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Transcript of the Testimony of Heath Lilly

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Case:

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CONFIDENTIAL STATEMENT UNDER OATH
OF
HEATH LILLY

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Wednesday, September 15, 2010, beginning at 1:12 p.m.

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

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EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

One

Subpoena

10*

Two

Return Receipt

10*

* Exhibit not attached

P R O C E E D I N G S

HEATH LILLEY, HAVING FIRST BEEN DULY AFFIRMED,
TESTIFIED AS FOLLOWS:

ATTORNEY KOERBER:

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

A. Heath William Lilly, L-I-L-L-Y.

ATTORNEY KOERBER:

And would you please state your address
and telephone number?

A. [REDACTED]

ATTORNEY KOERBER:

And your telephone number?

A. [REDACTED]

ATTORNEY KOERBER:

And do you have an attorney appearing
with you here today?

A. Yes.

ATTORNEY KOERBER:

Sir, would you identify yourself for the
record and your firm?

ATTORNEY MCCUSKEY:

Yes. John McCuskey of the law firm of

1 Shuman, McCuskey & Slicer, Counsel for Mr. Lilly.

2 ATTORNEY KOERBER:

3 And Mr. Lilly is your client?

4 ATTORNEY MCCUSKEY:

5 He is.

6 ATTORNEY KOERBER:

7 And I notice we have another attorney in

8 the room. I would ask that he state his name and firm

9 name and the client that he represents for the record.

10 ATTORNEY HARDY:

11 Yes. I'm David J. Hardy with Allen,

12 Guthrie & Thomas in Charleston, and I'm here to

13 represent Performance Coal.

14 ATTORNEY KOERBER:

15 And Mr. Lilly, are you appearing here

16 today as the result of receiving a subpoena?

17 A. Yes.

18 ATTORNEY KOERBER:

19 And this is a copy of the subpoena. Feel

20 free to take a look at it. I note for the record that

21 the subpoena compels you to appear September 15, at

22 8:38 a.m., and it is now 1:00 p.m. Based on the

23 discussion I had with your attorney last week, we

24 agreed to move that to 1:00 p.m. today. Was that your

25 understanding as well?

1 A. Yes.

2 ATTORNEY KOERBER:

3 I'd ask that that be marked as Exhibit

4 One.

5 (H. Lilly Exhibit One marked for

6 identification.)

7 ATTORNEY KOERBER:

8 Here's a copy of the return receipt card

9 signed by you on 9/3/10. I'd ask that that be marked
10 as Exhibit Two.

11 (H. Lilly Exhibit Two marked for

12 identification.)

13 ATTORNEY KOERBER:

14 Mr. Lilly, the statute that authorizes

15 the Director to issue subpoenas requires the Director

16 to offer to every witness subpoenaed a \$40-a-day

17 witness fee, plus roundtrip mileage at the rate of 15

18 cents a mile, so long as you drove in your personal

19 vehicle, plus reimbursement for any tolls that you may

20 have passed on your way here or the way home. In

21 order to receive that money, I have two forms that

22 need to be filled out, one of which is the Form W-9

23 miscellaneous form that's requesting your Social

24 Security number. It is my understanding that the \$40

25 witness fee is considered taxable income and that

1 you'll receive a 1099 miscellaneous at some later date
2 if you choose to fill out these forms. Some people
3 choose to fill out the forms and receive the money.
4 Some people do not. The choice is yours, but you need
5 to make that decision for the record now.

6 A. I will decline that money.

7 ATTORNEY KOERBER:

8 Bob?

9 ATTORNEY WILSON:

10 For the record, I've marked the subpoena
11 as Exhibit H. Lilly One and the return receipt as
12 Exhibit H. Lilly Two.

13 Mr. Lilly, my name is Bob Wilson. I am
14 with the Office of the Solicitor, United States
15 Department of Labor. With me is Erik Sherer, who's an
16 investigator with the Mine Safety and Health
17 Administration. Also present are individuals with the
18 State of West Virginia, and I'll ask that they state
19 their appearance for the record.

20 MR. FARLEY:

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

23 MR. O'BRIEN:

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

1 ATTORNEY KOERBER:

2 Barry Koerber, Assistant Attorney

3 General, assigned to represent the West Virginia

4 Office of Miners' Health, Safety and Training.

5 ATTORNEY MCATEER:

6 I'm Davitt McAteer, and I lead the

7 Governor's investigation --- independent

8 investigation.

9 ATTORNEY MCCUSKEY:

10 Mr. Wilson, may I ask also --- I haven't

11 been at any hearings, I don't think, with you for a

12 while, that since this is supposed to be a

13 confidential hearing, that the other people who are

14 present at the hearing also identify themselves and

15 their role?

16 ATTORNEY WILSON:

17 All right. We can do that. We do have a

18 confidentiality statement that I will read into the

19 record. Everyone that is present in the room is with

20 either the State of West Virginia or the Mine Safety

21 and Health Administration, United States Department of

22 Labor. Rich Stoltz, Tom Morley, Tim Watkins, Matt

23 Babington, Dave Steffey and Dana Ferguson are present

24 in the room.

25 Today is September 15, 2010, and we are

1 here at the Mine Academy to conduct an interview of
2 Mr. Lilly as part of the investigation into the
3 disaster that occurred at the Upper Big Branch
4 Mine-South on April 5th, 2010. Government
5 investigators and specialists have been assigned to
6 investigate conditions, events and circumstances
7 surrounding the fatalities that occurred at the Upper
8 Big Branch Mine on that date. The investigation is
9 being conducted by MSHA, pursuant to Section 103(a) of
10 the Federal Mine Safety and Health Act and by the West
11 Virginia Office of Miners' Health, Safety and
12 Training.

13 As I indicated, there are other
14 individuals from the investigation teams present in
15 the room. All members of the Mine Safety and Health
16 Administration Accident Investigation Team and all
17 members of the State of West Virginia Accident
18 Investigation Teams participating in the investigation
19 of the Upper Big Branch Mine explosion shall keep
20 confidential all information that is gathered from
21 each witness who provides a statement until witness
22 statements are officially released. MSHA and the
23 State of West Virginia shall keep this information
24 confidential so that other ongoing enforcement
25 activities are not prejudiced or jeopardized by a

1 premature release of information. This
2 confidentiality requirement shall not preclude
3 investigation team members from sharing information
4 with each other or with other law enforcement
5 officials. Everyone's participation in this interview
6 constitutes their agreement to maintain this
7 confidentiality.

8 Mr. Lilly, after the investigation is
9 complete, MSHA will issue a public report detailing
10 the nature and the causes of the fatalities in the
11 hope that greater awareness about the causes of
12 accidents can reduce their occurrence in the future.
13 Information obtained through witness interviews is
14 frequently included in those reports, and your
15 statement may be used in other proceedings.

16 You have a personal representative
17 present with you today, and Mr. Hardy is here
18 representing Performance Coal Company. This is not an
19 adversarial proceeding. This is a fact-gathering
20 exercise. Formal Cross Examination will not be
21 permitted. However, clarifying questions, as
22 appropriate, will be allowed.

23 We will be interviewing additional
24 witnesses after you, and so that we get everyone's
25 independent recollection of events, we ask that you

1 not discuss your testimony with anyone outside of this
2 room. A court reporter will record the interview, so
3 please speak loudly and clearly. If you do not
4 understand a question asked, please ask that the
5 question be rephrased. Please answer each question as
6 fully as you can, including any information that you
7 may have learned from someone else.

8 After we have finished asking questions,
9 we will give you an opportunity to go back and clarify
10 any statements that you made. We'll also give you an
11 opportunity if there's anything else that you think
12 may be important or relevant to the investigation that
13 you can tell us about that at that time. Also, if
14 after the interview today you think of any additional
15 information that you think may be relevant, we ask
16 that you contact the MSHA team here, at the Mine
17 Academy. Norman Page is the lead accident
18 investigator for MSHA, and I'm going to give you a
19 letter right now from Mr. Page. And this letter has
20 his contact information. The letter also contains
21 information concerning your rights as a miner under
22 the Mine Act. Terry, do you have anything that you
23 wanted to add?

24 MR. FARLEY:

25 Yes. Mr. Lilly, on behalf of the Office

1 of Miners' Health, Safety and Training, I'd like to
2 inform you that, as a participant in these interviews,
3 you are also protected by West Virginia State Law
4 should you experience any type of discrimination.
5 Specifically West Virginia Code, Chapter 22A, Article
6 I, Section 22, provides that protection.

7 Now, I'd like to pass along some contact
8 information for the West Virginia Board of Appeals,
9 which is charged with hearing complaints from persons
10 who participate in these type of interviews who may
11 experience discrimination. Should you have any
12 problems, you should feel free to contact the Board at
13 any time. And I would caution you that, should you
14 need to file a complaint, you need to do so within 30
15 days of the occurrence of the event. Thank you.

16 ATTORNEY WILSON:

17 Davitt, did you have anything you wanted
18 to say?

19 ATTORNEY MCATEER:

20 I don't.

21 ATTORNEY WILSON:

22 Is there anything further before we start
23 with the questioning? All right. Then, Terry, do you
24 want to begin?

25 MR. FARLEY:

1 Sure.

2 EXAMINATION

3 BY MR. FARLEY:

4 Q. Mr. Lilly, where are you employed?

5 A. Route 3 Engineering, with Performance Coal
6 Company.

7 Q. Now, were you employed there as of April 5th of
8 this year?

9 A. I was there, yes.

10 Q. Okay. Are you employed elsewhere now?

11 A. No.

12 Q. What's the actual physical location of the Route 3
13 Engineering office?

14 A. Montcoal, West Virginia.

15 Q. Is it on the actual Performance property?

16 A. Yes.

17 Q. Now, just so I understand here, does your paycheck
18 actually come from Route 3 Engineering or are you
19 employed by some other entity?

20 A. My paycheck comes from Massey Coal Services.

21 Q. Now, what types of work are actually performed by
22 Route 3 Engineering?

23 A. Route 3 Engineering ---

24 Q. Yes.

25 A. --- in a whole?

1 Q. Yes. What's the broad picture of what they do?

2 A. We do all the surveying for the mines, do all the
3 map making, take care of all the plans, if the mines
4 need ventilation plans, roof control plans, methane,
5 dust control plans, seismic centers, general
6 engineering practices for underground mining.

