

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

3
4
5 **IN THE MATTER OF:**

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

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15 The interview of SCOTT KINGERY, taken upon
16 oral examination, before Lynne M. Rodriguez,
17 Registered Professional Reporter and Notary Public
18 in and for the State of West Virginia, Wednesday,
19 January 5, 2011, at 10:00 a.m., at the Mine
20 Academy, 1301 Airport Road, Beaver, West Virginia.

21
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1 MR. KOERBER: Let's go on the
2 record. My name is Barry Koerber. I'm an
3 Assistant Attorney General and I'm
4 assigned to the West Virginia Office of
5 Miners' Health, Safety & Training Accident
6 Investigation Team for the UBB mine
7 accident investigation.

8 Today is January 5, 2011. It's a
9 little after 10. I would ask that the
10 other people, the other interviewers
11 identify themselves for the record.

12 MR. TUCKER: Bill Tucker with the
13 office of Miners' Health, Safety &
14 Training.

15 MR. WATKINS: I'm Tim Watkins.
16 I'm with MSHA.

17 MR. BABINGTON: Matt Babington.
18 I'm an attorney with the Department of
19 Labor.

20 MR. MCGINLEY: I'm Patrick
21 McGinley, with the Governor's Independent
22 Investigation Team.

23 MR. KOERBER: I see we have one
24 other person in the room. I'd ask that

1 she identify herself for the record.

2 MS. WEISE: Yes, my name is
3 Suzanne Weise, W-E-I-S-E. I'm with the
4 Governor's Independent Investigation Team.

5 MR. KOERBER: Sir, we have a
6 court reporter here that will be taking
7 down everything that's said here today.
8 For her benefit, please speak loudly.

9 MR. KINGERY: Okay.

10 MR. KOERBER: For her benefit,
11 please allow the question to be asked in
12 its entirety before you begin your answer,
13 and I'm going to ask that the interviewers
14 allow you to complete your answer in its
15 entirety before they begin the next
16 question. That just helps her out a lot.

17 Also, "Uh-huh's" and "Huh-hu's"
18 don't come out very well on a transcript,
19 so I would ask that you use the words
20 "Yes" and "No."

21 MR. KINGERY: Okay.

22 MR. KOERBER: All responses have
23 to be verbal. You can't just shake your
24 head "Yes" and "No." Things may get a

1 little informal in here, and if something
2 happens, we'll ask you to say the word,
3 whatever. But anyway, we have a map here
4 as an exhibit. If you're utilizing that
5 map, we will probably ask you to
6 specifically identify what you're pointing
7 at, because obviously if you're pointing
8 at something and saying you went from here
9 to there, that doesn't come across on the
10 transcript very well either.

11 We have a three day turn-around
12 with the transcripts, so today is
13 Wednesday. Three business days will be
14 Thursday, Friday and Monday. On Tuesday
15 or after, you and your attorney, or you,
16 if you so chose, can go to Johnny Jackson's
17 office in Charleston, West Virginia, and
18 I'll give you this card here in a minute.
19 This gives the address. You need to set
20 up an appointment first, but you will be
21 allowed to go to Johnny Jackson's office in
22 Charleston, West Virginia. They will have
23 a conference room for you. You and your
24 attorney or you can sit in that conference

1 room and read your transcript, and to the
2 extent that there's any corrections
3 necessary, you can make those corrections
4 on an errata sheet.

5 You will not be permitted to take
6 a copy with you or have a copy but you can
7 go beginning -- you can begin on Tuesday
8 of next week, okay, and I'll give you that
9 here in a minute.

10 If at any time, for any reason
11 whatsoever, you want a break, just say so
12 and we'll take a break, okay. There's
13 some restrooms out here, machines. We may
14 or may not have water in the refrigerator
15 but if we do, you're welcome to it.

16 MR. KINGERY: Okay.

17 MR. KOERBER: We would request
18 that you, after the interview is over, not
19 discuss what you say in here with anybody
20 other than your attorney, and we do that
21 to protect the integrity of the interview.

22 Matthew, do you want to put your
23 letter in?

24 MR. BABINGTON: Yes, this is a

1 letter from Norman Page, who is MSHA's
2 chief accident investigation leader.
3 Basically this sets out just some of the
4 background and the protocols for the
5 interview, and I will provide you a copy
6 with that now.

7 MR. KINGERY: Okay.

8 MR. KOERBER: I'd ask now for the
9 court reporter to swear Mr. Kingery in.

10 (WITNESS, SCOTT KINGERY, SWORN.)

11 EXAMINATION

12 BY MR. KOERBER:

13 Q. Sir, would you please state your full name
14 for the record and spell your last name.

15 A. Charles Scott Kingery. K-I-N-G-E-R-Y.

16 Q. And sir, would you please state your
17 address and your telephone number?

18 A. [REDACTED]
[REDACTED]

20 Q. Mr. Kingery, are you appearing here today
21 as a result of a subpoena?

22 A. Yes, sir.

23 Q. This is a copy of that subpoena. Feel
24 free to look at it if you would like. I'm going to

1 ask that the court reporter make that as Kingery
2 Exhibit 1, and I don't know whether or not you've
3 seen this document, but your attorney, John
4 McCuskty, who is one of the members of Mr. Sears
5 firm, accepted service on your behalf, and that's
6 what this document evidences, and I would ask that
7 the acceptance of service be marked as Kingery
8 Exhibit 2, and I'll give these to you.

9 (Exhibits 1 and 2 marked.)

10 Q. Mr. Kingery, do you have an attorney with
11 you here today?

12 A. Yes, sir.

13 Q. And sir, would you please identify
14 yourself and your firm, please?

15 MR. SEARS: I'm Chris Sears with
16 the law firm of Shuman, McCuskey & Slicer.

17 MR. KOERBER: And Mr. Sears, is
18 Mr. Kingery your client?

19 MR. SEARS: Yes.

20 MR. KOERBER: I also see that we
21 have another attorney at the table, and I
22 would ask now that he identify himself,
23 his firm and who he represents?

24 MR. SILKWOOD: I'm Eric Silkwood

1 from Allen, Guthrie & Thomas. I'm here on
2 behalf of Performance Coal Company.

3 Q. Sir, West Virginia Code 22A-1-22 provides
4 protections to coal miners who are discriminated
5 against for participating in interviews such as
6 this. I'm going to give you a memorandum that
7 contains the address for the West Virginia Board of
8 Appeals.

9 In the event that you feel that you have
10 been discriminated against because you participated
11 in this interview and would like to file a
12 complaint, this is the administrative tribunal to
13 which you make that file. I would caution you
14 though that you only have 30 days from which the
15 discriminatory act occurs to file the complaint
16 with the Board of Appeals.

17 I'm also going to give you a card from
18 Mr. Bill Tucker. He's our lead investigator for
19 this investigation, so that if, sometime after this
20 interview is over, you think of something that you
21 believe would be beneficial to the investigation,
22 please feel free to contact Mr. Tucker.

23 I'm also going to give, as I told you I
24 would earlier, the card for Mr. Johnny Jackson &

1 Associates, court reporter service in Charleston,
2 West Virginia.

3 A. Thank you, sir.

4 Q. Uh-huh. We tell everybody that we
5 interview that potentially there is a possibility
6 that there may be a need at some later date in the
7 future to recall you, so we're just giving you that
8 heads up.

9 A. Okay.

10 MR. KOERBER: Is there anything
11 else you want to add, Matt.

12 MR. BABINGTON: No.

13 MR. KOERBER: At this time, I
14 would like to turn the interview over to
15 Mr. Bill Tucker, to begin questions.

16 MR. SEARS: I have something that
17 I would like to make a statement on the
18 record before we begin.

19 MR. KOERBER: Okay.

20 MR. SEARS: Mr. Kingery got off
21 work last night about 3:00 in the morning
22 and I think got home about 4, got a few
23 hours of sleep. I just want it to be on
24 the record that he's operating under some

1 fatigue, despite my efforts to get him
2 loaded up with some caffeine this morning,
3 so I would remind you Mr. Kingery, if you
4 need to take a break at any time, just let
5 us know and we can do that, okay.

6 A. Okay.

7 MR. KOERBER: At any time, for
8 any reasons.

9 A. Okay.

10 MR. SEARS: Thank you.

11 EXAMINATION

12 BY MR. TUCKER:

13 Q. Well, we do appreciate you coming in,
14 especially after a long night and knowing that
15 you're tired.

16 How many years of mining experience do you
17 have?

18 A. February will make me five years.

19 Q. And could you just tell us who you worked
20 for during that five years and how long?

21 A. I have spent all of it about four months
22 with Massey.

23 Q. Which mines have you worked at?

24 A. Justice Number 1, Spirit, Allegiance, and

1 now I'm at Allegiance Number 1.

2 Q. What type of mining certifications do you
3 have?

4 A. My Assistant Mine Foreman card, MSHA, the
5 instructors card, Mine Rescue Card and my Service
6 Experience card with the state.

