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Transcript of the Testimony of Morris Hulgan

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STATEMENT UNDER OATH
OF
MORRIS HULGAN

taken pursuant to Notice by Alicia R. 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 Wednesday, August 25, 2010, beginning at 1:02 p.m.

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ATTORNEY WILSON:

Good afternoon. My name is Bob Wilson.

I'm with the Office of the Solicitor, United States

Department of Labor. Today is August 25th, 2010.

We're here to conduct an interview of Mr. Morris

Hulgan. Also present are individuals with the State

of West Virginia. I'll ask that they identify

themselves for the record.

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 KOERBER:

Barry Koerber. I'm an Assistant Attorney

General assigned to represent the West Virginia Office

of Miners' Health, Safety and Training.

MS. MONFORTON:

And I'm Celeste Monforton. I'm with the

Governor's independent team.

ATTORNEY WILSON:

And also Erik Sherer is an investigator

1 with MSHA. Mr. Hulgán, if you would, please face the
2 court reporter and she will swear you in.

3 -----

4 MORRIS HULGAN, HAVING FIRST BEEN DULY SWORN, TESTIFIED
5 AS FOLLOWS:

6 -----

7 ATTORNEY WILSON:

8 Barry, do you want to address these few?

9 ATTORNEY KOERBER:

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

12 A. Morris W. Hulgán, Jr., and my last name is
13 H-U-L-G-A-N.

14 ATTORNEY KOERBER:

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

17 A. It's [REDACTED]

18 [REDACTED] [REDACTED] [REDACTED]

19 [REDACTED]

20 ATTORNEY KOERBER:

21 And do you have an attorney or other
22 personal representative with you here today?

23 A. Just (b) (7)(C)

24 ATTORNEY KOERBER:

25 Ma'am, would you please state your name

1 for the record?

2 (b) (7)(C)

3 (b) (7)(C)

4 ATTORNEY KOERBER:

5 And you're his wife?

6 (b) (7)(C)

7 Yes.

8 ATTORNEY KOERBER:

9 Sir, are you appearing here today because

10 of being served with a subpoena?

11 A. Yes, I am.

12 ATTORNEY KOERBER:

13 And I'd like to have this marked as

14 Exhibit One. This is a copy of that subpoena. And
15 you can take a look at it to make sure that you agree
16 that it's a copy of the subpoena. And this you have
17 not seen. This is the return of service signed by the
18 Deputy Sheriff guy that served you, saying that he
19 served you on the 19th day of August, at 12:55 p.m.

20 A. Yes.

21 ATTORNEY KOERBER:

22 And there's attached to it a copy of the
23 subpoena, and then he writes up here when he stops out
24 there and you're not home. NH means not home.
25 Anyway, I'd like to be Exhibit Two.

1 ATTORNEY WILSON:

2 Okay. Those are marked Exhibit Hulgan

3 One and Hulgan Two.

4 (M. Hulgan Exhibits One and Two marked

5 for identification.)

6 ATTORNEY KOERBER:

7 Sir, the statute that authorizes the

8 Director to issue subpoenas compelling witnesses to

9 appear interviews such as this requires the Director

10 to offer to these witnesses a \$40 witness fee and

11 roundtrip mileage, so long as you drove in your

12 personal vehicle, at the rate of 15 cents a mile, plus

13 reimbursement for any tolls that you may have passed

14 on your way here or back. In order to receive that

15 money, I need two forms to be filled out, one of which

16 is an IRS Form W-9, which is a request for your Social

17 Security number, because the \$40 witness fee is income

18 and you --- it will be reported to the IRS and you

19 will receive at a later date a 1099 miscellaneous so

20 that you can put that with your 2010 taxes. Would you

21 like to fill those forms out at the close of this

22 interview or would you like to decline?

23 A. Decline.

24 ATTORNEY KOERBER:

25 Okay. Thank you.

1 ATTORNEY WILSON:

2 Mr. Hulgan, government investigators and

3 specialists have been assigned to conduct an

4 investigation into the conditions, events and

5 circumstances surrounding the April 5th, 2010

6 fatalities that occurred at the Upper Big Branch

7 Mine-South. The investigation is being conducted by

8 MSHA pursuant to Section 103(a) of the Federal Mine

9 Safety and Health Act and by the West Virginia Office

10 of Miners' Health, Safety and Training. We appreciate

11 your appearing here today to answer our questions.

12 There are other individuals present in the room with

13 either the State of West Virginia or MSHA.

14 All members of the Mine Safety and Health

15 Administration Accident Investigation Team and all

16 members of the State of West Virginia Accident

17 Investigation Teams participating in the investigation

18 of the Upper Big Branch Mine explosion shall keep

19 confidential all information that is gathered from

20 each witness who provides a statement until witness

21 statements are officially released. MSHA and the

22 State of West Virginia shall keep this information

23 confidential so as not to jeopardize or prejudice

24 other law enforcement activities. This

25 confidentiality requirement shall not preclude

1 investigators from sharing information with each other
2 or with other law enforcement officials. Everyone's
3 participation in this interview constitutes their
4 agreement to maintain this confidentiality.

5 After the investigation is complete, MSHA
6 will issue a public report detailing the nature and
7 the causes of the fatalities in the hope that greater
8 awareness about the causes of accidents can reduce
9 their occurrence in the future. Also, at the
10 conclusion of the interview process transcripts of all
11 of the interviews will be released to the public.
12 Information obtained through witness interviews is
13 frequently included in the reports that the agencies
14 prepare. Your statement may also be used in other
15 proceedings. Because we will be interviewing
16 additional witnesses, we request that you not discuss
17 your testimony with anyone other than with your wife.

18 A court reporter will be recording the
19 interview, so please speak loudly and clearly so that
20 she can take everything down. If you do not
21 understand the question, please ask that the question
22 be rephrased. Please answer each question as fully as
23 you can, including any information that you may have
24 learned from someone else. If at any time you need to
25 take a break, just let me know and we can go off the

1 record.

2 After we have finished asking questions,
3 we will provide you with an opportunity to add any
4 additional information to the record that you believe
5 may be important to the investigation. After your
6 interview is completed today, if you think of any
7 additional information, please contact Norman Page,
8 who is MSHA's lead accident investigator, here at the
9 Mine Academy. And I'll give you a letter now dated
10 August 25th, 2010, verifying your appearance here
11 today. And that letter contains contact information
12 where you can contact the investigation team here at
13 the Mine Academy. Terry?

14 MR. FARLEY:

15 Mr. Hulgan, on behalf of the Office of
16 Miners' Health, Safety and Training, I want to inform
17 you that the West Virginia State Mining Regulations,
18 particularly the West Virginia Code, Chapter 22A,
19 Article One, Section 22, provides protection against
20 potential discrimination for participating in these
21 type interviews. I'm going to pass along some contact
22 information from the West Virginia Board of Appeals.
23 That Board hears complaints from miners concerning any
24 discrimination problems. And should you experience
25 any such problems as a result of participating in this

1 investigation and in this interview, please contact
2 the Board immediately. I would caution you that
3 should you need to file a claim, you need to do it
4 within 30 days of when the problem occurs. Thank you.

5 ATTORNEY WILSON:

6 Celeste, did you have anything?

7 MS. MONFORTON:

8 No.

9 ATTORNEY WILSON:

10 No. Okay. Then Mr. Hulgan, I'm going to
11 turn it over to Erik Sherer, who's going to start the
12 questions.

13 A. Okay.

14 EXAMINATION

15 BY MR. SHERER:

16 Q. Okay. I want to thank you for coming down here
17 this afternoon, Mr. Hulgan.

18 A. Okay.

19 Q. We're doing an investigation into the explosion.
20 We're looking for any information that we can possibly
21 get that will help us determine what led up to the
22 explosion, what caused the explosion. We're doing
23 that for two reasons. The first is the families and
24 the friends and the coworkers of those miners deserve
25 to know what happened.

1 A. Absolutely.

2 Q. And the second reason is we want to prevent
3 similar occurrences in the future. So anything you
4 can share with us would be greatly appreciated.

5 Roughly, how many years of mining experience do you
6 have?

7 A. Twenty-seven (27), 28 years.

8 Q. Okay. When did you start with the Massey
9 organization?

10 A. 1999.

11 Q. 1999. When did you start working at Upper Big
12 Branch?

13 A. I probably worked at Upper Big Branch about a year
14 before this explosion happened.

15 Q. Okay. There had been a couple problems that I ---
16 that they had at Upper Big Branch that I left, and
17 they put us back over at Slip Ridge. One was when
18 they had trouble building this shaft up here, and a
19 bit broke. And they put us back over at Slip Ridge
20 for about a month or so. Then as soon as they got the
21 hole drilled and the spads set, they put us back over,
22 you know.

23 Q. Okay. And you've been at Upper Big Branch since
24 they got the Bandytown fan shaft ---?

25 A. Yeah. Actually, I drove all of Headgate 21. I

1 mined every bit of Headgate 21 and all this over in
2 here.