7 Q. Okay. Now, what companies or subsidiaries does
8 Route 3 Engineering serve?

9 A. Route 3 Engineering serves Elk Run Coal Company,
10 Marfork Coal Company and Performance Coal Company.

11 Q. Now, how many mines would that involve,
12 approximately?

13 A. I'd have to count them. You would have Hunter
14 Peerless, Sand Creek-Powellton. You would have
15 Roundbottom-Powellton, Black Knight II and Black King.
16 These are all active mines for Elk Run Coal Company.
17 That's five. They have multiple sections in some of
18 them. Inactive, you have obviously Castle Peerless
19 for Elk Run. Marfork you have Horse Creek Eagle,
20 Allen Powellton, Slick Ridge Cedar Grove, Marsh Fork
21 Cedar Grove, Brushy Eagle, Parker Peerless are all
22 active. And Coon Cedar Grove is a belt mine. We also
23 have Tunnel Mine, which is actually permitted under
24 Independence Coal Company. So I guess it wouldn't be
25 counted with that.

1 Q. Well, if my math is corrected, I think you counted
2 about roughly 13 or 14 ---

3 A. Roughly.

4 Q. --- active underground mines. And some of those,
5 of course, have multiple underground units?

6 A. Yes.

7 Q. Okay. All right. Do you serve any surface mines
8 or preparation facilities?

9 A. I do not, no.

10 Q. Does Route 3 Engineering serve any?

11 A. Yes.

12 Q. Which surface mines and facilities does Route 3
13 Engineering service?

14 A. B Tree Surface mine. It's a small highwall miner.

15 Q. Okay.

16 A. I don't really have anything to do with it, so I
17 couldn't give you any details.

18 Q. Okay. That's fine. Now, what is your specific
19 job title?

20 A. Mine engineer.

21 Q. Mine engineer. Now, I think you told us what
22 functions that Route 3 Engineering provided. What
23 were your routine job duties prior to April 5th of
24 this year?

25 A. And they're the same today as they were then .

1 Q. Okay.

2 A. My routine job duties are to take care of
3 ventilation plans, ventilation-based plans, roof
4 control-based plans, any revisions to those plans.
5 We, obviously, draw the projections, mining
6 projections, set all mine maps up, do all the
7 engineering work, end-of-month tonnages, mid-month
8 tonnage, take care of basically just all the
9 engineering for the underground coal mine.

10 Q. Are you also involved in the permitting process
11 for mining in the vicinity of gas wells?

12 A. Yes, somewhat.

13 Q. Prior to April 5th or as of April 5th, who was
14 your supervisor? Who would you report to?

15 A. Paul McCombs.

16 Q. Paul McCombs. What was Mr. McCombs' title at that
17 time?

18 A. Chief engineer.

19 Q. Is Mr. McCombs still with Route 3 Engineering?

20 A. He's no longer with Route 3 Engineering.

21 Q. Do you know when he left?

22 A. I can estimate. Roughly around June.

23 Q. Did he leave to take another job? Any
24 understanding of why he left?

25 A. He took another job.

1 Q. Now, what work might you have been involved with
2 specifically on the UBB Mine prior to April 5th of
3 this year?

4 A. Nothing. Very, very little. I've really not done
5 anything. One occasion I helped Eric Lilly when he
6 was on vacation, one time.

7 Q. Okay. Now, before I get too far down the road
8 here, let me back up on a couple things I forgot to
9 do. How long have you been with Route 3 Engineering?

10 A. June 2nd, 2008 is when I started, so two years and
11 four months.

12 Q. Now, were you employed anywhere prior to that as
13 an engineer?

14 A. Not as an engineer, no.

15 Q. Did you have mining experience prior to the time
16 you joined Route 3 Engineering?

17 A. Some. I had an internship with Consol Energy.

18 Q. What location with Consol?

19 A. Buckhannon, Virginia. Buckhannon, Virginia,
20 Consol. Buckhannon No. 1 Mine.

21 Q. Okay. About how much time did you spend
22 underground working with Consol?

23 A. Not much, maybe just two weeks underground. Most
24 of it was in the office.

25 Q. So in your two years-plus career here, what would

1 you estimate your underground time to be during that
2 period of time?

3 A. Well, probably a year maybe. I don't know. It's
4 hard to get specific. I'm a West Virginia black hat,
5 so I've got more than six months of time.

6 Q. Okay. So is it fair to say you did routinely
7 travel underground?

8 A. Uh-huh (yes).

9 ATTORNEY WILSON:

10 Is that yes?

11 A. Yes, but not on a daily basis, but on a weekly
12 basis. Sometimes it would stretch out longer, you
13 know.

14 BY MR. FARLEY:

15 Q. Okay. Now, when you traveled underground, what
16 did your work normally involve?

17 A. Well, for a long time I was a surveyor with the
18 spad crew, just long enough to get my black hat. I
19 wasn't a surveyor, per se. I was actually a mine
20 engineer, but I was just getting my time. And other
21 times when I've been understand, it was just like
22 ventilation surveys, checking ventilation controls,
23 air direction.

24 Q. Okay. Now, you indicated that your work for the
25 UBB Mine was very minimal, and you indicated that you

1 worked on mine plans, such as ventilation and roof
2 control. Did you develop or help to develop any
3 ventilation plans for the UBB Mine?

4 A. There was one occasion on --- let me think, in
5 December of 2009, Gerald Pauley was at Upper Big
6 Branch Mine. And I think that it may have been
7 roughly December 30th or December 31st, because I know
8 that we were getting ready to have a three-day
9 weekend. So it must have been December 30th. Gerald
10 Pauley arrived at the mine and he discussed something
11 with the superintendent. And I was the only engineer
12 that was available at that time, Eric Lilly was on
13 vacation, so I went up to the mine office there at UBB
14 and discussed the situation with Gerald Pauley that
15 they were having up there at the headgate. It dealt
16 something with belt air, but I'll be honest with you,
17 I can't even recall the details of the whole thing. I
18 worked with him and myself and Jamie Ferguson went up
19 the next Monday, met with Gerald about this plan, and
20 the State agreed that what we were proposing to
21 possibly to, they would probably approve that. But at
22 that time, I don't think we made a formal submittal.
23 We didn't make a formal submittal. Eric Lilly
24 actually did that one when he came back off of
25 vacation.

1 Q. Okay. Now, did you have something ---?

2 A. I would actually like to clarify that.

3 Q. Sure. Go ahead.

4 A. I don't recall for sure if I made that formal
5 submittal there because it's been that time frame, and
6 I just --- I don't remember. But that was the
7 situation.

8 Q. Am I clear here that Mr. Pauley's concern had to
9 do with the use of belt air to ventilate the working
10 section?

11 A. Honestly, I can't recall, Terry.

12 Q. Okay.

13 A. It did deal with belt air, but I cannot remember
14 if it dealt with ventilating the face or not.

15 Q. Okay. Now, do you know if Mr. Pauley's concern
16 was resolved at the time?

17 A. That's kind of the thing, is I didn't follow up
18 with that. Eric Lilly, when he came back off of
19 vacation, he took that project back over. So that was
20 between him and Gerald, and I don't ---.

21 Q. Okay.

22 A. We just discussed it and discussed what was ---
23 what we were going to do, and Eric Lilley followed up
24 with that when he came back.

25 Q. Okay. So you were involved on this one particular

1 day; is that correct?

2 A. Yes, sir.

3 Q. Now, who from management was also involved in this
4 particular situation?

5 A. Like I said, myself and Jamie Ferguson met with
6 them that following Monday concerning this and
7 discussed it.

8 Q. Okay. Was anyone present other than Mr. Ferguson,
9 yourself and Mr. Pauley?

10 A. I can't recall. I know there were, but I can't
11 recall if it was Steve Snyder or if it was --- or who
12 it might have been. I know that it was not just
13 myself, Jamie and Gerald, but I don't remember the
14 particular name. I'm sure that Steve Snyder would
15 have been involved, but I can't recall.

16 Q. Okay. If you happen to recollect later, please
17 give us that information. Now, in the development of
18 mine plans, such as ventilation plans and/or roof
19 control plans for that matter, too, I know you didn't
20 specifically handle matters for UBB, but it would be
21 fair --- was it fair to say that the process for
22 developing plans would have been similar, if not the
23 same, for all the mines?

24 A. Yes.

25 Q. Okay. So is it fair to say that there was a set

1 process in place in development of plans?

2 A. Yes.

3 Q. Okay. Now, was there a sign-off sheet for each
4 plan? Did it travel from through the --- a number of
5 individuals during the development and approval
6 process?

7 A. No.

8 Q. If you would take me through how it normally
9 played out?

10 A. The ventilation plan?

11 ATTORNEY MCCUSKEY:

12 Mr. Farley, may I object just for a
13 second and ask for a clarification? I assume, but I
14 don't know that I should be assuming, that you're
15 talking about initial plans, but you may be talking
16 about plan revisions, and I think that is a
17 distinction. I'd just ask you to clarify.

18 MR. FARLEY:

19 Thank you.

20 BY MR. FARLEY:

21 Q. Let's begin with how did the process normally play
22 out for initial plan submittals, development of a new
23 plan?

24 A. Sure. A ventilation-based plan?

25 Q. Yes.

1 A. Since I've been at it, we have a ventilation-based
2 plan that has been --- we always take a ventilation-
3 based plan that's been previously approved, because we
4 know that's what MSHA is going to accept, which really
5 isn't the case, but we submit that plan that's been
6 previously approved for their review and approval. I
7 mean, we'll take that and submit it.

8 Q. Okay. Now, does that mean that you submit the
9 plan, expecting it to be denied, expecting the initial
10 approval to be denied?

11 A. No. We expect them to be approved, but that's not
12 always the case. I mean, it's like --- I guess ---
13 there's no offense meant by this, but it's kind of
14 like trying to hit a moving target. You get something
15 approved this week, and the next week when you submit
16 it, it's no longer valid, if that makes any sense to
17 you.

18 Q. Do you have the same experience with the State
19 agency, too?

20 A. No, sir.

21 Q. Okay. But in this process, prior to submittal of
22 the plan, whose --- how many hands does it go through?
23 How many persons within the organization of Route
24 3 ---?

