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**Transcript of the Testimony of Marvin Perdue**

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**Case:**

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STATEMENT UNDER OATH

OF

MARVIN PERDUE

taken pursuant to Notice by Alicia R. Brant, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Tuesday, May 25, 2010, beginning at 8:10 a.m.

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2

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

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P R O C E E D I N G S

1  
2 -----  
3 ATTORNEY BABINGTON:

4 My name is Matt Babington. Today is May  
5 25th, 2010. I'm with the Office of the Solicitor,  
6 U.S. Department of Labor. With me is David Steffey,  
7 an accident investigator with the Mine Safety and  
8 Health Administration, an agency of the U.S.  
9 Department of Labor. Also present are several people  
10 from the State of West Virginia. I ask that they  
11 state their appearance for the record.

12 MR. TUCKER:

13 Bill Tucker, Office of Miners' Health,  
14 Safety and Training.

15 MR. FARLEY:

16 Terry Farley, Office of Miners' Health,  
17 Safety and Training.

18 MS. SPENCE:

19 Beth Spence, with the Governor's  
20 independent investigation team.

21 ATTORNEY BABINGTON:

22 There are several members of the  
23 investigating team also present in the room today.  
24 David Steffey will be conducting the questioning. All  
25 members of the Mine Safety and Health Accident

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

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

1 your assistance in this investigation.

2 You may have your personal attorney

3 present during the taking of this statement or another

4 personal representative, if MSHA has permitted it, and

5 you may consult with your attorney or representative

6 at any time. Your statement is completely voluntary.

7 You may refuse to answer any question. You may

8 terminate your interview at any time or request a

9 break at any time. Since this is not an adversarial

10 proceeding, formal Cross Examination will not be

11 permitted. However, your personal legal

12 representative may ask clarifying questions as

13 appropriate.

14 Your identity and the content of this

15 conversation will be made public at the conclusion of

16 the interview process and may be included in the

17 public report of the accident, unless you request that

18 your identity remain confidential or your information

19 would otherwise jeopardize a potential criminal

20 investigation. If you request us to keep your

21 identity confidential, we will do so to the extent

22 permitted by law. That means that if a Judge orders

23 us to reveal your name or if another law requires us

24 to reveal your name, or if we need to reveal your name

25 for other law enforcement purposes, we may do so. We

1 request that you refrain from discussing your  
2 statement with others who may be interviewed. Also,  
3 there may be a need to use the information you provide  
4 to us or other information we ask you to provide in  
5 the future in other investigations into and hearings  
6 about the explosion. Do you understand?

7 MR. PERDUE:

8 Yes.

9 ATTORNEY BABINGTON:

10 Do you have any questions?

11 MR. PERDUE:

12 No.

13 ATTORNEY BABINGTON:

14 After the investigation is complete, MSHA  
15 will issue a public report detailing the nature and  
16 causes of the fatalities in the hope that greater  
17 awareness about the causes of accidents can reduce  
18 their occurrence in the future. Information obtained  
19 through witness interviews is frequently included in  
20 these reports.

21 A court reporter will record your  
22 interview. Please speak loudly and clearly. If you  
23 do not understand a question asked, please ask the  
24 interviewer to rephrase it. Please answer each  
25 question as fully as you can, including any

1 information you have learned from someone else. I'd  
2 like to thank you in advance for your appearance here.  
3 We appreciate your assistance in this investigation.  
4 Your cooperation is critical in making the nation's  
5 mines safer.

6 After we've finished asking questions,  
7 you will have an opportunity to make a statement,  
8 provide us with any other information that you believe  
9 to be important. If at any time after the interview  
10 you recall any additional information that you believe  
11 might be useful, please contact Norman Page at the  
12 contact information previously provided.

13 Any statements given by miner witnesses  
14 to MSHA are considered to be an exercise of statutory  
15 rights and protected activity under Section 105(c) of  
16 the Mine Act. If you believe any discharge,  
17 discrimination or other adverse actions taken against  
18 you is a result of your cooperation with the  
19 investigation, you are encouraged to immediately  
20 contact MSHA and file a complaint under Section 105(c)  
21 of the Act.

22 MR. FARLEY:

23 Mr. Perdue, I'll make my part of the  
24 opening remarks very short and hopefully very sweet.  
25 The West Virginia Code, Chapter 22(a), Article 1,

1 Section 22, also protects miners from discrimination,  
2 particularly in situations like this, where you're  
3 talking to us during an investigation. In the event  
4 that you feel your employer discriminates against you  
5 in any way after this interview, you may feel free to  
6 contact Mr. Tucker or myself at the numbers on this  
7 memo and/or the West Virginia Board of Appeals, which  
8 hears such matters. Okay?

9 MR. PERDUE:

10 Okay.

11 -----  
12 MARVIN PERDUE, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
13 AS FOLLOWS:

14 -----  
15 ATTORNEY BABINGTON:

16 Before we begin, we're going to do just a  
17 couple questions about your representation. Would you  
18 please state your full name?

19 A. Marvin F. Perdue.

20 ATTORNEY BABINGTON:

21 Spell your last name, please.

22 A. P-E-R-D-U-E.

23 ATTORNEY BABINGTON:

24 And could you provide your home address  
25 and phone number for the record?

1 A. [REDACTED]

2 [REDACTED]

3 ATTORNEY BABINGTON:

4 Thank you. Do you have a personal legal  
5 representative here with you today?

6 A. Yes.

7 ATTORNEY BABINGTON:

8 All right. Will your personal legal  
9 representative please identify himself?

10 ATTORNEY RIST:

11 I'm Tom Rist. I'm with the Law Firm of  
12 Forman & Rist out of Charleston.

13 ATTORNEY BABINGTON:

14 Mr. Perdue, did you voluntarily choose to  
15 have this individual as your personal legal  
16 representative?

17 A. Yes.

18 ATTORNEY BABINGTON:

19 Did you feel like you had a choice in the  
20 matter?

21 A. No.

22 ATTORNEY BABINGTON:

23 Why do you say you didn't have a choice  
24 in the matter?

25 A. I mean, well --- I'm sorry. Yes.

1 ATTORNEY BABINGTON:

2 Let me get through the whole question

3 before you get there. So let's just try that again.

4 Did you feel like you had a choice in the matter of

5 choosing him as your legal ---?

6 A. Yes.

7 ATTORNEY BABINGTON:

8 Okay. Okay. Do you consent now to

9 having this individual as your personal

10 representative?

11 A. Yes.

12 ATTORNEY BABINGTON:

13 Okay. Do you understand that Massey

14 Energy, its affiliates or its officers or directors or

15 attorneys may not represent you or direct you in this

16 matter?

17 A. Yes.

18 ATTORNEY BABINGTON:

19 Mr. Rist, are you legally representing

20 the witness in this matter?

21 ATTORNEY RIST:

22 Yes.

23 ATTORNEY BABINGTON:

24 Do you understand that you may not

25 communicate with Massey Energy, its affiliates or its

1 officers, directors or attorneys concerning the  
2 substance of this representation?

3 ATTORNEY RIST:

4 I do.

5 ATTORNEY BABINGTON:

6 Are you being paid by a third party to  
7 provide such representation?

8 ATTORNEY RIST:

9 No.

10 ATTORNEY BABINGTON:

11 Dave, go ahead.

12 EXAMINATION

13 BY MR. STEFFEY:

14 Q. Mr. Perdue, I don't believe we got your phone  
15 number. Could you repeat your phone number for the  
16 record?

17 A. [REDACTED]

18 Q. [REDACTED]

19 A. [REDACTED]

20 Q. Thank you. Are you appearing ---?

21 A. [REDACTED]

22 Q. Thank you. Are you appearing here today  
23 voluntarily?

24 A. Yes.

25 Q. Has anybody made any promises or given you

1 anything ---

2 A. No.

3 Q. --- in exchange for your testimony? Thank you.

4 Has anyone made any threats concerning your testimony?

5 A. No.

6 Q. Has anyone else interviewed you, anyone from the  
7 company interviewed you about the accident or your  
8 knowledge of the conditions of the mine?

9 A. Not from the company.

10 Q. Okay. How many years of mining experience do you  
11 have?

12 A. Thirty-four (34).

13 Q. Can you give me a brief description of your coal  
14 mine employment history?

15 A. That would take all day, but ---.

16 Q. Just real brief.

17 A. I started with Westmoreland in '76. I've been  
18 through with New River, Maben Energy, Barrett Fuel,  
19 Birchfield Mining, ICG, Massey --- let's see, Chafe  
20 Mining, EC Mining, Horse Creek Mining, and I worked  
21 down at Keystone for --- on Bluestone property for a  
22 while. I can't remember who it was for. It was ---.

23 Q. You worked a lot of different places over the  
24 years?

25 A. Oh, yeah. I've worked a lot of mines, a lot of

1 different conditions.

2 Q. Okay. Do you have any mining certifications?

3 A. Yes.

4 Q. What are they?

5 A. I got my --- regular miner's certificate, shot  
6 fireman's and my foreman's card.

7 Q. Okay. Are you presently employed?

8 A. Yes.

9 Q. Where at?

10 A. I'm still at UBB.

11 Q. When did you start there?

12 A. What was it, around '95 when I started? '95.

13 Q. And what's your present job title?

14 A. Outby lead man, I guess, or a roof bolter, one of  
15 the two of them. I usually have a crew and I do all  
16 the outby work.

17 Q. Okay. And where did you work at prior to being  
18 hired at UBB?

19 A. Down at Bluestone property. I'm trying to think  
20 of the name of that company. It's for K.C. Walls.

21 Q. Okay. That's all right.

22 A. I can't remember the name of the company right  
23 now.

24 Q. That's fine.

25 A. It will come to me.

1 Q. That's fine. Do you know about approximately how  
2 long you were there?

3 A. About a year-and-a-half, maybe two years.

4 Q. Okay. How much of your mining history is with  
5 Massey?

6 A. Probably 13 years.

7 Q. Okay.

8 A. I left for a period of about three years in  
9 between '95 and present.

10 Q. Okay. Let's talk about the outby areas here.  
11 You're the --- I believe you are the fourth shift crew  
12 leader.

13 A. Fourth shift?

14 Q. Yeah. I think that's what was on my interview  
15 sheet. I was going to ask, what is fourth shift?

16 A. I don't know.

17 Q. Okay.

18 A. I'm on the dayshift.

19 Q. On the dayshift? Okay. That's a little  
20 clarification. And what's your work area and your  
21 responsibilities?

22 A. My work area at the present time was --- I was  
23 working at the Ellis --- right near the Ellis Portal  
24 or Eunice, whatever they want to call it?

25 Q. Okay. And what did you do there?

1 A. We was construct --- under construction of --- we  
2 just had cut a belt channel to put a belthead on,  
3 six-foot belt. We done put the beltline in. The day  
4 I was up there, this happened, I put --- I was putting  
5 a high line in and a 500 kV box.

6 Q. Okay. The areas that you and your crew work in,  
7 who pre-shifts those areas prior to you guys going in  
8 there and working?

9 A. I guess the hoot owl.

10 Q. Okay. And how many miners are typically on your  
11 crew?

12 A. I've only got four. Most of the time it's just  
13 according to --- me and another guy kind of work in  
14 conjunction, Mike Kiblinger. He's another guy. He's  
15 one of the outby bosses, too. Usually I come in, cut  
16 all the top down, we bolt it, get it set up. We'll  
17 help him maybe set the head in the drive, then he'll  
18 set the --- you know, the take-up, finish up a little  
19 bit while we're going to the next spot to set up  
20 again.