3 Q. Okay.

4 ATTORNEY WILSON:

5 And over in here, you're pointing to the
6 north area?

7 A. Headgate 22. That's Headgate 22; right?

8 BY MR. SHERER:

9 Q. No, that's --- this is Headgate 22.

10 A. Oh, okay. Okay. Headgate 22, right. Okay. I
11 went too far.

12 Q. No problem.

13 A. Yeah, Headgate 22. Then here was the One section
14 --- or Two section.

15 Q. Yeah.

16 A. Okay.

17 Q. Okay. So you've been back at Upper Big Branch
18 about a year or so prior to the explosion?

19 A. Yes.

20 Q. Okay. And where did you work prior to the
21 explosion?

22 A. On Headgate 22.

23 Q. Which shift did you work?

24 A. I worked evening shift.

25 Q. Who was your section boss?

1 A. My mind went blank.

2 Q. That's okay. If you think of it, we'll get ---
3 just let me know. Let's see. Who was up there? Was
4 it Brandon Bowling?

5 A. Not Brandon, no. Oh, shoot. He was the new boss.

6 Q. Hutchens?

7 A. No. He was there ---.

8 Q. That was Smurf.

9 A. Smurf was there before.

10 Q. Patrick Hilbert?

11 A. Yeah, Patrick.

12 Q. Okay.

13 A. Smurf quit about a month before that or maybe a
14 little longer, two months before that happened.

15 Q. Okay. Thank you. And what did you do up there?

16 A. I was a miner operator.

17 Q. A miner operator. Which miner did you operate?

18 A. Left miner.

19 Q. Left miner, okay. What was the model of that left
20 miner?

21 A. It was 1212.

22 Q. 1212, okay.

23 A. I had to think about that a minute.

24 Q. Were you there when they actually turned the
25 section out?

1 A. Yes.

2 Q. So you've been working on 22 ---

3 A. Yes.

4 Q. --- the entire time that it had been under
5 development?

6 A. Yes.

7 Q. What did you think about the ventilation on 22
8 Headgate?

9 A. It was terrible.

10 Q. Terrible. Any specific reason you recall that it
11 was terrible?

12 A. I couldn't call the times that --- I mean, you
13 know, for instance, Patrick's first day of mining, you
14 know , his first shift up there, we walked from the end
15 of the track to the power center and he had a safety
16 meeting and asked if there was anything anybody had.
17 I said, yeah, that's as far as we're going. We ain't
18 got no air. He pulls anemometer out and it wouldn't
19 even turn. You know what I mean? And he pulled us
20 off the section, you know, so --- and it was like that
21 all the time. You might have a little --- 10,000,
22 12,000, 13,000, 14,000, and then all of a sudden you
23 wouldn't have nothing.

24 MR. FARLEY:

25 That was the section power center where

1 it wouldn't turn?

2 A. Yes.

3 MR. FALREY:

4 Okay. Sorry.

5 BY MR. SHERER:

6 Q. And did you carry an anemometer with you?

7 A. No.

8 Q. What was the minimum quantity that you needed to
9 run the miner?

10 A. I think it was 8,000, if I'm remembering right, or
11 6,000. I can't remember.

12 Q. Roughly how often would you not have that 8,000 or
13 that minimum quantity? Would it be once a week, once
14 a shift, once a month?

15 A. It was about every shift. It would come and go.

16 Q. Okay.

17 A. I mean, sometimes it had a sign hanging up in
18 front of the power box, you know, a high voltage
19 sign, ---

20 Q. Sure.

21 A. --- and you could look down there and sometimes
22 that thing would be swinging and sometimes it wouldn't
23 even be moving.

24 Q. Okay.

25 A. That was one of the ways of telling whether you

1 had any air or not, you know.

2 Q. We heard that from several people that worked on
3 this section. Do you have any idea of why the
4 ventilation quantity would fluctuate like that?

5 A. No, I really don't, not unless it had something to
6 do with these doors they had down here, all these
7 doors, you know. And I don't know --- really, I don't
8 know.

9 Q. When you didn't have enough air to mine, what
10 would you do to get air?

11 A. Well, we'd shut it down and go looking for it.

12 Q. And what would you normally find?

13 A. Well, there have been times that we would have ---
14 you know, they'd pull us from off the section and we'd
15 come down here and maybe hang a couple curtains down
16 in this area.

17 Q. You're pointing toward the mouth of the
18 section ---

19 A. Yeah.

20 Q. --- outby?

21 A. I'm trying to pinpoint exactly where we would ---
22 it seemed to me like it was right in here or
23 something. We would lose our air somewhere right in
24 here. I don't know --- I don't see nothing marked on
25 that, what ---.

1 Q. Here's an overcast. Here's the intake.

2 A. We had a lot of problems right here at this
3 overcast.

4 Q. And this is an overcast over the belt. There's
5 also a regulator shown as part of that overcast and
6 then there's a door right next to it.

7 A. Can I use that?

8 ATTORNEY WILSON:

9 Yeah. Why don't you use the blue
10 highlighter. You can circle that.

11 A. Let me think here. I want to make sure I'm doing
12 this right.

13 BY MR. SHERER:

14 Q. Here's --- looks like the belt tail.

15 A. That's the belt head there; right? Overcast,
16 overcast. These overcasts weren't put in until like
17 --- I mean, a lot of times we would hang a curtain I'm
18 thinking right in here ---

19 Q. Uh-huh (yes).

20 A. --- to get our air ---. I think our air was
21 coming up this way. I can show them coming this way,
22 though. It did come up this way.

23 Q. Was it there?

24 A. At one time it come through here, I think, and
25 went that way.

1 ATTORNEY WILSON:

2 And you're saying up from the ---

3 A. Yeah. Do you want me to mark it?

4 ATTORNEY WILSON:

5 --- longwall section?

6 A. I think it went like this.

7 BY MR. SHERER:

8 Q. What we've heard from other testimony is there was
9 a major air change.

10 A. There was a lot of air changes.

11 Q. As the longwall is back behind this connector, the
12 belts came up through it, the air came up through it,
13 I think you guys used to come in ---

14 A. Yeah.

15 Q. --- over the headgate of the longwall. And once
16 the ---.

17 A. Is this the track?

18 Q. Yes.

19 A. Okay.

20 Q. Once the wall pulled up to the point where it
21 started blocking off that connector, ---

22 A. Right.

23 Q. --- they had to reroute everything.

24 A. Right. We traveled around this way ---

25 Q. Uh-huh (yes).

1 A. --- and back up.

2 ATTORNEY WILSON:

3 When you say this way you're saying the

4 Seven North belt?

5 A. Yeah.

6 MR. SHERER:

7 Seven North mains, yeah.

8 A. Mains, yeah.

9 BY MR. SHERER:

10 Q. Okay. So you go out and possibly hang some
11 curtains. Did you ever have to open or close any of
12 the doors to get your air?

13 A. Not that I remember. Most times it was just a
14 matter of hanging the curtains down around this area
15 to try to force the air to go up that way.

16 Q. Sure. Okay.

17 A. And I'm trying to look here. I'm a little
18 backwards on this, but is this ---?

19 Q. This is the Seven North belt.

20 A. That's the North belt.

21 Q. That's the stem that goes to the Glory Hole, and
22 then they set a new mother drive up here.

23 A. I cut all that out right there.

24 Q. Okay.

25 ATTORNEY WILSON:

1 You cut all that out meaning the area
2 where they put the new belt drive?

3 A. Yeah. Yeah. I spent a couple weeks down there
4 cutting all that out on the evening shift. They took
5 me off the section there for about two weeks and I
6 spent two weeks down here cutting all this out.

7 BY MR. SHERER:

8 Q. You cut an awful lot, I bet.

9 A. Yeah. There's a lot of rock. But I'm looking at
10 the intake here. How does the intake run?

11 Q. It's now coming up ---

12 A. Right.

13 Q. --- you mean like the Number One entry, Seven
14 North mains comes across. It looks like it comes up
15 under this --- probably over this belt, the overcast,
16 and then it comes ---.

17 A. If I remember right, our return come down and
18 overtop that overcast; right?

19 Q. Yeah. The return would have come actually down
20 here, come across the intake.

21 A. This is the return?

22 Q. This is the return down --- it comes through these
23 two overcasts here and then out this way.

24 A. But at one time it was going ---?

25 Q. It was, yes. You're absolutely right. But I

1 think they changed that.

2 A. Right. They made so many air changes. That part
3 of it, you know, I --- you know, that part of the air
4 change --- they made quite a few air changes. I mean,
5 there's no doubt about that.

6 Q. Let me ask you ---.

7 A. And you know, Everett Hager, when he got there ---
8 it was better when he got there. Things were getting
9 a lot better. I mean, he was --- he was really
10 working hard on it.

11 Q. About when did he get --- he go to the mine? When
12 did he start working at UBB; do you recall?

13 A. It was probably, you know, only maybe two months
14 prior to this.

15 Q. Okay.

16 A. Three maybe at the most, I'm thinking, you know.

17 Q. Okay.

18 A. I remember him tell me once when he first come
19 there, because I've knowed Everett for a long time,
20 that it would take him a month to get to know the
21 mines and two months to get to know the men. You
22 know, he wasn't --- he didn't really have enough time
23 to get to know, you know, ---.

24 Q. But you say you had pretty consistent problems
25 with just maintaining the minimum air quantities on

1 the section?