25 A. Within Massey?

1 Q. Yes. How many hands does it go through before
2 it's actually submitted to one or the other agency?

3 A. I guess, first of all, the superintendent or maybe
4 the company president will say, we need this to be
5 done, we need to add a section or whatever needs to be
6 done they might discuss it with the engineer. The
7 engineer will go and develop a plan, maybe draw
8 something up, and then he might take it back to the
9 superintendent, show it to him, see if he's good with
10 it. This may not happen every time, but as a rule of
11 thumb, that would happen. And the superintendent
12 would say, well, that looks good to me or he may have
13 some kind of suggestion and say, no, I don't want to
14 do it that way. Can we try to do it this way? He may
15 want to change things up a little bit. But that would
16 be the process. The engineer would initially develop
17 the plan, draw it up, take it to somebody, let them
18 see if they agree with that. And then, if that's the
19 case, then the plan would be submitted.

20 Q. Okay. Now, I know you indicated that you had very
21 little involvement with the Upper Big Branch Mine.
22 What engineer from Route 3 Engineering was
23 specifically assigned to the UBB Mine on a regular
24 basis prior to April 5th?

25 A. Eric Lilly.

1 Q. Did Mr. Lilly handle most everything from UBB
2 exclusively or did others participate in any way?

3 A. As far as I know, Eric done all the plans himself.
4 He had input from people above him, you know. But as
5 far as I know, the plans were his that he developed
6 initially and submitted to MSHA, which, of course,
7 MSHA did not accept his submittals for this longwall.
8 When this longwall was being developed, when the gate
9 roads were being developed for this longwall, I do not
10 recall how many plans were submitted, but there were
11 several plans submitted to ventilate this longwall.
12 And they were denied on multiple occasions for reasons
13 that I'm not aware of because I wasn't that involved
14 with it. But I know that these plans were denied and
15 I know that they were forced to do it the way that
16 MSHA required them to proceed to be able to run this
17 longwall.

18 Q. Okay. Now, when did the ventilation plan for the
19 longwall at UBB actually commence?

20 A. I don't know. Sometime in 2009 maybe.

21 Q. Okay. Now, we understand that production
22 commenced on the UBB longwall early September 2009; is
23 that correct?

24 A. Yes.

25 Q. Based on your observation?

1 A. Yes. I'm confirming there, but ---.

2 Q. Okay. Now, what individuals were involved in the
3 development of the ventilation plans for the UBB
4 longwall?

5 A. What individuals were involved?

6 Q. Yes. What individuals with Route 3 Engineering or
7 Performance Coal, Massey Coal Services, who might have
8 been involved?

9 A. As far as I know, the primary people involved with
10 be Eric Lilly and, I know that he had some input from
11 Chris Blanchard.

12 Q. Okay. Now, I think you said earlier that
13 sometimes a president or superintendent would direct
14 matters with regard to ventilation plans. Was that
15 typically true with the Performance Coal management
16 folks, too?

17 A. I couldn't answer that, Terry. I didn't --- I
18 wasn't involved enough to know.

19 Q. But if I understand you correctly, you do believe
20 that Mr. Blanchard had some input in the development
21 of the UBB longwall ventilation plans?

22 A. I believe that, but I cannot confirm that.

23 Q. Do you know what others might also have been
24 involved in the development?

25 A. No.

1 Q. Okay. Now, your involvement with the mine plans,
2 be they ventilation, roof control or whatever, did
3 that usually include underground visits?

4 A. Occasionally. That's not always the case, but
5 yes, at times.

6 Q. Did you actually go underground and make some sort
7 of an assessment or a determination for advancing the
8 plans?

9 A. In regards to?

10 Q. Well, any number of things. It's an evaluation of
11 what you were proposing to do to see if it might be
12 effective.

13 A. Not on a daily basis. Not on every job. Maybe in
14 a special case that might happen, but for the most
15 part you can tell off your mine map.

16 Q. Okay. Now, do you know if any ventilation surveys
17 were performed at the UBB Mine prior to April 5th of
18 this year?

19 A. There was one conducted at one time, but I don't
20 know when the date was. And I think it was prior to
21 --- I know it was prior to when I began working there,
22 and I began working there June 2nd, 2008. There was
23 one done. I don't know if you want to go back that
24 far, but ---.

25 Q. Sure, if you know.

1 A. I know there was one performed sometime prior.

2 Q. Prior to your ---

3 A. Prior to me being there.

4 Q. --- hire date, which would have been in the summer
5 of 2008.

6 A. And beyond that, I don't know what all took place
7 underground there. I don't ---.

8 Q. Do you know if the surveys were performed by
9 in-house engineers or by an outside entity?

10 A. Do you mean ventilation surveys?

11 Q. Yes. Excuse me, ventilation surveys.

12 A. I think they were in house. I don't know all the
13 details about that. I really can't answer that
14 because I wasn't there.

15 Q. Okay.

16 A. I mean, ---.

17 Q. Okay. All right. Do you know any of the details
18 as to what type of ventilation survey was performed?

19 A. Like I said, I wasn't there, so it would be hard
20 for me to answer that.

21 Q. I assume the same would apply to the area of the
22 mine which might have been surveyed?

23 A. What?

24 Q. Would you have any knowledge of what area of the
25 mine would have been surveyed?

1 A. No. Like I said, I really have no knowledge of
2 it, other than I just know it was conducted.

3 Q. Okay. Prior to April 5th of this year, did
4 you --- were you aware of any ventilation problems at
5 the UBB Mine?

6 A. No.

7 Q. Anything come to your --- was anything brought to
8 your attention?

9 A. No, sir.

10 Q. Do you know if anything was brought to the
11 attention of any other person within your engineering
12 department?

13 A. Not that I know of.

14 Q. Okay. Did anyone from Route 3 Engineering
15 participate in the ventilation changes of the UBB Mine
16 prior to April 5th of this year?

17 A. I can't answer that, Terry, because I don't know.
18 I don't know.

19 Q. Would it be normal routine for personnel from
20 Route 3 Engineering to participate --- actually
21 physically participate in an underground ventilation
22 change?

23 A. I guess that's what I was wanting you to clarify.
24 Do you mean actually underground?

25 Q. Yes, sir.

1 A. Physically knocking stoppings and constructing
2 stoppings?

3 Q. Well, that or any number of things actually
4 present underground when it occurred?

5 A. I have been before. I don't know if at
6 Performance that was what happened. I don't know.

7 Q. All right. Prior to April 5th of this year, did
8 you become aware of any water problems at the UBB
9 Mine?

10 A. I think there was maybe some water built up on
11 the --- I'm wanting to say the tailgate. Is that the
12 case?

13 A. When was the last time you were actually
14 underground at UBB or have you been underground at
15 UBB?

16 A. I've only been underground at UBB four to five
17 times.

18 Q. When? When was the most recent time you've been
19 there

20 A. These --- this tailgate and this headgate were
21 being developed that the longwall was currently mining
22 on. I was up there and set some of these spads up
23 here on a couple of occasions.

24 Q. Would that have been sometime in the early part of
25 2009?

1 A. I can't remember. Like I said, I can't remember
2 other than looking at these take-up dates on here.

3 Q. Obviously, it would have occurred after the date
4 you were hired?

5 A. Right. And prior to this being connected and the
6 longwall being set in there.

7 Q. Okay. We understand there was a considerable
8 water problem in the longwall headgate area, roughly
9 from the area of Crosscut 60 to as far inby as 90 and
10 possibly farther inby from there. Did you become
11 aware of that at any time?

12 A. I heard some talk about possibly some kind of
13 water issue there, but I honestly don't know any
14 details about it.

15 OFF RECORD DISCUSSION

16 BY MR. FARLEY:

17 Q. Are you aware of any computer simulations ever run
18 on the ventilation system at the UBB Mine?

19 A. I know that there was some done, but I don't know
20 any details about it as well.

21 Q. Do you know when this survey --- or where it was
22 done?

23 A. No.

24 Q. Or by whom?

25 A. No, I don't.

1 Q. Do you know if they documented or information on
2 disk or hard drive concerning a survey that might
3 still exist?

4 A. No, sir, I do not.

5 Q. Did you personally have any particular problems in
6 dealing with the management personnel at the UBB Mine?

7 A. No, sir.

8 Q. When Route 3 Engineering received direction or was
9 seeking assistance --- excuse me. Let me back up
10 here. Whenever the UBB Mine was seeking assistance
11 form Route 3 Engineering, who usually called to give
12 you directions? Who did you usually hear from?

13 A. I don't know because they wouldn't call me. I
14 wasn't involved with them.

15 Q. Okay. Who would they normally call? Who would
16 you normally speak to?

17 A. You mean when they were seeking an engineer?

18 Q. Yes, seeking any type of engineering assistance.

19 A. They would have called Eric Lilly.

20 Q. Okay. Now, is Mr. Lilly still employed by Route 3
21 Engineering?

22 A. No, Eric is not.

23 Q. Do you recall when he might have left?

24 A. That would be probably in June. I'm not entirely
25 certain.

1 Q. Now, would that be June of 2010?

2 A. June of 2010.

3 Q. Do you know why Mr. Lilly left Route 3
4 Engineering?

5 A. I don't know anything about it, no, sir.

6 Q. Okay.

7 EXAMINATION

8 BY MR. SHERER:

9 Q. I'm going to probably jump around a bit. I've got
10 some clarification questions and some fill-in sort of
11 questions, so just bear with me, please. What's your
12 educational background?

13 A. I have a Bachelor's degree in civil engineering.

14 Q. Okay. Where is that from, please?

15 A. Bluefield State College.

16 Q. Are you a Professional Engineer or a licensed
17 surveyor?

18 A. I am not.

19 Q. Are you an engineer in training or a surveyor in
20 training?

21 A. I am not, no.

22 Q. Who at Route 3 Engineering or possibly someone
23 else in the Massey organization does the ventilation
24 modeling now?

25 A. Can you repeat that?

1 Q. Yes. If you wanted to look at a ventilation
2 problem at one of the mines that you're working with,
3 would you have the capability of doing vent
4 simulations, ventilation modeling?

