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Statement Under Oath of Mike Hicks

Date: June 8, 2010

Case:

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STATEMENT UNDER OATH
OF
MIKE HICKS

taken pursuant to Notice by Danielle Ohm, 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 Tuesday,
June 8, 2010, beginning at 10:00 a.m.

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A P P E A R A N C E S

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

2

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I N D E X

1		
2	OPENING STATEMENT	
3	By Attorney Babington	6 - 9
4	WITNESS: MIKE HICKS	
5	EXAMINATION	
6	By Mr. Watkins	9 - 35
7	EXAMINATION	
8	By Mr. Farley	35 - 36
9	RE-EXAMINATION	
10	By Mr. Watkins	36 - 67
11	RE-EXAMINATION	
12	By Mr. Farley	67 - 68
13	EXAMINATION	
14	By Ms. Monforton	68 - 73
15	RE-EXAMINATION	
16	By Mr. Farley	74 - 75
17	RE-EXAMINATION	
18	By Ms. Monforton	75 - 76
19	RE-EXAMINATION	
20	By Mr. Watkins	77 - 82
21	RE-EXAMINATION	
22	By Ms. Monforton	82 - 83
23	CLOSING STATEMENT	
24	By Attorney Babington	84 - 85
25	CERTIFICATE	86

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

EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

One

Map

53*

Two

Bandytown Fan Map

84*

*exhibits not attached

P R O C E E D I N G S

ATTORNEY BABINGTON:

My name is Matt Babington. Today is June 8th, 2010. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is Tim Watkins, an accident investigator with the Mine Safety and Health Administration, another agency of the U.S. Department of Labor. Also present are several people from the State of West Virginia. I ask that they state their appearance for the record.

MS. MONFORTON:

Celeste Monforton, with the Governor of West Virginia special team.

MR. FARLEY:

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

MR. O'BRIEN:

John O'Brien, with the West Virginia Office of Miners' Health, Safety and Training.

ATTORNEY BABINGTON:

There's several members of the investigation team also present in the room today.

Tim Watkins will be conducting the questioning.

All members of the Mine Safety and Health

1 Accident Investigation Team and all members of the
2 State of West Virginia Accident Investigation Team
3 participating in the investigation of the Upper Big
4 Branch Mine explosion shall keep confidential all
5 information that is gathered from each witness who
6 voluntarily provides a statement until the witness
7 statements are officially released. MSHA and the
8 State of West Virginia shall keep this information
9 confidential so that other ongoing enforcement
10 activities are not prejudiced or jeopardized by a
11 premature release of information. This
12 confidentiality requirement shall not preclude
13 investigation team members from sharing information
14 with each other or with other law enforcement
15 officials. Your participation in this interview
16 constitutes your agreement to keep this information
17 confidential.

18 Government investigators and specialists
19 have been assigned to investigate the conditions,
20 events and circumstances surrounding the fatalities
21 that occurred at the Upper Big Branch Mine-South on
22 April 5th, 2010. The investigation is being conducted
23 by MSHA under Section 103(a) of the Federal Mine
24 Safety and Health Act and the West Virginia Office of
25 Miners' Health, Safety and Training. We appreciate

1 your assistance in this investigation.

2 After the investigation is complete, MSHA
3 will issue a public report detailing the nature and
4 causes of the fatalities in the hope that greater
5 awareness about the causes of accidents can reduce
6 their occurrence in the future. Information obtained
7 through witness interviews is frequently included in
8 these reports. You should know that if you request
9 confidentiality, confidentiality will only be granted
10 on a case-by-case basis. Your statement may also be
11 used in other proceedings.

12 You may have a personal representative
13 present during the taking of the statement and may
14 consult with the representative at any time. For the
15 record, do you have a representative with you here
16 today?

17 MR. HICKS:

18 No, I do not.

19 ATTORNEY BABINGTON:

20 Thank you. Your statement is completely
21 voluntary. You may refuse to answer any question and
22 you may terminate your interview at any time or
23 request a break at any time. Since this is not an
24 adversarial proceeding, formal Cross Examination will
25 not be permitted. However, you may ask clarifying

1 questions as appropriate.

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

8 I'd like to thank you in advance for your
9 appearance here. We appreciate your assistance in
10 this investigation. Your cooperation is critical in
11 making the nation's mines safer.

12 After we finish asking questions, you'll
13 have an opportunity to make a statement and provide us
14 with any other information you believe to be
15 important. If at any time after the interview you
16 recall any additional information that you believe
17 might be useful, please contact Norman Page at the
18 contact information previously provided.

19 -----
20 MIKE HICKS, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS
21 FOLLOWS:

22 -----
23 EXAMINATION

24 BY MR. WATKINS:

25 Q. Good morning, Mike.

1 A. Good morning.

2 Q. I appreciate you coming in. Listen, I got some
3 background information I need to run over with you.
4 Okay? Could you please state your full name and spell
5 your last name, please?

6 A. Michael H. Hicks, H-I-C-K-S.

7 Q. And could you please state your address and home
8 telephone number?

9 A. [REDACTED]

12 Q. Okay. And are you appearing here today
13 voluntarily?

14 A. Yes, I am.

15 Q. Okay. Mike, how long have you worked for MSHA?

16 A. Since '98.

17 Q. And your current duty station is?

18 A. Mount Hope, field office supervisor.

19 Q. How long have you been at Mount Hope as a
20 supervisor?

21 A. I'm working on my third year.

22 Q. Did you work at Mount Hope as a CMI ?

23 A. Yes, I did. I don't remember exactly when I
24 started. It was around 2002 in Mount Hope, I believe.

25 Q. 2002. So from '98 to 2002, what was your ---?

1 A. The Pineville field office, as a CMI.

2 Q. As a CMI, okay. Your present position is field
3 office supervisor?

4 A. Yes, sir.

5 Q. And how long have you been supervisor, did you
6 say?

7 A. About two-and-a-half years. Somewhere in that
8 neighborhood.

9 Q. Okay. Now, as I understand it, the enforcement
10 division is broken up into two different divisions.
11 Who is your supervisor?

12 A. Link Selfe.

13 Q. Link Selfe, okay. Mike, just take a couple
14 minutes here and give us a little rundown of your
15 mining history and experience, if you will.

16 A. Started in the coal mines in 1969. I have done a
17 little bit of everything from roof bolt operator, pump
18 repairman, electrician, section boss, shop foreman up
19 to supervisor. I was mine foreman and mine manager.

20 Q. Do you hold any specialized training or
21 certifications, mine foreman, any kind of papers?

22 A. Mine foreman in West Virginia, mine foreman in
23 Illinois, electrical, at one time I let my EMT card
24 go, shop foreman. I think that pretty well covers all
25 of it.

1 Q. You're also a member of the mine emergency ---
2 MSHA's Mine Rescue?

3 A. Yes, I am.

4 Q. We'll get into that a little bit later, but ---.
5 As field office supervisor, what are your primary
6 roles and responsibility?

7 A. To conduct and to ensure thorough and complete
8 inspections are conducted at the mines that I am
9 assigned to.

10 Q. Is UBB --- is that mine assigned to you this
11 quarter?

12 A. No, it's not.

13 Q. Okay. Was it assigned to you in previous
14 quarters?

15 A. I gave it up in September of 2009, I think is when
16 I went over to the other group, when I first swapped
17 over.

18 Q. So fiscal year ---

19 A. 2009.

20 Q. --- 2010 you went over to the other supervisor?

21 A. That's correct.

22 Q. As an inspector, were you ever assigned this mine?

23 A. Yes, I was.

24 Q. When was that?

25 A. That I couldn't tell you. I had it a couple

1 times. It's been several years ago. I don't remember
2 exactly when.

3 Q. You've had, I guess a pretty good history with
4 this mine then, several times?

5 A. Yes, I have. I went in and had a longwall prior
6 to this longwall. And they took the longwall out of
7 here and took it to another mines, and then they
8 brought it back. I don't know if I had it when they
9 didn't have a longwall, no.

10 Q. Do you know why they took it out and took it to
11 the other mine?

12 A. They had finished mining the area, and they didn't
13 have all of this developed. Let me see if I know
14 where I'm at here. None of this was developed over
15 here.

16 Q. By this you mean the current longwall?

17 A. Current, this over here.

18 Q. Okay.

19 A. And they had three or four panels. They wanted to
20 pull the longwall at Castle Mines, so they moved it to
21 Castle Mine, where they were developing to get ready
22 for this wall.

23 Q. While we're talking about the previous --- you
24 know, previous panels, if you look on the big map here
25 behind us, there's several areas where they mined the

1 panel, then they would stop and skip an area and then
2 start over again. Do you know why, why that was done?

3 A. They did all that prior to me having that coal
4 mines for --- the reason was they had some mainline
5 belts, part of it. And the other ones I think at that
6 particular time, evidently they could not mix ---.

7 Q. Okay.

8 A. And I think later on, while they were waiting for
9 Castle Mines to get ready for them to come back, you
10 see those four little panels there on the top, you
11 know, where ---

12 Q. Uh-huh (yes).

13 A. --- they picked those up while they were waiting
14 on Castle, I think, to get ready for the longwall
15 transfer.

16 MR. WATKINS:

17 Something you want clarified?

18 ATTORNEY BABINGTON:

19 Yes. Sorry. Which area?

20 A. It's the one on this map. Right there, right
21 there, right there and right there I think it was ---
22 I think they picked them up while they were waiting
23 for it to get ready at Castle Mine.

24 ATTORNEY BABINGTON:

25 So just for the record, you're referring

1 to the four panels that were on the previous ---
2 previous longwall panels, basically sections that were
3 set off from the original longwall?

4 A. Correct. I don't know the dates. I might have to
5 look at the dates and make sure. The date should be
6 right there on it.

7 ATTORNEY BABINGTON:

8 Right. The dates read September 2005 to
9 November 2005. One says June 2002 to July 2002,
10 December '05 to February of 2006, March 2006 to July
11 of 2006.

12 BY MR. WATKINS:

13 Q. In those previous areas, Mike, did they ever have
14 any problems with roof and rib and floor conditions in
15 those areas that you're aware?

16 A. I'm sure they had trouble with roof, but I
17 can't --- you know, for me to say exactly where, I
18 don't know.

19 Q. Do you remember them having a problem with the
20 ground, the floor hooving up and then being down due
21 to methane inundations?