2 A. But we had the same problem when we drove every
3 bit of that up through there. It even got worse up
4 there on that end. And the gas was unreal up there on
5 that end.

6 Q. Okay.

7 A. The last 10, 12 breaks up there, I mean, I can
8 remember hitting seven, eight percent up there with
9 the left miner.

10 Q. Oh, jeez.

11 A. Yeah. And I remember when I left here, the last
12 --- I mean, the last week or two we was hitting two-
13 tenths, three-tenths, four-tenths. I mean, it was
14 pretty common to hit, you know, two or four-tenths,
15 something like that.

16 ATTORNEY WILSON:

17 Let's just make sure that the record is
18 clear what we're referring to. When you were saying
19 that you were hitting seven or eight percent in that
20 vein, you're talking about the headgate entry of the
21 longwall; correct?

22 A. Right.

23 ATTORNEY WILSON:

24 All right.

25 A. On that very end up where the fan was --- before

1 the fan was drilled.

2 ATTORNEY WILSON:

3 And you're pointing down towards the

4 Bandytown fan?

5 A. Yeah.

6 MR. FARLEY:

7 2009?

8 A. Yeah.

9 BY MR. SHERER:

10 Q. Let's talk a bit more about Headgate 22, then
11 we'll talk about that Headgate 21 that you drove last
12 year. What did you do when there wasn't sufficient
13 air? Would you talk to Mr. Hilbert about it? Would
14 you tell him you just didn't have enough air or ---?

15 A. Oh, yeah. He was --- you know, if you didn't have
16 no air, you shut down.

17 Q. Okay.

18 A. You know, there's no problem with that.

19 Q. Okay. So he basically shut down the mining.

20 Would he shut down the bolter?

21 A. He'd shut down the whole section.

22 Q. Okay. About how often did he have to shut down
23 the whole section?

24 A. I know of him shutting it down three or four times
25 a week. Sometimes it might be just for a couple of

1 hours, ---

2 Q. Sure.

3 A. --- sometimes a little longer. And I know that
4 several times he pulled us --- I don't know how --- I
5 couldn't count, you know, but I know he's pulled us
6 off --- completely off the section, and we'd come down
7 there and start looking for air, you know.

8 Q. Now, I've been reading the production reports from
9 Headgate 22 and there's no mention of air or
10 ventilation. Do you know why that's just downtime?

11 A. Is that what they're putting on the report, just
12 downtime?

13 Q. Yeah. Do you know anything about that? Did you
14 ever hear anything about that?

15 A. Well, I've heard them say, you know, they didn't
16 know they was going to cover it up, you know.

17 Q. Sure.

18 A. But you know, I don't read their production
19 reports, you know.

20 Q. Sure. Now, we also understand that those reports
21 were called out at --- I think it was 9:00, 1:00 and
22 --- about every two or three hours --- two hours, I
23 think. Have you heard Mr. Hilbert call those out?

24 A. No. I'm always at the miner.

25 Q. Okay.

1 A. You know, I'm never around the phone or nothing.

2 Q. Okay.

3 A. I know he's left me before and said, I got to go
4 call out, you know, but ---.

5 Q. Sure. Now, you mentioned that you had seen
6 two-tenths, three-tenths of methane.

7 A. Uh-huh (yes).

8 Q. I guess that was on the methane monitor on the
9 miner?

10 A. Oh, yeah.

11 Q. What's the highest concentration of methane you
12 recall seeing on Headgate 22?

13 A. That's probably about four-tenths.

14 Q. Okay.

15 A. And it was I think probably the last seven or
16 eight breaks. You know, I think probably the first
17 ten breaks or so we didn't hit nothing, and on up here
18 the last four or five breaks it started getting a
19 little worse.

20 Q. A little gassier?

21 A. A little gassier, yeah.

22 Q. When you first make a cut, can you hear the gas
23 coming out of the ribs?

24 A. I don't think on --- I never did hear no gas on
25 the --- up here. Up there you could hear it.

1 Q. And you're pointing back to ---

2 A. To the ---.

3 Q. --- Headgate 21?

4 A. Right. But on --- right here you can --- but I
5 don't think you --- you could see it on the readout,
6 but you couldn't hear it.

7 Q. Okay. What was the roof and ribs like on this
8 section?

9 A. It was pretty decent.

10 Q. About how high were you mining on this section?

11 A. Everything was probably about six foot, give or
12 take a little.

13 Q. Were you taking any top or bottom?

14 A. Taking a little bit of top.

15 Q. Okay. What sort of top was it, shale or
16 sandstone?

17 A. It was shale.

18 Q. Okay. Do you recall anything unusual the week or
19 so prior to the explosion?

20 A. No.

21 Q. Were you scheduled to work Monday night?

22 A. Yes. I came back on a Monday night, April the
23 5th.

24 Q. What's the last shift prior to that that you
25 worked on Headgate 22?

1 A. I was off Friday, Saturday, Sunday, so it would
2 have been Thursday night.

3 Q. Thursday night. Do you recall anything unusual
4 that occurred on Thursday night?

5 A. No.

6 Q. Had you ever smelled anything that smelled like
7 kerosene when you were on Headgate 22?

8 A. No.

9 Q. Kind of a petroleum-like smell?

10 A. No.

11 Q. Okay. Do you recall if the puddles and such on
12 the floor, do you recall if they were bubbling much?

13 A. Yeah.

14 Q. Had you noticed any change in that?

15 A. It was pretty common on Headgate 21 to see it all
16 the time. But over on Headgate 22, in Number Three
17 entry, the water laid on that side --- in Number Three
18 entry, and you know, I mean, it was common that you
19 seen the water --- the bubbling through the water.

20 Q. Was it a little bit of bubbling or was it a
21 rolling sort of bubbling?

22 A. It just come and went. It was there. It was, you
23 know, always there, but it was --- sometimes it was
24 rolling and sometimes it was just real light, you
25 know.

1 Q. Okay. What about the thumping and bumping? Was
2 there --- did you notice any of that the week or so
3 prior to the explosion?

4 A. No.

5 Q. Okay. So everything was pretty quiet on the
6 section?

7 A. Yeah.

8 Q. Did you have any floor heave on the section?

9 A. Any what?

10 Q. Floor heave or floor hooving?

11 A. None that I know of.

12 Q. Okay. You never had to go back and grade somehow
13 the roadway or anything like that?

14 A. No.

15 Q. Okay. You'd be the guy that would know about
16 that?

17 A. Yeah. Yeah.

18 Q. Okay. What about the rock dust on the section,
19 can you recall the last shift or two you worked what
20 it looked like?

21 A. Rock dusting was very little hand dusting. I
22 think Terry Moore filled in a couple shifts --- a
23 couple shifts for Pat. And as far as machine dusting,
24 that was the only two shifts, and he made them do it
25 when he was up there. That was the only two shifts

1 that I recall that it was ever dusted with machine
2 dust.

3 Q. And do you recall about when Mr. Moore did that in
4 relationship to the explosion?

5 A. If I was guessing, I would probably say probably a
6 month prior to that explosion. I mean, again, I ---
7 it's been a long time, you know what I mean?

8 Q. Sure. Yeah.

9 A. But now, that was the only two times that I ever
10 recalled that there was ever any machine dusting done
11 up there.

12 Q. And then when you machine dusted, I assume that it
13 looked good?

14 A. Yeah.

15 Q. How was it looking immediately prior to the
16 explosion? Would you say it was good, fair?

17 A. Well, now, if I remember right, the beltlines was
18 rode up and I remember them putting some --- a couple
19 --- one or two machines over on the beltline, and the
20 beltline looked good. As far as Two and Three entry,
21 it was pretty poor.

22 Q. Okay. Who normally did the rock dusting on the
23 section when you guys were mining coal? Was it the
24 scoop operator?

25 A. Yeah.

1 Q. Do you think you had enough time to keep up with
2 the dust?

3 A. The scoop man got a lot to do, you know, ---

4 Q. Sure.

5 A. --- but I mean, you know, time --- you know, it
6 takes a lot of time to get everything together. And
7 then you're driving three entries, and it's hard to
8 get around up there. It's hard to get around
9 equipment.

10 Q. Sure.

11 A. It's almost impossible on that, really it is on
12 that.

13 Q. I hear you. I don't know how you guys do it with
14 two miners, two bolters.

15 A. I mean, you --- it's like a traffic jam up there,
16 you know, so you know ---.

17 Q. Okay. Let me ask you a little different question.
18 Have you noticed any unusual fatigue at the end of the
19 shift?

20 A. As in?

21 Q. Like when you got off from work, you just didn't
22 have enough energy to do much.

23 A. Yeah. I'm always wore out when I get off work.

24 Q. Yeah.

25 A. I don't know, you know, is that ---?

1 Q. I understand that. But had you noticed that it
2 had possibly gotten worse or you had gotten more tired
3 while you were working on this headgate section?

4 A. Not really.

5 Q. Okay. Thank you. Do you think --- just in
6 general, do you think the ventilation in the mine was
7 adequate?

8 A. No.

9 Q. Why do you not think that it was adequate? We
10 talked about the section. Is there anything specific
11 in the other parts of the mine that you think was
12 inadequate?

