ATTORNEY WILSON:

8 Pat.

9 RE-EXAMINATION

10 BY MR. MCGINLEY:

11 Q. You were referring to a couple of documents
12 discussing the roof control plan. What were the
13 documents? Can you identify them for the record?

14 A. This is the --- currently the approved roof
15 control plan for the Upper Big Branch Mine-South.

16 Q. Do you have a date on that? It was December 23rd,
17 2009?

18 A. December 23rd, 2009.

19 Q. When was that submitted, that roof control plan,
20 originally submitted?

21 A. When it was actually submitted?

22 Q. Yes. Is that reflected in the document you have?

23 A. Yes. It was submitted to us on October 27th,
24 2009.

25 Q. And you had another document. It was the

1 calculation of the analysis with the pillar.

2 A. Yes.

3 Q. And can you identify that document for the record?

4 Is that part of the roof control plan file?

5 A. This is --- this part of the roof control plan
6 file. It's the stability --- pillar stability factor.

7 Q. Is there a date on that?

8 A. There is a date on there. This was 12/14/2009.

9 Prior to the approval of the plan, we received this
10 document.

11 Q. And you're referring --- just for the record, to
12 make the record clear, you were using an acronym, I
13 think, referring to the software used to design the
14 stability analysis and the roof control plan. What
15 was that. ARMPS?

16 A. There's several different --- there's an ARMPS
17 and, you know, there's an ALPS. And the full name,
18 you know, sit's the --- A-L-P-S, it stands for
19 basically longwall pillar stability.

20 Q. And the ARMPS?

21 A. That ARMPS would be --- again, I can't answer that
22 with the total name of it with absolute certainty. I
23 would be hesitant to do that.

24 Q. Which of these do your people use and which --- I
25 think you were trying to identify this in your

1 testimony today. Which one does Performance or Massey
2 use?

3 A. This was an ALPS, A-L-P-S, submittal, longwall
4 pillar stability submittal, because this was a
5 longwall.

6 Q. That was --- the ARMPS is running the pillar?

7 A. Yes. It's retreat mining. But as far as a full
8 acronym, A-R-M-P-S, it is room and pillar. But the
9 full name, I would be hesitant because I ---.

10 Q. Sure.

11 A. Yeah.

12 Q. You used those acronyms, and so the record has to
13 reflect analysis of room and pillar or something
14 like ---.

15 A. Something along those lines, yeah.

16 Q. And then your testimony, which one was being used
17 by your folks?

18 A. This is the ---. This is the ALPS, longwall
19 pillar stability, because this dealt with a longwall
20 system.

21 Q. Right. And that was submitted by Performance?

22 A. They submit this file, and we check the
23 calculations.

24 Q. You check the calculations, using the same
25 program?

1 A. We check the calculations. We have available
2 these programs, ---

3 Q. Right.

4 A. --- and we check their numbers.

5 Q. Just for the record, ---

6 A. I understand.

7 Q. --- everybody reading this transcript won't
8 understand ---.

9 ATTORNEY WILSON:

10 We can put a copy of that as an exhibit.

11 MR. MCGINLEY:

12 Yeah, that's probably a good idea.

13 A. That's fine. Uh-huh (yes).

14 BY MR. MCGINLEY:

15 Q. What was the error factor?

16 A. I don't know the exact error factor. That I do
17 not know. I'd have to ask somebody that does this
18 every day.

19 Q. But just from your experience, they do --- the
20 program incorporates an error ---?

21 A. The program does incorporate an error factor, but
22 the exact error factor, I can't tell you.

23 Q. You were discussing the roof control plan, I
24 believe, of Performance and you were --- for example,
25 you said it states instability is likely without

1 supplemental support. What's the significance of that
2 information? How do you --- how do you interpret
3 that, if you generalize it for a layperson?

4 A. All right. This minimum stability factor that you
5 have here in this particular --- this program
6 recommends that --- in this particular case, that a
7 value of 1.13 be present. If it were 1.13 or above,
8 then it's saying basically that the pillar size would
9 be adequate with primary support.