21 Q. Okay. And which portal did you normally enter?

22 A. Ellis.

23 Q. Ellis Portal. And who did your pre-op check on  
24 your mantrip prior to going?

25 A. We walked in.

1 Q. Walked in?

2 A. It's only 12 --- yeah. It's only 12 breaks in.

3 Q. Okay.

4 A. It's more trouble than it's worth to go that 12  
5 breaks and then have to switch out, which we got ---  
6 you know, that --- I'd say the hoot owl guy does that  
7 pre-op on that because they had a crew in there  
8 working the night before.

9 Q. Okay. So you walked in and then what did you do?  
10 Was that your work area?

11 A. Yeah, that was the work area. It's those 12  
12 breaks.

13 Q. Twelve (12) breaks.

14 A. I can show you on the map whenever you're ready.

15 Q. Okay. So how long did it take you to walk that?

16 A. To walk out?

17 Q. Uh-huh (yes).

18 A. Seven minutes.

19 Q. Seven minutes?

20 A. Eight minutes. Something like that. It's not  
21 very ---. I remember looking at my watch and it was  
22 probably ten 'til, and I was there where we cut that  
23 hole overtop of the belt, because we was getting ready  
24 to set a pad there. And the other guy was outside  
25 measuring how long the thing was so we knew where to

1 set our pad. And I went around the corner, and one of  
2 my guys had been down there checking the belthead.  
3 Instead of him staying down there, he walked back up  
4 and got with me, and I met him, and we walked around  
5 the corner and picked up the other two.

6 Q. Okay. So you didn't travel through any equipment  
7 doors going to your work location there on the Ellis  
8 Portal side?

9 A. Yeah. There was a set of equipment doors walking  
10 on that.

11 Q. There was a set of equipment doors?

12 A. Yeah. There's a set of doors on the track and on  
13 the --- in the entry over there.

14 Q. Did ---?

15 ATTORNEY BABINGTON:

16 Let's get that map. With this blue  
17 highlighter, do you mind marking where those equipment  
18 doors were?

19 A. I believe they got a set --- you want me to put it  
20 across it?

21 ATTORNEY BABINGTON:

22 Sure.

23 A. There should be a door there, a door there, should  
24 be a door here and I believe a door here, then I got  
25 --- right here got a double ---. Do you want me to go

1 ahead and put it all on here, what it is?

2 BY MR. STEFFEY:

3 Q. Sure. Yeah, go ahead.

4 A. We got a double airlock here on the belt. I got a  
5 Kennedy stopping here, I believe a Kennedy stopping  
6 here. I believe that's where they're at.

7 ATTORNEY BABINGTON:

8 With the pen, could you mark what those  
9 different lines indicate? So these two you said ---

10 MR. STEFFEY:

11 Were Kennedy stoppings.

12 ATTORNEY BABINGTON:

13 --- were Kennedy stoppings. Those spads  
14 were 22254 and 22255.

15 A. That's close in there. I can't say for sure. But  
16 I'm almost sure it's right here in this line.

17 ATTORNEY BABINGTON:

18 So if you could circle those Kennedy  
19 stoppings and mark them as such off to the side,  
20 please?

21 WITNESS COMPLIES

22 ATTORNEY BABINGTON:

23 And again, to clarify, you're saying this  
24 is about --- this is an approximation of where you  
25 believe they are?

1 A. That should be the only two Kennedy stoppings.  
2 These should be doors. Do you want me to put these  
3 down as doors?

4 ATTORNEY BABINGTON:

5 Yes. If you could mark those doors as  
6 well, please?

7 A. You want a circle?

8 ATTORNEY BABINGTON:

9 Yeah. One circle would be fine for all  
10 four of those.

11 A. This is an airlock.

12 ATTORNEY BABINGTON:

13 Okay. Doors, yeah. And if you could  
14 mark the airlock doors as well. You could draw a line  
15 out to the blank space where you think it would be.

16 WITNESS COMPLIES

17 ATTORNEY BABINGTON:

18 And again, I'll just make sure. Are  
19 these approximations of where you believe these  
20 doors ---?

21 A. I'm almost sure that's where they're at. I built  
22 them, so ---.

23 BY MR. STEFFEY:

24 Q. Where was that belt channel that you were working  
25 on?

1 ATTORNEY BABINGTON:

2 If you can mark that with a yellow  
3 highlighter, please.

4 A. The door's right here, so that should be in this  
5 entry. That should be right here. Should be right  
6 through that area right there.

7 ATTORNEY BABINGTON:

8 Okay. So you've indicated an area around  
9 spads 22154 and 22150?

10 A. Uh-huh (yes). Because this should be marked as a  
11 tail right here when you come one break outby.

12 ATTORNEY BABINGTON:

13 Can you mark with the pen, labeling this  
14 --- if you could label it, I guess, beltline, is that  
15 what ---?

16 MR. STEFFEY:

17 Belt channel.

18 ATTORNEY BABINGTON:

19 Belt channel.

20 A. Let's take it up this way.

21 ATTORNEY BABINGTON:

22 Okay.

23 WITNESS COMPLIES

24 A. Okay. Do you want something else?

25 ATTORNEY BABINGTON:

1 You're good for right now.

2 BY MR. STEFFEY:

3 Q. You're good for right now.

4 A. Now, there was --- the day this happened, they was  
5 cutting overcasts. I believe they done cut one  
6 overcast here, and they was cutting an overcast right  
7 here.

8 Q. Were they cutting those overcasts with --- during  
9 active production shifts?

10 A. Yes.

11 ATTORNEY BABINGTON:

12 Do you mind marking those overcasts for  
13 me, please, with the blue highlighter?

14 A. I'm almost sure that they --- I don't know if they  
15 cut this one, but I know they was cutting this one.

16 ATTORNEY BABINGTON:

17 Okay. And with the pen could you label  
18 that overcast, please.

19 WITNESS COMPLIES

20 ATTORNEY BABINGTON;

21 And for the record, it looks like  
22 spad --- can we see that, Dave, 22150 or 9.

23 BY MR. STEFFEY:

24 Q. If you could grab the 100A. It should be the  
25 first one on top.

1 WITNESS COMPLIES

2 BY MR. STEFFEY:

3 Q. And that was at this point right here; wasn't it?

4 A. Yes.

5 MR. STEFFEY:

6 That is spad number 2215 --- just a

7 second. I believe that's a nine.

8 ATTORNEY BABINGTON:

9 Okay. So they were building an overcast

10 around 22159A.

11 A. They was just cutting.

12 ATTORNEY BABINGTON:

13 Cutting, okay.

14 BY MR. STEFFEY:

15 Q. Let's go back to this area right here. That's a

16 lot of vent controls on those air courses right

17 there, ---

18 A. Uh-huh (yes).

19 Q. --- Kennedy stoppings and airlock doors. Do you

20 know why they needed all that?

21 A. No. I'm going to say no. No.

22 Q. Anybody ever mention why they needed all that?

23 A. They said they was --- the way they was going to

24 run the air up here and around, at the time --- see,

25 we had a set of --- basically, I'd say that just

1       caused that airlock to seal this off, a set of  
2       stoppings across right here for this area that was in  
3       this area, and they had to build these before they  
4       could knock and get in here and work.

5       Q. Did building this here change air direction  
6       anywhere?

7       A. No.

8       Q. No.

9       ATTORNEY BABINGTON:

10      Sorry. Just to clarify, you said that  
11      they built the stoppings right inby the Ellis Portal  
12      in order to get work done in this crossover  
13      section ---

14      A. Yeah.

15      ATTORNEY BABINGTON:

16      --- going down south ---?

17      A. Yeah, to come here to work.

18      ATTORNEY BABINGTON:

19      Okay. Down south to ---.

20      BY MR. STEFFEY:

21      Q. So this was for the longwall mini-panel?

22      A. Yeah.

23      Q. Okay. Did you ever work anywhere else inside ---  
24      do any more work inside the mine anywhere else?

25      A. Yeah. We just had left from down there.

1 Q. Left from down there.

2 A. From the area that blew up.

3 Q. So these doors right in here, these were pretty  
4 much brand new?

5 A. Yeah.

6 Q. Okay. Let's talk about this area up here that you  
7 just left from. Where did you say you worked at in  
8 this area? Let's talk about these doors here. These  
9 are the doors where the ---?

10 A. Intake goes across the track.

11 Q. Absolutely.

12 A. Seventy (70) --- Break 70 --- looks like probably  
13 80, 81, somewhere through there, ---

14 Q. Yeah.

15 A. --- 82.

16 Q. Looks like Survey Station 19 --- I believe that's  
17 a --- is that a six or a five?

18 A. 19559, I believe. Do you see that that way?

19 Q. Uh-huh (yes).

20 A. I'm reading it upside down. That's why I'm  
21 asking.

22 Q. Probably would be better to take the magnifying  
23 glass.

24 A. Right here.

25 Q. Yeah, 59.

1 A. Okay.

2 ATTORNEY BABINGTON:

3 Just to clarify, 19959?

4 A. Uh-huh (yes). Yes. After I backed up I could see  
5 it better from right here than I can up there.

6 BY MR. STEFFEY:

7 Q. I apologize. I can't make some of these numbers  
8 out without the magnifying glass. Okay. These double  
9 doors right here, did you install these?

10 A. No, sir. They was there whenever I come back.

11 Q. Okay. Do you know who installed those?

12 A. No, sir, I sure don't. I asked why they was  
13 there, and they said, to keep from building overcasts  
14 there.

15 Q. To keep from building overcasts there?

16 A. Whenever I come back, we was starting this section  
17 here. They just --- they skipped all this here at the  
18 mouth of, I guess, Headgate One North. And they  
19 hadn't cut this but had come down here and started  
20 mining, and they said it's going to come back, which I  
21 come back later and we cut all this out and ---.

22 Q. And that's for the longwall belt coming off?

23 A. For the Mother Drive.

24 Q. Okay.

25 A. And I worked two weeks down here bolting, and then

1       they pulled me back outby and we started --- well, I  
2       worked --- we come over here at what they call the  
3       Three section, it would be in the south side, and set  
4       up a section there. They was going to drive out that  
5       ridge. When we got finished there, we come down,  
6       should be One North belt, and we started what's called  
7       Four section. They drove towards that way and got  
8       that panel, and then they plopped the track and went.  
9       After we got finished with that, we done a little bit  
10      of work and then we went down here to start cutting  
11      this.

12    ATTORNEY BABINGTON:

13    When you say this, you're referring to  
14      the ---?

15      A. One North Headgate.

16    BY MR. STEFFEY:

17      Q. Let's come back to these sets of double doors  
18      here, where the intake crossed the track.

19      A. Uh-huh (yes).

20      Q. Were these doors automatic?

21      A. Yes. Well, they was supposed to be.

22      Q. They were supposed to be?

23      A. Yeah.

24      Q. They didn't function all the time or ---?

25      A. No.

1 Q. No? When a supply motor would come through here,  
2 did he have to open both sets of these doors to take  
3 his supply motor through or could he open one ---?

4 A. If he had more than --- more than one car,  
5 probably.

6 Q. Did they typically have more than one car?

7 A. No, usually --- I never --- most of the time they  
8 just had one motor and one car that I seen.

9 Q. Okay. These doors here, if --- did you ever come  
10 through here and find these doors open?

11 A. Yeah.

12 Q. How often?

13 A. Not that often, but I have found them open.

14 Q. When they were open, did you happen to --- could  
15 you feel the airflow, what direction it was going, the  
16 pressure or anything?

17 A. I know the pressure is going to pull down towards  
18 the north.

19 Q. So when you say it pulled down toward the north,  
20 are you saying it reversed this air or pulled air off  
21 the intake?

22 A. Just pulled this air off the intake and down the  
23 doors.

24 Q. Okay. So it took air off the intake?

25 A. Yeah.

1 Q. And where did this intake go to?

2 A. Well, it just comes down here and wherever it  
3 wanted to pull. Because like I said, you had the  
4 holes back there. You know, it's going to pull ---.