13 A. Well, you know, I walked a lot of the intake and,
14 you know, it seemed like when you got down to about
15 --- I don't know, I think this is probably what, 78
16 Break somewhere in here or something.

17 Q. Seventy-eight (78) would be ---

18 A. Right here maybe.

19 Q. --- down here.

20 A. Is that right?

21 Q. Yeah. Here's 75. Seventy-eight (78) is right
22 here.

23 A. Okay. Where was the doors at, right in here?

24 Q. The doors are marked right here and right here.

25 A. Okay. I think right in front of these doors is

1 where we --- this was the intake here; right?

2 Q. Uh-huh (yes).

3 A. From here on out we had good air.

4 Q. Uh-huh (yes).

5 A. And it seemed like at times from here to here we
6 had good air.

7 Q. Uh-huh (yes).

8 A. You know, but when it got to here, it was just
9 like you lost everything.

10 Q. Okay. And about ---?

11 A. And it would come and go. I mean, it was just
12 like where --- I don't --- you know --- but if you
13 ever walked this, I mean the intake, it was good, and
14 it was good from here on out.

15 ATTORNEY WILSON:

16 Okay. When you say it was good from
17 here ---?

18 A. From ---.

19 ATTORNEY WILSON:

20 Up the Number Six North mains and then up
21 the headgate of the longwall ---

22 A. Right.

23 ATTORNEY WILSON:

24 --- to about the crossover; is that
25 right?

1 A. Right.

2 ATTORNEY WILSON:

3 All right.

4 BY MR. SHERER;

5 Q. And why do you think there was a problem with
6 ventilation in that intake?

7 A. I don't know. I mean, it's just like when it got
8 to here, it just --- it come and went, you know. It's
9 just like where could it went to, you know what I
10 mean?

11 Q. Okay.

12 A. I mean, it's just like, you know, ---. This
13 overcast right here, ---.

14 Q. Uh-huh (yes).

15 ATTORNEY WILSON:

16 And again, you're pointing to outby the
17 22 Headgate?

18 A. Right. I can remember air coming overtop and
19 underneath it, but you could go through a door and
20 come around and nothing would come overtop of it.
21 That would be your return. This was your return;
22 right?

23 BY MR. SHERER:

24 Q. The return is here. The return came down Number
25 three and then turned and went down ---.

1 A. Okay. It went over this overcast?

2 Q. Yeah.

3 A. Okay. And at one time our return come down this
4 way and went where, out that way?

5 Q. Yeah, used to just dump back this way, and that
6 had been rerouted, we understand, to go back ---.

7 A. Right. Because I remember it was down for two or
8 three weeks because we didn't have no return up here.
9 And we was down here on Headgate 22, doing all kinds
10 of crazy stuff, because we didn't have no return up
11 here.

12 Q. And do you recall about when you were down for
13 those three weeks?

14 A. No. I know that it was as couple months prior to
15 that.

16 Q. Okay. It was after Christmas?

17 A. Probably, just guessing. I mean, you know, it's
18 been a while.

19 Q. Sure.

20 A. But I also know the longwall was down for a week
21 over that, too.

22 Q. Okay.

23 MR. FARLEY:

24 We understand that the return was

25 rerouted around February 10th. Now, if that rings any

1 bell, that was Super Bowl Sunday.

2 A. Okay.

3 MR. FARLEY:

4 We understand that the return off 22

5 Headgate at that point went down the Number One entry
6 here in Seven North and then it was rerouted to where
7 it goes through the crossover and down Four and Five
8 and then the longwall headgate entry. Does that ring
9 a bell?

10 A. I remember them rerouting it, and I didn't know
11 exactly where it was going to after that. and I don't
12 think nobody else did neither because, like I said,
13 our return was supposed to go across that overcast,
14 and there was nothing coming across. It was trying to
15 come down the beltline. I mean, it was just like they
16 was doubling the curtains up here and everything, and
17 it was trying to force --- the air was trying to force
18 itself down the beltline. We couldn't get air in
19 Number One. We had one mine inspector that wrote low
20 air in Number One, but he let them run in Number Two
21 and Three. And I don't know if you all remember that
22 or not, but it would force itself to come back down
23 the beltline. It wouldn't go back down Number Three
24 entry. And it was a big problem. I mean, it was ---.

25 BY MR. SHERER:

1 Q. Sure sounds like it.

2 A. I mean, it was unreal. I mean, you couldn't force
3 it to go down Number Three.

4 Q. So it sounds to me like you just didn't have a
5 section return, ---

6 A. Uh-uh (no).

7 Q. --- in effect?

8 A. No, absolsutely not.

9 Q. Okay.

10 A. Never did.

11 Q. Was it that way when you first started the section
12 or was it ---?

13 A. The first ten breaks wasn't that bad because, if I
14 remember right, our return was --- I don't think they
15 had a stopping here. I think our air was pulling down
16 this way. It was pulling down ---. I mean, the first
17 ten breaks wasn't that bad. And then when they built
18 that --- I think they built a stopping here, stopping
19 that off maybe or something. I don't know. But when
20 they did that, then that's when the air got plum
21 terrible.

22 Q. Do you know who made those changes?

23 A. It was before Everett got there, so ---.

24 Q. Who was in charge of making ventilation changes in
25 this mine?

1 A. I couldn't tell you that.

2 Q. Okay.

3 A. I don't know who was --- I don't know who was
4 making all the ventilation changes. I really don't.
5 I know it was crazy, though.

6 Q. Do you think people were making changes while you
7 guys were on the section?

8 A. Something was going on because the air would
9 always come and go.

10 Q. Okay.

11 A. Massey had a policy, 20,000 or don't run. They
12 never had no 20,000 on that section.

13 Q. Would they run?

14 A. They'd run with 10,000 or 11,000, you know, one
15 miner at a time. And you'd work yourself to death
16 trying to get your air over to the miner, you know,
17 and then ---.

18 Q. Now, you say you talked to the section boss, Mr.
19 Hilbert, about that. Did you ever talk to anybody
20 else about low air?

21 A. There was a couple mine inspectors come up there
22 we talked to. We had one mine inspector one day. We
23 was coming in. He was an electrical inspector. I
24 don't know his name. And the men stopped him and told
25 him we didn't have no air on the section. The next

1 morning he sent a bunch of people out and they shut
2 the section down. And that was a week prior or two
3 weeks prior to April the 5th.

4 Q. Do you think upper management knew about the lack
5 of air on this section?

6 A. I've been around Everett Hager for a long time,
7 and he'll tell you, if you ain't got air, don't run.
8 He goes by the book. And Terry Moore is the same way.
9 And these two guys got thrown in on this just a
10 couple months prior. You know, they really didn't
11 have a chance to get to know this mine and what was
12 going on. And that's the way Massey is. They change
13 people around, you know, to where they don't want
14 nobody to know what's going on. I mean, that's the
15 way I feel about it.

16 Q. Sure.

17 A. I mean, you got Everett, he's --- I mean, and
18 Terry Moore, both will tell you, you know. And if
19 they come up there and you're running without air,
20 they'd fire you in a heartbeat. They'd rather see it
21 shut down than you run that section, you know, ---.
22 And that's the way we done it. We didn't have no air,
23 we didn't run. We didn't run. You know, most of the
24 time we didn't run 100, 150 feet a shift because we
25 didn't have no air.

1 Q. Okay.

2 A. And if we got that --- a lot of times --- you
3 know, sometimes it might only be 50 or 80 foot.

4 Q. Do you think you guys were getting pressure to run
5 coal even if you didn't have air?

6 A. There's always pressure there, yeah.

7 Q. Okay. When inspectors were on the property, did
8 somebody call in and tell you that they were on the
9 property or tell the section boss?

10 A. Most of the time they got to the section before
11 they got there.

12 Q. Okay. Thank you. I know you're --- you've
13 probably read all the stuff about methane monitors in
14 the paper. Did you ever have any problem with the
15 methane monitoring system on the miners ---

16 A. No.

17 Q. --- on this section?

18 A. No.

19 Q. Do you recall the last time you saw somebody
20 calibrate those methane monitors?

21 A. I can't recall, no.

22 Q. Okay. Do you think that compared to your handheld
23 instrument, the methane monitor on the miner you ran
24 seemed to be giving reasonable readings?

25 A. Yeah. I compared them.

1 Q. Okay. And then they were --- did they compare?

2 A. Yeah.

3 Q. Okay. Thank you.

4 A. And we did do that. And when Smurf was there, we
5 compared them a lot. And actually, you know, it got
6 to a point, Smurf knowed somebody was going to get in
7 trouble is why he quit way before he did, because he
8 knowed and he told the men he wasn't going down when
9 it happened, and that's why he quit, because he knowed
10 the air was not right most of the time. And I'm
11 pretty sure he'll tell you that.

12 Q. Okay. Thank you. Now, let's talk a bit about
13 this Headgate 21, when you were driving that. Did you
14 start when they first turned out from the Seven North
15 mains?