22 A. Not while I --- I don't think they had that, no.

23 Q. Okay. Have you had an occasion to be in these
24 active areas of the mine on Headgate One, Tailgate
25 One, in those areas?

1 A. Yes, I have.

2 Q. Do you remember when you were ---?

3 A. I didn't have this mine. It was the other group.

4 But in, let me think, December I think we were going
5 through temporary supervisors for the other group, and
6 the other group had this mines. And one of the --- we
7 had a complaint, I think, on water that was in the
8 tailgate, probably somewhere starting around 50 all
9 the way through here. It was flooded, and I directed
10 one of the people --- I talked to Mr. Selfe, and I
11 directed one of the people to go look at it, and we
12 put a 107 Order on it and shut it down, because they
13 were wading in water --- the complaint was they had
14 people wading in water up to their waist to fire boss.

15 Q. So you went to the mine ---?

16 A. The next day myself and Link Selfe and Kevin
17 Lyall, and Benny Clark was already there, and Dave
18 Rusch was already there. We were all in the mines at
19 the same time.

20 Q. Do you remember where you traveled to?

21 A. Yes, I do. I traveled up here to the ---.

22 Q. When you say up here, you mean on the Headgate One
23 North? Do you remember about what break you went to?

24 A. Started somewhere in about 50, 50 --- somewhere in
25 this area, and we traveled --- I think as far as I

1 got --- I may be wrong, but I'm thinking somewhere in
2 the 70s that the water was about a foot-and-a-half
3 deep at that time. There was a lot of hooving in that
4 bottom in this entry, ---

5 Q. Okay.

6 A. --- and they had put in Kennedy stoppings, trying
7 to put a Kennedy stopping line all the way along
8 through here to keep it open.

9 Q. Between which entry are you talking about,
10 between ---?

11 A. It was in the middle of the entry.

12 Q. In the middle of the entry?

13 A. Because all these stoppings were pushing out.

14 Q. Okay.

15 A. And they were going to try to maintain this over
16 here for their next tailgate entry. And at that time
17 I said there ain't no way in the world you're going to
18 hold this. And eventually that's why they started
19 this plan.

20 Q. Do you know about where that wall started at and
21 how long it went, how far it went back?

22 A. Where do you mean, down here?

23 Q. No, this wall, the Kennedy stopping wall, I guess.

24 A. Anything I told you would be a guess. I would
25 have to look at the records and find out the citation.

1 It was up in --- I'm thinking it was somewhere in the
2 50s, and I don't think they ever finished it.

3 ATTORNEY BABINGTON:

4 Just to clarify, you said that because of
5 their problems on this Headgate One North, the entries
6 on that section, they started developing this other
7 panel, which I think we referred to as Tailgate 22?
8 A. Sometime after that. I don't know when they did
9 that.

10 ATTORNEY BABINGTON:

11 But they made that --- they started that
12 section because of the problems on Headgate ---?
13 A. Because they could not maintain it right.

14 BY MR. WATKINS:

15 Q. Let's just look at the one headgate right now, the
16 one they had at the panel. Let's talk about the
17 active panel.

18 A. Okay.

19 Q. So you had about --- at about 50 Crosscut you said
20 you ran into water.

21 A. I don't remember exactly when. I remember the
22 water --- there was a citation on the water and the
23 stoppings and then we had that order on there. So Mr.
24 Selfe and myself --- that wasn't even my mines, but he
25 wanted me to go with him just ---.

1 Q. Okay.

2 A. I was going to see it anyway. And we walked up as
3 far as we could go, and I think it was around 72, and
4 from what I understand, the water was higher on that
5 end there.

6 Q. Towards the set-up entries?

7 A. If you look at the elevations it would have to be
8 because around 70 to 70 mining, up here you got 780s,
9 770s. It's going deeper right here.

10 Q. But you never traveled back in ---?

11 A. No.

12 Q. Okay.

13 A. I have been back in there before the longwall ever
14 started. That's back when I did have the mines with
15 my people, but --- and they was cutting it.

16 Q. So when you were in there previously, before the
17 wall even started, how were the conditions at that
18 time?

19 A. Conditions wasn't too bad. The water was swagging
20 in a few places, and I encountered more methane than I
21 thought there should have been in certain locations,
22 over in this area here.

23 Q. When you say here you're referring to?

24 A. Somewhere around --- I'm not going to be able to
25 tell you exactly where, but it was about a five or

1 six-foot crosscut. And I don't remember where the end
2 of the track was when I was walking up there. I was
3 walking up here to this --- see how they were coming
4 on that fan and the shaft. And my methane detector
5 went off at five-tenths, and I thought that was kind
6 of unusual for that to be for the intake where I was
7 walking up.

8 Q. Were they still driving at that time?

9 A. Yes, they were still trying to squirrel there.
10 And there was some point, I don't remember exactly
11 where, but they were right in here, trying to
12 squirrel ---.

13 Q. Just inby the fan?

14 ATTORNEY BABINGTON:

15 To clarify, the swag area you're
16 referring to, that's --- you're talking about the
17 entries between the set-up entry and where the
18 Bandytown fan ---

19 A. Correct.

20 ATTORNEY BABINGTON:

21 --- would be?

22 A. Somewhere between, I'm going to venture to say, 95
23 --- where the crosscut is, somewhere in there. I was
24 with a mine inspector on a spot. That's what I was
25 doing up there.

1 BY MR. WATKINS:

2 Q. So you had five-tenths in the intake?

3 A. Uh-huh (yes).

4 Q. Did you go into the return and see what you had?

5 A. No. When I went to the face --- the faces, I had

6 nine-tenths, as I can remember, in one of the faces.

7 I don't remember. I think it was Number Three.

8 Q. Was the Bandytown fan in operation at that time?

9 A. No. They hadn't started drilling it. I was going
10 to see if they were going to updrill it.

11 Q. Okay.

12 A. They had the bits and everything.

13 Q. What about the condition of the floor and the roof
14 at that time?

15 A. The floor and the roof was okay at that time.

16 Q. Okay. No water at that time?

17 A. It was wet all over the place. Ventilation was
18 what I had more concern with. It was stretched out so
19 far.

20 Q. You might have mentioned this, but do you remember
21 about what time frame that was?

22 A. No. I don't have a clue. It would be in my
23 records.

24 Q. Was that the only time that you was in this area
25 prior to going back in when you had the complaint

1 about the water?

2 A. I went back to that same --- and done the same
3 thing a week later with a different inspector ---

4 Q. Okay.

5 A. --- and put several orders on it.

6 Q. Orders for?

7 A. Better air in the face.

8 Q. Okay.

9 A. Three or Four return on the right side.

10 Q. Anything related to methane that you recall?

11 A. No, didn't have any methane --- you know, no more
12 than what I had the time before, that I recall.

13 Q. Roof, rib, floor conditions similar to what it
14 was?

15 A. At that particular time they were grading some
16 subparities, and they had taken out another stopping.
17 They had four of them instead of three at that
18 particular time. That's what I had put over on them.

19 Q. Do you know when they was grading the floor if
20 they were detecting any methane coming up from the
21 floor, the methane was higher when they were
22 grading ---?

23 A. I don't know.

24 Q. So the conditions --- at some point the conditions
25 in the headgate entries on the wall started

1 deteriorating. Do you know about when that happened?

2 A. No, because it wasn't my mine at that time. I
3 couldn't tell you exactly when it started.

4 Q. Do you know about how far up the wall had advanced
5 when you were there on the complaint?

6 A. I don't think the wall --- I think the wall ---
7 I'm thinking it was probably somewhere right here, in
8 this area here, around 50 or somewhere.

9 Q. Somewhere around 50 Crosscut?

10 A. Somewhere in this area.

11 Q. Okay. Were there any problems on the tailgate
12 that you were aware of?

13 A. We didn't go across --- not that I'm aware of. We
14 didn't go across the face. We went up to the head and
15 then we come over this return and I had an order on
16 them.

17 Q. Okay. So no one that you know of went up the
18 tailgate side to the back end of the wall or anything?

19 A. Not at that particular time we didn't, no.

20 Q. Before we go too far, I'm going to let Terry ask
21 you any follow-up questions that he has for you.

22 MR. FARLEY:

23 I don't think I have any.

24 MS. MONFORTON:

25 I don't have any.

1 MR. WATKINS:

2 I think John got one.

3 MR. O'BRIEN:

4 No, I don't.

5 BY MR. WATKINS:

6 Q. You mentioned that you went there on a complaint
7 due to the water. Do you remember getting any other
8 type of complaints at this mine?

9 A. I didn't go on the complaint. Let me clarify
10 that.

11 Q. Okay.

12 A. There again, this wasn't my mines. We had sent
13 --- well, Keith Sigmon I think is who it was, on the
14 complaint the night before. He called me at home
15 during the night, and that's when we decided to put a
16 107(a) Order on them. And then the next morning, Mr.
17 Selfe was going to travel with the acting supervisor.
18 But the acting supervisor had already left, so he come
19 and got me to go with him. So it wasn't a complaint,
20 it was just following up to see what the water looked
21 like and the heaving on the entry.

22 Q. Okay. But you went up and said you had floor
23 heaving?

24 A. Right.

25 Q. But you didn't detect any methane or any problems

1 with methane?

2 A. Nothing out of the ordinary.

3 Q. What ---?

4 A. Five, six-tenths probably, but ---.

5 Q. Do you know --- getting back to the Kennedy
6 stoppings they were using to make the longwall --- the
7 extended wall, do you know if they submitted a plan to
8 do that, the company submitted a plan?

9 A. No, I don't.

10 Q. Would that typically be something that they would
11 have to submit a plan to do?

12 A. Yes. Either that or put your stoppings back.

13 Q. The plan approval process --- I know you're on the
14 enforcement end of it. What type of input or what
15 kind of input do you guys have into the plan approval
16 process?

17 A. We have very little. You know, we look at the
18 plan when they send it in, and we'll look if there's
19 something that's lacking, we don't have to sign off on
20 it. There again, this wasn't in my group, so ---.
21 When we finally receive the plan, it's already --- the
22 ventilation or roof control or whoever, then we get it
23 and we look at it. And if we agree to it, we sign off
24 on it.