5 Q. But this is the intake that supplied air to the  
6 longwall?

7 A. Yeah.

8 Q. What condition were these doors in?

9 A. Fair.

10 Q. Fair?

11 A. Fair.

12 Q. When you were approaching --- say you were outby  
13 here and you were approaching this set of doors, when  
14 you were coming up to the first door, could you tell  
15 if the door on the other side was open? Was there any  
16 way of telling?

17 A. If you'd open it, it --- you know, if it wasn't,  
18 it just --- see, these --- these doors right here I  
19 believe were reversed from the way they was  
20 originally. I don't know what air change it made or  
21 not, but they used to open --- let's see. Yeah, they  
22 used to open in, but I believe they opened out now, if  
23 I'm not mistaken. Well, I believe they opened out for  
24 some reason.

25 Q. Okay.

1 A. It just seemed like to me --- you know, they --- I  
2 went down there after, you know, I left down there and  
3 it just seemed like to me them doors wasn't right at  
4 one time.

5 Q. Were they still like that on the day of the  
6 accident?

7 A. I don't know.

8 Q. Didn't know?

9 A. I wasn't in that area.

10 Q. Okay. These other doors in the mine here that we  
11 have indicated, were there doors going --- in the  
12 intake, going toward the longwall?

13 A. Yeah.

14 Q. Were they automatic?

15 A. No.

16 Q. What was their purpose?

17 A. Just to keep air from just coming across and going  
18 back out on the track, which there's no way it's going  
19 to go back out on the track, is what I'm saying. All  
20 this air was pulling --- it don't matter what it was.

21 Q. It was pulling that way?

22 A. Everything was pulling that way.

23 ATTORNEY BABINGTON:

24 Sorry. Before we go forward, do you mind

25 marking where the first set of doors we were talking

1 about were? I think you said it was around the 80  
2 Break.

3 A. Okay. Here's the second set.

4 ATTORNEY BABINGTON:

5 Okay. That's around spad 19 --- okay.

6 A. That's the one we just said.

7 ATTORNEY BABINGTON:

8 Right. And then the second one, 19666?

9 Is that what that says there?

10 A. Looks to me, or a 555.

11 MR. STEFFEY:

12 Approximately three breaks inby.

13 ATTORNEY BABINGTON:

14 Okay. And then could you also --- if you

15 could also then label --- I guess those are doors.

16 WITNESS COMPLIES

17 ATTORNEY BABINGTON:

18 And then could you also label with the

19 blue highlighter, the second set of doors that David

20 was just asking about?

21 WITNESS COMPLIES

22 A. I don't remember this set right here.

23 BY MR. STEFFEY:

24 Q. You don't remember that set?

25 ATTORNEY BABINGTON:

1 Which set are you referring to?

2 BY MR. STEFFEY:

3 Q. Okay. Just circle it and just --- you know, you  
4 don't believe they were there.

5 A. I don't remember. I remember putting up a set of  
6 doors, you know what I mean?

7 Q. Yeah.

8 A. We put up so many doors, I swear. I can't see  
9 how ---. We might have put these up. I believe I  
10 might have done it. I believe I do remember, ---

11 Q. Okay.

12 A. --- if I ain't mistaken. I believe we come back  
13 in here and we set this up.

14 ATTORNEY BABINGTON:

15 Just for the record here ---.

16 A. I don't believe we ever shut them.

17 BY MR. STEFFEY:

18 Q. So they were never shut.

19 A. I don't know. I ain't marking it for sure,  
20 because I ain't positive.

21 Q. Okay. That's fine.

22 A. I remember we come in, but I --- and we put up a  
23 set of doors, but I can't remember what. Like I said,  
24 we put all them, these, and I put up some more, you  
25 know, up on the other side, too, and repaired some

1 doors. They ain't even showed. Yeah, right here. I  
2 repaired these doors. Somebody had run through them.  
3 I done that like about a week before this happened,  
4 repaired the door right here.

5 Q. Now, when you said these doors were damaged,  
6 someone run through them, did they --- were they  
7 damaged to the point that air was ---?

8 A. No. I --- no, it was still airlocked. I just  
9 hung the doors on. You know what I mean? What I done  
10 is run up and down near the bottom of it, and I hung  
11 the --- re-hung the doors.

12 Q. Okay.

13 ATTORNEY BABINGTON:

14 Okay. So just to clarify, if you could  
15 label these as well. That looks about the ---  
16 progressing along Tailgate One North, that looks about  
17 at Crosscut Ten. If you could circle that and label  
18 repaired on this door. And could you also provide a  
19 date for that. You said about a week before the  
20 explosion?

21 A. Something like that. It was about a week or so.  
22 I remember --- I forget where I went and got the  
23 doors, but I come back up here and we hung them here.  
24 We didn't have enough top. Had to knock the legs out,  
25 set the doors on them, bring the legs back to get the

1 doors on there. I don't even know what date that  
2 would be.

3 ATTORNEY BABINGTON:

4 Okay. And before we go further, could  
5 you also label the doors on the Headgate One North  
6 section that you made? Those seem to be, for the  
7 record, just a few breaks.

8 A. Right here is Break Five, so ---.

9 ATTORNEY BABINGTON:

10 So about Crosscut ---.

11 A. About Eight.

12 ATTORNEY BABINGTON:

13 Yeah, about Eight Break on the Headgate  
14 One North.

15 A. Eight or Nine, because I believe 11 is where the  
16 air come across, right in here somewhere. See, I  
17 built all these overcasts. That's pretty close.

18 BY MR. STEFFEY:

19 Q. A door here at, I'd say, about Break 33 on the  
20 tailgate side, ---

21 A. Uh-huh (yes).

22 Q. --- did you install those?

23 A. No, sir.

24 Q. Didn't install those. Were you ever up there  
25 around those doors?

1 A. Yeah.

2 Q. What kind ---?

3 A. See, this map has changed. It seems like to me I  
4 took out a set of double doors in here one day.

5 Q. Okay.

6 A. No, it ain't. There should have been another set  
7 of doors down here, if I ain't mistaken.

8 Q. So there was ---?

9 A. It might --- no, it might have been right in here.

10 Q. Okay.

11 A. Yeah, these are the ones --- right here the track  
12 come across and went right there. There was a set of  
13 double doors in here one day I took out and we blocked  
14 off. So I guess they're showing up.

15 Q. A stopping there?

16 A. Yeah. But if I ain't mistaken, the frame is still  
17 there. We built it inside the frame.

18 Q. Okay. These doors here at Break 33 on the  
19 tailgate side, what kind of condition were they in?

20 A. They was in good condition.

21 Q. They were in good condition. Did you have a  
22 problem with people running --- you mentioned someone  
23 hit a set of doors. Did you have a problem with that  
24 happening?

25 A. Not very often. When they set doors right here,

1 you know, the motor get away --- it was sitting kind  
2 of on the hill, you know.

3 Q. Yeah.

4 A. The track gets slick, you know, but they  
5 would ---.

6 Q. And this set, this is the first set, the outby  
7 set, where the intake crosses the track?

8 A. This set right here is the one that got ---  
9 usually this door on this side ---

10 Q. Uh-huh (yes).

11 A. --- would get hit or these doors right here, but  
12 they hung new doors on this one, I believe. One door,  
13 I know, on this one.

14 Q. So there was a dip here around the track or where  
15 the intake crossed the track?

16 A. Yeah. You just kind of come downhill and then it  
17 comes back up, and then it went uphill right here at  
18 this set of doors.

19 Q. Okay.

20 A. That's just kind of ---.

21 Q. So it came downhill right here at the outby set  
22 and went back uphill at the inby set?

23 A. Yeah.

24 Q. Okay. Did that happen very often, people run into  
25 those doors?

1 A. You know how motor men are, they'll just bump  
2 them, or somebody in a Jeep will bump up against them.

3 Q. So how often did those doors have to be replaced?

4 A. I've only --- like I said, that one time I seen  
5 them. They come and hung some new doors on one of the  
6 two sets.

7 Q. Did the company have a procedure for replacing  
8 those doors?

9 A. I don't know.

10 Q. You don't know. They just told you to go in and  
11 replace the doors?

12 A. A lot of times you could tell whenever they'd been  
13 bumped or something. A lot of times it wouldn't hurt  
14 the doors, but the block would be --- say either  
15 somebody slammed them or ---.

16 Q. What did that do to the airflow going to the  
17 longwall? Did that take air off the longwall or ---?

18 A. Not as I know of. It still --- like I said, it's  
19 still going to pull everything.

20 Q. Yeah.

21 A. Basically everything from up there, it wanted to  
22 pull down everything.

23 Q. Pull to the Bandytown fan.

24 A. You know, I asked a guy --- I said, you show me a  
25 return here.

1 Q. Why do you think they opted to use two sets of  
2 doors here instead of an overcast?

3 A. Well, I don't know, but what I've heard, we didn't  
4 have time to build up.

5 Q. Didn't have time to build?

6 A. They didn't have time to cut overcasts. Had to  
7 get down here and get this started.

8 Q. So it was more of a time constraint or ---?

9 A. I guess. See, that happened right whenever I come  
10 back. I left around the period whenever they started  
11 this north --- on Four North. And then whenever -- by  
12 the time I come back, they was --- they drove this up  
13 to Eight North and then they backed up and they  
14 decided the wall was coming back. That's one of the  
15 reasons I come back, because of the wall.

16 Q. Now, you mentioned earlier that if these doors  
17 were open or damaged or there was quite a bit of  
18 leakage around them, that that would pull air off the  
19 intake and take intake air away from the longwall?

20 A. Uh-uh (no).

21 Q. No?

22 A. No. It still wanted to pull down this.

23 Q. Still wanted to pull that way. So this air  
24 wouldn't reverse here?

25 A. Not as I know, because it's all coming down the

1 track, too. You see what I'm saying?

2 Q. Uh-huh (yes). Did that maintain separation,  
3 though, you think, between the track and the  
4 secondary --- or between the primary and secondary  
5 escapeways?

6 A. Yeah, halfway.

7 Q. Halfway. How would you describe the roof, rib and  
8 floor in this mine?

9 A. It's just dangerous mines. You never know  
10 what's --- from one period to the next.

11 Q. What do you mean?

12 A. It's just --- well, you're cutting that rock, you  
13 got all them ribs, you know. It's --- some places you  
14 go, it's --- you know, you got two or three foot of  
15 rock there that you're having to rib bolt. And the  
16 top, it changes. It changes day by day, you know.  
17 Sometimes you hit a sand --- once you hit that  
18 sandstone, you know, it does fairly decent. But you  
19 might be going along six months, you know, like that,  
20 and then all of a sudden it will change and it will be  
21 a layer of sandstone, layer of coal. That was what  
22 happened in one of these areas down in here for about  
23 eight breaks.

24 Q. So they got in like a laminated sandstone?

25 A. Yeah, it's laminated.

1 Q. What about methane? Did you ever find any  
2 methane?

3 A. Not outby. You know, you might like find up to  
4 eight or nine-tenths in the face, but that's been ---  
5 back whenever I was section bossing. But as far as  
6 outby, I've never found, in this area right here, .2.

7 Q. Did you have --- did you carry a spotter?

8 A. Uh-huh (yes).

9 Q. A multi-gas detector, I guess. What kind did you  
10 carry?

11 A. Solaris.

12 Q. Solaris.

13 A. And I had another type one time before. I can't  
14 remember what it was, before I got the Solaris.

15 Q. Now, you mentioned that you found eight and  
16 nine-tenths in the face when you were section bossing.  
17 Where was that at?

18 A. That would be a place that somebody tore down.

19 Oh, God, that was on Headgate 14 maybe.

20 Q. Okay. So that was back ---?

21 A. Yeah.

22 Q. All right. But you mentioned you would find some  
23 methane occasionally outby, but it never would be too  
24 high?