7 Q. What's your current job title?

8 A. Section foreman.

9 Q. Are you on the mine rescue team?

10 A. I was. I got off the team probably two
11 weeks prior to the explosion.

12 Q. How long were you on the mine rescue team?

13 A. From November, 2008 to March, 2010.

14 Q. As a member of the mine rescue team, did
15 you participate in safety audits at various mines?

16 A. Yes, sir.

17 Q. Which mines do you recall that the team
18 that you were on covered?

19 A. We covered everything from Independence
20 Coal Company all the way to Green Valley, which was
21 about 32 different deep mines.

22 Q. Had you been to the Performance UBB mine
23 prior to the explosion?

24 A. Yes, sir.

1 Q. What did you do; what was your
2 responsibilities while you were at UBB?

3 A. As to the S-1 audits?

4 Q. Just whatever you done while you were
5 there, whether it was making the audit or whatever
6 it might have been.

7 A. Doing the audits pretty much.

8 Q. That's pretty much what you done while you
9 were at the UBB mine?

10 A. Yes.

11 Q. Okay. Do you know when you were there
12 last?

13 A. No, sir. As for date, I'm not for sure.

14 Q. How long would you say prior to the
15 explosion in April?

16 A. I can't honestly say the exact; couple
17 months.

18 Q. Did you help do a safety audit?

19 A. I think the last time I was there we was
20 doing fire drills.

21 Q. Have you ever helped do a safety audit at
22 the UBB mine?

23 A. Yes, sir.

24 Q. How does that work? I mean, does your

1 whole team --

2 How many people usually participate in
3 that? How does that work?

4 A. The way we have it set up, you have to
5 have at least five to consider it to be a team
6 visit, so at least five of us would go and do the
7 audit. Usually six but at least five.

8 Q. What's involved in doing the safety
9 audit? How does that flow? I mean, when you show
10 up, what all do you check or where do you end up
11 going?

12 A. We check equipment. When we go to the
13 section, we would check equipment, check and make
14 sure everything is up to Massey S-1/P-2 standards.

15 Q. I guess you do some type of report?

16 A. Yes, sir.

17 Q. How does that work? Do you give something
18 to the company and they respond back? Say you have
19 deficiencies that you may see that you would share
20 with them, if they correct them, do they respond
21 back or how does that work?

22 A. Go back to the mine rescue station, we
23 would type up a report. We would send a copy of it
24 to Elizabeth Chamberlain, a copy of it to Chris

1 Adkins, a copy of it to the resource group
2 president and resource group safety director and to
3 the superintendent.

4 Q. And if you had deficiencies written up, if
5 they correct them, do you do a follow-up to see if
6 those are corrected or do they respond to you about
7 your report?

8 A. I was on the contract team. It's the way
9 we go through and do the audit. Our number two
10 team, which would be the composite team, would do
11 the follow-up, so honestly, I never was on the
12 composite team. I'm assuming that they sent up but
13 I can't honestly say.

14 Q. Okay. Have you been back to the mine
15 since the explosion?

16 A. No, sir.

17 Q. When you go to the mine to do your audit
18 and you say you have to have five to be considered
19 a team, do you all travel together or do you split
20 up? How do you approach conducting your audit?

21 A. Sometimes we split it up. Three of us
22 would go to the section, for example, three would
23 walk the belts up, split it up in ways like that.
24 Sometimes three would walk the intake, it depends.

1 Q. Would you pretty much make the entire mine
2 or where would you concentrate on the most?

3 A. On the smaller mines, we could make the
4 entire mine. Larger mines, such as Performance or
5 Revolution or one of those, we wouldn't make the
6 whole mines, not on one visit, no. The next time
7 we would come back and do an audit, we would do a
8 different area of the mine.

9 Q. And you mentioned it may have been a
10 couple months or you weren't sure on the dates when
11 you were there prior to April.

12 Do you recall any problems that stand out
13 in your mind as far as what you may have seen or
14 encountered?

15 A. No, nothing really at all.

16 Q. You said you were off the team a couple
17 weeks prior to?

18 A. Yes.

19 Q. So you had no involvement in the recovery
20 or rescue?

21 A. Yes, yes, I was up there involved in that.

22 Q. Okay. Could you tell us how you found out
23 about the explosion?

24 A. A guy that was on the rescue team with me

1 also, he called me and told me about it.

2 Q. Who was that?

3 A. Casey Campbell is his name.

4 Q. Do you mind, the best that you can
5 remember, just kind of tell us, once you got the
6 call, what you done after that and walk us through
7 your involvement.

8 A. I met him at the Route 3 and U.S. 119
9 intersection and me and him rode up to where he
10 works at, which is Randolph, the Randolph mine. He
11 stopped and got his belt and hard hat and stuff and
12 we went on up to the mine, on up to Performance.

13 Q. Do you recall about what time you got
14 there?

15 A. Somewhere around 6:00 roughly.

16 Q. What did you do? Did you get briefed or
17 who did you contact once you arrived at the mine?

18 A. We walked into the bay after we got our
19 clothes on, walked into the bay area there and they
20 was in the middle of it. They told all of us to
21 come over, and I think I could be wrong but I'm
22 pretty sure it was the state there that was
23 briefing at the time, the state and Chris Adkins
24 was there. They told us where they was wanting us

1 to go and we went underground.

2 Q. What team were you with?

3 A. They put me with Knox Creek, Virginia's
4 team, and I'm pretty sure Casey was with the
5 Eastern Kentucky team.

6 Q. Do you recall about what time you went
7 underground?

8 A. 6:30-ish.

9 Q. Can you walk us through now from the time
10 you went underground, where you went and what you
11 encountered?

12 A. We went -- I'm trying to think. I can't
13 remember the name of the switch. It's where they
14 split, where they was driving the tailgate for the
15 longwall head gate.

16 Q. Would that have been 78 break?

17 A. Yes.

18 MR. MCGINLEY: Ellis switch?

19 A. No, it was past that. It was the 78 break
20 switch, I guess. That's as far as we could get the
21 mantrips at the time.

22 Q. Okay. Where did you go from there?

23 A. They had set up a fresh air base, the
24 phone line, probably six breaks up past that, five

1 or six breaks, roughly.

2 Q. And you went to the fresh air base?

3 A. And then I can't remember who all was with
4 us. There was two teams with us, two or three
5 teams, and then from there on, we went up to the
6 mother drive. We met up with Southern West
7 Virginia Number 1 team.

8 Q. Okay. Can you just, best that you can
9 remember, just tell us, you know, what you
10 encountered, any information that was passed on to
11 you?

12 Once you got underground to the fresh air
13 base, was there someone there who briefed you and
14 caught you up kind of what they had seen up to that
15 point?

16 A. Yes, Chris Blanchard was at the fresh air
17 base. He was manning the telephone.

18 Q. Did he kind of brief you then at that
19 point, catch you up?

20 A. Yes, he let us know where the number 1
21 team was at, where they was located at that time
22 and I guess what they had encountered.

23 Q. And where was that? Where were they at?

24 A. They was at the mother drive.

1 Q. Mother drive?

2 A. Yes.

3 Q. I mean, can you recall what he told you as
4 far as briefing as far as CO, what they had
5 encountered or bodies?

6 A. At the time, they didn't tell us they had
7 encountered any measurable CO. They had no
8 apparatus or nothing of that nature at that time.

9 Q. So where did you go from there?

10 A. Advanced on up to the mother drive. We
11 advanced the fresh air base up, stretched, I guess,
12 about a thousand foot of phone line, stretched it
13 on up to the mother drive and got set up there.

14 Q. Then what did you do? You established a
15 new fresh air base?

16 A. Yes. The Southern West Virginia team
17 advanced on up towards the longwall. They walked
18 up the mother drive belt, and the team I was with,
19 which was Knox Creek, Virginia, advanced on up
20 towards where the glory hole and all that area is
21 at.

22 Q. So you all made the area around the glory
23 hole?

24 A. No, sir, we made it from where the mother

1 drive belt head was at to the glory hole belt head,
2 which would be 128 break, 127 roughly, and started
3 running low, our apparatus started running low on
4 air and we were treated back and we were relieved
5 out by the second team.

6 Q. Okay. So when did you go under air?

7 A. The exact break, I'm not for sure.

8 Q. Is it once you left the mother drive?

9 A. Yes, it was probably five or six breaks
10 in, we started to get in the CO, and we got up to,
11 ballpark, 80 parts, a hundred parts per million,
12 and went under air, and like I said, made it to the
13 glory hole belt head.

14 Q. And then somebody had low air and you went
15 back to the fresh air base?

16 A. Yes.

17 Q. And another team then --

18 A. Went up where we went to and advanced on
19 in-by.

20 Q. Do you recall who that was?

21 A. It was the Eastern Kentucky Number 2 team,
22 and there was a couple guys off the Southern West
23 Virginia team. There was six of them; I can't
24 remember, one or two state inspectors, one or two

1 federal inspectors. There was quite a few of them
2 there.