5 A. Ventilation modeling?

6 Q. Yes.

7 A. No. There's a program that can be used, but I've
8 never used it.

9 Q. Who in the organization uses that?

10 A. I know there are several people that can use it,
11 but I don't know. I don't know. I couldn't answer
12 that.

13 Q. There's people that can use it. Who can use it?

14 A. Well, I just said I didn't know who all could use
15 it.

16 Q. But do you know somebody that can use it?

17 A. Let's see. I cannot think of --- I cannot think
18 of the man's name that can use that, no.

19 Q. Would it be a gentleman called Reddy?

20 A. Reddy?

21 Q. Yeah. Okay. Thank you.

22 A. I think that would be correct.

23 Q. Okay. Thank you. Now, you mentioned that MSHA
24 forced plans on you or something to that effect. Can
25 you explain that process, please?

1 A. Explain the process of MSHA forcing plans on me?

2 Q. Uh-huh (yes). Yeah.

3 A. Okay. Can I cite a specific instance?

4 Q. Sure. Sure. Anything you want to talk about.

5 A. All right. Well, recently I have one example of
6 MSHA forcing a plan on me. There's a problem. We
7 used to always --- I guess I need to try to illustrate
8 this to you. We used to always have an external
9 punch-out panel, and then you would send air in. Once
10 you tapped this first panel, initial panel out, you
11 would send air in at the bottom of the panel, evaluate
12 your air onto the panel, and then at the punch-out you
13 would evaluate air off of the panel. Okay.

14 Additional panels can be connected to these
15 punch-outs. All right. You have these additional
16 panels to the retreat mine and back. Once you're done
17 with this, the typical practice has always been send
18 air into the bottom of these panels, check air on each
19 one of these panels at an evaluation point at the
20 bottom, and then check air off of each one of these
21 panels at the punch-out.

22 Q. Uh-huh (yes).

23 A. Well, it's now MSHA's policy that they want to
24 block the punch-out down on additional panels, send
25 air into the subsequent panels, the left subsequent

1 panel, split the air in the gob, bring air down these
2 panels, the previous panels mines, and check them at
3 outlets at the bottom of the mine, bringing the air in
4 one panel, out all of the previous panels, and then
5 circulating the air back through the coal mine. Okay?
6 Well, that's their policy. That's all that they will
7 approve now. I recently have had some ventilation
8 base plans that I've had to submit to MSHA due to
9 whatever reason I can't recall, and I submitted those
10 plans in the manner that I first spoke of, of punching
11 the first panel out and then the subsequent panels
12 tied to them, send air into the bottoms of each of
13 those panels and check it out at the punch-out, which
14 would --- if there is any methane buildup in those
15 panels, it would dilute that methane, send it out the
16 punch-out, and the methane would be out of the mine.
17 Well, with MSHA's policy and what I have argued with
18 them is they want to send air up this last panel, they
19 want to bring it down on the previous panels mined,
20 pick up any methane on those panels and circulate it,
21 re-circulate back through the mine, endangering the
22 miners, in my opinion.

23 Well, these ventilation base plans that I've
24 submitted --- I now have one approved. I just recently
25 had one approved for Horse Creek Eagle, okay. I

1 submitted it twice with the way that I wanted to do
2 it, tying all the subsequent panels to that initial
3 panel and sending all the air out of the mine, because
4 that is what I felt was safest for our miners. I
5 don't feel that it's safe to pull methane back into
6 the methane, which is MSHA's policy now, which is all
7 that they will accept. It was denied twice. That was
8 the main stickler for that. There were other things
9 that they were finding on there to deny the plan for,
10 but that was the main thing. That was the constant on
11 there.

12 The first time that I submitted it, there were
13 several things that they picked on, and I corrected
14 all those things, and I didn't correct that. Well, it
15 was denied. I fixed all that stuff and sent it back
16 up there with that same plan for the external bleeder
17 system. But they reviewed it again and, all of a
18 sudden, there was a lot of other things wrong with
19 this plan other than that, after I had corrected all
20 these deficiencies with it and I got it denied and
21 sent back to me again. Well, finally, I was told ---
22 I was told by Mr. Joe Mackowiak that the days of
23 sending air out --- all the air out of a punch-out are
24 over and that I would not get anything approved unless
25 I submitted with air going up the last panel and

1 coming out all the other panels. I finally decided
2 --- it's also MSHA's policy --- they will allow you to
3 punch two entries outside, come in and set evaluation
4 points at the top end of the panel so that you can
5 evaluate that quality and quantity at both ends of
6 that panel. Well, we decided to go with that because
7 we felt that that was safer to --- for our miners to
8 not have to bring methane back through the mine, which
9 is essentially what MSHA's policy is.

10 Q. Okay. Thank you. One question about that. was
11 that mine on a blowing fan or an exhausting fan?

12 A. A blowing fan.

13 Q. Okay. Thank you. Okay. About what time did Eric
14 Lilly move out of Route 3 office and up to Upper Big
15 Branch? Do you recall?

16 A. I don't know. I don't know what time that was.
17 I'm assuming sometime in 2009, but I don't know.

18 Q. Okay.

19 A. I don't recall the date.

20 Q. Do you know why he did that?

21 A. He was made resident engineer up there. I don't
22 know any of the details. All I know is he was just
23 put in charge of it.

24 Q. Is Mr. Lilly any relationship to you?

25 A. No, sir, not that I am aware of.

1 Q. Okay. Thank you.

2 ATTORNEY MCCUSKEY:

3 You're obviously not a West Virginian.

4 You would know there are thousands of Lilly's, maybe
5 tens of thousands actually.

6 MR. SHERER:

7 Okay. Thank you. I was just wondering.

8 ATTORNEY MCCUSKEY:

9 Yeah, that's a good question.

10 BY MR. SHERER:

11 Q. One more question, Mr. Lilly. Were you aware of
12 the number of airlock doors at Upper Big Branch?

13 A. No.

14 Q. Okay. Thank you.

15 EXAMINATION

16 BY ATTORNEY MCATEER:

17 Q. Mr. Lilly, I am a West Virginian, but I'll ask you
18 the other question. Are your elated to Pete Lilly?
19 He used to work for Consol Peabody.

20 A. No, sir. I'm not even aware of him.

21 Q. Is that right? He's from down here in Beckley,
22 too. That's why ---.

23 A. Yeah.

24 Q. But you're not related to Eric. Give me your
25 background, your education. Where did you go to high

1 school?

2 A. I went to high school at Princeton Senior High
3 School.

4 Q. All right.

5 A. I also had vocational education there at Mercer
6 County Technical Education.

7 Q. Okay.

8 A. I took AutoCAD and drafting there. And after I
9 graduated high school, I went to Bluefield State and
10 got the degree in --- Bachelor's degree in civil
11 engineering technology.

12 Q. And then who did you --- I'm sorry. You said you
13 had gone over to the Buckhannon Mine?

14 A. Yes.

15 Q. Was that under this Bluefield civil engineering
16 program or was that different?

17 A. It was just an internship with Buckhannon ---

18 Q. Okay.

19 A. --- with Consol, just a brief three-month summer
20 internship.

21 Q. Okay.

22 A. Basic internship.

23 Q. Between years in college or ---?

24 A. Yeah. I think it was between my junior and senior
25 year.

1 Q. Okay. And that's with the Buckhannon --- what's
2 that division of Consol? Is it the Buckhannon
3 Division?

4 A. I'm not aware of the divisions.

5 Q. Okay. What was the internship about? I mean, was
6 it --- obviously, you had an interest in mines.

7 A. I guess --- sorry.

8 Q. Go ahead. Can you describe what you did during
9 that internship?

10 A. I guess basically the internship was just about
11 getting guys introduced into mining and getting
12 familiar with it and some experience. I mean, that's
13 what any internship is about.

14 Q. Sure. So when did you finish at Bluefield State?

15 A. I finished in 2008.

16 Q. And what month, May?

17 A. June I guess was when we graduated. I think we
18 graduated in June.

19 Q. And you then went immediately to work ---?

20 A. I clarify that. We graduated in May, because I
21 went to work on June 2nd.

22 Q. And that was when you went to work at Massey?

23 A. Massey.

24 Q. And what was your first job there?

25 A. My first job at Massey?

1 Q. Uh-huh (yes).

2 A. I came in as a mine engineer.

3 Q. Okay. A mine engineer. And did you work
4 immediately for Route 3?

5 A. Yes.

6 Q. But you said you did surveying ---?

7 A. Just for a short time frame.

8 Q. Okay. Is there a surveying division within Route
9 3?

10 A. Yes.

11 Q. And who is in charge of that?

12 A. Keith Trent.

13 Q. And then you did it enough to get the six months
14 to meet the requirements of the State of West Virginia
15 for a black hat?

16 A. Yes.

17 Q. Okay. So then you began to work on the other side
18 of the house for Route 3, that is the engineering
19 side?

20 A. I don't --- I'm not following you.

21 Q. There are two divisions. Surveying is over here
22 with Keith and then ---?

23 A. No, not really. It's just all one consolidated
24 engineering. I came in as a mine engineer. I was
25 doing mine engineer work and in between I would just

1 go to get my time.

2 Q. Sure.

3 A. You know, it wasn't --- right now I'm just going
4 six months and doing this. I just took my time
5 and ---

6 Q. I gotcha.

7 A. --- just gradually got it.

8 Q. Okay.

9 A. It's not --- I didn't take six months out to go to
10 do that.

11 Q. I gotcha. Okay. So what was your first
12 engineering job with Route 3? Which Mine?

13 A. When I started out I had Horse Creek Eagle, Allen
14 Powellton and Parker Peerless were my first three
15 assignments.

16 Q. And what did you do with those assignments? What
17 was the nature of the work?

18 A. Just everything we discussed all previously.

19 Q. Tell me what you did on a day-to-day basis. I
20 mean, I understand what you're saying, but what would
21 --- you get there at 8:30 in the morning or seven
22 o'clock, whatever time?