25 A. The most I found --- it ain't showing it, but it

1 would be up in Eight North, back up maybe in them  
2 corners ---

3 Q. Uh-huh (yes).

4 A. --- a little bit. Every now and then you'd find  
5 like .2, you know. It wouldn't be very much.

6 Q. And that's up around the gas well in the north?

7 A. Yeah.

8 Q. Okay. What about the ---?

9 A. A lot of times they'd be working, and I'd just go  
10 stroll around and just --- you know, just look and see  
11 what was going on up in there.

12 Q. I understand. What about on the sections and on  
13 the longwall, did you ever hear of them hitting any  
14 methane there on this current longwall panel or the  
15 headgate and tailgate section?

16 A. I heard Dino say a couple times he had trouble  
17 with the methane up there on that north --- well, not  
18 One North. It would be what?

19 Q. Headgate 22?

20 A. Yeah, Headgate 22.

21 Q. Yes. When he said trouble, how much methane was  
22 he talking about trouble?

23 A. He never did say.

24 Q. Never did say?

25 A. Never did say. You know, he'd just say something

1 --- you know, he mentioned ---.

2 ATTORNEY BABINGTON:

3 To clarify, Dino is?

4 A. Dean Jones.

5 ATTORNEY BABINGTON:

6 Thank you.

7 BY MR. STEFFEY:

8 Q. Did you ever hear of --- ever hear of the mine  
9 going through a gas well? Did you ever mine through a  
10 gas well anywhere?

11 A. I don't know about --- they had one, one time, but  
12 I thought --- that was way back on one of these panel.  
13 It was a long time ago.

14 Q. So it's in a sealed area now?

15 A. Yeah.

16 Q. Okay. Did this mine ever have a problem with  
17 running into a gas well that you guys didn't know  
18 about?

19 A. Not that I know of.

20 Q. Now, there was a seam below the Eagle seam, below  
21 Eagle. Did anybody ever discuss this with you guys or  
22 discuss this with any of the longwall crew or the  
23 section crews that you knew of?

24 A. Not that I know of.

25 Q. What about methane outbursts on the section or the

1 longwall, did you ever hear about them?

2 A. Yeah. I was in two.

3 Q. Okay. Did they come from the floor or ---?

4 A. Yes.

5 Q. Came from the floor, okay. Where was this at?

6 A. Headgate 14.

7 Q. Now, we've got a 1 to 500 map up here. Feel free  
8 to walk up there and point any time. You know, and  
9 we've got another one over there. And we can plot  
10 another one, if necessary. So you know, ---.

11 A. I believe it's around Headgate 14.

12 Q. Okay. What about the current longwall panel, did  
13 you ever hear of any methane outbursts there?

14 A. Well, I worked back in there. You might have even  
15 heard about the Great Wall. Did you hear about the  
16 ---? I know you've heard something.

17 Q. I've heard it --- we've heard it mentioned.

18 A. Me and my crew, we carried stuff back there. And  
19 what we was trying to do is maintain a walkway for the  
20 pumps back in here. And that would be --- I guess  
21 you'd call it Tailgate One North.

22 Q. Yes.

23 A. Around --- I'd say right here at 52 Break.

24 Somewhere right there. In fact, we started to wall.

25 We built it something like 15 breaks. What they was

1       trying to do is maintain an intake for that --- this  
2       panel here, I guess, whenever they'd come to mine it  
3       where they was having to kick air down both sides.

4       Q. And you mentioned pumps there. So was water a  
5       problem on the tailgate side?

6       A. I believe I had a pump at 54 and might have been  
7       99, 100, something like that, I believe. The numbers  
8       ain't --- I can't remember. It might have been  
9       80-some.

10      Q. What about on the headgate side, did they ever  
11      have any problems with water there?

12      A. As they was mining when I was at the headgate?

13      Q. As they were either mining it with --- driving it  
14      with the continuous miner, driving ---.

15      A. Oh, yeah. They got under the face. Because the  
16      day it happened, me and Everett was talking after  
17      that, and he said he just went down and walked down to  
18      see if they had the discharge line laid, and he walked  
19      across, in the belt entry and back out.

20      Q. And how deep was that water, anybody say?

21      A. He never did say.

22      Q. Anybody say where it was coming from?

23      A. Not really. I mean, I just figured it's coming  
24      out of the bottom or, you know, ---.

25      Q. Did they continue to have problems there with the

1 water on the headgate or tailgate side when the  
2 longwall was running? Did you ever hear anybody talk  
3 about that?

4 A. The longwall having trouble with water?

5 Q. Yes.

6 A. They had trouble with water for a while, but I  
7 thought they had that pretty well took care of.

8 There's a slag that was coming through and starting  
9 back up, and I figured it was starting to dry up  
10 there, if I hadn't heard nobody say ---.

11 Q. Never heard anybody say anything about it. If the  
12 pumps went off or anything or something happened to  
13 the pumps ---?

14 A. The pumps that I was taking care of at that time,  
15 they would just overflow and go to the next hole.

16 Q. Go to the next one. So it wouldn't rip out  
17 anywhere and interrupt ---.

18 A. No, I never seen them ripped out.

19 Q. Okay. Would it restrict ventilation in any way?

20 A. Yeah. Yeah, it could restrict. But with the way  
21 they done mining by it, it would just come up and go  
22 around it, you know, back into the gob area.

23 Q. Back into the gob area.

24 A. But you could see back in those entries some of  
25 --- you know, some of them failed. Some of them

1        hadn't failed.

2        Q. Okay.

3        A. As far as I did. It seemed like to me it might  
4        have been 80 to 89 or something. I have two more  
5        pumps down there and a swag. I can't remember exactly  
6        the place it was, but the water would get up pretty  
7        well to chest deep, but I could still stand up, but  
8        I'd have to reach the top.

9        Q. To maintain your balance?

10       A. Yeah.

11       Q. Did you feel like that was safe?

12       A. Well, the air is going around it, you know. It  
13       didn't really bother me. I always took a gas test. I  
14       never found nothing in that area.

15       Q. What did mine management say about the water?

16       A. We was trying to keep it down. Most of the time  
17       whenever it was deep --- we had one pump that went  
18       down. After I left there, the other guy that took  
19       care of my stuff back there, he said they drilled a  
20       borehole and was supposed to put a new pump in there  
21       and a new line.

22       Q. Now, you mentioned something about they ran into  
23       some bad roof back there. Could you come up here to  
24       this 1 to 500 and we can ---?

25       A. Well, this right here ain't showing it. This is

1 on the tailgate side and should have been on the  
2 headgate side.

3 Q. This one up here might show a little more.

4 A. It should have been right --- the bad roof should  
5 have been right about ---. It should have started, I  
6 believe, --- because we started --- I believe we  
7 started that wall right in here, and it come outby,  
8 I'd say, to this area.

9 Q. So you had the Great Wall was done. Did I  
10 understand you to say the Great Wall was on the  
11 headgate or tailgate side?

12 A. It was on the headgate side?

13 Q. Okay.

14 A. And it come down past --- I'd say right here. I  
15 believe I had a pump at 54, and it was right in that  
16 area somewhere. It quit. Like eight or nine breaks  
17 of it, right here. I come in here and we set jacks,  
18 cribs and stuff. You'd come in the next day, the  
19 whole thing was holed up. There's like three foot of  
20 it. It's just laminated.

21 Q. Bad top?

22 A. Yeah, just bad top over to the sandstone. Once it  
23 filled with sandstone, it was as smooth as could be.  
24 But we had a lot of trouble. This got --- some of  
25 these dips got full of water and they had curtain, I

1 guess, where they maintained their air on the wall.  
2 We've have to go through and you'd get soaking wet,  
3 you know. We'd make a split in it, you know. We come  
4 down through here setting jacks. And finally, they  
5 just gave up on it. And I guess that's when they  
6 decided to drive the tail, a new tail, down to this  
7 area right here.

8 Q. When you said that they gave up on it, were they  
9 still examining this area?

10 A. Oh, yeah. You had a pump crew come down in here,  
11 and they had pumps set in all down through here, air  
12 pumps. I believe they had a borehole down and two  
13 electric pumps in here or maybe they had the air pumps  
14 put back in there. I don't know.

15 Q. Okay. You mentioned there was some air pumps down  
16 in here. On the day of the explosion there was ---  
17 I've been told there was a note on the board  
18 mentioning these air pumps. Do you know anything  
19 about that?

20 A. No, I didn't see nothing on the board.

21 Q. You didn't see nothing on the board? Okay. If  
22 these air pumps went down, what would happen?

23 A. The water, it would rip out. But like I said,  
24 mostly all the area I took care of, I never did ---  
25 even when they drove up, I was never in this area that

1 much.

2 Q. Okay.

3 A. And mostly --- see, that's --- whenever they was  
4 driving up, I was putting this beltline in for the  
5 longwall. And probably right in here is probably the  
6 farthest I ever went.

7 Q. Now, there was mining above you in the Powellton  
8 seam. Did anybody ever discuss that?

9 A. Logan's Fork?

10 Q. Yes.

11 A. Yeah. I seen some overlays in it back whenever we  
12 was having trouble with the roof.

13 Q. Uh-huh (yes).

14 A. I believe it was back in this area right in here.  
15 I wanted to see what the overlays was. There was a  
16 few stumps. You know, it had been partialled mined up  
17 as the mine supposed to have been. And I went back  
18 and looked at those, like I said, to see why we was  
19 getting so much pressure at one time. That was just  
20 my, --- you know, my own personal ---. I was wanting  
21 to know why we was getting so much pressure.

22 Q. Did the mine superintendent or anybody from  
23 engineering or anybody ever come up there to look at  
24 that and see why --- you know, look at the pressure  
25 and then did you hear them talk about ---?

1 A. I guess they just figured it was normal.

2 ATTORNEY BABINGTON:

3 Okay. Clarify the area --- you

4 marked ---

5 A. That's bad top.

6 ATTORNEY BABINGTON:

7 --- an area. Okay. That's the bad top

8 area, and that's on the Headgate One North section.

9 Is that an approximation between those breaks you'd  
10 say?

11 A. Yeah, somewhere between ---.

12 ATTORNEY BABINGTON:

13 It looks like 42nd Break and 54 Break?

14 A. Yeah, quite close. I believe I had a pump set  
15 right there.

16 ATTORNEY BABINGTON:

17 And you also said the farthest that you

18 got down the Headgate One North section was maybe as  
19 far as ---

20 A. Eighty-five (85) Break.

21 ATTORNEY BABINGTON:

22 --- about 85 Break. So you never ---?

23 A. Somewhere around in there.

24 ATTORNEY BABINGTON:

25 You never went all the way down towards

1 the Bandytown fan?

2 A. No. Wherever this pump was sitting right there is  
3 basically the last pump I went to was where I stopped.

4 ATTORNEY BABINGTON:

5 One other thing. You said that the top  
6 and the beam was such a problem on Headgate One North,  
7 that's the reason why they ended up setting up a new  
8 tailgate?

9 A. Yeah.

10 ATTORNEY BABINGTON:

11 Okay. And is that the Tailgate 22 ---?

12 A. See, they got to maintain the air down through  
13 here, the intake airway. And there's no way they  
14 could maintain the intake airway and walk it, so I  
15 guess they come back to drive the new tailgate.

16 ATTORNEY BABINGTON:

17 Okay. And is that the Tailgate 22?

18 A. Yeah.

19 BY MR. STEFFEY:

20 Q. Do you know who made that decision to start to  
21 drive the tailgate?

22 A. I just know they did. I was putting people down  
23 in here and I didn't think it really needed to be  
24 there. But like I said, the inspectors that went with  
25 me down in there ---.

1 Q. I understand.

2 A. Whenever we was building that wall, we had, like I  
3 said, inspectors walk down through there with us that  
4 day. In fact, one of them wouldn't even go. So I  
5 don't know what was going on that day.