3 Q. Do you recall the highest CO that you saw
4 yourself?

5 A. Once we got up around the glory hole belt
6 head, it was around 15, 16 hundred parts per
7 million.

8 Q. So what happened after that?

9 A. We were treated back to the fresh air base
10 and they had called inside and said they wanted our
11 team to get over in the, I guess it would be the
12 number 5 or 6 entry from the mother drive and walk
13 it back to 78 break switch, just searching to see
14 if we could see anything or anybody.

15 Q. So did your whole team, just your team --

16 A. Yes.

17 Q. -- then walked out by back towards 78?

18 A. Yes, sir. When we made it to 78 break
19 switch, they pulled us out of the mine. I guess
20 the levels got too high and they had to pull us
21 out.

22 Q. Is that when they pulled everybody out at
23 that point?

24 A. Yes.

1 Q. Do you recall about what time that was?
2 Did you happen to look at your watch?

3 A. 2 or 3:00 in the morning. I know it was
4 late.

5 Q. Anything you want to share as far as what
6 you did see, you know, what was your thoughts as
7 far as the destruction and what were you thinking?

8 A. How do you survive something like that?

9 Q. So when you got the call to come outside,
10 then all the teams came out, did you come back
11 after that?

12 A. Yes, sir.

13 Q. And when was that?

14 A. The next day, they called us and told us
15 to come back, they was going to send us back in. I
16 think that was the day that they was getting ready
17 to send us in and it started raining and the
18 barimetric pressure dropped and started gassing off
19 again and they sent us back home.

20 Q. Do you recall then after that, when did
21 you come back?

22 A. The time, I'm not for sure on the times,
23 the time of day or time of night that they called
24 us back. There was nine days all together. The

1 next time we come back, they had actually sent the
2 team in, they was doing ventilation controls and I
3 guess trying to eliminate some of the bad air, and
4 they had myself and three others hauling supplies.
5 We hauled in two or three four wheelers and a
6 couple trailers with ventilation controls, things
7 of that nature.

8 Q. Did you all take those up to the 78 break
9 area?

10 A. Yes, sir. Well, at the time, they had
11 advanced the track. You could get a couple breaks
12 further at the time. There was a 48 inch belt head
13 there. I'm not for sure where that was at, but we
14 could unload it and take it up the track; it would
15 be about six or seven breaks.

16 Q. So what was your involvement after that?
17 I mean, then you ran the motor. What other
18 involvement did you have as far as the mine rescue?

19 A. Whenever we found last four, I guess the
20 last initial search, when we made the rest of the
21 mine, I guess on the search end of it, I was
22 involved in that. That was when they sent, I think
23 it was six teams to the 22 head gate, and they sent
24 us to the top end of that.

1 Q. When they explored the last little bit at
2 22 head gate?

3 A. Why, and we found the last three up there.

4 Q. And at that point, did you have any more
5 involvement? Did you help carry the --

6 A. As recovery?

7 Q. Yes.

8 A. Yes, sir. We came back in, I guess, after
9 they had made everything, the air changes and
10 recovered everything out, I was recovering the guys
11 off the 22 head gate.

12 Q. Just going back a little bit, when you got
13 to the mines and hearing people talk, did you hear
14 any ideas or anybody with any thoughts of what had
15 happened or where it had happened?

16 A. No, sir.

17 MR. TUCKER: That's all I have
18 for right now. I'll let Tim kind of pick
19 up.

20 EXAMINATION

21 BY MR. WATKINS:

22 Q. I've got a few follow-up questions here,
23 Scott. I'm going to kind of jump around a little
24 bit on you, and I'm going to apologize because I'm

1 going to be a little bit scattered here, but first
2 of all, I do want to thank you for coming in and
3 helping us out, first; and second, I do want to
4 thank you and commend you for your 15, 16 months
5 that you just spent on the the mine rescue team.

6 Do you mind if I ask why you got off?

7 A. My wife was pregnant with my second child
8 and the pay with full time rescue team compared to
9 what I could make as a section foreman.

10 Q. Okay.

11 A. So that's why I got off.

12 Q. Fair enough. I want to talk about the
13 April 5th accident a little bit that you just got
14 through talking about, then I'll go back to the
15 audit a little bit.

16 You say you arrived at the mine around 6.
17 You might have answered some of these questions
18 too, but do you remember what time Casey called
19 you, what time it was when he give you a call?

20 A. I can't remember, not right offhand. I'd
21 say probably 4:30.

22 Q. Okay.

23 A. Because it's an hour drive from my house
24 to Performance, so I'd say probably around 4:30,

1 something till 5.

2 Q. Do you remember what he told you when he
3 called you, what did he tell you?

4 A. He just told me that there had been an
5 explosion and I think at the time, there was 7
6 dead, 25 missing is what the initial report was.

7 Q. Okay. And do you know if he called you
8 because of your recent mine rescue experience and
9 they need your help or why would he call you?

10 A. Me and him was friends. We talk on a
11 regular basis away from work or at work and he just
12 called.

13 Q. Did anybody from the company direct him to
14 call you and ask you to come and help out, that you
15 know of?

16 A. No.

17 Q. He just did it on his own?

18 A. Yes, me and him, he took it on his own and
19 we went on up.

20 Q. Okay. So you got to the mine around 6,
21 and you mentioned you had a briefing outside before
22 you went under?

23 A. Uh-huh.

24 Q. Did they tell you who was already in the

1 mine, you know, as far as rescue teams go or
2 anything like that?

3 A. They just told us the number 1 team was up
4 there, and I guess Eastern Kentucky's number 1 team
5 was serving as the back-up at the time. They just
6 told us they was underground, and how many teams
7 and where at exactly, no.

8 Q. What about people who may not have been
9 members of teams underground, did they give you any
10 indication of who might have been underground
11 besides team members?

12 A. No, sir.

13 Q. Were you aware that anybody else may have
14 been underground that was not a team member?

15 A. No, sir.

16 Q. When you got to the fresh air bay, which I
17 think you said was around 78 break at the time when
18 you first got underground, and you met Chris
19 Blanchard.

20 A. Yes.

21 Q. Were you kind of surprised to see Chris at
22 that point?

23 A. Yes, I guess.

24 Q. Okay. Were there a lot of other people

1 other than Chris that you recall seeing?

2 A. There was a couple guys off the rescue
3 team that was stretching phone line, trying to get
4 the fresh air bay advanced, but as for that, no.

5 Q. Did you happen to see Mr. Whitehead?

6 A. Yes, sir.

7 Q. He was under there as well?

8 A. Yes.

9 Q. Did you have any conversations with
10 Mr. Whitehead or Mr. Blanchard about where they may
11 have traveled to?

12 A. No, sir.

13 Q. You mentioned you proceeded up to the
14 mother drive and then later on towards the glory
15 hole, and you went under apparatus by the in-by,
16 correct?

17 A. Yes.

18 Q. Because of high levels of CO?

19 A. Yes.

20 Q. Did you ever detect any methane that you
21 recall?

22 A. Not that I really remember. I'm sure that
23 we did, but like I said, the spotters was going off
24 crazy because of the CO.

1 Q. I mean, no real high levels of methane
2 sticks in your mind?

3 A. Nothing really, no, nowhere that was
4 explosive or anything.

5 Q. I guess in that 15 months, is this the
6 first time you've had to enter a mine or a mine
7 emergency of any kind?

8 A. As for an explosion, yes. Fire, no.
9 Prior to me getting on the rescue team, I dealt
10 with a mine fire at the mine I was working at.

11 Q. Where was that at?

12 A. Revolution, Justice Number 1.

13 Q. All right. I guess the reason I asked
14 that, because if you had seen others, I just want
15 to get into a little bit of comparison, but this is
16 your first one as far as an explosion?

17 A. Yes.

18 Q. I'm going to change gears on you now,
19 Scott, and talk about these audits and compliance
20 team that you were a part of.

21 I this you mentioned that you was on a
22 team that was --

23 A. Contracting.

24 Q. Contracting, yes. Thank you. Who was

1 actually the leader of that team?

2 A. At one point in time, it was Mark Dolan.
3 Mike Vaught also was later captain of the contract
4 team. James Redening, he was captain of it at one
5 point in time; just flipped around.

6 Q. The last time you was at UBB, do you
7 remember who was leader of the team at that point?

8 A. No, sir, I'm not sure at this time.

9 Q. Okay. Do you remember, besides those that
10 you just mentioned, anybody else who may have been
11 on that five member team?

12 A. If I'm not mistaken, the last time we was
13 there was doing the fire drills.

14 Q. Okay.

15 A. So there was Mike Alexander, Larry
16 Ferguson and myself was there, and we done the fire
17 drill third shift up the longwall creek.

18 Q. Can you explain that to me a little bit,
19 fire drill, what all did you do to do the fire
20 drill and that stuff?