23 A. Usually I arrive at 7:30, between ---

24 Q. Okay.

25 A. --- 7:30 and 8:00, 7:45 or something.

1 Q. And then what would you do?

2 A. Well, it just depends on what needed done for that
3 day.

4 Q. Gotcha.

5 A. I mean, naturally, you're not going to have
6 ventilation revisions every day.

7 Q. Sure.

8 A. I mean, you got other work you've got to do. On a
9 day-to-day --- day-to-day jobs would be ventilation
10 revisions, roof control revisions. Those wouldn't be
11 that frequent. It's just when they occur.

12 Q. Right.

13 A. And you know, you've got daily engineering jobs,
14 such as drawing projections or ---.

15 Q. Now, let's take the ventilation revisions. And
16 please excuse me. I went to law school, so there's
17 some things --- I've got some gaps here in some of
18 these areas. You said there was a base plan?

19 A. There's a ventilation base plan.

20 Q. Where do you --- if I wanted to get a ventilation
21 base plan, where would I get one?

22 A. I guess you'd have to generate it yourself.

23 Q. Well, there we have a problem. Okay.

24 A. Your ventilation base plan is your typical
25 ventilation that you're approved to do at any time in

1 the mine.

2 Q. Okay. But physically, where would you get it? In
3 the machine, that it would be stored in the computer?

4 A. Well, somebody has to draw the drawings on ---

5 Q. Okay.

6 A. --- draft the drawings on AutoCAD and somebody has
7 to type the text portion. I mean, there's obviously a
8 text that goes with each drawing that explains and
9 depicts ---

10 Q. Sure.

11 A. --- what --- or explains what that drawing is
12 depicting. So someone has to draft that.

13 Q. Gotcha. And where would those be located?

14 A. They would be located on our server.

15 Q. Okay.

16 A. We save those.

17 Q. I gotcha. So now you've got Mine X and you say I
18 got to do this ventilation revision, and you go to the
19 server and pull up Mine X ---?

20 A. Right. Like if you were doing a revision for
21 Upper Big Branch?

22 A. Right.

23 Q. Okay. If you were doing --- now, a revision is
24 different. A revision is something that you don't
25 have a typical to do. A revision to your base plan

1 --- I guess they call it a revision to your base plan,
2 but it's actually --- it's getting permission to do
3 something that your base plan doesn't cover, ---

4 Q. Oh, okay.

5 A. --- is what a revision is.

6 Q. So you'd have the old base plan and then you would
7 make a revision when you went to do this?

8 A. Right.

9 Q. Okay. So how did you find out what to do? I
10 mean, how ---?

11 A. How did I find out what to do?

12 Q. Yeah.

13 A. First --- you mean as I started work there?

14 Q. In your experience, how would you get the
15 information to say I want to make a revision or if
16 somebody would say to you, we want to make a revision,
17 who would say that to you?

18 A. Who would tell me they needed one?

19 Q. That's correct. Yes.

20 A. Usually you would have the superintendents or
21 something will say, you know, we need this.

22 Q. So in the case of Horse Creek, who would the
23 superintendent be?

24 A. At Horse Creek Eagle, Max Wallace is the
25 superintendent there.

1 Q. Uh-huh (yes).

2 A. Has been since I've started.

3 Q. And would he give you a call or ---?

4 A. Yeah. Yeah, that would be a typical thing or he'd
5 come down. Now, there's a lot of times that we'll get
6 together. Just for instance, me and Max will come and
7 we'll talk about it, you know, discuss what we need to
8 do, ---

9 Q. Sure. Sure.

10 A. --- if that clarifies for you.

11 Q. No, that helps. That helps. And this is
12 different than a modification to the ventilation plan?

13 A. I mean, I guess a revision would be a
14 modification. Those two words are ---

15 Q. Close.

16 A. --- close. I mean, ---.

17 Q. I'm just trying to think, is there something you
18 do differently for a modification, that you would do
19 differently for a modification?

20 A. I'm not sure what you're --- I'm not sure what you
21 mean.

22 Q. Upper Big Branch filed for 32 modifications in the
23 year before the explosion. Were those base plan ---?

24 A. Well, I don't know. I mean, are you talking about
25 ventilation revisions or are you talking about methane

1 and dust control plans? Because I ---.

2 Q. This is in the ventilation system.

3 A. Okay. Well, methane and dust control plans are
4 ventilation related. That's face ventilation.

5 Q. Uh-huh (yes).

6 A. So if that's counted in there, then you know, that
7 could maybe inflate that number.

8 Q. Sure.

9 A. I don't know that that --- you know, that number
10 doesn't include those methane dust control plans.

11 Q. Okay.

12 ATTORNEY MCCUSKEY:

13 Davitt, may I interrupt. Correct me if

14 I'm wrong, but for clarification purposes, I think if
15 you're asking if a modification is the same as a
16 revision, I think that's what you wanted to know, I
17 think he's saying, yes, they are the same, but ---.

18 I'm not answering for him.

19 ATTORNEY MCATEER:

20 I'm not sure that's the question.

21 BY ATTORNEY MCATEER;

22 Q. Is there a --- if I want to change the air in an
23 existing system, do I file a ventilation ---

24 A. Revision.

25 Q. --- revision?

1 A. Right.

2 Q. Okay.

3 A. If you've got something working in one manner ---

4 Q. Right.

5 A. --- and you want to change it, you would file a
6 revision.

7 Q. Right.

8 A. You would submit a revision for review and
9 approval.

10 Q. Okay. Now, Mr. Lilly, was it --- in addition to
11 Mr. Eric Lilly, was there any other resident engineer
12 at any other mine?

13 A. No.

14 Q. No?

15 A. No.

16 Q. Any discussion about that?

17 A. Not that I know of.

18 Q. I mean, does this guy get a promotion? Is this a
19 promotion?

20 A. Hey, man, I don't know anything.

21 Q. Does he got any more money or ---?

22 A. Don't know.

23 Q. Now, listen, everybody talks about who's getting
24 more money or who gets a promotion.

25 A. I really don't know, man, honestly.

1 Q. Where was your office located inside the building?

2 A. Inside of the Route 3 Engineering building?

3 Q. Yeah. Right.

4 A. Go in the door, hallway on the right, second
5 office on the left.

6 Q. Okay. And who was across the hall from you?

7 A. Keith Trent.

8 Q. Okay. Where was Eric's office?

9 A. Well, I mean, now at what date and time are you
10 talking about?

11 Q. You pick one.

12 A. Before Eric was moved to the mine, his office was
13 the first office on the right.

14 Q. So it was near yours?

15 A. Right.

16 Q. Did you ever chat with him about the Upper big
17 Branch, ever compare notes?

18 A. No.

19 Q. Okay. Did you ever have any conversations with
20 Chris Blanchard?

21 A. Have I ever had any conversations with Chris
22 Blanchard?

23 Q. Uh-huh (yes).

24 A. Yeah. Sure.

25 Q. And would those be related to work or ---?

1 A. Yes.

2 Q. And what were the nature of those conversations?

3 A. I've had a lot of conversations with him. Man, I
4 don't know all of them.

5 Q. Well, if you remember any of them, any of the
6 discussions that you might have had that involved UBB?

7 A. Never UBB, no.

8 Q. Okay. Was he responsible for any other mines that
9 you have responsibility for?

10 A. Chris Blanchard.

11 Q. He was over Marfork, yes.

12 Q. Okay. And you had responsibility of the Marfork
13 area?

14 A. Yes, along with various other things. We kind of
15 shared the load ---

16 Q. Okay. All right.

17 A. --- with Elk Run and Marfork that is.

18 Q. How did you find him, Mr. Blanchard?

19 A. How did I find him?

20 Q. Yeah. What kind of personality?

21 A. Oh, okay. Mr. Blanchard was --- I mean, I didn't
22 have any problems with him. I thought he was a pretty
23 good guy.

24 Q. Okay.

25 A. Very knowledgeable.

1 Q. Where did he go to school?

2 A. I believe he went to Virginia Tech.

3 Q. Oh, okay. Who else went to Bluefield that was on
4 the staff there at UBB?

5 A. At that time, Danny Acord was attending Bluefield
6 State College.

7 Q. Okay.

8 A. He just recently got his degree in 2010, though.

9 Q. Okay.

10 A. So he was not a degreed engineer at that time.

11 Q. Right. Jason Whitehead, did he go there?

12 A. Yes, he did.

13 Q. How did you get on --- he can play with that. It
14 doesn't bother us. How did you get on ---?

15 ATTORNEY MCCUSKEY:

16 It bothers me.

17 BY ATTORNEY MCATEER:

18 Q. Do you want another water, by the way?

19 A. No. I'll just be playing with it like that.

20 Q. How did you get to find a job at Massey?

21 A. How did I find the job at Massey?

22 Q. Yeah.

23 A. Well, obviously, I was searching for a job.

24 Q. Sure.

25 A. I worked at Grant's Supermarket in Green Valley,

1 West Virginia, new Bluefield. And a man that was
2 assistant manager there for a time, he had just
3 started as I was getting ready to graduate, knew one
4 of the superintendents or something up here at Route
5 3, and gave him my resume, and he took it to HR, and I
6 was called and got the job.

7 Q. Good. Do you remember who that was that was at
8 Route 3?

9 A. No, I don't. I never knew, I don't think.

10 Q. Okay. In the example you cited, the Horse Creek
11 Eagle example that you had conversations with Mr.
12 Mackowiak about, you suggested that the two entries
13 coming to the outside was acceptable, punching out.
14 And you said we decided to go with that. Who would
15 the we be in this case? Who would you have consulted
16 with?

17 A. Myself, Jamie Ferguson, who is president of
18 Marfork right now, and that would be the deciding two
19 people, I suppose.

20 Q. Okay. So in the case of at least that ventilation
21 plan for Horse creek, it was an engineer from Route 3
22 and the president of the company making the call on
23 that?

24 A. Yes.

25 Q. Okay. Who's the signature engineer for these

1 submissions for the plans? Who signs as a
2 Professional Engineer?

3 A. Okay. Well, for our maps that require
4 certification, at the time of the explosion would have
5 been Paul McCombs and Ray Brainard would be the two
6 P.E.s ---

7 Q. Okay.

8 A. --- that were available at Route 3.

9 Q. Is Mr. Brainard there anymore?

10 A. Yes. He is currently still working there.

11 Q. Okay. I may have misunderstood, but are you
12 currently still employed ---

13 A. Yes.

14 Q. --- at UBB --- I mean, at Route 3?

15 A. Yes.

16 Q. You said that four or five times you were up at
17 the --- I think you said the tailgate and then the new
18 headgate at 22.