6 Q. You mentioned --- did you talk to the guys that  
7 worked on the section? Did you ever see them?

8 A. Yes. We talked all the time, you know, pretty  
9 much.

10 Q. The guys that were on the sections and were on the  
11 longwalls, what were they saying?

12 A. I never heard them say --- you know, at that  
13 time --- you know, we just talked to them most of the  
14 time in the bathhouse, ---

15 Q. Yeah.

16 A. --- you know, but I never did hear them say  
17 nothing about ---.

18 Q. Inby air ---.

19 A. I heard them --- you know, a couple of them  
20 complained about the water, water is bad and the roof,  
21 but --- I believe maybe at that place where I was  
22 telling you that the bad top was, ---

23 Q. Uh-huh (yes).

24 A. --- I heard Griff say something --- well, he come  
25 out about a week or two before that and said he'd come

1 close to getting --- maybe cut his thumb or something,  
2 and he was off like a day or something like that.

3 Q. And Griff is ---?

4 A. The miner man.

5 Q. The miner man. What was his ---?

6 A. William Griffith.

7 Q. William Griffith, okay.

8 A. He said it was as close as --- close as he's ever  
9 come to being killed, then two weeks later ---.

10 Q. Did they ever talk about running into methane?

11 You mentioned that one of them had discussed --- said  
12 he'd had some problems with some methane.

13 A. That was Dino. I just heard him, you know, say  
14 something about the air, you know, and the methane.

15 Q. Did they feel like their air was adequate?

16 A. I don't know really --- you know, that's what  
17 really gets me. You know, if they'd have had that  
18 much of a problem ---. There's so many guys up there,  
19 I just don't think, you know, --- they wouldn't have  
20 run it like that.

21 Q. Was the longwall shearer and the continuous miners  
22 equipped with a methane sensor?

23 A. Uh-huh (yes). I'd say it is. Supposed to be.  
24 You know, as far as I know.

25 Q. Yeah. And I know you didn't work up there, but

1 just, you know, coal miners' talk.

2 A. Yeah.

3 Q. Did you ever hear of anybody bridging one out?

4 A. Not here.

5 Q. Not there? Do you know if anybody ever had one  
6 that the methane monitor went into a malfunction mode?

7 Did you ever hear of that happening anywhere?

8 A. Not from --- no. If they don't work, you don't  
9 run.

10 Q. Okay. Your approved methane and dust control plan  
11 and approved ventilation plan, did anybody ever go  
12 over those with you and your crew?

13 A. Mostly I'm outby.

14 Q. Mostly out ---.

15 A. Like I say, we don't go over the --- there'd be so  
16 many of them, we'd have to --- once you'd have one,  
17 there's different MMUs for each section, you know, so  
18 most of my people would just --- like I say, we was  
19 outby and we never went over dust control.

20 Q. What about outby changes to the ventilation  
21 system, building stoppings ---?

22 A. Yeah, we ---.

23 Q. So you guys worked on that, did you?

24 A. Yeah, mostly like, you know, whenever they didn't  
25 have enough help, you know, they'd pull us.

1 Q. Did anybody ever go over what they were doing and  
2 why? Did anybody cover that?

3 A. They'd just tell you to build a stopping here or  
4 overcast there.

5 Q. So they didn't go over the map or anything or they  
6 just, you know, built it here and ---

7 A. Yeah.

8 Q. --- never discussed why or what this was going to  
9 change?

10 A. No.

11 Q. Okay. And who would tell you to build the  
12 stopping?

13 A. Most of the time --- these down --- the ones that  
14 we built at Ellis was --- the vice-president, whatever  
15 his name is ---.

16 Q. Jason Whitehead?

17 A. No.

18 Q. Chris Blanchard?

19 A. No. On down.

20 Q. On down?

21 ATTORNEY BABINGTON:

22 Wayne Persinger?

23 BY MR. STEFFEY:

24 Q. Wayne Persinger?

25 A. Yeah. Wayne had me --- we was building in down

1 here. Some of these up in here, whenever we was build  
2 --- Everett was up in here. He'd tell us where they  
3 wanted one built.

4 Q. Did you ever notice if they had the ventilation  
5 plan posted on the mine bulletin board?

6 A. Yeah. It's posted up there in that room.

7 Q. Did they post when they made --- when they were  
8 proposing changes to MSHA in the ventilation plan?  
9 Did they ---?

10 A. I really can't remember.

11 Q. Really can't remember? Okay. I understand.

12 A. You know, they just come and showed me on the map,  
13 and I know --- you know, I knew the area good enough.  
14 I'd just --- I knew it. I didn't really need a map.  
15 they'd just tell me where they moved it.

16 Q. Let's go back to your crew, and I guess the ---  
17 and I guess the miner crews and the longwall crew.  
18 Your crew didn't hot seat with anybody?

19 A. No.

20 Q. You guys just walked in and ---? Now, what about  
21 the longwall crew and the miner sections?

22 A. I believe the longwall crew hot seated, but Dino  
23 and them, there was a little bit of gap between them.  
24 You know, they'd usually meet the dayshift --- I mean,  
25 evening shift coming in right around 78 Break.

1 Q. Okay. Now, with your guys, when that area was  
2 pre-shifted by the hoot owl --- you said you believed  
3 it was pre-shifted by the hoot owl.

4 A. That would be on the date board, you know, so ---.

5 Q. Yeah.

6 A. Because of the time we took --- most of the time  
7 our work is on the beltlines.

8 Q. Did anybody ever go over any hazards that was  
9 found when that area was pre-shifted?

10 A. Most of the time I just looked through the fire  
11 boss book to see what --- you know, I looked at the  
12 fire boss book every morning each time I signed it.

13 Q. Did the fire boss book ever list any hazards?

14 A. Not that I know of. There might be a fire  
15 extinguisher bad or something. We'd take the fire  
16 extinguisher in or somebody might have started up a  
17 pump, you know. The fire extinguisher that was there  
18 might have been bad or something, and we'd just take  
19 one in.

20 Q. Did you ever go into any areas where you were  
21 assigned to work and find any hazards?

22 A. All coal mines, you're going to find a hazard  
23 somewhere.

24 Q. Did you find anything you felt like probably  
25 should have been listed in the pre-shift book?

1 A. Yeah. Probably a couple times on --- you know,  
2 going in an area, you'd find a tailpiece gobbed off.  
3 But you don't know if it was gobbed off prior or if it  
4 gobbed off while you just run up on it, you know.

5 Q. Yeah. Okay.

6 A. I have found one that was --- you know, like  
7 anybody, you found one that started to smoke, stuff  
8 like that. Go and wash it out. You go and wash it  
9 out. Stuff like that.

10 Q. Now, did that happen very often?

11 A. Not really.

12 Q. Not really?

13 A. I found it a couple times, you know, but you don't  
14 know --- like I said, as much as them belts run off  
15 and stuff like that from time to time with the  
16 different longwall --- you had a problem whenever the  
17 longwall, if they wanted to run over a certain  
18 speed, ---

19 Q. Yeah.

20 A. --- you had trouble on every belthead. You know,  
21 if they could keep it down to where the belts could  
22 handle ---. We had a six-foot belt dumping on a  
23 five-foot belt, which was a real pain.

24 Q. Now, the six-foot belt, which belt was that?

25 A. That would be Five North, Four North, then it

1 dumped onto Ellis Five, which is a five-foot belt.

2 Q. And that presented you with some problems at the  
3 longwall and got to cutting above a certain speed?

4 A. Yeah. That five-foot belt might not wanting to  
5 handle --- you know, on that end you'd have trouble  
6 sometimes. You know, it'd gob off. Every time it  
7 gobbled off, pretty soon, you know, they call, we have  
8 to go over and shovel.

9 Q. And how often did that happen?

10 A. I don't know, four or five times in the last two  
11 or three months.

12 Q. That contributed to quite a bit of spillage there  
13 then?

14 A. Yeah. Sometimes it stalled the belt out. I don't  
15 know why it didn't break, but it stalled the belt out.

16 Q. What about the belt line at the Mother Drive, the  
17 Mother Belt, and then coming down here on the Six  
18 North belt and Five North belt, what type of condition  
19 were these belts in?

20 A. They was in pretty good condition.

21 Q. Pretty good condition?

22 A. Yeah. They was rock dusted. Like I said, that's  
23 why they --- my opinion is that's why the --- one of  
24 the reasons why it stopped where it did, because if  
25 they hadn't been in good shape, it would have picked

1 up dust and took it on out, I think.

2 Q. Did you ever find in these areas any problems with  
3 float dust on the belts or anything?

4 A. No. He took pretty good care of it what times I  
5 walked it.

6 Q. How often did they have to rock dust those belts?

7 A. I wouldn't know.

8 Q. Wouldn't know that?

9 A. No. Like I say, if somebody was off, a lot of  
10 times --- when they brought us in this area, if  
11 somebody was off, I'd usually walk from the Mother  
12 Drive up to probably --- sometime up to Four North  
13 belt, just whatever area that needed fire bossed. A  
14 lot of times they'd have it scheduled, but they'd only  
15 have one man, you know. They'd have --- well, two  
16 men. One man would be off and just have one person to  
17 fire boss. Usually that guy took care of the north  
18 and this area in here. I've walked these belts for  
19 him.

20 Q. Okay. So you did the on-shift on the belts or who  
21 did? They were in pretty good shape?

22 A. Yeah, a lot of times I walked them.

23 Q. Sometimes you walked them, okay.

24 ATTORNEY BABINGTON:

25 Let's take a quick break.

1           SHORT BREAK TAKEN

2           ATTORNEY BABINGTON:

3           Go ahead, Dave.

4           BY MR. STEFFEY:

5           Q. Your Solaris, did you take it home to charge it  
6           or ---

7           A. Uh-huh (yes).

8           Q. --- did you ---? You took it home to charge it?

9           A. Yeah.

10          Q. Who calibrated it and maintained it?

11          A. Most of the time we'd take --- we had our own  
12          machine right there. There's one when you walked in  
13          the mine office.

14          Q. So you have Galaxy there that you would put it in?

15          A. Yes.

16          Q. Okay.

17          A. And you had a pump tester beside of it.

18          Q. Okay. Who was your immediate supervisor?

19          A. I would say Everett Hager.

20          Q. And can you take me through the management  
21          structure at UBB?

22          A. I guess it would be Everett, then Wayne.

23          Q. And Wayne Persinger?

24          A. Persinger. Then --- I don't even know his name.

25          Blanchard, Chris Blanchard.

1 Q. Chris Blanchard? Okay. Have you ever been  
2 underground working when a ventilation change was  
3 made? I know you said you ---.

4 A. Yeah.

5 Q. Did they do this while coal was being mined, when  
6 you're in the active production shift? Do you ever  
7 remember them doing that or being told to do that?

8 A. They'd have to specify as the air changed, you  
9 know, what knocking --- knocking stoppings in,  
10 building some back or ---?

11 Q. Yeah, knocking stoppings, building some back,  
12 changing the air direction in an air course during an  
13 active production shift. Do you ever remember anybody  
14 doing that or being told to do that?

15 A. Not really. I don't guess. I can't remember if  
16 it was --- when we done it, you know, if it was  
17 between shifts, you know, like some of these we build  
18 up here, it's like in between shifts, I believe they  
19 changed.

20 Q. Now, between shifts, do you --- you mean between  
21 first and second or ---?

22 A. Yeah.

23 Q. Okay.

24 A. I believe so. I believe that's whenever they  
25 changed --- well, it would be this area right here.

1 They'd have it set up to where they'd just knock a  
2 stopping, and it just, you know, and they would change  
3 it.

4 Q. Okay.

5 A. Now, this one up here, ---.

6 Q. Do you ever remember any air reversals?

7 A. Yeah.

8 Q. When? Can you remember the last one?

9 A. On the day of the explosion.

10 Q. On the day of ---.

11 A. Well, the Friday before. Like I said, we was  
12 cutting that channel and all the air was going out of  
13 Ellis on that day, you know. That was that Friday  
14 night. And like I said, all the dust was going out  
15 the 12 breaks outside of Ellis while we was cutting  
16 that hole there, because nobody wouldn't let nobody  
17 go, you know.