16 A. No. I think I started --- don't hold me to it, I
17 mean, probably --- I'm saying probably 20 breaks
18 from ---.

19 Q. From the mouth?

20 A. I'm saying around 40, 45 Break maybe.

21 Q. Okay.

22 A. Maybe 50, somewhere in there.

23 Q. Okay. So you started about the upper third of it?

24 A. Yeah.

25 Q. And then did you drive all the way out to the end

1 of it?

2 A. All the way to the end.

3 Q. Tell us about that. You mentioned low air and
4 high methane.

5 A. Well, the air was decent on up to probably --- you
6 know, probably up into this area. And I can't see.
7 Does that say 80 or something?

8 Q. That's 95.

9 A. Oh, 95?

10 Q. Yeah.

11 A. 100, 95. We had decent air. I mean, it wasn't
12 like --- from there --- from 95 on out it was just
13 terrible, you know. It was awful.

14 Q. Just didn't have enough air to ---. Let me ask
15 you this. When you didn't have enough air, did you
16 shut down?

17 A. Yeah.

18 Q. Okay.

19 A. We didn't run very good coal from then on out. It
20 was --- you know, because you didn't have air. And it
21 was so hot up in there, that every --- all my
22 coveralls and everything, I cut the sleeves out of
23 every one of them. I'd go to bit the miner up, and
24 I'd be wringing wet.

25 Q. Oh, jeez.

1 A. That's how hot it was up there.

2 Q. That's pretty hot.

3 A. That's hot. I mean, ---.

4 Q. Was there a lot of water when you was up in that
5 area?

6 A. Yeah. We had a lot of water up through there in
7 places, yeah. Most of it in the Number Three entry
8 was knee deep or deeper. They had a couple pumps set
9 up through there to take care of some of it.

10 Q. Okay. Was the water draining toward the face as
11 you were cutting through there?

12 A. It was like it was trying to go with us, yeah.

13 Q. Okay. Now, you mentioned some real high methane
14 readings. What do you recall about those?

15 A. I just --- you mean, how high they was or ---?

16 Q. Yeah.

17 A. I remember --- if I --- I remember one time up
18 there up to eight, five, six, seven, eight percent.
19 And that was pretty common there for a couple weeks.

20 Q. And that was what was showing on the methane
21 monitor on the miner?

22 A. Yes.

23 Q. Did your handheld unit show similar values; do you
24 recall?

25 A. It was similar, yeah.

1 Q. Okay. What did you guys do when you ran into that
2 sort of methane?

3 A. We shut the section down and the majority of the
4 people went to the power box. And usually the boss
5 would come and get me to help ventilate or take care
6 of it.

7 Q. Were you able to successfully take care of it just
8 through changing curtains or fly pads or ---?

9 A. It took a while. It took time to get rid of it.

10 Q. Did you ever have to put curtain up the middle of
11 the entry?

12 A. Yeah.

13 Q. Who was your section boss when that was going on?

14 A. I can't remember his name. He was an old man.

15 Q. Okay. If you recall, ---

16 A. Oh, goodness.

17 Q. --- let us know.

18 A. Do you have any bosses' names I can ---? I'd know
19 it if I heard of it.

20 Q. We don't have a list handy. We've got a list of
21 all former employees, but there's about 500 people on
22 it.

23 A. I can't think.

24 Q. That's okay. Don't worry about it.

25 A. Wickline. Bobbie Wickline.

1 Q. Wickline, okay. That rings a bell. Thank you.

2 In your opinion, and this is all I'm asking, what do
3 you think caused this explosion?

4 A. Do the longwall's return return down this way?

5 Q. There was some return up the headgate. Most of it
6 went down the tailgate. We know that the headgate had
7 a lot of problems with water. It just about roofed
8 out.

9 A. Right. But their return --- all this was their
10 return; right?

11 Q. Uh-huh (yes). We think there was about 500,000
12 CFM going up through the Bandytown fan at the time of
13 the explosion.

14 A. I'll tell you, that three weeks they had us shut
15 down because we didn't have a return up here, I was
16 all up in there, and a lot of that was --- you know,
17 they built the cribs over here. You know, a lot of
18 places you could barely squeeze through. And they had
19 several men that refused to even go up in there
20 because the top, you know, it just --- you know, you
21 had two sets of cribs and you could turn sideways and
22 you could barely squeeze through, you know. And what
23 return they had up that way was just --- it was no
24 good. They didn't have no return, you know. And they
25 had a lot of water back in there, but you know, I

1 couldn't say what caused it.

2 Q. Okay.

3 A. There was a lot of gas --- but that fan was there.

4 You know, there was a lot of gas on that upper end up

5 there. But that fan you would have thought would have

6 took care of that up there, you know.

7 Q. Sure.

8 A. I don't know. I really don't know. I'd like to

9 know myself.

10 Q. We're just asking people for their opinions

11 because sometimes somebody will have a good idea. So

12 we appreciate that.

13 A. I ain't got no idea.

14 Q. Okay.

15 MR. SHERER:

16 That's all the questions I've got for you

17 right now.

18 EXAMINATION

19 BY MR. FARLEY:

20 Q. Mr. Hulgan, I'll be trying to clarify some

21 questions. I may be jumping around, so be patient

22 with me.

23 A. Okay.

24 Q. Is it correct that Hilbert replaced Smurf when

25 Smurf left?

1 A. Yeah.

2 Q. Do you remember about when Smurf left?

3 A. I couldn't remember if it was a month or two
4 months. It seemed to me like it was more like two
5 months prior to April 5th.

6 Q. And for the record, Smurf is Richard Hutchinson?

7 A. Yeah.

8 MR. SHERER:

9 Hutchens.

10 MR. FARLEY:

11 Hutchens. Excuse me.

12 BY MR. FARLEY:

13 Q. You talked about the high voltage sign section
14 power center on 22 Headgate. If I understood you
15 correctly, that was usually a pretty good indicator of
16 how your ventilation was; is that correct?

17 A. Yeah. Yeah. You know, where we ain't got
18 anemometers or whatever, you know, you could be up
19 there running coal, and all of a sudden, you didn't
20 have no air. And all you had to do was just walk
21 around the corner and look down there at that power
22 box, and if there weren't no air, that was the end of
23 it, he'd shut it down.

24 Q. Okay. You know, at times when the ventilation was
25 not good, the sign would just simply be hanging still;

1 is that correct?

2 A. Still. Wouldn't move at all.

3 Q. I guess as the ventilation improved, the more the
4 sign would ---

5 A. It would swing ---

6 Q. --- wave?

7 A. --- back side to side.

8 Q. All right. And I think you said that on Friday
9 --- or excuse me, Thursday, the last shift that you
10 worked prior to the explosion, it was straight,
11 hanging down; is that correct?

12 A. It come and went, so --- you know, when we left
13 there, it was --- I can't really remember if it was
14 swinging or not, you know, but I think when we left
15 there we had decent air. I think we had 11,000.

16 Q. And when you say 11,000 you mean in the last open
17 crosscut?

18 A. At the power box. We had 11,000 at the power box.

19 Q. Meaning intake air?

20 A. In the intake air?

21 Q. Oh, yeah?

22 A. Yeah. We --- I remember --- I had been with the
23 boss, checking air, and I'm pretty sure 11,000 is what
24 he said he had.

25 Q. Okay.

1 A. Because you know, when he took over bossing, when
2 he took Smurf's place, it was pretty common that he
3 was pulling his anemometer out and checking every cut
4 before we run. I mean, you know, he was new at it and
5 he was trying to be --- do it right, you know what I
6 mean?

7 Q. Sure.

8 A. And he did. He done it right.

9 Q. Now, how was it earlier that week and the week
10 before the explosion?

11 A. Sometimes you had it, sometimes you didn't.

12 Q. It comes and goes?

13 A. It comes and goes.

14 Q. Now, I'm trying to understand your shift schedule
15 at the 22 Headgate. Am I correct that you worked
16 straight evening shift?

17 A. Right.

18 Q. Now, there was also a straight dayshift crew; is
19 that correct?

20 A. Right.

21 Q. Now, was there also a crew which would work three
22 on the day and three on the evening and then three
23 off?

24 A. Right.

25 Q. That sort of gave everybody ---?

1 A. Yeah. I think it was five on, three off, five on,
2 three off, I believe is how it was.

3 Q. So you had three crews working --- three extra
4 crews working that section?

5 A. Right.

6 Q. Okay. Now, you indicated that you spent a couple
7 of weeks carrying belt channel and so forth down there
8 for the mother drive construction site at the mouth of
9 the 22 Headgate.

10 A. Right.

11 Q. Now, did anybody ever tell you that the work at
12 the mother drive construction site had a negative
13 impact on the 22 Headgate ventilation? Did anybody
14 ever --- did you ever hear any discussion like that?

15 A. Yeah, I did. I remember that --- I recall them
16 coming off the section and coming down and hanging
17 their curtain and stuff. When I cut this, all my air
18 --- I was cutting it going towards the head, and the
19 air was going --- you know, the dust was going away
20 from it. So I never had no trouble with no dust, but
21 there was several times that they come down and re-
22 hung curtains or something here, thinking that we was
23 stealing their air from them, you know. But that only
24 lasted a couple weeks, and we still had the problems
25 up there, you know. Some way, somehow that they split

1 the air to where both of us was supposed to have air,
2 you know. I was supposed to have air when I was
3 cutting that head hole and the section was supposed to
4 have their air, too. And at that time, if I remember
5 right, our intake was --- our air was coming from over
6 here and coming over like this and up. And I don't
7 know where it was coming from, but it was coming
8 across right in here, these two entries right here,
9 and coming over this way and coming up.