21 A. We would stop them either at their section
22 tail piece or belt head on their way out. Most of
23 the time on the third shift, we done on their way
24 out. We would stop them at a belt head, tell them

1 the belt head was on fire, or something of that
2 nature, make them stretch the hose out, actually
3 spray their water, show them the different fall
4 pattern, straight stream on their nozzles.

5 When we get done with that, we would go
6 back to the -- we had SCSR training units, had a
7 cache set up to where they would don one. We would
8 make them travel one break. We had a life line set
9 up; travel their life line. Make them transfer.
10 Had blacked out goggles to make them try travel the
11 real life line just a little ways, just to simulate
12 that they was in smoke and make them travel their
13 secondary on the rest of the way out.

14 Q. What did those guys think when they put
15 those goggles on?

16 A. There was a couple of them that didn't
17 like it.

18 Q. I've had them on. It's tough to see.

19 A. Yes.

20 Q. What did the people at the mine think
21 about your audit team when they come around? Were
22 they glad to see you?

23 A. Some was, some wasn't.

24 Q. What about the management folks?

1 A. Some was --

2 Q. Same as the other people?

3 Do you know how a particular mine was
4 chosen for a audit?

5 A. At random. Unless they would call and say
6 come do an audit here or something, it was pretty
7 well done at random. We picked them ourselves,
8 just wherever.

9 Q. Same with the area that you visited? I
10 know you mentioned you didn't do the entire mine
11 but you visited certain areas?

12 A. Yes, same thing. We went to one section
13 this time. The next time, we would go to two
14 section. Next time, we would do the out-by end of
15 it. It just varied.

16 Q. So it was pretty much up to the team to
17 decide where it was going?

18 A. Yes, unless otherwise directed from the
19 captain of the team.

20 Q. Yes. I guess the captain wasn't given
21 orders, I guess, or was he given orders about where
22 to go to?

23 A. As in the captain of the entire team, Rob?

24 Q. Yes.

1 A. Yes, sir.

2 Q. And you resigned in March of 2010, about a
3 month before the explosion of UBB?

4 A. Yes, roughly around about.

5 Q. And you said the reason was that your wife
6 was expecting your second child?

7 A. Yes, sir.

8 Q. And there was a differential in pay
9 between full time mine rescue, and I didn't catch
10 what else.

11 A. Section foreman.

12 Q. Section foreman. What's the differential
13 in pay?

14 A. About \$35,000.

15 Q. Thirty-five a year?

16 A. Yes.

17 Q. When did you get your Assistant Mine
18 Foreman card, approximately?

19 A. February, 2010.

20 Q. Okay. So you had --

21 A. Just recently got it.

22 Q. Right. Before you became a full time
23 member of the mine rescue team, what kind of
24 training did you have?

1 A. Just my regular, I guess, black hat card.
2 That's for mining.

3 Q. Okay. What were you doing before you
4 became a member of the mine rescue team?

5 A. I was shuttle car operator.

6 Q. And so did you have to apply for the mine
7 rescue team job? How did that work?

8 A. Just inquired information about it.

9 Q. Okay. And when you were approved to
10 become a member of the team, did you have any extra
11 training or how did that work?

12 A. Yes, 32 hour mine rescue training.

13 Q. Was that all at one time or over a period
14 of time?

15 A. It was over a period of a week.

16 Q. And during that training, did you become
17 familiar with basic mine rescue protocols, you
18 know, what's expected when there's a mine rescue?

19 A. Yes.

20 Q. What do those protocols require in terms
21 of keeping track of who's in a mine where there's
22 been a problem that requires a rescue?

23 A. It's been about a year since I've dealt
24 with any of that.

1 Q. Well, is there supposed to be briefing or
2 debriefing, is that part of it?

3 A. Yes.

4 Q. Were you briefed before you went into UBB?

5 A. Yes, sir.

6 Q. And who briefed you?

7 A. There was, like I said, a couple
8 inspectors. If they was state or federal, I'm not
9 for sure right offhand. And Chris Adkins was
10 there.

11 Q. Okay. And did Chris Adkins play a role in
12 the briefing?

13 A. He just pretty well told us where we was
14 going to. Like I said, the inspectors that was
15 there, they had just arrived there too so they
16 really didn't know what was, I guess, going on or
17 where to go.

18 Q. So Mr. Adkins would have had more
19 information at that point?

20 A. Yes.

21 Q. And what were the teams that were present
22 when you arrived, if you recall?

23 A. Southern West Virginia 1 and 2 teams,
24 Eastern Kentucky 1 and 2 teams and Knox Creek,

1 Virginia.

2 Q. And you arrived approximately 6:00, 6 p.m.

3 A. Yes, around about.

4 Q. So all those five teams were already
5 there?

6 A. Two of them was already stationed there,
7 the 1 and 2 would teams, Southern West Virginia.

8 Q. Southern West Virginia.

9 A. And Eastern Kentucky had already arrived
10 there and Knox Creek had just pulled in. They got
11 there, I guess, about the same time that I did.

12 Q. And before you went in the mine, did
13 somebody check your name off or ask for your
14 identification?

15 A. Yes. There was an inspector, whether it's
16 state or federal, I'm not sure of, was writing down
17 our names and last four of our social.

18 Q. I see. Writing on a --

19 A. Just a legal pad.

20 Q. And when you came out about 2 or 3:00 that
21 morning --

22 A. They had our names wrote down again.

23 Q. Was it the same person, do you recall?

24 A. No.

1 Q. Did they check you off immediately as you
2 came out of the portal?

3 A. Yes, they was standing there at the bridge
4 and would write our names down before we could
5 leave the mantrip area there.

6 Q. Okay. With regard to mine rescue
7 protocols, what information should you have when
8 you go in the mine about others who are present in
9 the mine?

10 A. Where they're located, what they've
11 encountered, where the fresh air bay is at, how
12 many back up teams are present, things of that
13 nature.

14 Q. Of that information, how much did you know
15 before you went in to UBB on the night of the
16 explosion?

17 A. I knew there was back up teams there. The
18 exact location of the exploring team, I really
19 didn't know, but where the fresh air bays was at,
20 yes, we knew where that was at.

21 Q. Did you know how many teams were
22 underground when you went in?

23 A. No, sir.

24 Q. Was that consistent with what you learned

1 about mine safety protocol?

2 A. No.

3 Q. What did you learn in your training, mine
4 rescue training, about the need for back up, back
5 up teams?

6 A. You have one team exploring, one team at
7 the fresh air bay, one team outside.

8 Q. And did you know which teams, when you
9 went into UBB, that were playing those roles?

10 A. No, sir.

11 Q. Did you know how many people who had been
12 working in the mine at the time of the explosion
13 were unaccounted for when you went in the mine?

14 A. We was told, I guess, 7 was confirmed
15 deceased and I think they said it was like 21, 22
16 missing.

17 Q. Is that what they told you then or did you
18 learn that later, do you recall?

19 A. Just I guess what we heard on the radio on
20 the way up. They never really didn't give us a
21 direct number of how many was missing.

22 Q. When you say "They didn't," the ones that
23 were briefing you?

24 A. Briefing us, yes.

1 Q. When you came out of the mine at 2 or 3:00
2 in the morning, were you debriefed?

3 A. Yes, sir.

4 Q. Who did that?

5 A. There was a whole roomful upstairs asking
6 questions on what we seen, where we had been, the
7 exact names and stuff like that.

8 Q. Sure, I understand, but it was upstairs in
9 the mine office there?

10 A. Yes.

11 Q. At what portal was that?

12 A. In the Performance portal. I never was
13 over on the Ellis side.

14 Q. Okay. And was somebody writing down what
15 was said during the debriefing?

16 A. That I don't really remember.

17 Q. How many people on your team, the one that
18 you went underground with?

19 A. How many people was on that team?

20 Q. Yes.

21 A. Seven roughly.

22 Q. Did you know any of them?

23 A. Yes, I competed with them throughout the
24 year, you know, on mine rescue and things.

1 Q. They were the western Kentucky team?

2 A. Knox Creek.

3 Q. That's right, Knox Creek. Did you know
4 all of them?

5 A. About three or four of them on a first
6 name basis, I guess.

7 Q. So when you came out of the mine in the
8 early morning hours of April 6th, everyone had been
9 withdrawn, is that correct?

10 A. Yes, sir.

11 Q. So when you coming out, were the mine
12 rescue teams sort of mixed up because they were all
13 coming out at the same time, do you have any
14 recollection of that?

15 A. Not really.

16 Q. When you were debriefed, was there more
17 than one mine rescue team that was in the room that
18 was talking and being asked questions?

19 A. Yes.

20 Q. How many. Were they all there, do you
21 think?

22 A. They asked for two people from each team.
23 I really don't know how many teams was in there.

24 Q. So were you one of the two people from

1 your team?