10 Q. Uh-huh (yes).

11 A. And then if it is below the suggested value, this
12 program tells you what recommendations that you should
13 consider. And this particular one said on development
14 that major inaction --- interaction is unlikely. And
15 then it also said, on the tailgate, that we should ---
16 to avoid a major interaction, which would be --- which
17 would be sloughage of the pillars or those such
18 things, that we should consider a pattern of
19 supplemental roof support, cable bolts or equipment.
20 And then it also says without that, rib instability is
21 likely without that. So what it's saying, if you
22 weigh it up, you'll have some instability, sloughage
23 of the ribs, and that you could have --- could have
24 some major interaction between the seams above and
25 seams below.

1 Q. And then it provides the options of what they'll
2 do if there's any indication of that major
3 interaction?

4 A. It doesn't --- it doesn't provide --- if there's
5 any indications of interaction, yeah. You also must
6 remember that the approved roof control plan are the
7 minimums, and that the operator has the obligation
8 under 75.202(a) to examine those areas, and if there
9 are conditions that are unknown and develop during the
10 course of mining activity, that they take whatever
11 action is necessary to support the roof. And that's
12 well above and beyond, again, the plan, as I approved,
13 of the mines.

14 Q. And they were having some problems with stability
15 of pillars before that approval; is that right? I
16 recall testimony that ---.

17 A. When I became aware of any --- the issues at hand,
18 they had had a roof fall and there was sloughage, and
19 there was some indications that ventilation controls
20 had to be repaired. And eventually what it led up to
21 is this. The company elected not to take care of
22 these conditions, and that's the reason ---

23 Q. Right.

24 A. --- that the new --- the new tailgate is being
25 developed.

1 Q. Now, could they have taken care of those
2 conditions? Was there --- I mean, they opted not to,
3 but in your experience, in your view, could they have
4 continued by taking certain types of actions to
5 provide additional support?

6 A. I actually didn't firsthand observe these
7 conditions, so that will be a difficult question to
8 answer. Could they have --- there is a high
9 possibility that they certainly could have. If there
10 was a roof fall --- if there was an isolated roof fall
11 in there, and you know, to have this sloughage, I
12 can't tell you whether it was major sloughage, but
13 there was enough interaction to cause some damage to
14 ventilation controls. And you know, there's a
15 possibility they could have installed additional
16 floor-to-roof support in there and maybe help, I don't
17 know, but again, I didn't firsthand see the
18 conditions.

19 Q. I think we had testimony from some others that
20 did.

21 A. Okay.

22 MR. MCGINLEY:

23 Okay. I don't have anything else.

24 A. You guys should have this document. This is
25 a ---.

1 ATTORNEY WILSON:

2 The roof control plan. Are you done?

3 MR. MCGINLEY:

4 Yeah, I'm done.

5 ATTORNEY WILSON:

6 Terry?

7 MR. FARLEY:

8 No.

9 RE-EXAMINATION

10 BY MR. PAGE:

11 Q. Let me ask you a question, Bob.

12 A. Uh-huh (yes).

13 Q. I think probably the next thing that we need to
14 get into is the night of the explosion.

15 A. Okay.

16 Q. Now, that may take a while. You said you had like
17 an hour-and-a-half or something a while ago.

18 A. Yeah. I got about another hour.

19 Q. Okay. Do you want to go through this or do you
20 want to --- we got you scheduled for Sunday, or what
21 do you want to do?

22 A. I mean, I could go through this. I don't know. I
23 don't know what extent you're talking about.

24 Q. I figure it's going to take anywhere from an
25 hour-and-a-half to two hours. Now, I don't know.

1 Because I'm sure all of us have got quite a few
2 questions.

3 A. Maybe we better do that.

4 Q. That's why I wanted to bring it up.

5 A. You'll have the time on Sunday because, you know,
6 I mean ---.

7 Q. I don't want to get halfway through it ---

8 A. And then stop.

9 Q. --- and then have to stop and try to pick up with
10 it. I would either go through it or reschedule.

11 ATTORNEY WILSON:

12 Why don't we talk about this. We can go
13 off the record. Let's go off the record.

14 OFF RECORD DISCUSSION

15 ATTORNEY WILSON:

16 We're back on the record. We had a
17 conversation off the record, and everyone is in
18 agreement that the best course of action is to stop
19 the interview at this point. It's ten 'til four
20 o'clock on Friday afternoon, and we will reconvene
21 here, on Sunday, which would be June 6th, at two
22 o'clock p.m. Off the record.

23 * * * * *

24 STATEMENT UNDER OATH CONTINUED AT 3:50 P.M.

25 * * * * *

1 STATE OF WEST VIRGINIA)

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 R. Brant