18 Q. And when was this again?

19 A. That was on the Friday morning before Easter.

20 Q. Friday morning before Easter. So that was the  
21 Friday before the explosion?

22 A. Yes, sir.

23 Q. What happened after that?

24 A. Well, we come back in on Monday. And I never did  
25 pay no attention that Monday morning, but I come back

1 where I was telling you that the guys was cutting  
2 overcasts, the dust was going in and going towards ---  
3 what you'd say down by Ellis going inby.

4 Q. So everything was traveling inby on that day, on  
5 the day of the explosion?

6 A. Yes, sir.

7 Q. Any idea what caused that air reversal?

8 A. No, sir. I'd like to know myself. Because after  
9 the explosion, the air started coming back out.

10 Q. Did you talk to the section crews on that Friday?

11 A. No, sir, I sure didn't, because we left pretty ---  
12 we left outside pretty early because I had a lot of  
13 work to do up on Ellis, and I took the two guys that I  
14 had that day. See, like I said, they took one of my  
15 guys. I believe one guy was off, or they took him  
16 somewhere else, and I had Dennis Simms and Jacob Daws  
17 with me, and we went in and that's where we was going  
18 to hang that highline and set that 500 kV box.

19 Q. Do you remember any other air reversals?

20 A. No, sir.

21 Q. Okay.

22 A. The only thing I remember is just, you know, like  
23 we talked before, all the air was pulled.

24 Q. Okay. Do you ever remember being told that there  
25 was an inspector on the property?

1 A. That very day, no, sir.

2 Q. Did anybody ever let you all know that there was  
3 an inspector on the property? Anybody ever call  
4 inside and say there's an inspector or we got company?

5 A. Yeah, we got company.

6 Q. How often did that happen?

7 A. I don't know. Every now and then. I guess if he  
8 was coming towards your direction, you know, to tidy  
9 up.

10 Q. And who would call in and tell you?

11 A. I don't know who it would be. Somebody would come  
12 and tell me because usually I wouldn't be near a  
13 phone. Whoever's near a phone might come by and tell  
14 you, we got an inspector coming.

15 Q. Okay. Do you know who told the people outside,  
16 did they await the inspector and saw him coming up the  
17 hill or did security call him or how did that work?  
18 Don't know?

19 A. You don't know. Most of the time whenever you all  
20 pull in the driveway --- in the parking lot, you know.

21 Q. Did anybody in mine management ever caution you  
22 about what you say to inspectors and why and that the  
23 inspector is not there to help the miner or the  
24 company?

25 A. No.

1 ATTORNEY BABINGTON:

2 I'm sorry. Was that a no?

3 A. No.

4 BY MR. STEFFEY:

5 Q. Do you know of any complaints about unsafe  
6 conditions against this mine that were made to MSHA?

7 A. No, sir.

8 Q. What about to the company?

9 A. I don't know if anybody made --- you had a  
10 suggestion box, I guess, out there at one time.  
11 Probably somebody has ---.

12 Q. Did management ever mention that there had  
13 been ---?

14 A. No, not as I'm --- not as I'm aware of.

15 Q. Any of your --- did you ever have any concern?  
16 Did you ever complain to them about anything?

17 A. Just that area down there at that bad top. I  
18 didn't like my people going in there.

19 Q. What was their reaction?

20 A. You know, work on it. Try to make it as safe as  
21 you can. We need to get this --- you know, they was  
22 really trying to get that to work.

23 Q. Yeah.

24 ATTORNEY BABINGTON:

25 You're referring to the bad top in the

1 Headgate One North section?

2 A. Yes.

3 BY MR. STEFFEY:

4 Q. Let's go back to the --- I guess to the hazardous  
5 condition there. Did any of your guys ever have any  
6 concerns? Did they ever express any concerns?

7 A. Yeah. They didn't like the roof and ribs, you  
8 know. Anybody that went down through there probably  
9 wouldn't have liked them.

10 Q. Okay. Were you ever around when there was a  
11 citation issued?

12 A. Sure. I was the section boss for years, you know.

13 Q. Yeah. Well, in this area right in here.

14 A. No, sir.

15 Q. Wasn't around. Did you ever come outside after  
16 one had been issued?

17 A. They pulled us back one time. We was in this  
18 area. I guess on 22 one time, and they had been up in  
19 the face, and we was --- I believe we was working on  
20 the overcasts at that time, and they pulled everybody  
21 back to the mouth of the section. I can't remember  
22 what for.

23 Q. You don't remember what for?

24 A. No.

25 Q. Was that the first time that happened or ---?

1 A. No. Probably two times I believe I've seen that  
2 happen, the inspector pulled everybody back to the  
3 mouth before ---. I can't remember if it was over  
4 the ---.

5 Q. Don't remember what it was over.

6 A. Seemed like to me something --- had to do  
7 something with the refuge chamber maybe one time or  
8 something like that.

9 Q. What was management's reaction to the inspector  
10 pulling back? How did ---?

11 A. Well, you know that he ain't going to like it.

12 Q. What about the men working? Does the section boss  
13 or anybody ever make the decision to pull his crew  
14 back because he felt like it was unsafe?

15 A. Not as I know of.

16 Q. If a man had made that decision, what do you think  
17 would have happened to him?

18 A. They would have probably fired him.

19 Q. So there was a lot of pressure at this mine to run  
20 coal?

21 A. Oh, yeah.

22 Q. Do you know where that pressure came from?

23 A. Most of it comes from the top.

24 Q. And the top meaning?

25 A. Probably Blanchard on up.

1 Q. Okay. About when did the ventilation problems  
2 start in this mine?

3 A. I didn't know they ever stopped.

4 Q. Didn't know they ever stopped?

5 A. No.

6 Q. This area right in here, ---.

7 ATTORNEY BABINGTON:

8 Which area is that, Dave?

9 BY MR. STEFFEY:

10 Q. And this is the area coming off Six North belt to  
11 the Mother Drive right here, going up Headgate Number  
12 One and in the area of the cut-through.

13 A. Like I said, they've changed this, I don't know  
14 how many times. I've built so many stoppings and  
15 doors and stuff through this area from the different  
16 times it's been changed.

17 Q. Do you feel like management made long-term plans  
18 for this mine or do you feel like everything was on  
19 short term ---?

20 A. Everything was rushed.

21 Q. Everything was rushed?

22 A. That's my opinion. The longwall should have never  
23 started when it did. Headgate 22 should have been  
24 drove up before the longwall even started.

25 Q. What was your reasoning for that?

1 A. To get better ventilation.

2 Q. To get better ventilation. Now, you said the  
3 ventilation problems never stopped there. What  
4 concerns did you have on the ventilation?

5 A. Just like I said, my concerns was that, because  
6 you all is coming --- you all come and inspected. But  
7 it was always changed around in that area up at the  
8 Headgate One North to Headgate 22. That area right  
9 there, it was changed several times.

10 Q. Your upcoming work shift, was it ever delayed due  
11 to an unsafe condition in the mine?

12 A. God, you're asking me something ---. I don't even  
13 know that I can even remember from one day to the  
14 next.

15 Q. Nobody ever ---?

16 A. I don't believe so.

17 Q. Don't believe so. The carbon monoxide monitoring  
18 system in the mine, did it ever go into the alert or  
19 alarm status? Do you ever remember someone saying we  
20 got a carbon monoxide alert or ---?

21 A. Well, a lot of times they called me on there to go  
22 check them, you know, different places. That's like  
23 that --- that would be the drive down there where that  
24 tailgate probably --- well, this ain't on this map.  
25 I'd have to show you on another map. Down there, it

1 would go off every now and then. They'd have to go  
2 down there and check it and see.

3 Q. Would they tell you if it was an alert or an  
4 alarm, or they just said, go check it?

5 A. Just alarm.

6 Q. Just alarm.

7 A. They said, it's going off, to go check it and see  
8 what it is.

9 Q. Okay.

10 A. I'd go down, you know, just different --- if I was  
11 in the area, they would mostly call --- usually Tom  
12 Sheets or Virgil would call me and said he had an  
13 alarm. Somebody would tell them they had alarmed and  
14 ask me to go check it for them, and I'd go look.

15 Q. And you mentioned there was a lot of pressure at  
16 this mine to run coal.

17 A. Yes.

18 Q. You mentioned you felt like this pressure came  
19 from the top. Did you think that anyone ever ---  
20 maybe they encouraged shortcuts, not, per se, telling  
21 you to do it, but if you do it and you don't get  
22 caught, we're going to turn our head? Was that the  
23 attitude?

24 A. I couldn't say on that.

25 Q. Couldn't say on that. Did you ever see Chris

1 Blanchard or Jason Whitehead underground anywhere?

2 A. Yes, sir.

3 Q. Did they ever talk to you or your crew?

4 A. Very seldom, but I had seen them a couple days  
5 before. We was down there working on that beltline.  
6 They come down wanting to know why it ain't in and all  
7 this stuff and started throwing things around.

8 Q. So they'd come underground and kind of show their  
9 temper a little bit and ---?

10 A. Well, they didn't show their temper. They just  
11 come down there, fooling around with us. I got my own  
12 set way of installing a belt, and that's the way I go.  
13 They didn't like it. I told them, that's the way it's  
14 going to be or I was leaving.

15 Q. What did they disagree with on your way?

16 A. Well, they was just wanting to drop --- you know,  
17 put top structures out before you even put the rails  
18 and stuff, and you're going to have to hang and carry  
19 rails four or five breaks, you know, your rails and  
20 your bottoms and your spreaders and stuff like that.  
21 I told them, no. As soon as we got the other stuff  
22 like that, I'm going to put our tops down and makes it  
23 easier on the men.

24 Q. So they wanted it rushed and what you wanted to do  
25 was go about it in an orderly fashion and make sure

1 your people ---?

2 A. Yeah. I always lay my stuff out before.

3 Q. Did anybody --- Blanchard or Whitehead, did they  
4 ever say anything to the effect that vacation may be  
5 cancelled or the mine may be closed if production  
6 doesn't pick up? Did ---?

7 A. No, I never heard that.

8 Q. You never heard them throw anything out like that?

9 A. I never got my vacation on the right time anyway,  
10 so ---.

11 Q. Okay.

12 A. I always had to work through a something.

13 Q. Did you ever see Chris Adkins or Don Blankenship  
14 at the mine?

15 A. Yeah, I've seen Chris, not --- with Don, it's been  
16 years.

17 Q. Did you ever talk to Chris about anything?

18 A. Not really.

19 Q. Not really. Did he ever say anything about  
20 vacation being cancelled or anything?

21 A. Uh-uh (no).

22 Q. Nothing ever posted on the board or anything that  
23 we need to run coal and pick up production?

24 A. Oh, now, we have had some on weekends.

25 Q. On weekends?

1 A. You know, on these three-day --- we have run but  
2 as far as --- I was thinking you was meaning like a  
3 week's vacation or something like that cancelled.

4 Q. Okay. But they'd take your weekend from you and  
5 run more coal?

6 A. Sometimes.

7 Q. Sometimes?

8 A. Of course, it was according to what was going on.  
9 A lot of times they'd take a weekend like that. The  
10 crews wouldn't run coal, but they would do --- you  
11 know, like the set-up work or something like that. It  
12 might be down there and like cutting that top. Like  
13 whenever they was down here, cutting this, I believe  
14 them guys worked more north. They was, you know, ---.

15 Q. Yeah.

16 A. They worked a whole weekend like that.

17 Q. Let's talk about the day of the accident for a  
18 minute. Where were you at the time of the accident?

19 A. I just finished and walked out of the drift mouth.

20 Q. Okay. So you felt the rush of air?

21 A. Yeah.

22 Q. Okay.

23 A. Yeah, it was rushing. Them boys ( [REDACTED]

24 [REDACTED] You know, it was [REDACTED] .

25 Q. Okay.

1 A. Trying to hold onto something.

2 Q. What did you do after that?

3 A. We wondered what --- I asked what happened. They  
4 said, well, they didn't know what happened, so ---  
5 they said, well, maybe we had a big roof fall. And I  
6 said, I don't believe we would have one that big. So  
7 I ran upstairs and got on the phone, trying to find  
8 out what was going on. Meanwhile, while I done that,  
9 somebody called and said the COs was going off at ---  
10 from 78 Break to 42 Break the COs was going off, so  
11 --- that was Blanchard. And I guess Everett --- I  
12 believe Whitehead come up there, because he's the one  
13 that took off with my detector. His detector was low  
14 or something. He grabbed my detector and took off  
15 with it.

16 Q. So he went in the mine?

17 A. Yeah. There was three or four of them went in the  
18 mines. I don't know who all. They told me to  
19 maintain the phones in case I heard communication,  
20 listen and see if I could hear anybody.

21 Q. Okay. Never did hear anybody, though?

22 A. Well, whenever Gary May got to 42 Break and said  
23 he seen a light coming up. He said he didn't find  
24 nothing there. He seen a light coming down the track.  
25 He said it's dusty, but he seen the light down the

1 track. So whenever he came back, that's whenever he  
2 called me and said, we need an ambulance and we need a  
3 bunch of them now. So that's whenever I called for  
4 the emergency crews.

5 Q. Do you know who called MSHA?

6 A. No, sir.

7 Q. Did you go underground on the day of the accident?

8 A. No, sir.

9 Q. After the accident occurred?

10 A. After the accident, no, sir.

11 Q. Okay. Were you underground any time after that?

12 A. No, sir, other than just right in the portals, you  
13 know. We took a couple air readings and stuff,  
14 different ---.

15 Q. Do you know how people were accounted for that  
16 were entering and exiting the mine?

17 A. What, that day?

18 Q. Yes.

19 A. On the check-in board?

20 Q. Yeah, after the accident.

21 A. After the accident, they come down and got a list.  
22 See, I already had --- two of my people had already  
23 left and went off the hill, so I knew they was  
24 outside. So I accounted for them. I accounted for  
25 myself. And my other guy was sitting outside because

1 he didn't know what --- he was wondering what was  
2 going on, Dennis Simms.

3 Q. And you mentioned Whitehead went in the mine. Did  
4 Blanchard go with him?

5 A. Yes.

6 Q. Did they have SCSRs on?

7 A. On?

8 Q. Yeah. Did they have --- on their person?

9 A. I don't know.

10 Q. Don't know?

11 A. No.

12 Q. Didn't see them pick up any on the way in?

13 A. Like I said, I was maintaining the phone.

14 Whenever he come behind, I know he did get my detector  
15 when I was on the phone.

16 Q. Did you ever get your detector back from  
17 Whitehead?

18 A. No, sir.

19 Q. Okay. Were you there when they came out? How  
20 long were you at the mine after that?

21 A. Twenty-two (22) hours.

22 Q. Twenty-two (22) hours. So were you there when  
23 Whitehead and Blanchard came back out?

24 A. Yes, sir. I believe they come out --- back out on  
25 the other side.

1 Q. Did you happen to notice if they had an SCSR on  
2 them?

3 A. No, sir.

4 Q. Okay. Did they say anything? Did they mention  
5 anything about how far they'd been or where they'd  
6 been?

7 A. While I was listening on the phone, they went down  
8 on the tailgate side, and I believe the CO got too bad  
9 after they had left, before they found the first man.  
10 They went down on the tailgate side and they had come  
11 back out. And from what I could understand, they got  
12 within two breaks of the head drive on the headgate  
13 side, ---

14 Q. Okay.

15 A. --- and they had to retreat, come back out.

16 Q. Okay. Did Whitehead and Blanchard ever mention  
17 making it up on the Headgate 22 section? Did they  
18 ever ---?

19 A. No.

20 Q. Anybody ever mention that?

21 A. No.

22 Q. Okay. What were the --- the stair-step bleeder  
23 system that they used at the back of these longwall  
24 panels, do you know of any problems that were  
25 associated with those?

1 A. No, sir.

2 Q. Okay. Do you know of any problem with the  
3 tracking system at this mine prior to the accident?

4 A. I don't believe the tracking, but the Walkie  
5 Talkies from time to time.

6 Q. So that's how the dispatcher kept track of the  
7 underground employees, was a Walkie Talkie?

8 A. No. I guess he had his tracking --- you had your  
9 tracking system. It worked.

10 Q. Okay.

11 A. Because several people, you know, set on them or  
12 something like that and go off and they'd go to  
13 hollering at them.

14 Q. Oh, okay.

15 A. You know, I have heard ---.

16 Q. You've heard ---?

17 A. I believe like a couple days before that Tom  
18 Sheets had sat on his or laid it down on the --- on  
19 his Jeep with his tool pouch.

20 Q. Okay. Does the company have any type of incentive  
21 program in mind at the mine in regard to production or  
22 safety?

23 A. They had that Raymond --- you know, the Raymond  
24 points and stuff like that.

25 Q. Okay. Did everybody share in that equally, the

1 salary and the hourly employees?

2 A. I guess.

3 Q. Do you know of anybody that was ever encouraged to  
4 take light duty rather than turning in something as a  
5 lost-time accident?

6 A. You know they did. At one time it looked like the  
7 Upper Big Branch Memorial out there. You know, that's  
8 been, you know, several years back, but ---.

9 Q. Did you ever visit an area called the Glory Hole?

10 A. Yeah. I cut all the head and drive and stuff out  
11 of it.

12 Q. Did you ever find any methane around that?

13 A. Not around it.

14 Q. Not around that.

15 A. I know the CO was, you know, if I remember, up in  
16 the hole, I know that they was --- somebody went to go  
17 up in there one day and --- you know, to get up in  
18 there to get those radioactive monitors or something  
19 out. They was going to take them out, and the CO was  
20 bad and they didn't --- they retreated back out of it.

21 Q. Okay. Did you know Josh Napper?

22 A. Napper (corrects pronunciation), yes.

23 Q. Are you aware of the letter that he wrote to his  
24 family prior to the accident?

25 A. I heard about it.

1 Q. Why do you think he'd write a letter like that?

2 A. I don't know. I don't know. He just seemed like  
3 a happy-go-lucky guy. And the area he was in, I  
4 didn't think it was really --- you know, he was  
5 working outby.

6 Q. Did he ever have any complaints to management  
7 about the unsafe ---?

8 A. Not that I know of. You know, I talked to him  
9 that morning. I told him he's just a big boy. I told  
10 him I was going to whip him, you know.

11 Q. Do you feel that Upper Big Branch was a safe mine?

12 A. My opinion, I can't understand what happened. I  
13 don't know. I've seen a lot worse. Like I said, I've  
14 worked at Eccles, ICG and around some other places  
15 been.

16 Q. Do you think that production and profitability  
17 were placed above safety by upper management?

18 A. They can.

19 Q. Can?

20 MR. STEFFEY:

21 That's all I've got.

22 EXAMINATION

23 BY MR. FARLEY:

24 Q. Marvin, be patient with me. I've got several  
25 things to clarify, and it sort of comes from different

1 directions. The information that we received from the  
2 company regarding employees in your case indicates  
3 your status is A1. Do you have any idea what that  
4 means?

5 A. No, sir. What's A1?

6 Q. I don't know. No idea. There are others that may  
7 be A2 or A3 or something. I'm just curious as to what  
8 that meant. Now, if I understand correctly, you're an  
9 hourly employee; is that right?

10 A. Yes, sir.

11 Q. Now, the area where you were working ---

12 A. At the Ellis.

13 Q. --- at the day of the --- on the day of the ---  
14 what's that construction area called? Does it have  
15 any name that you use for it?

16 A. I believe I just used --- I believe I put on that  
17 book it was LBB construction area.

18 Q. Okay.

19 A. I believe that's what I put.

20 Q. All right.

21 A. Or it might have been Ellis Four Tail, I don't  
22 know. Just some, you know, ---.

23 Q. Okay.

24 A. I just made up a book and put something on it.

25 Q. All right. Okay.

1 A. It hadn't been --- it shouldn't have been about a  
2 --- maybe a week or a half old, stuff like that.

3 Q. Okay. Well, again, jumping around, the doors  
4 around 80 Crosscut, I think you indicated that they  
5 were supposed to operate automatically but did not.

6 A. Yeah. They had jacks and stuff on them, but they  
7 wasn't --- you had to get out and open each one.

8 Q. Did they ever, at any time, operate automatically?

9 A. Yes, sir.

10 Q. Do you know when they ceased operating  
11 automatically?

12 A. That would be a hard one.

13 Q. If you know.

14 A. No, I wouldn't --- I couldn't even imagine when.  
15 It's been --- I'd say last fall or something. It's  
16 been a while.

17 Q. Okay. All right. This mine seems to have a  
18 considerable number of doors.

19 A. More doors than you needed, in my opinion.

20 Q. Okay. That was my next question.

21 A. These guys couldn't mine coal back in the '70s,  
22 could they?

23 Q. Have you ever seen doors used to this extent at  
24 other mines where you've worked?

25 A. No, sir.

1 Q. Okay. You were talking about Griff, who a couple  
2 weeks prior to the accident said that he cut his  
3 thumb?

4 A. Yeah. Well, he fell backwards and hit something,  
5 yeah, and cut his thumb.

6 Q. And you indicated that that was the closest --- he  
7 said to you that was the closest he's ever come to  
8 getting killed?

9 A. Yeah.

10 Q. What made him stop --- what exactly was he doing,  
11 or do you know?

12 A. He was back --- he'd --- he told me he was lifting  
13 --- he might have backed up and was cleaning up the  
14 other side and he was --- said he was bitching about  
15 the way the curtain was, you know, how they had to  
16 hang a curtain up so close. And he said something  
17 about, well, he got in there and he got trapped, you  
18 know, right there with the curtain and he said he  
19 couldn't --- whenever it fell out that he could hardly  
20 run, you know. He said just like it didn't --- it  
21 fell the opposite direction, you know, when it  
22 flipped.

23 Q. Okay. All right. You said that there was an  
24 occasion at least once where you found the belt  
25 smoking. Did you actually see any --- ever actually

1 see any flames?

2 A. No. No. It was just --- it was smoking real bad.  
3 We took and dug it out and I took the water hose and  
4 forced it out.

5 Q. Okay. Now, when you found the belt smoking, did  
6 you notice any burning sensation in your eyes?

7 A. It wasn't really that bad. You know, it was  
8 uncomfortable to breathe, but no, it wasn't really  
9 that bad, whatever.

10 Q. Okay.

11 A. Like I said, I had three or four other people with  
12 me whenever we stopped and put it out, or dug it out  
13 to where it quit smoking.

14 Q. Okay.

15 A. Then we left the belt down, and I believe set a  
16 bearing down, too. It had been --- the bearing didn't  
17 start. It wasn't --- the bearing had got hot, and I  
18 left it down and told them to come and check it.