2 A. Yes.

3 Q. Who was the other person from your team?

4 A. I'm trying to remember his name. I'm
5 pretty sure his last name is Jackson. I'm not for
6 sure of his first name.

7 Q. So there were two from your team and two
8 from several other teams present during this April
9 6th debriefing?

10 A. Yes, sir.

11 Q. Were different people asking the questions
12 in the debriefing?

13 A. Yes.

14 Q. Yes?

15 A. Yes. Can I take a break?

16 MR. KOERBER: Yes, let's take a
17 break. Let's go off the record just
18 briefly.

19 (Recess taken.)

20 MR. KOERBER: I have to be at
21 another meeting in another county at 1:00
22 so I'm departing now and leaving this to
23 Mr. Bill Tucker. Thank you all.

24 Q. A couple more questions about mine

1 rescue.

2 Do you know who was in charge of mine
3 rescue? At the time you arrived at the mine and
4 were sent in, was there a person in charge --

5 A. As in directing where everybody goes?

6 Q. Was anybody identified as the person in
7 charge?

8 A. No, I don't guess. I was never informed
9 of anyone.

10 Q. Is that part of mine safety protocol that
11 you learned about, that there's supposed to be
12 someone in charge of the rescue operation?

13 A. Well, yes, but I don't guess this is your
14 typical accident, I guess. I don't know.

15 Q. Do you know, did they explain in your
16 training the purpose of having someone in charge of
17 the mine rescue?

18 A. I'm assuming that fresh air base was, or
19 the command center was.

20 Q. But you don't know whether no person was
21 identified as being in charge of the mine rescue?

22 A. No, not when we first got there.

23 Q. Subsequently, was someone identified as
24 being in charge?

1 A. Mr. Strickland, I guess, from MSHA. I
2 guess when he arrived, he took over.

3 Q. Okay. When you went in, you went up to
4 the fresh air base, is that right?

5 A. Yes.

6 Q. During the time you were there, did you
7 overhear here or were you involved in a discussion,
8 sort of a controversy about having an adequate
9 back-up team before a team went in-by?

10 A. Yes, sir, there was a state inspector
11 there. I don't remember his name. I don't
12 remember; he was out of Wyoming County.

13 Q. Sure.

14 A. But he told us we was going to have a
15 back-up team for them. He was going with the
16 initial team. We stayed there as the back-up team
17 until two more teams arrived, then we advanced on
18 up to where we was told to go.

19 Q. Do you know if there was any controversy
20 about whether a team should hold up going in-by and
21 wait for adequate back-up?

22 A. Do what now?

23 Q. Do you know if there was a discussion that
24 there wasn't an adequate back up team and we should

1 wait, we shouldn't send a team further in-by?

2 A. Not that I'm aware of.

3 Q. Did you ever hear any discussions
4 subsequently about that?

5 A. No.

6 Q. Let me ask you some questions about the
7 safety audits you were involved in.

8 You used a couple terms I'm not familiar
9 with. You talked about, and correct me if I'm
10 wrong, I think you said the contract team and the
11 composite team.

12 A. Yes, sir.

13 Q. What do those two terms mean? What's a
14 contract team?

15 A. Contract team is a group of six
16 individuals that has to make a mine visit once a
17 quarter. A composite team is made up of members of
18 I guess the mines and they only have to make their
19 team visits twice a year.

20 Q. I'm sorry, the composite team is made up
21 of what?

22 A. Six team members.

23 Q. Sixteen, okay.

24 A. Six.

1 Q. Six members.

2 A. And they just have to make their visits
3 twice a year. Contract has to do their's four times
4 a year.

5 Q. Now you said that the composite team would
6 have done a follow-up at UBB after you were there,
7 do I understand it correctly?

8 A. Yes.

9 Q. Is that the only thing that composite
10 teams did was follow up after the contract team
11 visited the mine and did a safety audit?

12 A. Pretty much, as far as I know. Like I
13 said, I was never on the composite team, I was just
14 on the contract team.

15 Q. So you're not sure what the composite team
16 did except you know that they did do some follow-
17 up?

18 A. Yes, sir.

19 Q. Do you know why there were these two
20 different types of safety audit teams, the contract
21 and composite team?

22 A. It's the way it's broken down into federal
23 law, I'm almost positive of that way. It's split
24 up that you have a contract team and a composite

1 team.

2 Like I said, the composite team is made up
3 of six individuals that regularly work at these
4 mines.

5 Q. I'm sorry, that was the composite?

6 A. Composite. Contract is made up of just
7 members, I guess, of different mines that go to all
8 the different mines that we cover.

9 Q. Okay. So the composite team, the team on
10 those teams regularly work at the mine that they
11 audit?

12 A. Yes, or as the follow-up audits. The
13 contract would do the audits.

14 Q. So after you went in and did an audit at
15 UBB, then people who worked at UBB who were on the
16 composite team would follow up?

17 A. Yes, but it wasn't -- the team was made up
18 of six people who regularly worked at the Resource
19 group. That was Performance and Marfork was one
20 resource group. It was all full time mine rescue
21 but there was two individuals from that team that
22 regularly worked at Marfork, two of them that
23 regularly worked at Elk Run, two that regularly
24 worked at Independence.

1 MR. BABINGTON: Can I ask a
2 question follow-up on that?

3 MR. MCGINLEY: Sure.

4 EXAMINATION

5 BY MR. BABINGTON:

6 Q. Mr. Kingery, you said that the contract
7 teams did quarterly safety audits but the composite
8 teams would only go twice a year?

9 A. Yes.

10 Q. So were those different composite teams
11 that did the follow-ups?

12 A. No.

13 Q. Because if you had four safety audit and
14 composite audits only visited twice?

15 A. The entire team only had to make their
16 team visit twice a year. The two individuals that
17 from that resource group would do the follow-up
18 audits.

19 Q. Okay. And how many people were on the
20 team that would do the safety audits?

21 A. Six.

22 Q. And then you would have two people from
23 the composite team that would do --

24 A. Go back over the audit in its entirety.

1 MR. BABINGTON: Thanks, Pat.

2 MR. MCGINLEY: Thank you.

3 EXAMINATION

4 BY MR. MCGINLEY:

5 Q. So were there written materials that you
6 reviewed with regard to safety audits?

7 A. Just go over the S-1 manual, S-1/P-2
8 standards.

9 Q. What do the P-2 standards have to do with
10 safety auditing?

11 A. Such as P-2 says you'll have a 3/4 quarter
12 inch chain at your feeder. It's always there at
13 your feeder, you know where it's at. An example,
14 rock falls on somebody, or an example like that,
15 you know that chain is there; it's already there.
16 That's part of P-2.

17 P-2 also has the hole 20,000 in your last
18 open break on the miner section.

19 Q. Did you check the pre- and on-shift and
20 fire boss reports to see if there was compliance
21 with that 20,000 at the last open break
22 requirement?

23 A. Myself, no.

24 Q. Did somebody on the team?

1 A. I'm assuming that they did. Myself, I
2 wasn't a foreman at the time so I never messed with
3 the books.

4 Q. But the safety audit team --

5 A. Yes, they would go over the books.

6 Q. Okay. So they could determine whether
7 there was always the required 20,000 at the last
8 open break?

9 A. I'm assuming so. I mean, I can't say
10 definitely.

11 Q. Well, the requirement of 20,000 was not of
12 MSHA requirement or safety requirement, was it?

13 A. No, it's Massey.

14 Q. What do you know about that requirement?
15 I mean, if that requirement is not met?

16 A. Shut the station down.

17 Q. At the last open break --

18 MR. SEARS: I'm sorry, let him
19 finish his question before you answer,
20 okay.

21 A. Okay.

22 Q. I think you answered, but just to clarify
23 for the record, when there's not 20,000 at the last
24 open break, the section is supposed to be shut down

1 until adequate air can be found?

2 A. Yes, sir.

3 Q. Is that what you do where you work?

4 A. Yes, sir.

5 Q. What section do you work in?

6 A. It's the only section at the mines.

7 Q. Is it a continuous miner section?

8 A. Yes, sir.

9 Q. Have you ever had less than 20,000?

10 A. Yes, sir.

11 Q. How often does that happen?

12 A. Not too often. Running 90,000 upper
13 intake for a single section coal mine, you really
14 don't have that much trouble.

15 Q. When you shut down your section because
16 you don't have the 20,000, do you document that, do
17 you write it down?

18 A. Yes, it's put on our production report.

19 Q. Where would you put it on that? I've seen
20 the reports, I know the form. Where would you put
21 that?

22 A. It would be on the front page over on your
23 down time. It would be down under "Ventilation."
24 There is a component code and all that stuff you

1 put in with it.

2 Q. Right. Was there a number for
3 ventilation?

4 A. Yes.

5 Q. Was that where you would mark it down for
6 ventilation?

7 A. Yes.

8 Q. With regard to P-2, other than the chain
9 you've talked about, what other things do you look
10 at with regard to P-2 when you did these safety
11 audits?

12 A. Fly boards put up on cycle, cable bolts
13 put up on cycle.

14 Q. That's not part of S-1?

15 A. I'd say it's probably part of both. I
16 mean, there's no sense in being down over it
17 whenever you can put it up on cycle. I'm pretty
18 sure that's where it falls into P-2.

19 Q. What else other than those three things
20 that you look at with regard to P-2 when you do a
21 safety audit?

22 A. Stopping are numbered, initialed and
23 dated. Signs are up. Are your man door signs,
24 stuff on your lifeline, things like that, I'm sure

1 that all falls into the P-2 end of it also.

2 Q. Do you personally have a copy of the S-1/
3 P-2 manual?

4 A. S-1 manual, yes, sir.

5 Q. Does every Massey member who works in the
6 mine have a copy of that manual?

7 A. That I'm not for sure of.

8 Q. When did you get your copy?

9 A. Really I honestly don't remember.

10 Q. I'm not looking for a definite time. Was
11 it when you first went to work for Massey, was it
12 when you became Assistant Mine Foreman, when you
13 joined the rescue team?

14 A. You get your handbook when you first
15 start, and really, like I said, I'm not for sure
16 whenever I got it. I have a copy of it at the
17 house. I'm pretty sure I got it when I was on the
18 rescue team.

19 Q. Have you ever seen it before you were on
20 the rescue team?

21 A. Yes, sir.

22 Q. Where did you see it?

23 A. They have a copy of it in each mine.

24 Q. In the office?

1 A. Yes.

2 Q. And you went there and you looked at it
3 there?

4 A. Yes, you can look any of it up there.

5 Q. Did you have to ask for a copy of the S-1
6 manual?

7 A. No, sir.

8 Q. So when you did safety audits, what you
9 had to go on was the S-1 manual, and you didn't
10 have anything else in writing that gave you
11 instructions about what the safety audit was
12 supposed to involve?

13 A. No, sir.

14 Q. And when you say, "No, sir," you mean --

15 A. Just S-1 handbook is all we had.

16 Q. What kind of instructions were you given
17 when you first learned about safety audits?

18 A. What do you mean?

19 Q. Well, did they say, as part of your work
20 in the mine rescue team, "You're going to do safety
21 audits," did they say that to you?

22 A. Yes, Elizabeth said that.

23 Q. Did you know that before you went to work
24 on the mine rescue team, that you would do safety

1 audits?

2 A. Just on my initial orientation was when
3 she said it.

4 Q. Did she explain why the rescue team
5 members were going to do safety audits?

6 A. No.

7 Q. Were you surprised that you were going to
8 do safety audits in addition to rescue teamwork?

9 A. Not really. I mean --

10 Q. You just did what you were told?

11 A. Yes.

12 Q. And so did you have a checklist when you
13 went in the mine, meaning you, did your contract
14 team have a checklist of things to look at when you
15 went in the mine?

16 A. No, it was just walk up, if you see
17 something, would you write it down and we would
18 report it.

19 Q. Did you have a form to write it down on if
20 you saw something?

21 A. Just write it down on a piece of paper,
22 and then whenever we would get back, we would type
23 it up on a form.

24 Q. Who would do the typing?

1 you can remember. This isn't a test.

2 Q. That's what I said. No, that's what I
3 said.

4 MR. SEARS: I understand. I'm
5 just reminding him.

6 Q. Yes.

7 A. Repeat the question there.

8 Q. I'm just wondering what the S-1 manual
9 that you used in doing safety audits, what it said
10 about ventilation.

11 You said there was a 20,000 requirement
12 for air at the last open break. Was there anything
13 else in the manual, that you can recall?

14 A. Just talked about curtains tied right,
15 different ways of ventilating sections. I mean,
16 ithad all that in there for your split air, swift
17 air.

18 Q. Okay. Does the S-1 manual that you used
19 in doing safety audits say anything about rock
20 dusting?

21 A. I really can't recall right offhand. I
22 mean, it's got to be within 40 feet of the face. I
23 guess now it's got to be 80 percent within 40 feet
24 of the face, but as for, I guess, a timeline or

1 when you're supposed to rock dust, stuff like that,
2 I don't remember that.

3 Q. Is there a timeline in the S-1 manual?

4 A. That's what I just said, I don't really --

5 Q. You don't know whether there is or not?

6 A. No.

7 Q. So what percentage of non-combustible
8 material is required with regard to rock dusting?

9 A. Eighty percent or less.

10 Q. How can you determine whether there's 80
11 percent non-combustible?

12 A. MSHA comes in and does their test. I'm
13 assuming there's 80 percent.

14 Q. So you just look at an area that's been
15 rock dusted and you don't know whether it's 80
16 percent or more or less, do you?

17 A. No, not right offhand.

18 Q. Does Massey do its own rock dust
19 sampling? You know, you can take samples and send
20 it to a lab?

21 A. Yes.

22 Q. Does Massey ever do that, to your
23 knowledge?

24 A. Not to my knowledge. I'm not on that end

1 of the examinations area.

2 Q. So as an assistant foreman, section
3 foreman, you have responsibility for seeing that
4 there's adequate rock dusting in the area where you
5 work and you supervise, is that correct?

6 A. Yes, sir.

7 Q. So you just look at rock dusting and you
8 guess whether it's 80 percent or not?

9 A. I mean, I really don't have a lab that I
10 can test it.

11 Q. No, I understand. I'm just asking because
12 it's important to have rock dusting in compliance
13 with the law and I'm just wondering how Massey does
14 it.

15 A. We machine dust every shift, use three to
16 four of the super bags of dust. I mean, the end of
17 every shift, it's machine dusted.

18 Q. At the end of every shift?

19 A. So I'm assuming it's probably 80 percent.

20 Q. Okay. Do you think it would be adequate
21 if you machine dusted every third shift?

22 A. I couldn't tell you.

23 Q. If you just hand dusted rather than
24 machine dusted, would that give you adequate rock

1 dusting to be in compliance with MSHA regs, do you
2 have any sense of that? If you don't, that's fine.

3 MR. SEARS: I object to asking
4 him opinion testimony. I mean, I think
5 that's where you're getting to.

6 MR. MCGINLEY: No, I'm not at
7 all, Chris.

8 MR. SEARS: Let me state my
9 objection and you can respond.

10 MR. MCGINLEY okay.

11 MR. SEARS: You're kind of giving
12 him some hypotheticals. I don't think
13 he's comfortable answering these, you can
14 speak for himself, but to the extent
15 you're giving him these hypotheticals,
16 asking him whether or not it would be
17 appropriate, I think that kinds of gets
18 into asking him his opinions about stuff.

19 He's here to testify about facts
20 that he knows, things that he did, things
21 that he does, things along those lines,
22 and to the extent that he doesn't feel
23 comfortable expressing opinions about
24 things because it's kind of out of his

1 scope of expertise, that I would advise my
2 client that it's appropriate to say that
3 and not feel that he has to give an answer
4 just because the question is being asked.

5 Q. Fair enough. I'm not asking you for an
6 opinion, I'm just trying to understand the work you
7 did when you did safety audits at places like UBB.

8 One of the things you were supposed to
9 look at was the adequacy of rock dusting, is that
10 correct?

11 A. Yes. But what does the amount of rock
12 dust that I put on my section have to do with --

13 Q. Well, I'm trying to understand how did you
14 determine whether the rock dusting was adequate at
15 UBB or any other mines.

16 I believe it's based on the your
17 experience in the work that you do, correct?

18 A. Yes, but I mean, if you walk down a belt
19 line and you see float dust, you're going to write
20 it up as needing additional dusting.

21 Q. Okay. But my question was, how did you
22 determine whether there's adequate dusting?

23 Can you do adequate dusting just by hand
24 dusting, do you know? And if you don't know the

1 answer, that's fine.

2 A. No, I'm not for sure on that.

3 Q. Did you ever do or have your people
4 working under you do hand dusting?

5 A. Yes, scoop man does.

6 Q. You know, I'm just asking what you do, I'm
7 not trying to trick you, I'm trying to understand
8 what the safety audits involve.

9 You said you looked at equipment in safety
10 audits, is that correct?

11 A. Yes, sir.

12 Q. Is that one of the things you personally
13 would do in the safety audits?

14 A. Check fire suppressions on the miners,
15 check lights, check E stops. That's about as far
16 as I went with it.

17 Q. What about the other team members?

18 A. I'm not a certified electrician so I
19 wouldn't go no further with it.

20 Q. Would you have a certified electrician on
21 the team?

22 A. Yes, sir.

23 Q. So the certified electrician would look at
24 electrical equipment?

1 A. Yes.

2 Q. What other areas of expertise were on the
3 team?

4 A. We had one guy, he was a surveyor. He was
5 on the team there for a little bit. He would go
6 over a little bit on the maps, but other than that,
7 that was pretty much.

8 Q. What do you know about water sprays for
9 dust suppression? Do you check those on equipment?

10 A. You check them the start of every shift
11 before the miner fires up and you dust parameters.

12 Q. So were the water sprays checked when you
13 went to UBB, the sections where there were dust?

14 A. Yes, we checked the water sprays, but once
15 we left, if they went out, I mean --

16 Q. Sure. You would only know what you saw?

17 A. Yes.

18 Q. Does the S-1 manual say anything about how
19 often water sprays should be checked?

20 A. Checked before every cut. That has to do
21 with your MMU's, your dust control.

22 Q. Okay. And if the water spray is clogged
23 or isn't functioning right, what does the S-1
24 manual require you to do?

1 A. Fix it.

2 Q. You stop production and you fix it?

3 A. Yes.

4 Q. The safety audits that you did, are they
5 in addition to the required mine rescue team visits
6 in mines or did they overlap? Do you basically,
7 for lack of better words, kill two birds with one
8 stone?

9 A. Making our visit and do audits, yes,
10 that's the way we do it.

11 Q. Okay. Just a couple more.

12 Did you ever get any feedback, any
13 response to the safety audits you did at UBB or any
14 other mines?

15 A. As in?

16 Q. Did somebody come back and say, "Well, you
17 wrote down this and we want to talk to you about
18 it," or once you send in your report, that was the
19 last you heard about it?

20 A. That's the last we heard about it.

21 Q. Say when you went to UBB, how long did you
22 spend underground?

23 A. Anywhere from four to six hours, I'd say.

24 Q. Just one day?

1 A. Yes.

2 Q. So between the time you joined the rescue
3 team and the time you quit, did you visit UBB every
4 time there was a safety audit?

5 A. I can honestly say I'm not for sure on
6 that.

7 Q. Okay. You think you visited a number of
8 times?

9 A. Yes, but as for every time, no, I'm not
10 for sure of.

11 Q. Okay. Just a clarification, when you got
12 to UBB after the explosion, you got your clothes on
13 and you went into the bay area?

14 A. Yes.

15 Q. For the record, can you define what you
16 mean by bay area?

17 A. Where they park mantrips at, that big
18 garage there, I guess you could say.

19 Q. Okay. You said you were surprised to see
20 Chris Blanchard underground when you went with the
21 rescue team the first time on April 5th into UBB,
22 is that correct?

23 A. Yes.

24 Q. Why were you surprised?

1 A. I didn't know he was in there. I just
2 thought mine rescue was in there.

3 Q. Did you know him to see him?

4 A. I know of him, been around him a time or
5 two, but on a first name basis, no.

6 Q. Were you surprised to see Jason Whitehead
7 in the mine?

8 A. Same as Blanchard. I mean, once again, I
9 thought mine rescue personnel was the only ones in
10 there.

11 Q. Is that what the mine safety protocol
12 requires, that only mine rescue teams be
13 underground?

14 A. I can understand them being in there.

15 Q. Sure, I understand, but I'm just asking
16 what your knowledge is of mine safety protocol.

17 A. Protocol says mine rescue only, but in a
18 situation like that, I mean, I would have done it.

19 Q. In your training in mine rescue training,
20 is there any discussion of exceptions to the
21 protocols?

22 A. No. I mean, I don't guess no exception,
23 but once against, I can understand why they was
24 doing it. I mean, if there's a chance to save one

1 man --

2 Q. Do you know why there is a requirement
3 that only mine rescue team members be underground
4 during a mine rescue? Was that discussed in your
5 training?

6 A. I'm sure it was at one point in time, but
7 do I remember? No, not right offhand.

8 Q. You said that you had been involved in a
9 fire at Revolution when you worked there?

10 A. Yes, sir.

11 Q. What kind of fire was that?

12 A. Tail roller caught fire and burned up 200
13 foot of belt.

14 Q. That was serious?

15 A. Yes.

16 Q. How far in-by was the fire?

17 A. From my location or from where --

18 Q. Well, from the portal at Revolution.

19 A. I don't know; 35 breaks or so from the
20 bottom of the slope.

21 Q. Was anybody hurt or burned?

22 A. No.

23 Q. Do you know when that was approximately?

24 A. September of '08.

1 Q. Roughly September of '08, you think?

2 A. Yes.

3 Q. You said in the mine safety audits, you
4 pick mines at random?

5 A. Uh-huh.

6 Q. So you knew you had to do four visits a
7 year for the mine safety audit, is that correct?

8 A. Yes.

9 Q. So there must have been a little more than
10 random. You knew which mines hadn't been visited
11 four times.

12 A. I mean, we had 32, 33 mines. We just pick
13 them at random for that quarter and go to them and
14 the next time we would pick them at random and go
15 to them. It wasn't no big set schedule on it.

16 Q. But did you try to do them quarterly?

17 A. Yes, you had to do them quarterly.

18 Q. Okay. And that's a calendar year
19 quarterly?

20 A. Yes.

21 MR. MCGINLEY: All right. I
22 don't have any other questions. Thanks.
23 I appreciate your patience with me.

24 EXAMINATION

1 BY MR. WATKINS:

2 Q. While we're on the subject of audits, I
3 just got a couple more, if you can believe it.

4 The last time you was there you was there
5 with the fire drill. Did you only travel in the
6 belt entries during that fire drill or did you
7 travel to other entries?

8 A. We just traveled the secondaries. I'm
9 pretty sure that was the track there from the
10 mother drive out, so that's where we was at.

11 Q. How did that entry look as compared to a
12 mine you normally look at as far as rock dusting?
13 Did it look similar to the amount of rock dust?

14 A. Well, I mean, Upper Big Branch was always
15 rock dusted well, from the areas that I seen.

16 Q. Again, on that particular time, you was
17 only in the, what they call the neutral entry?

18 A. Yes.

19 Q. When you guys chose a mine to conduct a
20 audit, did you just show up at the mine or did they
21 know you was coming ahead of time?

22 A. Sometimes we would call, sometimes we
23 wouldn't.

24 Q. Okay. And you're sort ever like MSHA, we

1 show up. I didn't know if they knew you guys was
2 coming.

3 A. Sometimes we did, sometimes we didn't.

4 Q. So when you got there, did you go in and
5 meet with the superintendent prior to going
6 underground?

7 A. Superintendent and mine foreman.

8 Q. And made arrangements through them to get
9 rides?

10 A. Yes.

11 Q. Speaking of when we talked about advance
12 notice there a little bit, did you ever have any
13 problem or hear of anyone giving advanced noticed
14 when MSHA showed up or the state showed up to do
15 their inspections underground?

16 A. Do what now?

17 Q. Did you ever hear of occasions where
18 workers underground were notified whenever state or
19 federal showed up to do the investigations?

20 A. No.

21 EXAMINATION

22 BY MR. TUCKER:

23 Q. Just a couple more things, just to
24 clarify, if I understood right, you came off the

1 mind rescue team a couple weeks prior to UBB?

2 A. Yes, sir.

3 Q. Then one of your buddies, who you were on
4 the mine rescue team when the explosion occurred
5 called you and told you about it, and then you went
6 to the mine basically on your own to offer your
7 assistance to help?

8 A. Yes, sir.

9 Q. Okay. I commend you for doing that.

10 One thing, you mentioned that you was part
11 of the final exploration on 22 head gate prior to
12 removing the last victims out of the mine, is that
13 correct?

14 A. Yes, sir.

15 Q. Did you participate in the removal of the
16 workers from 22 head gate that night out of the
17 mines?

18 A. We had it split up where we was, if I'm
19 not mistaken, six breaks apart, there would be six
20 men six breaks apart. I was on the last leg of it
21 when we was loading them on the way out.

22 Q. If you could, so it would be a matter of
23 record, could you describe what was in place to
24 bring those victims out of the mine, how that

1 transpired, how it was set up and coordinated to
2 make that happen?

3 A. They had teams set up, like I said, every
4 six breaks and we just pretty much relayed it. I
5 mean, six men would carry one six breaks, switch
6 off, all the way out of there.

7 Q. It was all the way to 78 break or
8 thereabouts?

9 A. Right around where that "X" is at there.
10 I'm pretty sure that's the end of the track.

11 Q. Around 82, 83 break?

12 A. Yes, or around 87, it looks like, 88.

13 Q. And then from there, they were --

14 A. On the mantrip, took outside.

15 Q. Okay. From that point, once they got on
16 the mantrip, just describe what happened from that
17 point until you got outside that next morning.

18 A. From the time we loaded the last ones up,
19 I got on the mantrip and I drove the mantrip out.
20 I had a crew of rescue workers and brought them the
21 rest of the way out that had been in there for 16,
22 18 hours doing the recovery, under apparatus and
23 packaging and things like that.

24 Q. All right. And once you got outside there

1 at the drift, what happened then? Did you wait as
2 they -- I don't want to put words in your mouth --
3 but just as they took the victims out to the
4 temporary morgue that was set up, did the teams
5 wait there while they took them on out?

6 A. Yes.

7 Q. Can you just explain how that happened?

8 A. The makeshift morgue wasn't big enough to
9 handle all nine at one time so they had the last
10 four to five, I'm not for sure right offhand, on
11 that last mantrip, and we waited in the drift mouth
12 until they went outside, all of us but one.