25 Q. When the mine was assigned to you, either as an

1 inspector or as a supervisor, do you remember getting
2 any complaints on hazardous conditions at that time?

3 A. I can't remember, but I'm pretty sure that we
4 probably did, because we had quite a few of them.

5 Q. Just with UBB, do you remember anything in
6 particular that you might have had with that mine?

7 A. No, I don't remember anything in particular. If I
8 thought about it for a long time --- you have to
9 realize that I have several mines with 31 MMUs, and
10 it's hard to remember which ---.

11 Q. I understand. That's kind of going back in time.

12 A. I have some mines I have a lot more trouble with
13 than others, and I think they were having quite a few
14 ventilation problems at this mine, air reversals,
15 stuff like that, because I would hear --- somebody
16 would tell me about it. But it wasn't my mines, so I
17 didn't really get involved in it.

18 Q. You remember the air reversals and problems with
19 the mine. Do you remember any specifics about those?

20 A. What I'm saying, the longwall there was reversed
21 for about a week when they first started, somewhere
22 over in this area. I don't remember ---.

23 Q. Again, this area being ---?

24 A. Yeah, when they first started it, somewhere up in
25 there.

1 Q. You said air reversal. You mean in the belt, in
2 the intake?

3 A. I was thinking it was the intake, but I don't know
4 for sure. I know they had --- they were having some
5 problems here and they had some of the panels, I don't
6 know if it was this one or another one that they were
7 having problems with air.

8 Q. Was all this prior to the startup of the Bandytown
9 fan?

10 A. I think some of it was, but I think some of it may
11 have been after the fact. I'm not sure.

12 ATTORNEY BABINGTON:

13 Sorry. To clarify, you said that you
14 heard about air reversal at the set-up, and then you
15 said that you heard about air reversal to other areas?

16 A. I don't know which area. There again, it wasn't
17 my mine. You know, I would hear some of the mine
18 inspectors --- and I'd talk to them in the mornings
19 and they'd tell me something that forced me to get on
20 the map and look at because, you know, I had enough
21 problems of my own without trying to but in on
22 somebody else's.

23 BY MR. WATKINS:

24 Q. Did you have any other occasion to visit the mine
25 after that, after the ---?

1 A. The next time that I went was probably with the
2 mine rescue team.

3 Q. Following the accident?

4 A. Pardon me?

5 Q. Following the April 5th accident?

6 A. (Indicates yes).

7 ATTORNEY BABINGTON:

8 Was that a yes or no?

9 A. Yes. As near as I can remember now.

10 BY MR. WATKINS:

11 Q. Now, I know it wasn't your mine, but do you
12 remember any conversations you might have had with the
13 roof control --- with the ventilation department and
14 the enforcement group as far as the conditions in the
15 headgate entry on that longwall?

16 A. No. No, I didn't. I remember they were having
17 meetings, but I wasn't involved in it.

18 Q. There's a --- you mentioned top and bottom and you
19 were talking about the floor heaving back in some of
20 the previous panels. There's a seam that's underneath
21 this seam which hasn't been mined, maybe 30 inches or
22 so. Do you know anything about that?

23 A. I don't know.

24 Q. And I also believe there's several mines that
25 overlay this mine.

1 A. Yes. I think Black Knight. I think that's where
2 a lot of the water came from.

3 Q. And what makes you think that?

4 A. Black Knight?

5 Q. What makes you think that's where the water came
6 from?

7 A. Because Black Knight dried up.

8 Q. That would be a good indication, wouldn't it?

9 A. It dried up about the time this one flooded.

10 Q. Okay.

11 A. Black Knight wasn't my mine at that time, but ---.

12 Q. Okay. So that took care of your problem. Was
13 that in a sealed area or ---? I mean, the Black
14 Knight Mine, the area that dried up.

15 A. It was a working area. Black Knight has always
16 been a wet coal mine. Well, it's wet again now. I'm
17 having problems with it right now.

18 Q. What about the roof and rib conditions in the
19 Black Knight Mine beltway, was it in good condition
20 or ---?

21 A. We had a few areas we had some problems with. We
22 contributed that to where this was pulling underneath.
23 We had some areas that we had some extra plans for due
24 to that fact, where the wall was at. And finally, I
25 think they sealed up that entry.

1 Q. Had you heard any talk in the office or with the
2 inspectors or at the company, for that matter, about
3 problems you were having with these double doors in
4 the mines as far as air reversal if you keep the doors
5 open, anything like that?

6 A. No, I haven't.

7 MR. WATKINS:

8 Do you have anything?

9 MR. FARLEY:

10 No.

11 MR. WATKINS:

12 Celeste?

13 MS. MONFORTON:

14 No.

15 BY MR. WATKINS:

16 Q. So that's the last time that you were in there
17 prior to the 5th that you remember; is that correct?

18 A. I think that was the last time. I think that was
19 in about December, you know, and I gave the mine up
20 the first of October. We did have a meeting with the
21 vice-president of this mine to explain to him I wasn't
22 satisfied with the citations and everything we've been
23 issuing at this mine.

24 Q. Who was the vice-president?

25 A. Chris Blanchard.

1 Q. What was Chris' response when you had that
2 meeting?

3 A. His response was --- I was very unsatisfied with
4 the fact that it was --- the size of the coal mine and
5 they was starting at the longwall, and we had issued a
6 lot of orders, mine inspectors. The concern I had was
7 he didn't even have a mine foreman on the evening
8 shift or the hoot owl. With that size of a coal mine,
9 about a four-section coal mine with a longwall and
10 from what I understood from my people, he was trying
11 to micromanage this coal mines hisself and him going
12 underground maybe once every two weeks. And that's
13 just what my people tell me. I don't know for a fact
14 that that's a fact, but I confronted him with it.
15 well, he asked me in that meeting if I knew what the
16 problem was with the coal mines or had I heard. And I
17 told him, yeah, you are, from just what my people told
18 me.

19 Q. Where did this meeting take place at?

20 A. In Mr. Selfe's office.

21 Q. In the district office?

22 A. Uh-huh (yes).

23 Q. Okay. Who all was present in that meeting?

24 A. Myself, Link Selfe, Chris Blanchard, Joe
25 Mackowiak, Rich Kline and Benny Clark, who was going

1 to be the temporary supervisor that was taking on this
2 coal mine.

3 Q. You mentioned you was dissatisfied with the number
4 and type of citations that were issued; is that
5 correct?

6 A. Correct. We explained to him at the rate they
7 were going, they were on a pattern of violations.

8 Q. What type of citations and orders were you
9 issuing?

10 A. We went back I think --- I can't remember exactly.
11 I think we went back a couple years. It was --- I
12 forget the amount of them, but there was quite a few
13 citations for that size of coal mines. I know it
14 was --- we had them all and talked to him about the
15 amount.

16 Q. Do you remember when this meeting was?

17 A. September --- I'm thinking September 16th, but I
18 ain't going to swear to that.

19 Q. Okay.

20 A. Of 2009.

21 Q. So that would have been right at the end when
22 you ---?

23 A. That's when I was giving up the coal mine.

24 Q. Do you know if anything had changed after that?

25 A. Mr. Blanchard assured me that he would put a mine

1 foreman on those two shifts and assured me that he
2 would get another safety man, which eventually he did
3 do that. The violations did reduce, but there again,
4 it went out of my group to the other group, so I don't
5 know. You know, you'd have to look at the paperwork
6 for the other group and see what it went to versus
7 what it was when we had it.

8 Q. Anything else as far as the inspection part goes
9 that I might have missed that you can think of before
10 we move on?

11 A. You know, there again, I was down there several
12 times with different inspectors to look at things that
13 they issued or just traveled with them, but you know,
14 I'd have to go back through my records before I could
15 remember anything really significant. I think the
16 only --- there was one significant thing, and it's not
17 on this map. Is that the Ellis Portal?

18 Q. Top right.

19 A. Yes. Okay. One of my inspectors went there, I
20 don't remember when, but they was taking TL, total
21 liberation, air readings. And there was supposed to
22 be five portals, and there was only three, so he
23 called me and we ended up putting two or three orders
24 on them because the map showed five portals. They was
25 evidently having cut two of them through and they

1 wasn't fire bossing them. We found that problem. I
2 don't remember exactly when that was. Since that time
3 that I went back with them, they were pulling all
4 their people from there and they had only a small
5 trailer. Didn't even have room for people to change.
6 So we cited them for that and give them an amount of
7 time to get another trailer or some kind of bathhouse
8 facilities, which they did not do, which we finally
9 had to put a (b) order on it, and finally they did
10 shut it all down and put their people back to the
11 other portal and they did mine some more off of the
12 highwalls to put a bathhouse on that side. That's the
13 only significant thing that I can remember.

14 Q. Just going back a little bit, we talked about them
15 putting the Kennedy wall up, up the entry of the
16 headgate, and we talked about them submitting a plan.
17 Would that be something --- as you were a supervisor
18 or an inspector, for that matter, did you have a
19 problem with the mine implementing stuff prior to
20 approval or without approval?

21 A. Yes. If they started something that they didn't
22 have approval for, we'd cite them.

23 Q. I mean, did that happen often?

24 A. I couldn't tell you.

25 Q. Can you remember any particular instance where

1 that occurred?

2 A. At this mine?

3 Q. Yes.

4 A. Can't remember for sure. There again, I got too
5 many of them to try to remember all of them.

6 Q. Okay.

7 MR. WATKINS:

8 Celeste?

9 MS. MONFORTON:

10 No.

11 MR. FARLEY:

12 I have a few clarifying questions.

13 EXAMINATION

14 BY MR. FARLEY:

15 Q. You and Kline, Mackowiak and Link Selfe and Mr.
16 Clark met with Blanchard you say around September 15,
17 2009, and you told Blanchard that he was the problem.
18 Now, let me make sure I understand why. Was that
19 because you felt that he needed a mine foreman on the
20 evening and midnight shifts and additional safety
21 personnel or was it for other reasons beyond that?

22 A. He asked me what I heard was the problem, and I
23 told him what the people were telling me. You know, I
24 explained to him these other situations about the mine
25 foremans --- I supervised for 25 years before I come

1 to MSHA a multi-section coal mine, and I told him, I
2 said, there ain't no way in the world you can run a
3 mine that big without somebody in charge. That's what
4 I was trying to get across to him.