19 Q. Okay. All right. Let's go back to this Friday  
20 before the explosion, which would be, I think, April  
21 2nd.

22 A. Okay. I was on the hoot owl shift, the a.m.  
23 shift.

24 Q. All right. Now, I think you told us that on  
25 Friday the air in the Ellis Switch, Ellis Portal area,

1 where you were working, was moving ---

2 A. Outby.

3 Q. --- outby.

4 A. Going toward the outside.

5 Q. The following Monday it was moving inby?

6 A. Yes, going inby.

7 Q. Any idea why that was happening or why it changed?

8 A. No, sir.

9 Q. Okay. Since the explosion, have you heard of any  
10 air changes that might have been made on April 4th,  
11 prior to this explosion?

12 A. No, sir.

13 Q. Okay.

14 A. If they was, that's the reason why the air was  
15 going inby with it.

16 Q. I don't know.

17 A. You see what I'm saying?

18 Q. Yeah. That's why I asked. I think you were on 22  
19 Headgate section at some point, weren't you?

20 A. What?

21 Q. Twenty-two (22) Headgate section, you were on that  
22 section?

23 A. Yeah. We was up there building some overcasts and  
24 stuff.

25 Q. Okay. Did you see any ---?

1 A. Laying track.

2 Q. Did you see any bottom hooving on the 22 Headgate  
3 section anywhere?

4 A. That bottom was rough up through there. I guess  
5 you could call it --- yeah, it was probably hooving.

6 Q. Okay.

7 A. Because there would be holes full of water and,  
8 you know, the bottom was busted up, you know, quite  
9 bad, ---

10 Q. Okay.

11 A. --- you know, in places.

12 Q. All right. Now, you indicated that it was  
13 necessary to run the longwall at a reduced speed  
14 because it would --- if you ran it too fast, it would  
15 gob out ---

16 A. The belts could ---.

17 Q. --- and bounce outby?

18 A. Yeah.

19 Q. And was that regular routine as far back as far as  
20 during the time this panel --- this current longwall  
21 panel was in operation?

22 A. Yeah.

23 Q. Okay.

24 A. They worked --- they kind of worked pretty good,  
25 you know. Every once and a while they get --- ever

1 since that longwall was there, and I guess other  
2 people can verify this, the longwall's never went a  
3 hundred percent. It never run --- it's never run 60  
4 percent. Belts can't handle what that thing puts out.

5 Q. Okay. Do you know who the dispatcher was on April  
6 the 5th?

7 A. No.

8 Q. Okay. Did you know if the dispatcher routinely  
9 kept a written log of underground track?

10 A. Yeah.

11 Q. Okay.

12 A. Usually every morning we call and tell him who we  
13 have, you know, and where they was going to.

14 Q. Okay. Do you know a --- did you know a UBB  
15 employee by the name of Mike Elswick?

16 A. Yes, sir. I met him one time.

17 Q. Do you know if he was working on April 5th?

18 A. Yes, sir.

19 Q. Do you know if he might have left the mine early  
20 that day?

21 A. No.

22 Q. Okay.

23 A. That's the new fire boss who found the Mother  
24 Drive; ain't it?

25 Q. Excuse me. I'm sorry. Did you hear --- what I

1 meant to ask was, did you hear anything about him  
2 calling out to say his eyes were burning at any point?

3 A. Uh-uh (no).

4 Q. Okay.

5 A. No. I met him that morning --- well, talked to  
6 him that morning. I believe I got an SC --- no.  
7 Something about his SCSR that morning.

8 Q. Okay.

9 A. And they hired him like Friday. He was on the  
10 hoot owl shift. They hired him on Friday, and like I  
11 said, Monday morning I didn't even know he was until I  
12 seen him.

13 Q. All right. At the mouth of the current longwall  
14 panel, are you aware of any work done in that area  
15 immediately outby the current longwall panel in  
16 preparation for the next longwall move?

17 A. You mean the ---?

18 Q. Any equipment in there, anything been done to get  
19 things established to make sure they move the  
20 longwall?

21 A. I think they brought a bolting machine up there.  
22 I believe Timmy and them was up there at the time,  
23 getting ready to bolt up for a pull-out, wasn't he?  
24 That's where they found the three guys, the three or  
25 four of them, right there.

1 Q. Do you know where the bolting machine was located?

2 A. No, sir, because I just ---.

3 Q. Okay.

4 A. That's one of the reasons --- that's the reason  
5 Timmy was there, because his two nephews, Napper and  
6 that other one, wanted to learn how to run a bolting  
7 machine, and he come in with them to show them how.

8 Q. Okay.

9 ATTORNEY BABINGTON:

10 Beth?

11 EXAMINATION

12 BY MS. SPENCE:

13 Q. I just have one question. When you said this was  
14 a dangerous mine, what specifically did you --- were  
15 you referring to?

16 A. It's just the conditions, you know, from one time  
17 to the next, you know. The top changes in this mines  
18 quite a bit. It can go from sandstone to slate, back  
19 to sandstone within, you know, six or seven breaks.

20 Q. Do those kind of conditions ---?

21 A. Plus the coal seams, a lot of --- you know, the  
22 coal seam might be, let's say 50 inches, but the  
23 height might be 70-some inches. You got this rock  
24 that you're bolting up. You know, you got the rib  
25 rolls, you know, your top conditions and stuff like

1 that. A lot of that slate will crumble up and fall  
2 out between the bolts, you know, back in old areas.

3 Q. Compared with other mines you've worked in, how  
4 would this one rate in terms of what you call these  
5 dangerous conditions?

6 A. I don't know. Probably just a five. You know, it  
7 ain't --- any mines can be a dangerous mines, you  
8 know. But you just have so much, I guess, potential  
9 for other things to happen.

10 Q. Thank you.

11 A. You know, I guess this mines --- they always call  
12 it the sleeper, you know. The mines you don't worry  
13 about is the mines you usually --- that you have  
14 trouble with.

15 RE-EXAMINATION

16 BY MR. STEFFEY:

17 Q. Did you ever see Whitehead or Blanchard make a  
18 ventilation change? Did you ever see them knock a  
19 stopping or anything? Did you ever hear of them doing  
20 anything like that?

21 A. Well, I was talking to one of the longwall guys  
22 and he said --- he didn't know who was doing it, he  
23 said, but there had been --- you know, ventilation  
24 would be changed from --- one time like he worked and  
25 he'd come back and there'd be something changed.

1 Q. Which guy was that?

2 A. I can't think of his name now. I'll tell you,  
3 since this happened, I've had trouble thinking, you  
4 know, remembering things.

5 Q. I understand.

6 A. I can think of his brother because his brother ---  
7 his brother works on the longwall. I can't think of  
8 it right now, but he's the foreman on the --- outby  
9 foreman on the longwall.

10 Q. That's fine. You mentioned on the day of the  
11 explosion that you had just walked outside when the  
12 explosion occurred.

13 A. Yes, sir.

14 Q. Did you happen to hear anybody prior to --- just  
15 prior to the explosion hollering out on the mine phone  
16 for the outside or anything?

17 A. Uh-uh (no). No.

18 Q. Had they had any trouble that day on the longwall  
19 at all?

20 A. I don't know. I was back in that area that I was  
21 telling you about hanging highline and stuff.

22 Q. Was there a phone back there or anything?

23 A. No, sir. I was getting ready to put a phone back  
24 in that area.

25 Q. Okay.

1 A. We hadn't got back that far. I believe I carried  
2 about two phones to --- and I was checking the water.  
3 You know, there was an existing section up there that  
4 the telephone on --- the belt control lines along it  
5 still, and I was going to tear up into it, ---

6 Q. Okay.

7 A. --- you know, and get a phone made up in there.

8 Q. When you --- just a couple more questions here and  
9 I'll be done. When you came back to Upper Big Branch,  
10 did they give you any kind of training?

11 A. What?

12 Q. Any task training?

13 A. My eight hours?

14 Q. Yeah, your eight hours or ---?

15 A. Yeah.

16 Q. What about task training? Did they ever task  
17 train you for anything?

18 A. I'm almost sure. I believe --- yeah, I think I  
19 got some task training, yes.

20 Q. Okay. What about the men on your crew?

21 A. Yeah, we pretty well ---.

22 Q. Do you feel like the training that they provided  
23 you was adequate?

24 A. We didn't do that much. You know what I mean? We  
25 wasn't --- most I believe our --- my crew of guys was

1 --- might be around the bolt machine, scoop or maybe a  
2 shield hauler. We was up around that way.

3 Q. Somebody that was new --- let's say somebody had  
4 just gotten their black hat, did you ever have anybody  
5 that was like that or know of anybody in the mine that  
6 had --- you know, a new miner?

7 A. Yeah. Basically I got all them.

8 Q. Basically you got all them?

9 A. I got the red hats.

10 Q. Did the training that they received prior to being  
11 put on your crew include, you know, demonstrating  
12 equipment or anything like that; do you know?

13 A. I usually showed them. Usually that's how --- the  
14 first day was most of the time with me.

15 Q. Okay.

16 A. Some of them was --- you know, I'd get a few every  
17 now and then that would come off of something else.

18 Q. Okay.

19 MR. STEFFEY:

20 That's all I've got.

21 ATTORNEY BABINGTON:

22 Terry, anything else?

23 RE-EXAMINATION

24 BY MR. FARLEY:

25 Q. Did you work on April 4th?

1 A. No.

2 Q. Was the mine idle that day?

3 A. As far as I know, it was. I was in Greenbrier  
4 County.

5 Q. Okay.

6 MR. FARLEY:

7 That's it.

8 ATTORNEY BABINGTON:

9 On behalf of MSHA and the Office of  
10 Miners' ---.

11 MR. TUCKER:

12 I got one more question. Do you got  
13 anything you want to add?

14 A. No, sir. I just want to find out what happened.

15 ATTORNEY BABINGTON:

16 On behalf of MSHA and the Office of  
17 Miners' Health, Safety and Training, I want to thank  
18 you for appearing and answering questions today. Your  
19 cooperation is very important to the investigation as  
20 we work to determine the cause of the accident. We  
21 request that you not discuss your testimony with any  
22 person, aside from your personal representative.  
23 After questioning other witnesses, we may call you if  
24 we have any follow-up questions that we feel that we  
25 need to ask you. If at any time you have additional

1 information regarding the accident that you would like  
2 to provide to us, please contact us at the contact  
3 information previously provided.

4 If you wish, you may now go back over any  
5 answer you've given during this interview. You may  
6 also make any statement that you'd like to make at  
7 this time.

8 A. No.

9 ATTORNEY BABINGTON:

10 Okay. Again, I want to thank you for  
11 your cooperation in this matter.

12 OFF RECORD DISCUSSION

13 ATTORNEY BABINGTON:

14 Just to clarify, if we have any follow-up  
15 questions, we'll be contacting Mr. Rist, ---

16 ATTORNEY RIST:

17 Correct.

18 ATTORNEY BABINGTON:

19 --- who's the personal representative for  
20 the witness.

21 ATTORNEY RIST:

22 His attorney, right.

23 ATTORNEY BABINGTON:

24 His attorney, that's right.

25 ATTORNEY RIST:

1 Okay.

2 ATTORNEY BABINGTON:

3 Okay.

4 \* \* \* \* \*

5 STATEMENT UNDER OATH CONCLUDED AT 10:06 A.M.

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1 STATE OF WEST VIRGINIA )

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4 CERTIFICATE

5 I, Alicia R. Brant, a Notary Public in and  
6 for the State of West Virginia, do hereby certify:

7 That the witness whose testimony appears in  
8 the foregoing deposition, was duly sworn by me on said  
9 date and that the transcribed deposition of said  
10 witness is a true record of the testimony given by  
11 said witness;

12 That the proceeding is herein recorded fully  
13 and accurately;

14 That I am neither attorney nor counsel for,  
15 nor related to any of the parties to the action in  
16 which these depositions were taken, and further that I  
17 am not a relative of any attorney or counsel employed  
18 by the parties hereto, or financially interested in  
19 this action.



20  
21  
22 *Alicia R. Brant*  
23  
24  
25