19 A. Uh-huh (yes).

20 Q. What was your function going up there?

21 A. At those times it was just surveying. I was just
22 setting spads, man.

23 Q. When would that have been, roughly?

24 A. Like I said, it was before the longwall was
25 installed. It would have been sometime in 2009.

1 Obviously, it had been prior to September 2009, but I
2 don't know an exact date.

3 Q. And was there any discussion of methane problems
4 or any other problems that you might have ---?

5 A. I never knew of any methane problem at Upper Big
6 Branch other than the 2004 thing that they talked
7 about, but ---.

8 Q. Right.

9 A. Which obviously I'm sure everyone here knows about
10 it; right?

11 Q. What did you hear about that one?

12 A. I just heard that something --- I just heard there
13 was a methane problem, but ---.

14 Q. Okay. Was there any discussion among yourselves
15 over the water cooler about the 2004 events or
16 anything like that?

17 A. No. I've never known anything about it other ---.

18 Q. All right. Who did you hang out with at Route 3?

19 A. Hang out?

20 Q. You know, go to lunch with or, you know, chat
21 with?

22 A. I don't guess I really have any particular
23 buddies. I just kind of just try to stick to my work.

24 Q. Keith Snow?

25 A. Keith Snow? I don't know who that is.

1 Q. Anybody else that comes to mind that worked there
2 that you would consult with?

3 A. That I would consult with?

4 Q. Yeah.

5 A. What do you mean by consult?

6 Q. Well, if you didn't --- you know, if a problem
7 comes up and the answer isn't apparent to you, you ask
8 somebody.

9 A. Your mentor, ---

10 Q. Yes.

11 A. --- is that what you mean?

12 Q. Perfect.

13 A. Matt Walker would be my mentor.

14 Q. Okay. Was that an assigned mentor or did you just
15 happen about that, just somebody ---?

16 A. There's no formal assigned --- he's had the most
17 experience there, so obviously he's had to train me
18 and bring me up, you know.

19 Q. Okay. Did you and he ever discuss Upper Big
20 Branch?

21 A. Not with me. I've had no reason for him to
22 discuss Upper big Branch with me.

23 Q. Were you at the mine the day of the explosion?

24 A. No.

25 Q. Okay. Were you --- can you tell me where you

1 were?

2 A. Yeah. I was at work that day, obviously, which
3 our office is not at the mine office.

4 Q. Right.

5 A. I had left. I left around 3:00 and went to the
6 West Virginia Office of Miners' Health, Safety and
7 Training and dropped some plans off.

8 Q. Okay.

9 A. And I had already went home when I found out what
10 had happened.

11 Q. Did you go back to the mine?

12 A. I went back, yes.

13 Q. And did you do anything there in a work capacity
14 or ---?

15 A. Mainly just folding maps, man.

16 Q. What do you mean by folding maps?

17 A. We have AutoCAD technicians that were putting some
18 maps out. People were asking for maps, and my
19 function was just in there folding maps, folding them
20 up for them so they could take them to them.

21 Q. Okay.

22 ATTORNEY MCATEER:

23 That's all the questions I have just now.

24 EXAMINATION

25 BY ATTORNEY WILSON:

1 Q. Just a couple follow-up clarifying questions, if
2 you don't mind. You indicated Mr. McCombs went to
3 another job. Do you know where he's working now?

4 A. Marshall Miller & Associates.

5 Q. Marshall Miller & Associates. Do you know if Eric
6 Lilly --- did he have a mentor?

7 A. Matt Walker would have been his mentor, too.

8 Q. And was Mr. Lilly --- was he working at Route 3
9 when you started there in 2008?

10 A. We started on the same day.

11 Q. Do you know where he went to school?

12 A. West Virginia University.

13 Q. And were you and he about the same age?

14 A. Yeah. He was a year older than I am.

15 Q. How old are you?

16 A. Twenty-five (25).

17 ATTORNEY WILSON:

18 Terry?

19 MR. FARLEY:

20 Just one.

21 RE-EXAMINATION

22 BY MR. FARLEY:

23 Q. As of April 5th, this year, I understand from what
24 you said that Eric Lilly was the resident engineer at
25 UBB. Now, of the 12 or 14 miles that were served by

1 Route 3 Engineering, how many of those other mines had
2 a resident engineer?

3 A. No other mines had a resident engineer other than
4 UBB.

5 Q. Any particular reason for that?

6 A. I guess your only real reason is you don't have
7 enough engineers for each mine.

8 Q. But why would just UBB as opposed to all the
9 others have a resident engineer?

10 A. I don't know, Terry. I don't know the answer.

11 Q. All right.

12 ATTORNEY WILSON:

13 Let's go off the record.

14 SHORT BREAK TAKEN

15 ATTORNEY WILSON:

16 We'll go back on the record. Erik, do
17 you have any follow-ups?

18 MR. SHERER:

19 Sure. Uh-huh (yes).

20 RE-EXAMINATION

21 BY MR. SHERER:

22 Q. Did you ever take ventilation plans, amendments
23 and such into the District 4 Office?

24 A. On a regular basis.

25 Q. When you took them down there, did you ever have

1 any occasion to make changes on those plans?

2 A. You mean ---? Can you clarify what you're saying
3 there?

4 Q. Yes. You'd take the plan in, maybe get somebody
5 to look at it, there was some --- say a minor problem,
6 would you --- did you ever have to make any changes to
7 the plans while you were at the District 4 Office?

8 A. Most of the time how that will happen is you'll
9 submit the plan, they'll review it, and if there are
10 minor changes that can be made to the plan, they'll
11 let you come up and physically make those changes on
12 the map, sign off on the map, and that's the process
13 for that.

14 Q. Okay. Sure. If something like that happened to
15 you, did you have the authority to make those changes?

16 A. Yes.

17 Q. Did you have to consult with anybody?

18 A. Well, that's what I was going to clarify with
19 that. A lot of these changes are just minor changes
20 that have no real effect on the ventilation. It may
21 be something else that's on the map, and those changes
22 I will make. Now, if it's something that is major,
23 like you know, could really change something up, then,
24 you know, obviously I'm going to have to consult with
25 someone.

1 Q. And who would you typically consult with?

2 A. You would consult with your company president.

3 Q. Okay. Thank you. Do you think there's a
4 difference between a revision and a supplement on a
5 vent plan?

6 A. A revision and a supplement?

7 Q. Yeah. Uh-huh (yes).

8 A. Okay. Well, I'm not sure what basis are you
9 saying that on. Are you talking about a supplement to
10 the ventilation base plan or ---?

11 A. Yes. Uh-huh (yes).

12 Q. Now, there are supplements to the ventilation base
13 plan, but a revision --- a ventilation revision would
14 be --- it wouldn't be part --- it wouldn't actually be
15 that base plan. It would be I'm mining over here on
16 Headgate One North, they butted off, and then they
17 want to move down here off of Six North belt. And
18 then there's so many changes to the ventilation outby
19 that it doesn't follow the approved ventilation base
20 plan. A supplement --- in my opinion, a supplement to
21 the ventilation base plan would be like adding a
22 drawing to the ventilation base plan or something. So
23 I'm kind of having some confusion here with what
24 you're saying.

25 Q. Okay. I just wanted to get your opinion. Thank

1 you, sir. Do you know if Performance Coal Company was
2 ever forced to adopt a plan that MSHA required?

3 A. Yes.

4 Q. Do you know which plan they were forced to adopt?

5 A. The plan to ventilate this longwall. I don't know
6 any of the details on it because I wasn't involved in
7 designing this longwall, but I know that that revision
8 was denied on several occasions. And they were
9 made --- they had to implement the plan that MSHA
10 required them to to be able to run this longwall.

11 Q. Do you think that MSHA required additional
12 ventilation air or additional protection or --- do you
13 have any?

14 A. I don't know any of the details, sir.

15 Q. Thank you. Where did you hear that from?

16 A. Where did I hear that from?

17 Q. Yeah.

18 A. Obviously, well, I mean, I've heard it from Eric
19 Lilly, the man that was working on the plans. You
20 know, I've seen the denials come back in from MSHA.

21 Q. Okay. Thank you. You mentioned that you
22 participated in some ventilation changes underground.
23 Were they all successful?

24 A. Yes.

25 Q. Okay. You also mentioned something about just

1 being able to look at a map and tell if the
2 ventilation would work or not. How do you do that?

3 A. How do you just look at a map and tell if the
4 ventilation ---? Well, I guess, obviously, you're
5 going to have to --- if your ventilation controls are
6 correct, you know, you're going to be able to tell
7 what controls need to be removed or installed to
8 change that airflow and to change the airflow
9 direction. Now, obviously, after that has been done,
10 it needs to be checked to see if what you've
11 implemented does work. But it's going to be awful
12 hard to foresee the future when you don't know ---
13 when you don't --- you're not --- you'd have to change
14 it to know exactly what's going on. I mean, I can't
15 guarantee volumes of air in places.

16 Q. Okay. So you're just talking about direction?

17 A. I'm talking about air direction --- ventilation
18 controls and air direction. You can obviously tell
19 off a map what ventilation controls need to be removed
20 or installed to change air direction.

21 Q. Okay. You've got to excuse me. I just got my
22 first engineering degree about four years ago, so I'm
23 trying to keep up with current technology.

24 ATTORNEY MCCUSKEY:

25 You're a late bloomer.

1 MR. SHERER:

2 Yeah. Uh-huh (yes).

3 BY MR. SHERER:

4 Q. Okay. Are you familiar with the P-2 manual?

5 A. Yes.

6 Q. Okay. P-2 says that all plans submitted to MSHA
7 should be signed off by the president of the resources
8 group, the vice-president of operations, the chief
9 engineer, the mine superintendent and the mine
10 foreman. Are you familiar with that?

11 A. I've been told that, yes.

12 Q. Did Route 3 practice that?

13 A. Not on --- no.

14 Q. Okay. Thank you. After you would get a
15 ventilation plan or even a roof control disapproval
16 letter, did you ask to --- normally ask to meet with
17 the people of the district to discuss the reason for
18 the disapproval?