10 Q. You're pointing to ---

11 A. I don't know what that is.

12 Q. --- the north side of the 22 Headgate belt.

13 ATTORNEY WILSON:

14 Do you want to mark it? Do you want to
15 mark the entries with a green highlighter where
16 you recall ---?

17 BY MR. FARLEY:

18 Q. As best we understand it, this intake that you see
19 here, which is what basically makes its way to the 22
20 Headgate, was a return prior to February 10th, as best
21 we understand.

22 A. Okay.

23 Q. So maybe that's --- if that helps you.

24 A. I think all that was done --- that was changed
25 after the head hole was already cut and done, the head

1 was set and everything. The belt was put in.

2 Q. Okay.

3 A. I mean, don't hold me to that, but I'm pretty sure
4 it was. But I do know that our air was coming right
5 through here and over and up to the section.

6 ATTORNEY WILSON:

7 Why don't you mark that with the green
8 highlighter just so that it's clear what you're
9 talking about?

10 A. All right. I'm sitting here, trying to think,
11 before I mark that. The track on this entry --- this
12 was the belt; right?

13 BY MR. FARLEY:

14 Q. Uh-huh (yes).

15 A. The track was in this entry here; right?

16 Q. Uh-huh (yes).

17 A. And the track went up this way; right? Am I
18 right?

19 MR. SHERER:

20 I think so.

21 A. So I'm thinking our air was coming across right
22 here and right here, coming up like this, to our
23 section. See, I remember us hanging --- before they
24 put these overcasts in, I remember us hanging curtains
25 right here and right here and right --- let's see.

1 Now, is this the belt? What is this? This is the
2 belt line; right?

3 MR. SHERER:

4 That's the belt, yes, sir, from the
5 tailgate section.

6 A. Okay. We would hang curtains here and here, maybe
7 right here, too, blocking the air from going this way
8 and trying to force it up that way.

9 ATTORNEY WILSON:

10 Block it from going across towards the
11 longwall?

12 A. Yes. And that was before this section was really
13 up and running. You know what I mean?

14 ATTORNEY WILSON:

15 Let me go ahead. I'll mark this map as
16 Exhibit Hulgan Three.

17 (M. Hulgan Exhibit Three marked for
18 identification.)

19 MR. SHERER:

20 Can we get you to draw a line out from
21 that green line that you marked and just label it ---?

22 ATTORNEY WILSON:

23 Label that over there intake.

24 WITNESS COMPLIES

25 MR. SHERER:

1 Okay. Thank you.

2 A. Now, I don't know how they was right in that area
3 to come across it, but I remember it was coming across
4 the track. We had a double door there, if I remember,
5 might be a double door right there. That's what I'm
6 looking at. Is that that double door?

7 MR. SHERER:

8 That's a stopping there. There's a
9 double door right here.

10 A. Double door right here?

11 MR. SHERER:

12 Yes. There's a double door here and then
13 there's two ---.

14 A. They was keeping that double door closed and
15 letting the air come around this way up to the
16 section.

17 ATTORNEY WILSON:

18 You're referring to the double doors
19 again just outby the mouth of the ---

20 A. Right.

21 ATTORNEY WILSON:

22 --- 22 Headgate?

23 A. Just seemed like --- they made a lot of changes
24 here. There was a set of double doors here, too.
25 They took them out. At last, there was two set of

1 double doors here; right? There was two set of double
2 doors there, was. I don't know if they there now or
3 not. Oh, here they are. They're marked right here.

4 MR. SHERER:

5 Yeah. There's a set of double doors in
6 the same break and then here's another set that go
7 across an intersection.

8 A. Our intake air was coming this way; right?

9 MR. SHERER:

10 Uh-huh (yes).

11 A. That's how it was. This was changed so many
12 times, this area right here. In just the couple
13 months I was up there, there was doors. They moved
14 these doors a dozen times. I mean, at one time they
15 was back here. These overcasts, they had been ---
16 that one was act ---. I think this one here was the
17 one that was active.

18 BY MR. FARLEY:

19 Q. Okay. Now, again, I'm trying to clarify some
20 things. I'm not trying to trick you, ---

21 A. Okay.

22 Q. --- so don't get that impression at all. In
23 reading the pre-shift/on-shift report books for 22
24 Headgate and the longwall for the month of March,
25 based on the entries in the books, now, assuming the

1 entries in the book were accurate and can be believed,
2 all right, that's an assumption, now, the pre-shift
3 report for the month of March for the longwall, again,
4 on the assumption that it's accurate, shows that the
5 intake --- the main intake for the longwall over here
6 on the headgate side was around 115,000 cubic feet per
7 minute around the first of March. Now, by the end of
8 March it's in the mid 50s, 55,000 to 60,000. Now, in
9 reading the pre-shift/on-shift book for 22 Headgate,
10 now, the quantity of air shown in the last open break
11 readings is a little bit better towards the end of
12 March, at least if you can believe what's in the
13 books.

14 A. Uh-huh (yes).

15 Q. Now, if I were to go --- I can't give you exact
16 numbers, but the average goes up probably 3,000,
17 4,000, 5,000 cubic feet per minute in the last open
18 break readings. Now, am I accurate --- is it accurate
19 or, you know, based on your actual experience, you
20 were there, ---

21 A. I remember that.

22 Q. --- did the ventilation actually improve a little
23 bit on Headgate 22 for a month?

24 A. For a couple weeks it did. I remember that. I
25 remember that change.

1 Q. Okay.

2 A. Yes, I do.

3 Q. Okay.

4 A. It did improve some, yes.

5 Q. Because based on the description of the decrease
6 in air on the longwall, I mean, my question is, if it
7 didn't improve a little bit, then where did it go? I
8 know you don't know the answer to that, but you see
9 where I'm going here?

10 A. Yes. I do remember that change. I do remember
11 for a week or two it was a little better, and it's
12 just like it wasn't there no more.

13 Q. Okay. All right.

14 A. I mean, I honestly believe they just didn't really
15 have --- they had air come in, but they just didn't
16 have nowhere for it to go.

17 Q. And that's why I asked you that question
18 because ---

19 A. Right.

20 Q. --- you got to basically cut it in half ---

21 A. Right.

22 Q. --- on the longwall, and again, where did it go?

23 A. Because you know, at one time I remember they was
24 trying to force it down through here and it wouldn't
25 go, you know, or they wouldn't let the longwall and

1 the one section there go together, if I remember
2 right, you know.

3 Q. Okay.

4 A. That's why they shut us --- we was down for three
5 weeks building them Kennedy stoppings up through there
6 and stuff.

7 Q. Okay.

8 A. It was crazy, you know. And then they made that
9 air change and tried to send the air somewhere else.
10 And that's what I was saying, the air was coming
11 underneath that overcast right there, up on the
12 section, but there was nothing coming back ovetop of
13 it on your return, you know. I mean, just --- you
14 would think you could put that air somewhere on the
15 return, but it ain't going --- you know what I mean?
16 I mean, it's the truth. I mean, we --- and there was
17 --- I don't know how many times I went to that
18 overcast right there. I mean, all the times that we
19 was pulled off the section, you go through that door,
20 you'd have 40,000 coming underneath. By the time you
21 got up here, you wouldn't have 10,000. and then when
22 it come --- you go to the returns side of it, there
23 was nothing going across the top of it. You couldn't
24 make it go across the top of it.

25 Q. Now, based on what I'm hearing from you about Mr.

1 Hutchens and Mr. Hilbert, your two foremen, that you
2 worked for, is it fair to say that you had confidence
3 in those two men?

4 A. Yeah. Smurf was --- he was the same way. If you
5 didn't have no air, he'd shut it down.

6 Q. Okay. My understanding of how your miner sections
7 were staffed --- when I say staffed, you know, how you
8 had your people designated as far as their jobs were
9 concerned, you never had someone whose sole duty was
10 designated to take care of the ventilation; is that
11 correct?

12 A. Not that I know of.

13 Q. Did Massey companies ever have a so-called
14 ventilation man or a ventilation person?

15 A. No, not that I know of.

16 Q. Have you ever worked anywhere that it did?

17 A. No. You took care of your curtain and your air
18 you was working, and your boss come and checked it and
19 told you, you could run or not run.

20 Q. Okay. The reason I asked the question is, you
21 know, in another lifetime, many years ago, it was
22 actually the section boss. We actually had a guy who
23 was a ventilation person.

24 A. Right.

25 Q. Do you remember those days?

1 A. Yes, I do. I really do.

2 Q. All right.

3 A. I do remember that.

4 Q. All right. Did you ever hear any stories about
5 anybody being stationed at specific locations in the
6 mines, at doors or regulators, to adjust the air based
7 on where they thought an inspector might be going on a
8 particular day?

9 A. No. Yes and no. Let's put it this way. They
10 could get air up there when an inspector was coming up
11 there. So we always thought down here on this
12 headgate that they was opening or closing a door down
13 here to give us more air.