5 MR. FARLEY:

6 Okay. I understand. Thank you.

7 Celeste?

8 MS. MONFORTON:

9 No.

10 RE-EXAMINATION

11 BY MR. WATKINS:

12 Q. Mike, let's talk about the accident that occurred
13 on April 5th. Do you remember --- I'm sure you
14 remember where you was at, how you got notified.

15 A. I was in the office. I think they activated our
16 MMU somewhere around between 4:15 and 4:30. Myself,
17 Jerry Cook and Mike Shumate are the closest
18 individuals to here, the mine cabin, and when we get
19 activated we come to load up our equipment and our
20 teams right in the command vehicle and we drive over
21 to wherever the accident is.

22 Q. Would you just kind of walk me through from the
23 time you got the call and through the rest of that
24 day, if you will. About what time did you get called,
25 who called you ---?

1 A. I wasn't called. Mr. Marrs come into my office
2 somewhere around between 4:00 and 4:15 and told me not
3 to go anywhere. I still didn't know what was going
4 on, and then finally I found out that we had something
5 happen at this coal mine. And about 15 minutes after
6 that, he come and told me that our emergency unit had
7 been activated and go get the stuff, started getting
8 loaded and headed in that direction.

9 Q. You mentioned Mr. Marrs.

10 A. Luther Marrs.

11 Q. Luther Marrs, what's his title?

12 A. He's an ADM.

13 Q. He's --- I guess we talked later on that there had
14 been two divisions for enforcement.

15 A. He's got the other division. Him and Mr. Selfe, I
16 guess, were involved in the meetings that were going
17 on.

18 Q. So he come in about 4:00, 4:15, and just told you
19 not to go anywhere, and a little bit later he come and
20 told you that you've been activated?

21 A. Correct.

22 Q. Did he say why, what was going on or anything?

23 A. Said we had had an explosion, I think is what he
24 told me.

25 Q. So he said that about 15 minutes later, about

1 4:30. So what did you do once --- after that point,
2 what happened?

3 A. I come straight to the mine, and then I started
4 loading all of our gear bags. Virgil Brown, who was
5 --- I think he was in Utah or somewhere at that time,
6 called me and told me whose gear bags to get. They
7 would normally send about nine of us to a disaster
8 like that. So I loaded all those and got our machines
9 --- most of our machines and everything loaded. But
10 that time, Jerry Cook and Mike Shumate showed up and
11 they all helped me get everything loaded, and then we
12 proceeded to UBB.

13 Q. Okay.

14 A. We arrived at UBB probably somewhere around ---
15 I'm going to say between 6:00, maybe 6:30, somewhere
16 in that neighborhood. I'm not sure.

17 Q. Who did you report to when you got to the mine?

18 A. When we got to the mines we was having trouble
19 because --- I don't know if you all seen our command
20 vehicle, our team truck. They're kind of big. So I
21 had the command SU --- not an SUV, but Winnebago,
22 whatever you want to call that thing, Blue Goose. And
23 I was having trouble --- it quit on me going up the
24 hill to UBB, so one of my inspectors, he come down and
25 he finally figured out what was wrong with it and

1 fixed it, and I got it up on the hill.

2 When we got up on the hill to UBB, there were so
3 many government Jeeps, we couldn't even find a place
4 to park. So then somebody, I don't remember who, come
5 and told us to get ready our first crew. So we left
6 the truck sitting in the middle of the road and then
7 somebody else parked it. Mike Shumate benched our
8 machines while Jerry Cook and myself went and got
9 dressed so we could go underground with the first team
10 that was going underground. Through all that, then we
11 had a briefing. It was somewhere probably around
12 eight o'clock before we even got underground.

13 Q. Let's talk about the briefing real quick. Who
14 conducted the briefing?

15 A. Mr. Bob Hardman.

16 Q. And do you know where that was conducted at?

17 A. In the motor barn at UBB.

18 Q. Was anyone from the company present?

19 A. There were several --- I don't remember who all
20 was present because I was still trying to get all my
21 stuff together. Mr. Hardman was the one that done the
22 talking, but I don't remember who all else was there.

23 Q. Do you remember what he told you?

24 A. It wasn't a real, real thorough briefing. We knew
25 that they had already found some victims, and we

1 already knew that they had already took some of them
2 out. And we had --- at that particular time I'm
3 thinking we thought there were 18 unaccounted for.
4 Later on we found out it was more than that. And that
5 was basically it. Then we got on the mantrip and
6 left.

7 Q. Was there any discussion in that briefing about
8 who was underground at that time? I'm not talking
9 about the people --- I'm not talking victim, I'm
10 talking about your rescue people.

11 A. They --- a little bit of confusion there. We know
12 that there had been one of the Massey Mine rescue
13 teams that had brought those people out, but we didn't
14 find out they were underground until we got to the
15 fresh air base. I think we more or less thought there
16 were some people underground, but we didn't know who.
17 And then after we got to the fresh air --- well, I
18 started finding stoppings out at 30 --- it's not on
19 this map.

20 Q. We got a map underneath this if you'd like to look
21 at it.

22 A. The first stopping I seen out ---.

23 Q. Mike, before we --- I guess before we get started
24 into Ellis Portal, you've been on the mine rescue
25 team. How long have you been on the team?

1 A. About seven years.

2 Q. About seven years. Okay. And as being a member
3 of the mine rescue team, what are your
4 responsibilities? What role do you play?

5 A. Normally we're the search and recovery.

6 Q. And do you guys go in as a team or do you travel
7 with other teams?

8 A. We travel with other teams. When we go to a
9 disaster, we'll have one of us with the backup team,
10 one on the surface, with the team on the surface, and
11 one with the exploration or recovery team that's in by
12 the fresh air base.

13 Q. Okay. So you got one with the active team?

14 A. Correct.

15 Q. What's your role as far as being one of the team
16 members?

17 A. I just travel with the teams. I'm not a trainer
18 or nothing like that, if that's what you mean.

19 Q. Is your role to oversee where they travel to and
20 what they perform underground? Is that your role?

21 A. Our biggest role is to make sure that they don't
22 get theirselves in trouble. A lot of --- when you go to
23 a disaster like this, especially if you got people
24 that's with this coal mine, like Massey people,
25 particular at this mine or if you went to the Aracoma,

1 either one of them or --- the people that are closer
2 with that coal mines, you kind of have to hold them
3 back a little bit. I mean, we're there to ensure that
4 they do not get in trouble or get anybody else hurt.
5 And then a lot of them have never been in situations
6 like this and they'll look for us for guidance on what
7 to do and stuff like that.

8 Q. Okay. I think you mentioned you had a
9 debriefing --- or not a debriefing but a briefing on
10 the surface that Mr. Hardman conducted.

11 A. Correct.

12 Q. And then you went --- started into the mine?

13 A. Correct.

14 Q. Do you remember who you traveled with, what teams
15 or anything like that?

16 A. No, I don't remember. I know eventually when I
17 ended up, up in Headgate 22 I was with Jamie Ferguson,
18 his brother and a Mike Plumley from one of the
19 Kentucky teams. The rest of them, I don't remember
20 who all they were because I wasn't with most of them.
21 And a lot of them I had never seen before.

22 Q. When you started underground, was there any other
23 MSHA people going with you?

24 A. Jerry Cook. Jerry Cook was sitting across from me
25 when we went in with the first mantrip, and he got on

1 one side and I got on the other side so we can see
2 what's in front of us. And Fred Wills was also in one
3 of those buses behind us somewhere.

4 Q. Okay.

5 A. And that's where I told you I started seeing
6 stoppings out.

7 Q. Okay.

8 A. The first one I seen I think was Number 30. I
9 think it's right here. This stopping right here I
10 found damaged.

11 Q. Got a blue highlighter. If you can circle that
12 stopping.

13 WITNESS COMPLIES

14 A. I'm going by the signs on the track, if they're
15 accurate. Sometimes they're not.

16 BY MR. WATKINS:

17 Q. That's still pretty close. But that's the 30
18 Break of --- it's labeled Four North belt?

19 A. Correct. Because I asked Mr. Cook, I said, have
20 you got anything out on your side? At that time I
21 didn't even know this was an intake. I didn't know.
22 I knowed I was in a track entry. I didn't know where
23 the intake return or nothing was at that time.

24 Q. Okay.

25 ATTORNEY BABINGTON:

1 Could you mark with a --- draw a line
2 through a blank space and write, you know, blown-out
3 stopping or ---?

4 A. I'm just going ---.

5 ATTORNEY BABINGTON:

6 Yeah, that's fine.

7 A. The whole stopping would have had this damage.

8 ATTORNEY BABINGTON:

9 Okay. Can you write stopping as well
10 just to clarify?

11 WITNESS COMPLIES

12 ATTORNEY BABINGTON:

13 So for the record, the witness has marked
14 damaged stopping in the blue highlighter, marking an
15 area circled --- an area circled in the 30 Break on
16 Four North Belt in the crosscut that's, I believe, on
17 the left side of the track entry.

18 A. Okay. From there I think it was 40, 41. I was
19 trying to remember all this. I didn't have a pen or
20 paper. That's how quick we got underground.

21 BY MR. WATKINS:

22 Q. Now, when you circled the ones at 40 and 41, are
23 they damaged or were they damaged?

24 A. I don't think any of them was completely out, just
25 damaged, you know, like a half a stopping. I think we

1 got on up to maybe about 50 somewhere, into 51, 52,
2 and I'm not sure which ones, but they were a couple
3 more. And then I couldn't remember anymore, so I just
4 quit trying to remember them. And then when we got up
5 to the fresh air base, somewhere where --- it was 78,
6 I believe, right in here, once we started going all
7 through there, there was a lot of damage up in there.

8 Q. So up to 78 you didn't see --- you did not see a
9 lot of damage, I guess?

10 A. I quit even looking because I couldn't remember.
11 I didn't have nothing to write it down, so it was ---
12 I already knew we had a short circuit of air, and
13 everything was getting black at that time. See, we
14 didn't even know --- we heard that people had been
15 found somewhere, but we didn't know where.

16 Q. Okay.

17 A. And I think it was around 47, somewhere in this
18 area, that we seen where all the rescuers were, where
19 they had --- somebody had donned rescuers. So we
20 figured that's where that had taken place. And we
21 proceeded on up here. When we got on up here, that's
22 where we ran into Chris Blanchard, right here.

23 Q. Right here being 78?

24 A. Seventy-eight (78), I recall.

25 Q. Was the track clear or did you have to use another

1 track ---?

2 A. That's as far as we could go. The track went all
3 the way to the floor --- the switch there.

4 Q. And what stopped you at that point?

5 A. They said that's where the fresh air base ---.

6 Q. Fresh air base. But there's nothing in the track
7 that physically stopped you?

8 A. As I went up it --- we walked --- we moved from
9 here to establish a fresh air base up here, I think
10 around a hundred. And the track had stuff in it, plus
11 there was one area that was flooded. You couldn't get
12 nothing from the track entry. You had to come around
13 over the other entry.

14 Q. Let's back up for a second. When you got to 78
15 you said you ran into Chris Blanchard?

16 A. Uh-huh (yes). Yes, sir.

17 Q. Was there anyone else other than Chris at that
18 time?

19 A. At that particular time, the only one there was
20 Chris Blanchard.

21 Q. Okay. Is that when you became aware that there
22 was other people in the mine besides you guys, or when
23 did you become aware that there was other people?

24 A. At that particular time is when we found out there
25 was people in the mine.

1 Q. Okay.

2 A. And we were trying to find out why he was there
3 because I know --- as far as I know, he's not a mine
4 rescue member. And then while we're sitting there
5 talking to him, he's talking on the phone. Then Jason
6 Whitehead comes up from up in here somewhere, and then
7 there was a couple of the Massey team members come up
8 in there, and none of them had their machines on them.

9 Q. You said none of them had their machines on. Did
10 they have them? They didn't have a machine at all?

11 A. They didn't have no machines. The two Massey team
12 members, the machines that was laying there, they come
13 back and got them. That's why they came back. So
14 evidently, wherever they was at, they must have
15 encountered something.

16 Q. Do you know who they were, who the team members
17 were?

18 A. I couldn't tell you who they were. One of them
19 was --- one black guy that they had on their team was
20 one of them. I can't remember his name. And the
21 other one, I couldn't tell you his name.

22 Q. You say when you got there that Chris was on the
23 phone. So when you get to 78, Chris was on the phone?

24 A. Correct.

25 Q. Do you know who he was talking to?

1 A No. I took for granted it was the command center.

2 Q. Did you overhear what he was telling them, what
3 the conversation was?

4 A. No, I did not.

5 Q. Did you have any conversation with Chris about
6 where he had been, what he had on, anything like that?

7 A. We --- Cook and I had quite a bit of conversations
8 about that time. Blanchard was telling us that the
9 command center wanted us to go, split up, half of us
10 go up towards the longwall and half of us going on up
11 towards 22. And we did not have any backup. That's
12 when we talked to Blanchard. Cook was talking to him
13 first and told him, we don't have no backup people for
14 these people to split up, because you have to have ---
15 according to our procedures, you have to have backup
16 team members for anybody you have inby the fresh air
17 base. Well, we didn't even know who was inby the
18 fresh air base. We didn't know how many people was up
19 there or even who they were, because they just kept
20 coming out. Well, those four, that's all I ever seen.
21 There had to be some more up there somewhere. I don't
22 know how many people they had up there. So finally
23 the command center had Cook and his team to go on and
24 I was there with about I think six people with me to
25 back them up, and we still didn't have backup for

1 those other people. And then Jason Whitehead came out
2 and Jason Whitehead got on the telephone. And I told
3 him, I said, we cannot take these --- they was still
4 wanting me to take my team up this way. I told them
5 we can't do that. We don't have any backup.

6 Q. When you say they, you're talking about the
7 command center?

8 A. Correct. Well, then Jason Whitehead got off the
9 phone and told me I had been overruled and that we
10 were to go. They said there's a backup team coming.
11 I said, well, they're not here. I don't see them. I
12 said, we got to have a backup team. And so I said,
13 well, who was you talking to. He said, Chris Adkins.
14 So I got on the phone and I talked to Chris Adkins.
15 And I told him, I said, we don't have nobody to back
16 these people up. I said, if they get in trouble, how
17 am I going to get them? He said, we have to hurry.
18 So at that time I said, well, let me talk to Bob
19 Hardman, district manager. He said, well, Bob's on
20 the phone. I said, well, these people ain't going
21 nowhere until I talk to Bob. So a little bit later
22 Bob got on the phone. Bob basically told me the same
23 thing, we have to hurry. I told Bob, I said, Bob, I
24 don't have people to back these people up. He said,
25 well, they're up there without machines on anyway, so

1 they're not under air anyway. He said, you got your
2 teams coming. I said, Bob, I don't have teams here.
3 He said, we have to go. I said, you know --- so we
4 went. So at that time we started stretching out to
5 establish some other fresh air base up to around 100.
6 And after Cook left me here, I never did see cook
7 again. So I don't know where he went to. Like I
8 said, we didn't have a map. I don't know --- I didn't
9 even know if this is the way Cook went.

10 Q. When you say this way, are you talking about up
11 towards ---

12 A. Up to the wall.

13 Q. --- the Number One Tailgate? He went up the
14 straight?

15 A. I don't know if he went that way or not. I don't
16 know which way he went.

17 Q. He was going inby 78 North. Okay.

18 A. So he might have went this way or come across this
19 way. I don't know. To this day, I don't know where
20 he went. But anyhow, ---.

21 Q. I mean, was there any communication you had with
22 Cook prior to him leaving to go get a backup?

23 A. I was backing Book up when he left.

24 Q. Yeah. But I guess I'm a little bit lost. If you
25 were going to back him up, shouldn't you have known

1 which way he was going?

2 A. You would think, but nobody was --- we wasn't
3 getting really information. And then after we got up
4 here, I still didn't know where Cook was. Supposedly
5 I had two teams that were coming to back me up here,
6 but I never did see them. I don't know who they were.

7 Q. Okay.

8 ATTORNEY BABINGTON:

9 Sorry. But to clarify, when you say when
10 you got up here, you're referring to the 100 Break?

11 A. Yeah, somewhere in this area, where the fresh air
12 base was. You couldn't see. You know, they said it
13 was somewhere around 100, but you couldn't see nothing
14 up there at that particular time. Everything was
15 black. If there was a hundred sign there, I never did
16 see it.

17 BY MR. WATKINS:

18 Q. So backing up to 78, do you remember which entry
19 you traveled in going up to 100 Break?

20 A. We started up the track entry. I'm thinking this
21 is --- is this the track entry here? We started up
22 the track entry, but there was some location there and
23 it was flooded. And we had to come over this other
24 entry to get around the water. And we went back in
25 the track entry. These doors --- no, that stuff was

1 there. It wasn't blown out. The track entry was just
2 a disaster with timbers and cinderblocks and doors.

3 Q. These doors you're referring to that are just inby
4 about Break 80?

5 A. Airlock doors. I know that this is all airlock
6 doors that were intact or standing, and they were all
7 on the ground by Four --- whatever you want to call
8 it.

9 Q. As you proceeded in toward 100 Break, the
10 stoppings, were they in, out; do you remember?

11 A. Some of them were and some of them were out. Once
12 we got up here, then that's when we kind of split up.
13 We had a couple in each entry. Little did we know
14 that somebody had already found this one victim prior
15 to us finding him. Somebody already found him.

16 Q. This one victim, do you know ---?

17 A. The fire boss that was at that belt drive.

18 Q. Could you circle that and label it, please?

19 A. I don't know if this is the drive here or this one
20 over here. There was two drives in that area, but I
21 don't know which one. Like I said, I didn't have a
22 map, so I don't know exactly where he was at.

23 Q. Somewhere inby at 100 Break before crossing to 100
24 Break?

25 A. Correct.

1 Q. How do you know somebody had already found him?

2 A. Later on I found out somebody had actually ---
3 Cook and them might have found him. One of the other
4 Massey team. One of them had found him.

5 Q. How far did you make it that evening on the 5th?

6 A. To the mantrip.

7 MR. WATKINS:

8 You want to label this one as One before
9 we move on?

10 ATTORNEY BABINGTON:

11 Sure. Let's go off the record for a
12 second.

13 OFF RECORD DISCUSSION

14 (Hicks Exhibit One marked for
15 identification.)

16 A. You want to know what I did from here?

17 BY MR. WATKINS:

18 Q. Why don't you take me from --- yeah, why don't you
19 take me from the second fresh air base that you
20 established and as you worked your way in.

21 A. Okay. Wherever the fresh air base was here, and I
22 don't know where it was, one in this area somewhere.

23 Q. Just draw a big circle around it if you want to.

24 A. Okay. We were --- there was about six of us
25 sitting there. And whatever team was up here called

1 that we had a couple people in trouble.

2 Q. Would that be Cook's team?

3 A. No, it wasn't Cook. It wasn't cook's people. It
4 was somebody else.

5 Q. Okay. Was it one of the --- three or four people
6 that Blanchard and Whitehead and a couple ---? It was
7 somebody different than those people?

8 A. I don't know who these people were.

9 Q. Okay.

10 ATTORNEY BABINGTON:

11 I'm sorry. Around what area did that
12 group call from?

13 A. Somewhere in here. I don't know exactly where.

14 ATTORNEY BABINGTON:

15 So inby along ---?

16 A. In here and in this area here, but they called and
17 they said they had a couple people in trouble and they
18 needed a map, because we still don't have a map.

19 ATTORNEY BABINGTON:

20 So inby along Seven North belt, up
21 towards the Glory Hole?

22 A. Correct, somewhere in that area. Okay. I think
23 at that particular time Jamie Ferguson went back and
24 got a map somewhere back here. He come back up.

25 While he was gone, these people were still --- nobody

1 went up here. So I took two people up the track entry
2 to get to these two people who were supposed to be in
3 trouble. When we got to those two people, they were
4 sitting on the track. They said they were okay. It
5 was just real hot. So I guess they had so much heat,
6 because it got hotter the closer you got up to them.
7 So I wanted for them to get back here, and then Jamie
8 Ferguson caught up with me, and me and Jamie Ferguson,
9 this team here, the other two men that was with these,
10 went on back. Me and Jamie Ferguson, his brother and
11 Mike Plumley went from here with a map. And they had
12 told Jamie they wanted us to find a refuge chamber. I
13 think --- is this marked as a refuge chamber? We were
14 looking for this refuge chamber, so ---.

15 BY MR. WATKINS:

16 Q. Again, if you could identify that on the map.

17 A. That's about where we was looking for.

18 Q. Just kind of draw your line out and put refuge
19 chamber or ---.

20 A. Shelter is what we call it.

21 Q. Shelter, whatever you want to put in there.

22 WITNESS COMPLIES

23 BY MR. WATKINS:

24 Q. That blue was shelter; right?

25 A. Okay. That was not there.

1 Q. Okay. That's at Break 135; correct?

2 A. Yes. But anyhow, we look and we go all around
3 this. We went inby, four or five breaks inby, up to
4 somewhere in this area here. I don't know how far.

5 Q. That's somewhere up around 140?

6 A. Never did find them. So then we come back and
7 then we started this way?

8 Q. Started this way, meaning up to 22 Headgate?

9 A. Headgate 22.

10 Q. Okay.

11 A. We went from here to here and then we started this
12 way. We're in the track entry.

13 Q. The whole time?

14 A The whole time. Well, not over here. We split up
15 looking for this chamber.

16 ATTORNEY BABINGTON:

17 Sorry. Just to clarify, you moved inby
18 along Seven North belt through the Glory Hole area, up
19 to around 135, looking for a refuge chamber, and then
20 you traveled inby up towards, I think, the Eight North
21 section is how people are referring to it.

22 A. Correct.

23 ATTORNEY BABINGTON:

24 You didn't find anything in that area,
25 and then you traveled towards the Headgate 22 section?

1 A. Correct.

2 BY MR. WATKINS:

3 Q. Back up just real quick, Mike. You said the two
4 gentlemen that called out and said they needed help,
5 how did they call out? What type of communication
6 were you using?

7 A. We could hear them. This was verbal.

8 Q. Oh, just verbal. It wasn't on the radio or ---?

9 A. We could hear them verbal.

10 Q. Oh, okay.

11 A. Because it was only like maybe five, six crosscuts
12 inby us.

13 Q. Now, on the fresh air base, what type of
14 communication did you have at the fresh air base?

15 A. I had a hard line.

16 Q. Was it a pre-existing line or is it ---?

17 A. That's the one we brought up with us when we moved
18 it up here.

19 Q. Was your fresh new line all the way to the outside
20 or did you tap into the existing lines ---?

21 A. It's tapped in back here.

22 Q. Back here, being 78?

23 A. Right.

24 Q. Okay. As you proceeded up to Seven North from the
25 second fresh air base, if you will, toward the Glory

1 Hole, what was the conditions that you encountered?

2 A. It looked like an atom bomb went off.

3 Q. No stoppings? Everything had blown out?

4 A. It was just --- I mean, it was black. Everything
5 in the track was --- I mean, stoppings, man doors. I
6 mean, walking was a problem because you had to go
7 around a lot of stuff. We found one little fire. I'm
8 sorry, somewhere in this area coming up we found a
9 little fire, but I took one of my machines off and the
10 ice was melting and put the fire out.

11 Q. What about your methane and oxygen readings, CO
12 readings? What kind of readings ---?

13 A. CO was up somewhere --- I can't remember exactly
14 where. There again, I don't know where it was at. I
15 don't know what stopping we were. All I know is the
16 methane kept going up. CO was going way up. O2 was
17 going down. Visibility, by the time we got to ---
18 where was the mantrip? Anybody know? Somewhere in
19 this area. I'm thinking it was about four breaks
20 outby this chamber where we was --- if they would let
21 us stay another half-hour we would have probably found
22 the other four guys.

23 ATTORNEY BABINGTON:

24 Do you mind marking on the map where you
25 believe the mantrip on Headgate 22 was?

1 A. I couldn't tell you. All I know is it's somewhere
2 in this --- I'm going to put you a big circle.

3 BY MR. WATKINS:

4 Q. This is the mantrip you were referring to.

5 ATTORNEY BABINGTON:

6 And again, you said that was --- seemed
7 to be about four or five breaks outby the refuge
8 chamber?

9 A. From what I understand, it was something like
10 that. I don't know. We traveled the track entry all
11 the way up.

12 BY MR. WATKINS:

13 Q. Up Headgate 22, what was the condition in that
14 one?

15 A. There again, there was no stoppings. All the
16 stoppings was out on both sides. That I could see,
17 because you couldn't see. You'd have to walk over
18 crosscuts because you couldn't see. By the time we
19 got up to this point, your visibility was maybe a
20 foot, maybe two foot. To see the victims we had to
21 get down in the mantrip so we could see how many was
22 in there.

23 Q. Visibility was limited due to?

24 A. Smoke.

25 Q. Smoke.

1 A. I know right before --- about 50 foot before we
2 found the mantrip I found a rubber boot, an SCSR, and
3 I told the team we had somebody close, and about 50
4 foot later is when we found him. I'm going to take a
5 break.

6 SHORT BREAK TAKEN

7 BY MR. WATKINS:

8 Q. Mike, I think before we took a break there we was
9 heading up Headgate 22, towards the mantrip.

10 A. When we found the man --- well, like I said
11 before --- did you got to the part where I found the
12 rubber boot?

13 Q. Uh-huh (yes).

14 A. And I found the activated --- I thought at that
15 time it was activated, but I don't know if it was or
16 not, really.

17 Q. What was activated?

18 A. SCSR. And they were kind of like in the
19 intersection. Something else I thought a while ago.
20 We dropped --- had to drop off a man back here
21 somewhere. By the time we got here there was only
22 three of us because we ---.

23 Q. Where did you say you dropped a man off?

24 A. Radio. Radio call, communications. Dropped one
25 off.

1 Q. That would be the Headgate 22 and Eight North
2 intersection?

3 A. Somewhere in here somewhere. To tell you where,
4 there again, it all looked the same. And after we
5 found the boot and the SCSR, Jamie went in this
6 crosscut. I think his brother went here, but he may
7 have went with him. But anyhow, I walked up about 50
8 feet, and that's when we found the mantrip.

9 Q. When you say Jamie went into Crosscut Three,
10 towards the Number One entry, and his brother ---?

11 A. Finding that boot, we didn't know from which
12 direction it come from.

13 Q. Okay.

14 A. So he walked over here. And he probably didn't
15 get 50 feet when I hollered at him, and then we come
16 up here and checked all those, and they were all
17 deceased, and made it to the next crosscut. I think
18 that's when they told us we had to come out, because
19 we had like over 10,000 parts per million CO. Methane
20 was over range on my low range. I think I had about
21 eight percent methane at that time.

22 Q. Where was that at? Where were those readings
23 taken at?

24 A. In this area.

25 Q. Okay.

1 A. I don't know where ---. I don't know. We were
2 calling them out. When you asked me where they were
3 given at, I don't know. So I had the machine and
4 Jamie --- I think Jamie was the one calling them back
5 to here.

6 Q. So you --- I guess your team is the one that found
7 the concentrations, with the CO, methane and oxygen?

8 A. Yes. Yes, we had ---. We was over range on CO
9 and methane. And I think the reason they pulled us at
10 that time, because I don't think they heard the low
11 O2, because I only had like 3.6 ---.

12 Q. Were you guys under apparatus or just ---?

13 A. Oh, way back.

14 Q. My question is when you went under --- when did
15 you go under apparatus?

16 A. I don't know when we went under. It was way back
17 down here somewhere. We was under for a long time.
18 And then after we found them, they called us back,
19 told us to come out. We were trying to find an easier
20 place to walk, so I came over in this entry, we'll try
21 this entry, see if it's any better. And Jamie was
22 trying this entry, and they wasn't any better. So
23 basically we just got back together down --- we
24 dropped them men off, and then we come out.

25 Q. When you say it wasn't any better, is that due to

1 the debris or ---?

2 A. Debris everywhere. And then on the way out we
3 found a little fire, somewhere in here, a little
4 smoldering --- I don't remember if it was a timber or
5 --- I guess it was a timber probably, smoldering, so
6 we took one of the machines off and pulled the water
7 out of it. I thought we put it out. I don't know
8 whether we did or not because I never did go back.

9 Q. You don't remember where that was at?

10 A. Well, when you're up in there, you don't remember
11 where nothing is.

12 Q. Were you traveling a different entry coming out
13 than you did going in?

14 A. No. We was just trying to get out.

15 Q. I guess what I'm getting at, when you went in, you
16 just suppressed the fire on your way in?

17 A. It was in the same entry we went in. For some
18 reason or other, it ignited while we were up there,
19 because it wasn't smoking when we went back.

20 Q. Was it smoking when you came out?

21 A. Yes, it was.

22 Q. You can tell a difference in the entry you're
23 traveling in from the time you went in until the time
24 you came back out?

25 A. We could tell that --- we could see the smoke.

1 But now from up to this point, it could have been
2 burning and we would have never seen it anyway.

3 Q. Do you remember what the condition was that caused
4 you guys to go under apparatus? Was it low oxygen?
5 Was it CO?

6 A. CO. CO started. CO gradually --- I don't know
7 where, but it gradually kept climbing on us. And
8 eventually we went under. I don't remember where. I
9 don't remember what the CO was, somewhere in this
10 thing, but we was probably around between 1,500 parts
11 CO before we went under.

12 Q. Do you think it was before you got to the Glory
13 Hole area?

14 A. I have no idea. I don't remember.

15 ATTORNEY BABINGTON:

16 Just another quick clarifying. You said
17 that you wouldn't have known whether there was a fire,
18 and you pointed to the headgate?

19 A. Due to the smoke, because it was all smoke.

20 ATTORNEY BABINGTON:

21 And the smoke was in the Glory
22 Hole/Headgate 22 area?

23 A. This wasn't that smoky. This was light.

24 ATTORNEY BABINGTON:

25 Okay. So the Seven North Glory Hole had

1 light smoke?

2 A. Correct.

3 ATTORNEY BABINGTON:

4 But then the Headgate 22 section had ---

5 A. Heavy.

6 ATTORNEY BABINGTON:

7 --- heavy smoke? What about the Eight

8 North base ---?

9 A. It was light.

10 ATTORNEY BABINGTON:

11 Light smoke.

12 A. Everything was light probably to --- I'm going to
13 venture to say in here. I don't really know, but due
14 to looking at this map now, I would say it started
15 getting heavy from here up.

16 ATTORNEY BABINGTON:

17 Okay. When you say from here up, you're
18 pointing to the Headgate 22 section?

19 A. Correct. Because from what I understand, there
20 was a little bit of ventilation back in this area. I
21 don't --- you know, after the fact. There was none in
22 this area.

23 ATTORNEY BABINGTON:

24 That area, again, being Headgate 22?

25 A. Correct.

1 BY MR. WATKINS:

2 Q. You were calling --- you were calling conditions
3 back out to the command center?

4 A. I wasn't. I was --- Jamie was calling them out.
5 Jamie was the one that was calling them out. I had
6 the detector and I would --- when I would look at and
7 I would show it to him, so we'd both look at it, then
8 he would call it out.

9 Q. Were there any directions coming the other way,
10 from the command center to the teams, telling you
11 where to advance to or where not --- you know, where
12 to go, where not to go, any of that?

13 A. The only thing I know is we was told to keep going
14 until we --- I don't know who made the decision for us
15 to retreat or why, unless it was the high
16 concentrations we had. I guess --- I still don't know
17 why, but I guess that's why. And we was getting
18 pretty limited air, too. We was --- we had probably
19 enough air to go a little bit further. But to get
20 back as far as we had come, we wasn't going to be able
21 to make it if we got down to the 700s. We wouldn't
22 have been able to make it, so we --- that may have
23 been something to do with them pulling us, too. I
24 don't know.

25 MR. WATKINS:

1 Okay. Terry, you got some follow-up
2 questions?

3 RE-EXAMINATION

4 BY MR. FARLEY:

5 Q. You indicated that when you arrived at 78 --- when
6 you first came into the mine that you encountered
7 Blanchard. Now, was 78 the established fresh air base
8 at that time?

9 A. From what I understand it was.

10 Q. Okay. Was there an order shortly after to move
11 the fresh air base?

12 A. Yes, there was.

13 Q. Now, when you arrived at 78, you indicated that
14 there were people inby the fresh air base. Do you
15 know how many people were inby the fresh air base?

16 A. No, sir.

17 Q. When you had the conversation with Adkins and
18 Hardman regarding the unavailability of backup people,
19 were you at 78?

20 A. Correct.

21 Q. Do you recall about what time that was?

22 A. No, sir.

23 Q. Okay. You indicated that, as you advanced into 22
24 Headgate that you encountered heavy smoke. How was
25 it? Can you elaborate on that? Can you tell us what

1 your visibility was in terms of how far ahead you
2 could see?

3 A. You could not see --- standing in the entry, you
4 could not see rib in either direction. To look at the
5 mine floor, you had to take your light off to get it
6 down closer to the floor to see the mine floor. We
7 were going in entries to see if there was any victims
8 in there, and we would have to do that to see. I'm
9 saying a foot, two foot --- two foot max visibility
10 probably.

11 Q. Practically non-existent?

12 A. Yes.

13 Q. Okay.

14 MR. FARLEY:

15 That's all I have for that.

16 EXAMINATION

17 BY MS. MONFORTON:

18 Q. Before you went underground, you indicated that
19 Mr. Hardman conducted a briefing and that you had some
20 information that some victims had already been found.
21 Was there other information that was provided to you
22 about conditions underground, or was it your
23 understanding that you would be part of the first team
24 of mine rescue?

25 A. At that time we were --- as I understand it, we

1 were the first team. We didn't know there was another
2 team until we got here.

3 Q. Given your experience in mine rescue, what would a
4 normal briefing have --- under normal --- not that any
5 rescue is normal, but would the briefing --- would you
6 expect a briefing to include information about who was
7 underground already?

8 A. Correct.

9 Q. So was it fair to say that when you encountered
10 individuals underground, that was quite surprising to
11 you that you ---?

12 A. Oh, that was a total shock when I found Blanchard
13 and Jason Whitehead.

14 Q. Do you know if Jason Whitehead or Mr. Blanchard
15 are members of mine rescue teams?

16 A. I don't know for a fact. I don't --- I've never
17 seen him on a team.

18 Q. My notes indicate that you believe that there were
19 two Massey teams underground.

20 A. Just --- well, you're talking about the ones that
21 were with me?

22 Q. The ones that were with you, yeah.

23 A. Right.

24 Q. The ones with you. And then --- but once you got
25 to the fresh air base at 78, you encountered other

1 individuals that were members of a different Massey
2 Mine rescue team?

3 A. Correct.

4 Q. And could you repeat for the record what you
5 observed in terms of them and any apparatus or
6 equipment that they had?

7 A. The only ones that I seen of the team that was
8 underground --- I wish --- I can't remember their
9 names. There were two guys come out that I know for a
10 fact were on Massey's team at that location. Their
11 machines was out here in the fresh air base. They
12 didn't have them on.

13 Q. And in terms of typical mine rescue procedures, in
14 your experience, what would the reason be for a mine
15 rescue team member to leave their apparatus somewhere
16 and explore without apparatus?

17 A. In a fresh air base there is no reason to do that.
18 I mean, that's --- we don't do that. Only after you
19 explored and you know there's no contaminant would you
20 do something like that.

21 Q. Following normal mine rescue procedures, would
22 each team or at least some teams underground have a
23 map of the mine?

24 A. That's hard to say. You got to remember, we're
25 looking for people. We're not worried about a map.

1 There should be one given to us at a briefing. But if
2 we don't have one, we're going to go in anyway.

3 Q. Right. You indicated a couple times during your
4 testimony that the map would have helped you, but that
5 is ---.

6 A. It would have given us some indication of where we
7 we're at.

8 Q. Right.

9 A. See, there again, I was probably more familiar
10 with this mines than Jerry Cook. But then again, all
11 this right here was developed after. I had no idea
12 about this. A map would have helped me to --- you
13 know, show me where the wall was, and I'd have some
14 kind of idea where Cook and them were. That would
15 have been beneficial.

16 Q. So it would be fair to say that a map would have
17 been helpful to you, but it wasn't going to prevent
18 you from trying to do your ---

19 A. No.

20 Q. --- job?

21 A. And somebody may have had a map. You know, nobody
22 had one here until Mr. Ferguson went back out. Maybe
23 that other two teams brought some in. I don't know
24 where the maps come from, but I know Mr. Ferguson
25 finally did end up with a map.

1 Q. This is a question for myself and for the public's
2 understanding of how mine rescue teams operate,
3 because we know that the public at some point will
4 have an opportunity to read these transcripts. When
5 --- under normal procedures, when a mine rescue team
6 member finds a victim, is there a procedure for
7 marking that area so that other teams, when they pass
8 by, know that that victim's already been accounted
9 for?

10 A. Not on initial exploration. They will call out
11 --- the command center should know that John Doe is
12 here in such and such a crosscut. Now, as far as us
13 doing anything else, we don't, because that person has
14 to be marked exactly how he's laying. And even the
15 people --- the people that were with me were trying to
16 find out who he was. And I told them, do not move
17 him. They were trying to look at his belt, but his
18 tag was blowed in half, so ---.

19 Q. So is it fair ---?

20 A. We still didn't know who he was.

21 Q. It's fair to say that the mine rescue team member
22 would try to observe and see if they could find
23 something identifying ---?

24 A. Try to figure out who --- you know, if we can get
25 a name off a hat or something like that. The only

1 thing we could figure was a fire boss because he was
2 outby. That's the only we figured that's who it was.

3 Q. But if a mine rescue team member is not able to
4 find anything identifying the person without
5 disturbing the victim, then it's just called out that
6 there's a victim?

7 A. It was called out there's a victim, yeah, and we
8 would have just gone on.

9 Q. Thank you. At one point you described when you
10 were under apparatus and you passed through the area
11 of the Glory Hole and you started to proceed, looking
12 for the rescue chamber up towards Eight North. Is it
13 your testimony that you never found the rescue
14 chamber?

15 A. That's correct.

16 Q. And do you believe that you didn't find the rescue
17 chamber because it wasn't there or that you didn't
18 explore the entire area?

19 A. According to the map that Mr. Ferguson had, it was
20 not there. I don't know if they ever found one in
21 that area later or not. I don't know.

22 MS. MONFORTON:

23 That's all I have.

24 MR. WATKINS:

25 Terry?

1 RE-EXAMINATION

2 BY MR. FARLEY:

3 Q. Initially when you arrived at 78 you were
4 bare-faced?

5 A. Correct.

6 Q. And as you advanced to the next fresh air base,
7 which is about 105 or so, you were still bare-faced?

8 A. Yes.

9 Q. Did you have any burning sensation in your eyes in
10 that general area as you were advancing before you put
11 your apparatus on, anything unusual?

12 A. We did at some point, but I don't remember what
13 point that was.

14 Q. Do you mean other than the obvious smell of ---
15 that you would encounter in a mine that had just blown
16 up, any unusual smell in that area?

17 A. I can't smell, so I can't answer that. You'd have
18 to ask somebody else.

19 Q. Fair enough. Now, before you advanced into 22
20 Headgate, did you happen to venture into the crossover
21 entries connecting 22 Headgate toward the One North
22 Headgate entries?

23 A. No, sir.

24 Q. Okay. You indicated that you had been a mine
25 rescue team member for a good many years. Prior to

1 this event, have you been involved in other mine
2 rescue and recovery operations following mine
3 disasters?

4 A. Yes, I have.

5 Q. Could you tell me which ones, please?

6 A. Sago and Aracoma.

7 Q. Sago and Aracoma?

8 A. Aracoma.

9 Q. Were you involved in the underground rescue and
10 recovery at Sago?

11 A. Yes, sir.

12 MR. FARLEY:

13 All right. Thank you.

14 RE-EXAMINATION

15 BY MS. MONFORTON:

16 Q. I have another group of questions. Do you know if
17 Mr. Adkins or Mr. Hardman are members of mine rescue
18 teams or have been members of mine rescue teams?

19 A. I have no idea.

20 Q. Under the mine rescue procedures that you said are
21 kind of standard operating procedures, would normally
22 someone directing the mine rescue in the command
23 center or the individuals directing it be mine rescue
24 personnel?

25 A. We would like to have that, but no.

1 Q. Would you say that the rules governing mine rescue
2 were followed at all times on April 5th?

3 A. No.

4 Q. And do you believe there are circumstances when
5 those rules should be deviated?

6 A. We haven't. Depending on the circumstances. I
7 don't know how you can explain this. We broke them at
8 Sago because we still thought we had victims, which we
9 did. Only had four radios and we stretched out --- I
10 would call it stretched. We got in trouble, lost
11 communications, then we had to stretch out about 14
12 people just so we could keep communications. Do we
13 put our lives in jeopardy? No, we don't do that. Do
14 we take chances, you know? Maybe a little bit.
15 Nothing that will put us in jeopardy, because our
16 first priority is our team. We have to protect them.
17 Because without them, we're not going. And that
18 procedure, in my opinion, this disaster was not
19 followed. A lot of people have a lot of concerns of
20 what happened because a lot of us think we got real
21 lucky. A lot of them about ready to get off the team.
22 But will we do it again? Yeah, we will, because
23 that's what we do.

24 Q. And thank you for what you do.

25 MS. MONFORTON:

1 I don't have anything else.

2 RE-EXAMINATION

3 BY MR. WATKINS:

4 Q. Mike, any time when you was exploring in the fresh
5 air base, did you ever run across any evidence that
6 maybe somebody had been there before you?

7 A. I didn't, but Mr. cook did. That's what he was
8 telling me later on. There was nobody inby this area.

9 Q. By this you mean Headgate 22 and One Headgate
10 North?

11 A. Yes. Mr. Cook told me that they did find an
12 activated SCSR. And at first they thought they would
13 be people up here. But after they found them, they
14 knowed that those people couldn't have put them on.

15 Q. Was there ever any discussion with Mr. Cook of
16 where those might have came from, how those got there?

17 A. I thought it was Jason Whitehead and Chris
18 Blanchard.

19 Q. Did you ever have any discussion with Mr.
20 Blanchard or Mr. Whitehead regarding the use of the
21 SCSRs?

22 A. No, I didn't.

23 Q. I think you mentioned when you first came
24 underground at Crosscut 78, the fresh air base, that's
25 when you ran into Mr. Blanchard and Mr. Whitehead.

1 Was there any discussion at that time about what
2 they've been through and what they seen?

3 A. No. I just told them they wasn't going inby no
4 more without a machine.

5 Q. Did they give you any indication of where they
6 have traveled to?

7 A. No.

8 Q. So when you got pulled out from Headgate 22 from
9 the command center, who told you to come outside? As
10 you were exiting the mine, did you run into anybody
11 from the company or --- that you hadn't seen prior to
12 that on the way in? I mean, I'm not talking about
13 anybody --- I'm talking about that might have been
14 inby 78?

15 A. The possibility was that there could have been,
16 but there was people --- I don't know where they all
17 come from, but there was people everywhere. But I
18 don't know if they come in behind us or what. I don't
19 know.

20 Q. So when you left Headgate 22, where did you meet
21 up with Mr. cook?

22 A. The next time I seen Mr. Cook was --- I'm thinking
23 right here at this fresh air base.

24 Q. That would be the one right around Break 100, 105,
25 somewhere in that area ?

1 A. I'm not sure, but I think that's where I seen him
2 next. We were all on our way out.

3 Q. So what happened after you guys met up? Did you
4 just come on out?

5 A. No. We had to take a break. We done walked from
6 here to here.

7 Q. Okay.

8 A. I don't know how, but we was all trying to find
9 something to drink. And some of the guys were
10 drinking water out of the machines.

11 Q. So about how long did it take you to exit the mine
12 once they told you to come out? How long did it take
13 you before you got back outside?

14 A. I think we went outside probably somewhere around
15 2:30. And how long it took? I don't know what time.
16 We didn't even have a clue what time it was, really, I
17 guess.

18 Q. You don't know what time it was when they called
19 and told you to come out?

20 A. I didn't have a watch on me. After we found these
21 people up here, it was time to go. And I didn't find
22 out what they had found over here until I got back
23 with Mr. Cook. I think at that time we found out we
24 still had five --- I think five unaccounted for.

25 Q. When you got to 78 did you guys --- everybody came

1 out at the same time?

2 A. When we got to 78, yes. Lord, there was --- I
3 don't know how many mantrips. I know I walked by
4 probably eight mantrips just to get on a mantrip.
5 They was ---. They almost had more mantrips than we
6 had people up here.

7 Q. Were you on one of the first buses to come back
8 out then or ---?

9 A. I think I was on the first or the second coming
10 out. I can't remember which one.

11 Q. When you got to the outside, was there a
12 debriefing or anything that you attended?

13 A. I never was debriefed. They told me there was a
14 debrief, but I never did find it. And I don't know if
15 the rest of the guys were or not, but nobody ever done
16 debriefed me.

17 Q. So what happened when you got outside? Did you do
18 anything other than just undress and go home? Did you
19 talk to anybody or ---?

20 A. We undressed and got something to drink and
21 something to eat because we had been at it for hours.
22 That was a 23-hour day for me, you know. They told us
23 what time to be back the next day, and we went home.

24 Q. Who told you?

25 A. I can't remember who it was because I don't know

1 if Virgil had made it there yet or not.

2 Q. Was it an MSHA person?

3 A. Uh-huh (yes). Correct. Yes.

4 Q. Do you remember what time you came back the next
5 day?

6 A. Oh, goodness. I'm thinking we were to be back,
7 I'm thinking, at two o'clock. We were going to be
8 evening shift. I think we were supposed to be back at
9 two o'clock the next day, I think, but I could be
10 wrong.

11 Q. Did you come back at two o'clock the next evening?

12 A. Yes. Yes, I did.

13 Q. What did you do that day when you came back?

14 Where did you travel to and whatnot?

15 A. I was not allowed to go back underground, me or
16 Cook. Neither one of us were allowed to go back
17 underground. I don't know if it was due to the
18 investigation or due to the conflict that we had about
19 not having the correct amount of people, but we don't
20 know that. As of right now, we don't know.

21 Q. So you haven't been back under?

22 A. No. Was just backup on the surface, helped got
23 machines ready, helped to get the machines ready. I
24 told them --- Mr. Brown, I said, why am I here? If I
25 can't go underground, I need to go home. I said, what

1 kind of backup if I can't go underground. He kept us
2 there.

3 Q. Did Mr. Brown have a response?

4 A. Well, it's conflict due to the investigation, I
5 think is what they were trying to do --- or what they
6 thought we could do if we were underground. But I
7 know Mr. Cook, he tried to find out, and I don't think
8 any District 4 mine rescue personnel are allowed
9 underground now, from Arlington, from what I
10 understand.

11 MR. WATKINS:

12 Celeste?

13 RE-EXAMINATION

14 BY MS. MONFORTON:

15 Q. Just one question. When you're operating on this
16 mine emergency group, is Virgil Brown your supervisor?
17 How does that work?

18 A. Virgil is --- he is the team, I guess, trainer. I
19 guess John Urosek is our supervisor. Virgil, more or
20 less --- we've got trainers on each shift. Basically
21 I guess they get the information from John to tell us
22 when and where, all that.

23 Q. You had worked this very long 23-hour shift. With
24 everything you saw and then you went home and were
25 expected to come back the next day for a two o'clock

1 shift, what was your expectation when you came back?
2 Given your experience in the past on these types of
3 events, what was your expectation of what you were
4 going to do when you came back?

5 A. Go back underground and look for the rest of the
6 guys. That's what they always do.

7 Q. And up to this point, these many weeks after the
8 explosion, no one in MSHA leadership has explained to
9 you why you're not allowed underground?

10 A. Just the conflict of interest for the internal
11 review, I guess, is what they're saying. That's
12 basically what we're led to understand.

13 Q. And who has told you that? Is that your direct
14 supervisor has told you that?

15 A. Virgil Brown. I've tried to get John to let us go
16 back under, but --- our supervisor. And I think it
17 comes from Bob in Arlington, or maybe Jim, that we
18 couldn't.

19 MS. MONFORTON:

20 That's it.

21 ATTORNEY BABINGTON:

22 Okay. We're going to enter --- there's
23 two maps that we've marked during this interview. The
24 first one is labeled Hicks One, and that is the Ellis
25 Portal fan, and Hicks Two is the Bandytown fan map.

1 (Hicks Exhibit Two marked for
2 identification.)

3 ATTORNEY BABINGTON:

4 On behalf of MSHA and the Office of
5 Miners' Health, Safety and Training, I want to thank
6 you for appearing and answering questions today. Your
7 cooperation is very important in the investigation as
8 we work to determine the cause of the accident.

9 We request that you not discuss your
10 testimony with any person aside from your personal
11 representative. After questioning other witnesses, we
12 may call you if we have any follow-up questions. If
13 at any time you have additional information regarding
14 the accident that you'd like to provide to us, please
15 contact us at the contact information previously
16 provided. If you wish, you may now go back over any
17 answer you've given during this interview and you may
18 also make any statement that you'd like to make at
19 this time.

20 A. One thing I was thinking about, you all do know
21 that we didn't come in the Ellis Portal. You all know
22 how we got in the mine? Okay.

23 ATTORNEY BABINGTON:

24 Well, thank you. And again, I want to
25 thank you for your cooperation in this matter. Off

1 the record.

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STATEMENT UNDER OATH CONCLUDED AT 12:00 P.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

5

I, Danielle Ohm, a Notary Public in and for

6

the State of West Virginia, do hereby certify:

7

That the witness whose testimony appears in

8

the foregoing deposition, was duly sworn by me on said

9

date and that the transcribed deposition of said

10

witness is a true record of the testimony given by

11

said witness;

12

That the proceeding is herein recorded fully

13

and accurately;

14

That I am neither attorney nor counsel for,

15

nor related to any of the parties to the action in

16

which these depositions were taken, and further that I

17

am not a relative of any attorney or counsel employed

18

by the parties hereto, or financially interested in

19

this action.

20



21

22

A handwritten signature in cursive script that reads "Danielle Ohm".

23

24

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