19 A. Your reasons for your disapproval are written and
20 marked on your plans ---

21 Q. Okay.

22 A. --- and they are sent back to you.

23 Q. Okay. And ---.

24 OFF RECORD DISCUSSION

25 A. The district will mark the corrections, the needed

1 corrections on these plans ---.

2 ATTORNEY MCCUSKEY:

3 He said and sent back to you.

4 A. And sent back to Route 3 Engineering.

5 BY MR. SHERER:

6 Q. Did you ever have any questions about what they
7 meant in the disapproval letters or the plans that
8 they sent back to you?

9 A. I'm not --- are you being --- do you have a
10 specific incident or I mean are you talking ---

11 Q. Not ---.

12 A. --- referring directly about Upper Big Branch Mine
13 or ---?

14 Q. No, just in general. Did you always understand
15 the reason for the disapproval?

16 A. Did I always understand the reason for the
17 disapproval?

18 Q. Yes.

19 A. Okay. How --- I'm trying to think how to answer
20 that. Yes, I can understand the method behind it.

21 Q. Uh-huh (yes).

22 A. I did not always agree with ---

23 Q. Sure.

24 A. --- what's being said.

25 Q. Did you ever feel the need to get additional

1 clarification from the district?

2 A. Did I feel ---? Yes.

3 Q. Did you ask?

4 A. I have asked.

5 Q. Did you get clarification?

6 A. Yes.

7 Q. Okay. Thank you. You say you started out setting
8 spads and you got your six months underground for your
9 black hat. About how long did it take for you to get
10 that six months underground?

11 A. Well, I don't know if maybe you misunderstood what
12 I said or not, but I started out as a mine engineer
13 and I took time to do that. I didn't just go
14 underground for six months and say, you know, I'm
15 taking time out to set spads for six months. I did
16 that over a period of maybe roughly --- I don't know
17 what period it was. I just took the time to go.

18 Q. Okay.

19 A. You might go two days this week ---

20 Q. Okay.

21 A. --- or ---.

22 Q. When did you receive your black hat?

23 A. I would have to look on the card.

24 Q. Okay. Do you have a card with you?

25 A. June 11th, 2009.

1 Q. Okay. So roughly a year?

2 A. Roughly a year to do six months.

3 Q. Okay. Thank you. Did you get involved in posting
4 the survey results?

5 A. Take-up?

6 Q. Uh-huh (yes).

7 A. No.

8 Q. Okay.

9 A. That's not my job.

10 Q. Did you ever plot any of the survey notes?

11 A. No.

12 Q. Okay. Did you ever put the push-ups in the
13 AutoCAD?

14 A. Can you clarify what you mean? I'm not sure what
15 you mean.

16 Q. Section advances.

17 A. Oh, you mean take-up?

18 Q. Take-up.

19 A. No, I've never had to enter take-up. That's
20 usually a CAD man.

21 Q. Okay.

22 A. AutoCAD technician.

23 Q. Okay. Do you ever deal with survey notebooks?

24 A. No, I don't have to. Like I said, that's kind of
25 out of my realm there.

1 Q. Okay. Sure. You mentioned you put projections on
2 the map. I assume that's the mining projections
3 required under 75372?

4 A. Right. You have to show a year's worth of
5 projections.

6 Q. How were those projections developed?

7 A. How were they developed?

8 Q. Uh-huh (yes).

9 A. Well, I guess there's two ways those could be
10 developed. You would obviously try to develop them as
11 per your typicals, you know. You know what I'm
12 talking about, your typical ventilation-based plan.
13 You'd try to set them up --- set your panels up so
14 that you could follow your typicals. Obviously,
15 that's how you would do that. There might be cases
16 where a coal seam is so narrow --- where you're so
17 high on the hill that you can't follow those
18 projections. And that's part of the reason that you
19 get into those revisions is because you can't follow
20 those typicals.

21 Q. Okay.

22 A. You know what I mean?

23 Q. Sure. Did you guys do any sort of long-range
24 planning, mine planning?

25 A. Yeah. We have budget plans. We have a 15-year

1 budget plan right now.

2 Q. Okay. And did that steer your projection
3 development?

4 A. Yeah. We try to follow that. Sometimes you
5 can't, but sometimes it will change.

6 Q. Sure. Did you ever run any pillar stability
7 programs?

8 A. AMSS, ARMPS.

9 Q. Did you ever run ALPS?

10 A. No.

11 Q. Okay.

12 A. That's Advanced Longwall Pillar Stability. I've
13 never been involved with the longwall.

14 Q. Okay. When you're running ARMPS, what's the
15 minimum pillar safety factors that Route 3 would find
16 acceptable?

17 A. They're different per your plan. We try to stick
18 with a 1.5. That's what's in most of our approved
19 roof control plans.

20 Q. Okay. Thank you. Do you know who developed the
21 initial layout for the current longwall panel at UBB?

22 A. Are you referring to projections?

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

24 A. I don't know who set that up initially.

25 Q. Okay.

1 A. I know that some of that was changed up there on
2 that angle. I don't know what the deal was with that,
3 but like I said, I don't know.

4 Q. Okay. I think you mentioned you had a degree in
5 civil engineering technology.

6 A. Yes, sir.

7 Q. Did you take any classes in mine ventilation?

8 A. No.

9 Q. Did you take any classes in rock mechanics?

10 A. No.

11 Q. Have you taken any supplemental training in those
12 topics?

13 A. Do you mean like after school ---?

14 Q. Uh-huh (yes).

15 A. No. I've been trained on the job.

16 Q. Okay. Who trained you?

17 A. Matthew Walker.

18 Q. Okay. Thank you.

19 MR. SHERER:

20 That's all the questions I've got for
21 right now. Thank you.

22 ATTORNEY WILSON:

23 Davitt?

24 RE-EXAMINATION

25 BY ATTORNEY MCATEER:

1 Q. Explain to me, if you can, the requirements to
2 receive a black hat from the State of West Virginia.
3 Is that --- and you said --- if I understood your
4 testimony, you said that you did that in the course of
5 a year, and you got your card out.

6 A. Uh-huh (yes).

7 Q. Is that actual six months ---?

8 A. Six months' worth of shifts.

9 Q. Six months' worth of shifts?

10 A. I believe it's 108 shifts, Terry. Is that what it
11 is?

12 MR. FARLEY:

13 It is.

14 ATTORNEY MCATEER:

15 Okay.

16 BY ATTORNEY MCATEER:

17 Q. So that would make --- so if your starting date is
18 the 1st of June or 2nd of June in 2008 and the
19 explosion occurs on the 4th of April --- I'm sorry,
20 April 5th, 2010, you would have had about 19 months of
21 experience at that time --- between that time and
22 minus six months for working underground. So your
23 experience there as a mining engineer was about 13
24 months?

25 A. I don't know if your math is right on that. I

1 started June 2nd, 2008. I would have had 24 months
2 this past 2010. So April, May, June, it would be 21
3 months, if I'm correct. And I may be wrong.

4 Q. Yeah. It would have been June of '10 that your
5 second-year anniversary was.

6 A. Right.

7 Q. So ---.

8 A. Which would have been 24 months.

9 Q. So let's back that out to April.

10 A. Right. April, May, June.

11 Q. Okay. That's three months.

12 A. Twenty-four (24) minus three is 21.

13 Q. And then there's six months off --- six months of
14 working underground?

15 A. Yeah. Well, you've got time --- yeah.

16 Q. Okay.

17 A. You've got ---.

18 Q. So 13, 14 months, yeah. Have you been referred to
19 any mine ventilation books that you've consulted with
20 or that you consult?

21 A. Any mine ventilation books?

22 Q. Yeah.

23 A. No.

24 Q. Okay.

25 A. Like I said, I've been trained on the job.

1 Q. Sure.

2 A. I've ---.

3 Q. And did you use or do you consult with any mine
4 ventilation computer programs? I mean by that, I'm in
5 the old school books are what I look at, but you guys
6 look at computer theses or any documents or things
7 like that that you can refer to?

8 A. I've not referred to anything.

9 Q. And how often did Mr. Walker train you?

10 A. He trained me on a daily basis.

11 Q. Okay.

12 A. I mean, I'm --- you know, I've been at this for
13 two years, sir, and you know, you're not going to
14 learn everything in two years.

15 Q. Right.

16 A. It takes a lifetime of experience to gain
17 knowledge that you need to learn every day.

18 Q. Right. And so you testified with some certainty
19 about your position vis-à-vis the Horse Creek Mine.
20 Did Mr. Walker train you about that, teach you about
21 that?

22 A. I've consulted with Mr. Walker on almost a daily
23 basis about nearly everything I do.

24 Q. Did you consult with him at all about Upper Big
25 Branch Mine?

1 A. I have had no dealings with Upper Big Branch
2 Mine, ---

3 Q. Okay.

4 A. --- other than the one that we spoke of earlier.

5 Q. Sure. Okay. And the 15-year plan that you --- in
6 answer to Mr. Sherer's question, what's that plan?

7 I'm sorry. I don't understand.

8 A. A 15-year plan? Well, a 15-year plan is a budget
9 plan that projects what you are going to mine within
10 the next 15 years, projects --- shows you how many
11 clean tons per foot you're going to be able to mine,
12 shows you that 15 years --- it goes ahead and set up
13 that 15 years so you know what you're going to do and
14 it just basically plans the mine out for 15 years.

15 Q. Uh-huh (yes). And have you ever worked on one of
16 those or ---?

17 A. That's kind of out of my realm, too.

18 Q. Okay.

19 A. Now, I have helped with some of the timing and
20 stuff. We have to time those out. You know,
21 obviously you get so many feet per shift. You've got
22 so many shifts you got to work. Well, you know you're
23 going to advance so far so fast, so that's what's
24 called timing. You're going to know where you're
25 going to be at 15 years down the road; right?

1 Q. Uh-huh (yes). Sure.

2 A. And I have been involved in looking at some of
3 that timing, making sure the projections are feasible,
4 you know, making sure that they're set up. You know,
5 some panels you can't pillar. Some you can.