13 Q. Until the very last victim got outside?

14 A. Yes, everybody but one, and I can't
15 remember, he was a federal inspector, and he walked
16 on out.

17 Q. I just thought it was important to get,
18 since you was part of that, to just kind of
19 describe how the victims were taken out.

20 What would you estimate the distance there
21 that they were carried?

22 A. As from up there to the mantrip?

23 Q. From the 22 head gate to the mantrip.

24 A. I would say it took at least a half a mile

1 or better, every bit of it.

2 MR. TUCKER: I don't have
3 anything else.

4 EXAMINATION

5 BY MR. BABINGTON:

6 Q. I'll try to be quick. You were asked a
7 couple of times when you spoke with Chris Blanchard
8 at the fresh air base.

9 Did either he or Jason Whitehead talk
10 about finding any victims?

11 A. No, I never did hear them say.

12 Q. You mentioned that the audits, for the
13 most part, were random but sometimes the captain,
14 Rob Asbury, would direct certain audits be done on
15 certain mines?

16 A. Yes.

17 Q. Did he ever express why he chose certain
18 audits to be conducted?

19 A. No, not to me he didn't.

20 Q. Okay. Were you aware of why he would
21 direct?

22 A. No.

23 Q. During the time that you were doing safety
24 audits at UBB, were you ever informed of them

1 having any history of methane inundations?

2 A. Repeat the question there, please.

3 Q. During your time when you were performing
4 safety audits at UBB --

5 A. Uh-huh.

6 Q. -- were you ever informed that that mine
7 had any history of methane inundations?

8 A. No, not at the time of the audits.

9 Q. Okay. I'm guessing that you've heard
10 about that since?

11 A. Yes.

12 Q. But during the audits --

13 A. No.

14 Q. And you didn't hear about any pop-offs
15 they had in the longwall?

16 A. No.

17 Q. Did you hear about any problems they had
18 with the longwall while you were doing your audits?

19 A. No.

20 Q. Okay. You mentioned that the auditing
21 team would write up a report of their safety
22 audit?

23 A. Uh-huh.

24 Q. And then the composite team would come

1 back and do the follow-up.

2 A. Uh-huh.

3 Q. Is that a "Yes?"

4 A. Yes.

5 Q. Okay. Did the composite team, after they
6 conducted their follow-up, would they write a
7 report?

8 A. That, I don't know. I was never on the
9 composite team.

10 Q. But if they had written a report, you
11 never received a report from the follow-up team?

12 A. No. Like I said, I don't know. I don't
13 guess. I was never on the composite team so I
14 couldn't tell you.

15 Q. Well, I'm just wondering, just to clarify,
16 you, as a member of a contract team, never received
17 any copies of a report from a composite team?

18 A. No, sir.

19 MR. BABINGTON: And lastly, Eric,
20 you and I spoke about this before the
21 interview but we just kind of want to
22 re-put on the record or request for the
23 safety audit reports. I think we
24 requested for five years, from January 1,

1 2005 through April 5, 2010.

2 MR. SILKWOOD: The request I have
3 is July 8th of 2008 to August of 2010.

4 MR. BABINGTON: Okay, yes. I
5 think we talked more specifically in that
6 other interview about the dates where they
7 would be available, but you said that was
8 July, 2008?

9 MR. SILKWOOD: Yes.

10 MR. BABINGTON: Okay. We just
11 want to make sure that, if possible, we
12 get those as quickly as possible.

13 MR. SILKWOOD: Sure.

14 MR. BABINGTON: That's all I
15 have.

16 EXAMINATION

17 BY MR. MCGINLEY:

18 Q. Just a couple more questions.

19 In answer to Mr. Watkins' questions, you
20 said that rock dusting at UBB was always good when
21 you were there?

22 A. Yes. I mean, from what I could tell, it
23 was good.

24 Q. But each visit you made was just a small

1 area of the mine, is that correct?

2 A. Yes.

3 Q. And you couldn't say for sure whether the
4 rock dusting was in compliance just by looking at
5 it?

6 A. No, sir.

7 Q. Mr. Watkins also asked what the safety
8 audit teams would do when they arrived at the mine,
9 and you said they would go to the office, is that
10 correct?

11 A. Yes, sir.

12 Q. And talk to a superintendent or the --

13 A. Mine foreman.

14 Q. -- mine foreman. And what would that
15 discussion entail? I mean, what would that
16 discussion entail?

17 A. Just tell them where we was going to. I
18 mean, what we was there for, and we would talk to
19 them when we got out, tell them about what we had
20 found.

21 Q. Okay. So did the mine foreman ever
22 suggest, "We're having problems at such and such a
23 place. Why don't you look there?"

24 A. No.

1 Q. So the choice of where to go in the mine
2 was always yours, is that correct?

3 A. Yes.

4 Q. And you would always tell the mine foreman
5 or the superintendent where in the mine you were
6 going, is that correct?

7 A. Yes, sir.

8 Q. And when you arrived in those places,
9 would the people there expect you? I mean, they
10 knew you were coming sometimes?

11 A. Sometimes, but not always.

12 Q. Okay. So somebody would have had to call
13 them from outside the mine to tell them you were
14 there?

15 A. I'm assuming so.

16 Q. How long would your discussion typically
17 take when you go and do an audit and you visit with
18 the superintendent or foreman of a mine?

19 A. After the audit or before?

20 Q. No, before.

21 A. Five, ten minutes; not long.

22 Q. Okay. And when you come out of the mine
23 after you do an audit, you talk to the foreman or
24 superintendent, is that correct?

1 A. Yes.

2 Q. And how long does that discussion
3 typically last?

4 A. About the same. I mean, we just hit the
5 high points on our audits pretty much.

6 Q. Okay. So what are the most serious
7 violations of S-1 that you recall that you found at
8 UBB?

9 A. Like I say, I really don't -- All these
10 audits run together. I really --

11 Q. Let me ask you what are the most serious
12 violations of S-1 or MSHA standards that you found
13 at any mine?

14 A. Low air, wide bolts and stuff like that.

15 Q. Okay. Typically, maybe you can't say
16 that, but was there an average page length of the
17 reports that you would give?

18 A. It just varied.

19 Q. From, you know, one page to fifty pages,
20 or is there a ballpark estimate you could make?

21 A. Just it would vary, one to say five pages,
22 I mean, depending upon the size of the mine.

23 Q. So rarely it would be more than five pages
24 of a report?

1 A. Yes.

2 Q. Refresh my recollection; was there a form
3 that you had to fill out with regard to these
4 safety audits or was it you just take a blank sheet
5 of paper and you type in the word processor and
6 there's no form?

7 A. We had a form made up that we would just
8 type it out on, but it's just a punch list is all
9 it was.

10 Q. What do you mean by that?

11 A. It just had the area, little block over
12 here would say "Area," and then you would write
13 what it was and "Date found" and there would be a
14 "Date corrected" box.

15 Q. Okay, but the "Date corrected" box
16 wouldn't always be filled in?

17 A. I would never see it.

18 Q. Okay. So you filled out where you went
19 and what the problems were and somebody else would
20 fill in the date corrected?

21 A. Yes.

22 Q. Maybe the composite team, you don't really
23 know, correct?

24 A. Yes.

1 Q. Was that just a one page form?

2 A. Yes.

3 Q. But your report could be additional pages?

4 A. Yes.

5 MR. MCGINLEY: That's all. Thank
6 you.

7 MR. BABINGTON: Bill, do you want
8 to do the closing statement?

9 MR. TUCKER: I can. We
10 appreciate you coming today. We really do
11 appreciate the work that you done during
12 the mine rescue at UBB.

13 This is an opportunity for you to
14 go back if you think maybe there's
15 anything you want to add to what you've
16 said or any closing comments you'd like to
17 make, feel free to take your time and
18 share them with us; maybe something that
19 we didn't ask maybe that we should have,
20 any information that you may have that you
21 could offer, we appreciate it.

22 MR. KINGERY: That's about it.

23 MR. BABINGTON: Thank you, and
24 you have contact information for both the

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state and for MSHA. Thank you for coming
and talking to us. Off the record.

(Interview concluded at
12:13 p.m.)

1 STATE OF WEST VIRGINIA, To-wit:

2 I, Lynne Rodriguez, a Notary Public and
3 Registered Professional Reporter within and for the
4 State aforesaid, duly commissioned and qualified,
do hereby certify that the deposition of was duly
5 taken by me and before me at the time and place
specified in the caption hereof.

6 I do further certify that said proceedings
7 were correctly taken by me in stenotype notes, that
8 the same were accurately transcribed out in full
and true record of the testimony given by said
witness.

9 I further certify that I am neither attorney
10 or counsel for, nor related to or employed by, any
of the parties to the action in which these
11 proceedings were had, and further I am not a
relative or employee of any attorney or counsel
employed by the parties hereto or financially
interested in the action.

12 My commission expires the 2nd day of June,
13 2020.

14 Given under my hand and seal this 6th day of
15 December, 2011.

16

17

18

Lynne M. Rodriguez, RPR
Notary Public

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24