14 Q. Okay.

15 A. And that's what we really thought, but --- you
16 know, that's --- I can't remember where the doors was
17 at. Right here maybe. Right there.

18 Q. About right there. And I'm not a ventilation
19 expert, and I'm not a rocket scientist either, but if
20 you want to do ---.

21 A. Our intake crossed right here; right. And then
22 at ---.

23 Q. It split. According to the map, it splits the air
24 and goes --- one going to the longwall and the other
25 going up to the other sections.

1 A. Well, see, at one time, when that longwall was way
2 up here, our air come up this way. Let's see.

3 Q. All right. Also, based on your description of Mr.
4 Hager and Mr. Moore, that you had some confidence in
5 them, ---

6 A. Absolutely.

7 Q. --- had some confidence in them?

8 A. Out of all the people I worked with --- I mean,
9 not to interrupt you or nothing, but them two right
10 there, you know, they're --- they do things right, you
11 know what I'm saying, and they both was throwed in on
12 this. And you know, Everett didn't want to be there,
13 but they brung him over to help straighten this place
14 out. And just like I said, you know, he told me it
15 took a month, two months to get to know the mines, and
16 it will take a couple months to get to know the men,
17 you know what I mean, or three months, you know. So
18 he didn't really --- in my opinion, he still was just
19 trying to get used to this place and he was trying to,
20 you know, make changes to make things better, you
21 know. He's always been trying to make --- you know,
22 do things better and make things better, you know, and
23 he's always kept a clean section. I mean, ---.

24 Q. Part of our investigation is trying to figure
25 out ---

1 A. Right.

2 Q. --- who was doing what and where.

3 A. Right.

4 Q. Okay?

5 A. Right.

6 Q. Now, my understanding is that Mr. Hager was the
7 superintendent for the north part of the mine ---

8 A. Right.

9 Q. --- at the time of the explosion; is that correct?

10 Is that the way you recall it?

11 A. As far as I understand, yeah.

12 Q. Do you know when Mr. Hager became superintendent?
13 Had he been working someplace else?

14 A. He was at Ellis Eagle or --- yeah, Ellis Eagle.

15 Q. Okay. Now, when did Mr. Hager come to UBB?

16 A. February maybe. I might be wrong, but January,
17 February, March somewhere.

18 Q. You're confidential that prior to January and
19 February Mr. Hager was someplace other than UBB?

20 A. He was at Slip Ridge.

21 Q. Okay.

22 A. Or no. He was at Ellis Eagle.

23 Q. Okay. What about Mr. Moore, had he always been at
24 UBB or did he come ---?

25 A. He had been there a few months longer, but I think

1 he had been our section boss. I think he was over on
2 the other side, not on this side. I don't know
3 exactly where he was at or where, but ---.

4 Q. Now, we understand that Wayne Persinger came to
5 UBB sometime in the early part of 2010. Does that
6 sound about; ---

7 A. Yes.

8 Q. --- right?

9 A. Right.

10 Q. Would Mr. Persinger have come about the same time
11 as Mr. Hager?

12 A. Yeah. I think so. I mean, there might have been
13 a couple weeks difference or a month difference, you
14 know, but pretty much around the same time.

15 Q. Okay.

16 MS. MONFORTON:

17 I just have a couple of follow-up
18 questions.

19 EXAMINATION

20 BY MS. MONFORTON:

21 Q. Talking about Mr. Persinger and Mr. Hager coming,
22 do you have any idea of what the circumstances were
23 that caused the company to put them there at the mine?
24 What was going on at the mine that you --- any idea of
25 why those individuals were put at the mine?

1 A. I think his name was Andy Kolson. I think he was
2 the superintendent. And I think they had fired him
3 because they let it flood up in there and it caused to
4 have another return set, and the longwall was down for
5 an additional week or two. And I think that's how it
6 come about that --- and then Homer retired. And then
7 after, you know, Andy was fired and Homer retired,
8 they had to put somebody in their --- you know. And
9 they brung the best to make things better, you know.
10 I mean, the three men that they brung there, you know,
11 Terry Moore and Everett Hager and Persinger, they're
12 fine people. I mean, they do things right and they
13 get things for you, you know. And all three of them,
14 they just had throwed in there, you know, and ---. To
15 me it's not really right that, you know, they would
16 get hung up on this because none of the three was
17 there long enough to know what really was going on at
18 this mines, you know.

19 Q. Thank you.

20 A. You know, you feel like there's 29 men dead, and I
21 know because I worked with all them guys, and you feel
22 like, you know, that somebody is going to take the
23 blame for this, you know. I mean, something happened
24 terribly wrong, you know. But I know them three guys
25 and I know that they're not going to do nothing in any

1 shape or form --- I mean, for instance --- I know this
2 is totally off the wall. I remember Everett Hager, we
3 were having bad top, and I never seen another mine
4 foreman, he'd take everybody on the section for the
5 first 20 minutes and pull rock. Mid-shift you shut
6 down. Everybody would get a slate bar and pull rock.
7 And I've never heard of another mine foreman do
8 something like that, you know, looking out for each
9 other. And that's the kind of guy he was, you know.

10 Q. Thanks for sharing that with us. You mentioned a
11 number of times that there were a lot of air
12 changes ---

13 A. Right.

14 Q. --- going on at the mine. What were the
15 procedures for miners to know that there were going to
16 be air changes, or did you just go up to the section
17 and it would be something different every day?

18 A. Well, as far as the air changes, I mean, they
19 would tell you that there was --- you would hear about
20 it from your foreman, you know, that there was an air
21 change, and hopefully we'd have better air.

22 Q. Okay.

23 A. And that's --- you know, ---.

24 Q. So it was your experience that the foreman would
25 know and they would let you know what to expect?

1 A. Yeah. Our foreman would let us know. But you
2 know, they made an air change and where they was
3 trying to put your return air or something, you didn't
4 know that. You'd know that they made a change and
5 that was it, you know.

6 Q. I'm just going to ask if you can help us with any
7 dates or time frames. You mentioned that your
8 recollection that for two or three weeks you were down
9 on Headgate --- Production was down on Headgate 22 and
10 some individuals were building at that same time some
11 Kennedy stoppings.

12 A. Uh-huh (yes).

13 Q. Can you pinpoint an approximate amount of time?

14 A. I know we was down for at least two --- I'm
15 thinking more closer to three weeks, that they
16 wouldn't let us run because we didn't have no return.
17 And I can't remember if our return was with the
18 longwalls or they was trying to get them to let us
19 return our air with the longwall. And we built all
20 them Kennedy stoppings. We worked for two or three
21 weeks.

22 Q. Was that in the fall of last year? Would it have
23 been October, November 2009?

24 A. I think it would be around January. Don't hold me
25 to this, I mean, because I'm really bad on dates, I

1 admit, but I'm thinking it was around January and
2 February.

3 Q. Okay. Did you indicate that on a shift when you
4 had good air that you'd expect to get about a hundred
5 foot?

6 A. Yeah.

7 Q. So if we looked at the production books, we'd
8 probably see some shifts then when it was 60 or 80?

9 A. Most shifts was around 80 to 150, something like
10 that. I think the only --- the best shift we ever had
11 last year was --- not this year but last year was 4th
12 of July. I think we --- after all the deductions and
13 everything, it was 350 foot.

14 Q. On one shift?

15 A. One shift.

16 Q. You were running the miner on that shift?

17 A. Yes. And I had Bobbie Pauley as a buggy operator
18 behind me, the lady.

19 Q. Uh-huh (yes).

20 A. She was running the buggy, and I think we got 220
21 on our side or something like that. That was the best
22 shift and probably the only shift that we done that.

23 Q. Okay. That's my only question.

24 MR. FARLEY:

25 Maybe a quick break?

1 ATTORNEY WILSON:

2 All right. Let's go off the record.

3 SHORT BREAK TAKEN

4 ATTORNEY WILSON:

5 Back on the record. Erik?

6 RE-EXAMINATION

7 BY MR. SHERER:

8 Q. I got one follow-up question. You mentioned you
9 were working in the water back in the headgate of the
10 longwall. Did you notice any problems from working in
11 the water? Did you get any rashes or anything when
12 you were doing that?

13 A. I didn't, no.

14 Q. Do you know anybody that has?

15 A. Not that I can recall, no.

16 Q. Okay. Thank you.

17 A. I mean, no, not that I can recall.

18 Q. Thank you.

19 MR. FARLEY:

20 Anything else?

21 ATTORNEY WILSON:

22 Celeste, anything?

23 MS. MONFORTON:

24 Nothing.

25 ATTORNEY WILSON:

1 Nothing? All right. Then Mr. Hulgan, on
2 behalf of MSHA and the Office of Miners' health,
3 Safety and Training, I want to thank you for appearing
4 and answering questions today. Your cooperation is
5 very important to the investigation as we work to
6 determine the cause of the accident. I'll remind you
7 that we request that you not discuss your testimony
8 with anyone because we will be interviewing additional
9 witnesses. After questioning other witnesses, we may
10 call you if we feel that we have any follow-up
11 questions that we would like to ask you. And if you
12 do think of anything additional that you would like to
13 provide to the investigation team, please contact us
14 at the contact information that was provided to you.
15 Also in the letter that I provided to you there's some
16 information concerning your rights as a miner under
17 the Mine Act. And to find out additional information
18 concerning your rights under the Mine Act, you can go
19 to MSHA's website at www.msha.gov.

20 Before we finish, I want to give you an
21 opportunity. If there's anything else that you would
22 like to add to the record or if there's a statement
23 that you would like to make, you can do that at this
24 time.

25 A. The only thing that I'd like to say is, you know,

1 that I don't think --- you know, I know they rock
2 dusted a lot on the track because that was easy, you
3 know, the track machine. You know, a lot of these
4 entries --- especially when they got up here to these
5 four entries up here and stuff, you know, One, Two and
6 Four, you know, was not rock dusted enough.

7 ATTORNEY WILSON:

8 And are you referring to the back side of
9 the longwall?

10 A. Headgate 21.

11 ATTORNEY WILSON:

12 Okay.

13 A. And it's just a lack of rock dust, I think. I
14 think it would have helped a lot if they would have
15 dusted a whole lot more, you know. And I do have a
16 couple pictures, if you'd be interested in looking at
17 them, where it was --- it stayed black, I mean, if
18 you'd want to look at them.

19 ATTORNEY WILSON:

20 Absolutely. Why don't we go off the
21 record and we'll do this, and then we'll come back on
22 and finish up. Off the record.

23 PICTURES REVIEWED

24 RE-EXAMINATION

25 BY MS. MONFORTON:

1 Q. I'm going to ask you --- since we're talking about
2 rock dusting, I'm going to ask you, to the best of
3 your recollection, in the couple of weeks before the
4 explosion to mark on the map --- whether you circle it
5 or however you want to do it, the areas that you felt
6 were not adequately rock dusted. I think we --- at
7 one point we were off the record and you were talking
8 about a lot of float coal dust in this crossover area
9 and so on. So just, from your own recollection ---.

10 A. Well, off the record, okay.

11 Q. Yes.

12 OFF RECORD DISCUSSION

13 (M. Hulgan Exhibits Four through Seven
14 marked for identification.)

15 ATTORNEY WILSON:

16 All right. Let's go back on the record.

17 While we were off the record we downloaded and printed
18 out copies of photographs. Mr. Hulgan, I'm going to
19 show you what have been marked as Exhibits Hulgan
20 Four, Five, Six and Seven. Are these printouts of the
21 photographs that you took?

22 A. Yes, they are.

23 ATTORNEY WILSON:

24 All right.

25 A. All four of them, yes.

1 ATTORNEY WILSON:

2 And ---.

3 A. They come off my phone.

4 ATTORNEY WILSON:

5 And can you take the blue marker and ---

6 these were taken on the longwall headgate panel; is

7 that correct?

8 A. Right.

9 ATTORNEY WILSON:

10 Back towards the Bandytown fan?

11 A. Right.

12 ATTORNEY WILSON:

13 And can you take --- I know you don't

14 remember the specific crosscut, but would you be able

15 to just circle the general area where you think these

16 photographs were taken?

17 A. Yeah, I can try.

18 ATTORNEY WILSON:

19 All right. So with the blue marker

20 please do that.

21 WITNESS COMPLIES

22 A. You can't see the date on that, but 3/15 and that

23 one there is --- I'm going to say --- should I just

24 circle the area?

25 ATTORNEY WILSON:

1 Yeah.

2 A. I'm going to say in this area right here.

3 ATTORNEY WILSON:

4 Okay. And you circled that in blue?

5 A. Right.

6 ATTORNEY WILSON:

7 And that would have been before September

8 of 2009; is that right?

9 A. Right.

10 ATTORNEY WILSON:

11 All right. Celeste, did you have a

12 follow-up question?

13 MS. MONFORTON:

14 Yeah.

15 RE-EXAMINATION

16 BY MS. MONFORTON:

17 Q. You indicated when we were off the record that you
18 took the photographs of the mining machine.

19 A. Yes.

20 Q. But what was your --- what did you notice in
21 particular looking back at those photographs about the
22 condition of the area you were working in?

23 A. Actually, I really never really paid that much
24 attention to them pictures until after the explosion.

25 And then after I really got looking at them, I noticed

1 that there was no rock dust. I mean, there's I think
2 a picture of a bolter and a miner there and there was
3 --- you know, there's no --- nothing has been rock
4 dusted. Everything's just black as it can be.

5 Q. And how does that relate to your experience in
6 terms of rock dusting at this mine over the last year?

7 A. You know, there was very little rock dusting done.
8 And I think I've counted five times on my hand --- I
9 mean, five times that it's been rock dusted ---
10 machine dusted that I know of on our shift.

11 Q. In the two or three weeks preceding the explosion,
12 what's your recollection of the rock dusting in the
13 sections where you traveled or worked?

14 A. On Headgate 22, the whole time that --- from the
15 mouth of the section to where it stopped mining, I
16 know that it was machine dusted two times, that Terry
17 Moore filled in for another boss and he definitely
18 made sure that it was rock dusted twice, the two shifts
19 that he was up there.

20 Q. And when Mr. Moore was making sure that it was
21 rock dusted on Headgate 22, what areas would he have
22 rock dusted --- or would have had rock dusted?

23 A. Again, you know, that could --- you know, you
24 could probably just go back in the records and see
25 where he filled in for somebody. That would be the

1 best thing I could tell you.

2 Q. Okay.

3 A. There was two shifts that he had to sign the books
4 where he filled in for somebody.

5 Q. What was your recollection of this area that we've
6 been calling the crossover in terms of adequacy of
7 rock dusting?

8 A. A lot of float dust between --- I don't know what
9 you would call this here and this.

10 ATTORNEY WILSON:

11 Well, between the 22 Tailgate and 22
12 Headgate.

13 A. Right. There was a lot of float dust.

14 BY MS. MONFORTON:

15 Q. Would you mark in pink on the map the area that
16 you believe was not adequately rock dusted in the
17 couple of weeks preceding the explosion?

18 WITNESS COMPLIES

19 BY MS. MONFORTON:

20 Q. And in those couple of weeks preceding the
21 explosion, you would have been traveling up this North
22 Glory mains area?

23 A. Right.

24 Q. And what's your recollection of rock dusting in
25 that area?

1 A. Well, now, you know, the track part that we rode
2 --- you know, the mantrip that we rode, looked decent.
3 It really did. That part of the mines from probably
4 Headgate 22 --- at the head of the Headgate 22 to the
5 outside looked good.

6 Q. On the track entry?

7 A. The track entry. From Headgate 22 to the face was
8 in bad shape for rock dust, along with Headgate 21,
9 all the way from the --- from March, where the
10 longwall left off, all the way up to the --- where the
11 fan was, the new fan they put in.

12 Q. Thank you, sir.

13 MS. MONFORTON:

14 Any other questions?

15 ATTORNEY WILSON:

16 Terry?

17 RE-EXAMINATION

18 BY MS. FARLEY:

19 Q. When you mined coal on Headgate 22, did you run
20 the scrubber on the miner at any time?

21 A. Yeah.

22 Q. How often did you do it?

23 A. Every cut. It depended on the scrubber pretty
24 much.

25 Q. Okay.

1 A. It wasn't the best scrubber in the world, but it
2 would draw the dust. You depended on the scrubber.

3 Q. So you ran it every day?

4 A. Yeah, every day. Every cut.

5 Q. What about --- well, I know you didn't work on the
6 other miner section at Tailgate 22 when they did.

7 A. I didn't what now?

8 Q. What about the other section, 22 Tailgate? Would
9 they have run the scrubber?

10 A. You're talking about here?

11 Q. Yes, sir.

12 A. Okay. I think they had 1415s there, and I really
13 don't know --- I mean, I been by this, you know, a
14 thousand times, but when they started this section
15 off, I was no part of it.

16 Q. Okay.

17 A. I was, you know, pretty much up in here then, up
18 on Headgate 22.

19 Q. Okay.

20 A. And when they started Headgate 21, I wasn't there
21 when they brung the equipment in and I wasn't there
22 when they mined any of it.

23 Q. Last year, when you were down there towards
24 Bandytown, in the area that you marked earlier, did
25 you run the scrubber in that area, too?

1 A. Yeah.

2 Q. Was that an everyday thing?

3 A. Yeah.

4 Q. Okay. All right.

5 A. Oh, yeah.

6 Q. Okay. Thank you.

7 ATTORNEY WILSON:

8 Anything further? Erik, anything?

9 MR. SHERER:

10 No.

11 ATTORNEY WILSON:

12 All right. Then Mr. Hulgan, again I want
13 to thank you for coming in today. And if there's
14 anything else, please contact us. And if there's
15 nothing further, then we'll go off the record. Thank
16 you.

17 A. Thank you all.

18 * * * * *

19 STATEMENT UNDER OATH CONCLUDED AT 3:11 P.M.

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1 STATE OF WEST VIRGINIA)

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4 CERTIFICATE

5 I, Alicia R. Brant, a Notary Public in and
6 for 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.



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22 *Alicia R. Brant*
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