6 Q. Okay.

7 A. And I've been involved in looking at those and
8 making sure that you can do what's shown on the map.

9 Q. Okay. Did you know any of the fellows that were
10 killed in this mine?

11 A. I knew one.

12 Q. Uh-huh (yes).

13 A. I knew one man that was killed.

14 Q. Okay.

15 ATTORNEY MCATEER:

16 Thank you, Mr. Lilly. That's all the
17 questions I have.

18 ATTORNEY MCCUSKEY:

19 I want to ask a couple ---

20 MR. SHERER:

21 Sure.

22 ATTORNEY MCCUSKEY:

23 --- points of clarification.

24 MR. SHERER:

25 Sure.

1 EXAMINATION

2 BY ATTORNEY MCCUSKEY:

3 Q. Heath, if you would, would you clarify a question
4 that was asked of you about the --- where the
5 plans --- various ventilation and roof control, where
6 the plans are located? I think that was Mr. McAteer's
7 question.

8 ATTORNEY MCATEER:

9 It wasn't my question.

10 BY ATTORNEY MCCUSKEY:

11 Q. Would you clarify where approved plans are located
12 in ---

13 A. Sure.

14 Q. --- within the universe?

15 A. Approved plans are located at the mine office. We
16 keep a copy at Route 3 Engineering. And there's
17 obviously a copy at Mount Hope, District 4. And if
18 it's a State plan, it's at the West Virginia Office of
19 Miners' Health, Safety and Training.

20 ATTORNEY MCATEER:

21 And are there physical copies or is this
22 computer ---?

23 A. There are physical copies.

24 ATTORNEY MCATEER:

25 So there's a room that the maps are ---?

1 A. There's a book ---

2 ATTORNEY MCATEER:

3 A book?

4 A. --- at the mine that the physical copy is put in.

5 ATTORNEY MCATEER:

6 Okay.

7 BY ATTORNEY MCCUSKEY:

8 Q. And when a revision is made, to clarify, is that
9 the same --- does the same occur to the base plan
10 after there's a revision of the plan?

11 A. They are taken to the mine and the approval letter
12 is taken to the mine, and we keep up with the
13 ventilation revisions, the approved ventilation
14 revisions and that approved cover letter.

15 Q. The approved cover letter to whom?

16 A. The approved cover letter that's addressed to us
17 from, say, Mr. Hardman.

18 Q. Okay.

19 A. That's placed with it, and it's kept at the mine,
20 and with us, and with MSHA.

21 Q. And a second point of clarification. You were
22 asked a question about what --- to the effect of what
23 triggers or what begins a revision of a ventilation or
24 roof control plan. Would you clarify for the panel
25 what events that you're aware of actually trigger a

1 revision to a plan?

2 A. That may cause a revision to be done?

3 Q. Yeah.

4 A. Well, outside of --- engineering may notice
5 something foreseeable in the future that needs to be
6 addressed so that mining can continue with an approved
7 plan. You might have to have a revision made. Like I
8 said earlier, if you were mining up here and you
9 decided to butt off and move down here, you may
10 foresee that. Engineering would decide, hey, we need
11 to get a plan approved so that they can have their
12 ventilation set up correctly.

13 Q. Okay.

14 A. Also, upper management may say we need this done
15 or, you know, they may have something in mind that
16 they want to change, and we'll submit that for review
17 and approval to MSHA. Or the State or Federal
18 regulatory agencies may call and say, we need to make
19 a change or something. You know, that's kind of the
20 process.

21 Q. Okay.

22 ATTORNEY MCCUSKEY:

23 I just wanted to make sure that was
24 clear. That's all I have for clarification.

25 ATTORNEY WILSON:

1 Anything further from anyone?

2 MR. FARLEY:

3 No.

4 MR. SHERER:

5 No.

6 ATTORNEY WILSON:

7 Just give me one second.

8 ATTORNEY WILSON REVIEWS NOTES

9 RE-EXAMINATION

10 BY ATTORNEY WILSON:

11 Q. Let me ask just one last question, sort of an
12 opinion question. As I indicated to you earlier, one
13 of the purposes for this investigation is what can we
14 learn in order to prevent something like this from
15 happening again. And we heard a lot of testimony that
16 this mine, the Upper Big Branch Mine, had a lot of
17 airlock doors. So for example, if you look at the
18 Number Six North belt, between 80 and 85, you've got
19 sets of airlock doors here ---

20 A. Uh-huh (yes).

21 Q. --- rather than overcasts. As a mining engineer
22 who's responsible for doing ventilation plans, do you
23 have any feelings or opinions as to the use of doors
24 versus the use of overcasts?

25 A. Well, I'd have to look at that right there, but

1 they're used in different situations. A lot of
2 times --- most of the mines that I work with, our
3 airlock doors are just, you know, at the portal. They
4 cause pressure so that all the air doesn't want to
5 rush out the belt entry, so that, you know, the air
6 will want to flow out the returns. I don't know
7 specific cases that you're looking at. I'd have to
8 look and examine what was done. But other than that,
9 I don't know what you're asking.

10 Q. Well, if you were putting in --- you now, if you
11 had an option of having an overcast where you had,
12 say, an intake air course coming over another entry
13 and you had the option of using an overcast to
14 separate those airways or airlock doors, would you
15 have a preference of one or the other?

16 A. Well, that's going to depend, because this
17 situation right there that I'm looking at, those two
18 overcasts right there, there really would be no need
19 for another set of overcasts because you just need to
20 cross this belt entry. You don't want all your air
21 going out your belt entry anyway, in that specific
22 instance. Now, if it was coming to a situation where
23 you were needing additional intakes, then you maybe
24 would want an additional overcast. But that may not
25 always be the case.

1 Q. Okay.

2 ATTORNEY WILSON:

3 Any follow-up? Okay. Mr. Lilly, on
4 behalf of MSHA and the State of West Virginia, I want
5 to thank you for appearing and answering questions
6 today. Again, we request that you not discuss your
7 testimony with anyone else other than people that are
8 here in the room. If, after questioning other
9 witnesses, we may have additional information that we
10 wish to ask you about, we will contact you. And
11 again, if you think of anything else that you would
12 like to provide to us, we ask that you contact us at
13 the contact information that was given.

14 Before we go off the record, I want to
15 give you an opportunity. If there's anything else
16 that you would like to add to the record or anything
17 else that you think we should know about, you can let
18 us know that right now.

19 A. No, sir. I don't know.

20 ATTORNEY WILSON:

21 Okay. Then again, thank you for your
22 cooperation, and we'll go off the record.

23 A. Thank you.

24 CONFIDENTIAL STATEMENT UNDER OATH

25 CONCLUDED AT 2:54 P.M.

1 STATE OF WEST VIRGINIA)

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CERTIFICATE

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



Alison Salyards

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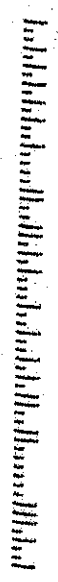
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80:16	800 3:22			
3:00 61:5	83 5:24 6:4			
30 16:14	85 6:4,6			
30th 23:7,9				

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March 30, 2011

Norman Page
Chief Accident Investigator
Mine Safety & Health Administration
1301 Airport Road
Room D-200
Beaver, West Virginia 25813-9426

Re: September 15, 2010 MSHA Transcript of Heath Lilly

Dear Mr. Page:

The United States Department of Justice has furnished me a copy of the MSHA hearing transcript of the testimony of my client, Heath Lilly, for review and preparation of an errata sheet. Although the time for review and correction was limited, my client was able to find and make the corrections as set forth on the enclosed errata sheet. Please append this errata sheet to Mr. Lilly's original hearing transcript and send a copy of the same to each person or entity to whom the transcript was sent prior to Mr. Lilly's review.

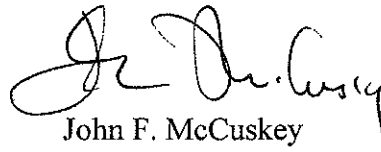
I reiterate my previous request to you that the transcript be provided to my client (or to me) for an unfettered thirty (30) day review which will allow my client sufficient time to locate additional transcript errors and necessary corrections.

A copy of this errata sheet is also being provided to Sargent's Court Reporting Service so that, as is the proper procedure, Sargent's may also append this errata sheet to the original copy of the transcript.

Norman Page
March 30, 2011
Page 2

Please confirm receipt of the attached errata sheet and that you have caused it to be affixed to all transcript copies in your possession and to others to whom you have transmitted this transcript.

Sincerely,



John F. McCuskey

JFM/mam
Enclosure

cc: Barry Koerber
Derek Baxter
Sargent's Court Reporting Service, Inc.

ERRATA SHEET

I, the undersigned, HEATH LILLY, do hereby certify that I have read the foregoing sworn statement taken on Sept 15, 2010 at the West Virginia Mine Academy, and that, to the best of my knowledge, said deposition is true and accurate (with the exception of the following corrections listed below):

PAGE/LINE	CORRECTION AND REASON FOR CORRECTION
Pg 18/5	Change seismic centers to sizing centers
Pg 20/3-4	"based plans" needs changed to base Plans This mistake needs change in multiple places
Pg 43/18	are you "elated" should be related
Pg 39/15-16	"you have these additional panels to the retreat mine and back" This makes no sense! Should say, Additional panels can be driven up attached to subsequent panel and Retreat mined back
Pg 40/2	"Mines" should be Mined
Pg 41/6	"the methane" should say the mine
Pg 39-40/24-5	BAD wording should replace with this block The punch-out down after additional panels have been connected, Send air into the last panel and back out at the mouth of each previous panel. The air would be evacuated at the mouth of the last panel, split in the gob and travel back down

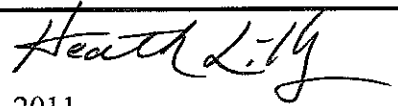
PAGE/LINE

CORRECTION AND REASON FOR CORRECTION

The previous panels to Evaluation points at their mouths. This would cause the air in this bleeder system along with any methane that could have built up to be circulated back through the entire mine rather than exiting the mine at this punchout.
 Pg 68/19 end should be and

Please note that I was not given adequate time to adequately and completely review this transcript to fully correct for many grammatical, spelling, and text errors made by the reporter

HEATH LILLY



Subscribed and sworn to before me this 30th day of March, 2011.

Melody A. McCormick
 Notary Public

My Commission Expires:

