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Transcript of the Testimony of Thomas Sheets

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STATEMENT UNDER OATH
OF
THOMAS SHEETS

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at The National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Tuesday, July 27, 2010, beginning at 8:09 a.m.

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ATTORNEY HAMPTON:

My name is Polly Hampton. Today is July 27th, 2010, and I am with the Office of the Solicitor, U.S. Department of Labor. With me is Erik Sherer, an accident investigator with the Mine Safety and Health Administration, MSHA, an agency of the United States Department of Labor. Also present are several people here from the State of West Virginia and I ask that they now state their appearance for the record.

MR. FARLEY:

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

MR. O'BRIEN:

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

ATTORNEY KOERBER:

Barry Koerber, Assistant Attorney General, representing the West Virginia Office of Miners' Health, Safety and Training.

MS. SPENCE:

And I'm Beth Spence with the Governor's independent investigation team.

ATTORNEY HAMPTON:

1 There are also other members of the
2 investigation team present in the room with us today.

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

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

1 Safety and Health Act and the West Virginia Office of
2 Miners' Health, Safety and Training. We appreciate
3 your assistance in this investigation.

4 You may have a personal attorney present
5 during the taking of this statement and you may
6 consult with this attorney at any time. Since this is
7 not an adversarial proceeding, formal Cross
8 Examination of you will not be permitted. However,
9 your legal representative may ask any clarifying
10 questions if appropriate. And so the record is clear,
11 do you bring somebody with you here today?

12 MR. SHEETS:

13 Yes.

14 ATTORNEY HAMPTON:

15 Okay. And who is that person?

16 ATTORNEY MCCUSKEY:

17 John McCuskey from the Law Firm of
18 Shuman, McCuskey & Slicer in Charleston.

19 ATTORNEY HAMPTON:

20 Okay.

21 ATTORNEY MCCUSKEY:

22 Polly, may I mention two things,
23 prerequisites here? Mr. Sheets has a condition called
24 [REDACTED], and it [REDACTED]
25 [REDACTED]. So he wanted me to

1 make sure you all knew that. It doesn't affect his
2 memory. It doesn't affect his speech. It doesn't
3 affect his performance. But he certainly didn't want
4 that to be misinterpreted as nervousness or anything
5 of that nature.

6 ATTORNEY HAMPTON:

7 Okay.

8 ATTORNEY MCCUSKEY:

9 It's a medical condition that he takes
10 medication for.

11 ATTORNEY HAMPTON:

12 Okay.

13 ATTORNEY MCCUSKEY:

14 And secondly, I had told Mr. Sheets based
15 on a prior interview because he asked me --- he's a
16 religious man, he speaks with his pastor, he speaks
17 with other people, and he said is this --- is it a
18 requirement that I keep this confidential what is said
19 here today, and I told him, no, and that's contrary to
20 what you just said he was agreeing to. I had asked in
21 a prior one, Mr. Wilson, I said, well, what statute or
22 law requires the witness to maintain secrecy. We
23 understand your legal requirement of this committee.
24 And Mr. Wilson said, as I recall, there is no such
25 thing, but we ask you to keep it confidential. So I'd

1 like to clarify that because he feels very strongly
2 that he is likely to want to speak with others about
3 his interview today ---

4 ATTORNEY HAMPTON:

5 Okay.

6 ATTORNEY MCCUSKEY:

7 --- including his pastor.

8 ATTORNEY HAMPTON:

9 Okay. We can certainly understand a
10 distinction in terms of if you are wanting to discuss
11 certain issues, emotional issues that you're going
12 through with someone such as a pastor, and that I
13 think would probably be acceptable. But we are trying
14 to protect the integrity of the investigation, and
15 making sure that people aren't leaving this room,
16 going out into the community and talking about things.
17 And we want to keep this testimony as pure as possible
18 so that people are coming in here and telling us their
19 version of what they know. So that is primarily the
20 intent behind our request to keep things confidential.

21 ATTORNEY MCCUSKEY:

22 Do we agree, though, it is a request
23 rather than ---

24 ATTORNEY HAMPTON:

25 Yeah.

1 ATTORNEY MCCUSKEY:

2 --- a law? Okay.

3 ATTORNEY HAMPTON:

4 Okay. So as you've indicated, Mr.

5 McCuskey is here with you. Did you voluntarily choose

6 Mr. McCuskey to come in as your personal legal

7 representative?

8 MR. SHEETS:

9 Massey has informed me that they will

10 retain representation for me, and that he represents

11 me, me only and not Massey Coal. So yes, I did

12 request.

13 ATTORNEY HAMPTON:

14 Okay. You made a request to Massey for

15 an attorney to come in and represent you?

16 MR. SHEETS:

17 Yes.

18 ATTORNEY HAMPTON:

19 Okay. Are you paying him directly to be

20 your attorney?

21 MR. SHEETS:

22 No.

23 ATTORNEY HAMPTON:

24 And do you know who is paying him?

25 MR. SHEETS:

1 I assume Massey is. I'm pretty sure
2 Massey is, but I'm not paying him.

3 ATTORNEY HAMPTON:

4 Okay. And so you went to Massey and
5 Massey chose him on your behalf?

6 MR. SHEETS:

7 Yes, ma'am.

8 ATTORNEY HAMPTON:

9 And when did this happen?

10 MR. SHEETS:

11 Yesterday.

12 ATTORNEY HAMPTON:

13 And did you feel like you had a choice to
14 have Mr. McCuskey be your attorney?

15 MR. SHEETS:

16 Yeah. I probably had a choice, yes.

17 ATTORNEY HAMPTON:

18 Okay. Do you currently still feel like
19 you have a choice in this matter to have him here?

20 MR. SHEETS:

21 Yes, yes.

22 ATTORNEY HAMPTON:

23 Okay. So you do consent to having him as
24 your attorney here?

25 MR. SHEETS:

1 Yes.

2 ATTORNEY HAMPTON:

3 Okay. And do you understand that Massey

4 Energy, its affiliates or its officers or directors or

5 attorneys may not represent or direct you in this

6 matter?

7 MR. SHEETS:

8 Yes.

9 ATTORNEY HAMPTON:

10 Okay. All right. And so, Mr. McCuskey,

11 you agree that you are legally representing him in

12 this matter?

13 ATTORNEY MCCUSKEY:

14 I do.

15 ATTORNEY HAMPTON:

16 Okay. And you understand that you may

17 not communicate with Massey Energy, its affiliates,

18 officers, directors or attorneys concerning the

19 substance of this representation?

20 ATTORNEY MCCUSKEY:

21 As I have spoken before in these

22 hearings, the only representations I'm going to make

23 to this body are that I am his counsel, his counsel

24 only and that I will abide by all the rules of the

25 West Virginia Rules of Professional Responsibility.

1 ATTORNEY HAMPTON:

2 Okay. And you are being paid by a third
3 party to provide this representation?

4 ATTORNEY MCCUSKEY:

5 That's correct.

6 ATTORNEY HAMPTON:

7 Okay. Your identity and the content of
8 this conversation will be made public at the
9 conclusion of the interview process and may be
10 included in a public report of the accident unless you
11 request that your identity remain confidential or your
12 information would otherwise jeopardize a potential
13 criminal investigation. If you do request us to keep
14 your identity confidential, we can only promise that
15 to the extent permitted by the law. That means that
16 if the judge asks us to reveal your name or if there's
17 any other law that requires us to reveal your name or
18 if there are other law enforcement purposes, we may
19 have to reveal your name. So we can only give you
20 that promise to a certain extent, and this is only
21 coming from the Federal side as well. The State has
22 their own FOIA requests and their own confidentiality
23 rules that regulate their behavior.

24 Also, there may be a need to use the
25 information that you provide to us or other

1 information we may ask you to provide in the future in
2 other investigations into and hearings about the
3 explosion. Do you have any questions about that?

4 MR. SHEETS:

5 No.

6 ATTORNEY HAMPTON:

7 Okay. After the investigation is
8 complete, MSHA will issue a public report detailing
9 the nature and causes of the fatalities in the hope
10 that greater awareness about the causes of accidents
11 can reduce their occurrence in the future.

12 Information through witness interviews is frequently
13 included in these kinds of reports.

14 Since we will be interviewing other
15 individuals, as we just mentioned, we do request that
16 you not discuss your testimony with any other person
17 other than your Counsel or personal representative, or
18 as you've indicated to us, you might to have a
19 conversation with your pastor.

20 A court reporter will record your
21 interview, so please speak loudly and clearly. If you
22 don't understand a question, please let the person
23 asking you the question know and they can clarify or
24 re-ask it. We want to make sure that you are
25 understanding the questions that are asked of you.

1 And please answer each question as fully as you can
2 including given us any information you might have
3 learned from somebody else.

4 We'd like to thank you in advance for
5 your appearance here. We appreciate your assistance
6 in this investigation. Your cooperation is critical
7 in making the nation's mines safer. After we have
8 finished asking questions, you will have an
9 opportunity then to make any statement you'd like or
10 to provide us with any other information that you
11 think is important. And if at any other time after
12 the interview you have other information you'd like to
13 share with us or something else maybe you forgot to
14 say, please contact us at the information that was
15 provided to you in that letter, Norman Page's address
16 --- I'm sorry, e-mail address and telephone number are
17 in there, and that is a good way to communicate with
18 us.

19 Any statements given by miner witnesses
20 to MSHA are considered to be an exercise of statutory
21 rights and protected activity under Section 105(c) of
22 the Mine Act. If you believe any discharge,
23 discrimination or other adverse action is taken
24 against you as a result of your cooperation with the
25 investigation, you are encouraged to immediately

1 contact MSHA and file a complaint under Section 105(c)
2 of the Act.

3 ATTORNEY KOERBER:

4 Mr. Sheets, I'd also like to inform you

5 that the West Virginia Code provides certain

6 protections to coal miners who participate in

7 interviews such as this, who may encounter some type

8 of discriminatory action at some later due to the fact

9 that they participated in an interview such as this.

10 The code sections --- I want to give you a little bit

11 of information just so you have that with you so you

12 don't have to remember everything that I'm saying.

13 West Virginia Code 22A-1-22 is the code

14 site to which I'm speaking. Any complaint that you

15 might want to file pertaining to any discriminatory

16 action that might occur would be filed with the Board

17 of Appeals. That is an administrative body with the

18 State of West Virginia that hears certain types of

19 coal mine related causes. I will give you this piece

20 of paper, which contains the address to the Board of

21 Appeals, together with the business card for Mr. Terry

22 Farley, who is our lead investigator for purposes of

23 the interview --- interviews. Also, on this piece of

24 paper is the name of Mr. Bill Tucker, who is the lead

25 investigator for the underground segment of the

1 investigation. I would like to caution you, sir, the
2 statute requires that any complaint regarding any
3 discriminatory action that might occur to you must be
4 filed within 30 days of whenever the discriminatory
5 action is. Okay. So let me give you this stuff here.
6 This is for you to take with you and to keep.

7 ATTORNEY HAMPTON:

8 Okay. Do you have any questions before
9 we begin?

10 MR. SHEETS:

11 No.

12 ATTORNEY HAMPTON:

13 Okay. Could you swear in the witness?

14 -----

15 THOMAS SHEETS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
16 AS FOLLOWS:

17 -----

18 ATTORNEY KOERBER:

19 Mr. Sheets, let me just start this out
20 real quickly. You are today pursuant to a subpoena;
21 correct?

22 A. Yes.

23 ATTORNEY KOERBER:

24 I'm going to hand you a copy of that
25 subpoena and ask that you look at that and tell me

1 whether or not that appears to be a true copy of what
2 you received in the mail?

3 A. Yes, sir.

4 ATTORNEY KOERBER:

5 Okay. I would ask that that be marked as
6 Exhibit A or One or however we're marking these and be
7 put into the record here. Polly, do you want to
8 handle the stickers?

9 ATTORNEY HAMPTON:

10 Uh-huh (yes).

11 ATTORNEY KOERBER:

12 Sir, prior to the interview, I offered
13 you two forms because as I explained to you earlier,
14 the statute to which the director is given
15 authorization to issue subpoenas, it requires an
16 individual to receive a \$40 a day witness fee for
17 participating in these interviews together with
18 mileage reimbursed and any tolls that you may have
19 passed along the way here or on your way back home.
20 In order to receive such reimbursement and witness
21 fees, I need you to fill out two forms, one which is
22 an invoice that lists the number of miles traveled and
23 the number of tolls passed roundtrip, also an IRS Form
24 W-9 which is a request for tax payor identification
25 number and certification.

1 Earlier, you had indicated that you may
2 not want to receive this money, and I would like you
3 to state on the record whether you would like to fill
4 out these forms and receive such money or decline.

5 A. I decline.

6 ATTORNEY KOERBER:

7 Okay. Thank you, sir.

8 ATTORNEY HAMPTON:

9 I have marked the subpoena as Exhibit
10 Number One, Sheets 7/27/10. Okay. Mr. Farley?
11 (Sheets Exhibit Number One marked for
12 identification.)

13 EXAMINATION

14 BY MR. FARLEY:

15 Q. Mr. Sheets, would you be kind enough to state your
16 full name for the record, please?

17 A. Thomas Edward Sheets.

18 Q. Okay. Would you also give us your home address,
19 please?

20 A. [REDACTED]

21 [REDACTED]

22 Q. Okay. Is there also a home phone number?

23 A. [REDACTED]

24 Q. Okay. Mr. Sheets, prior to today, have you been
25 interviewed by any other party concerning the Upper

1 Big Branch accident on April 5th?

2 A. Yes.

3 Q. Who would that party be?

4 A. I can't recall their names. Jeff from United
5 States Department of Labor, criminal justice special
6 investigator. There was two that came to my house,
7 and Massey attorney, Chris Pence maybe. That name ---
8 I'm not real good at names.

9 Q. Okay. The attorney that you spoke of, do you
10 recall when that interview took place?

11 A. Shortly after. I --- no, I can't recall when it
12 happened.

13 Q. Do you mean --- when you say shortly after, is
14 that shortly after April 5th, the accident?

15 A. Yes, sir.

16 Q. Okay. Now, what type of questions did this person
17 ask you during that interview?

18 A. Asked me my job responsibilities there, what I had
19 done that day, had I seen any illegal activities.

20 Q. Okay. All right. A little background information
21 here, if you don't mind. What's your total experience
22 as a coal miner?

23 A. Twenty-three (23), 24 years.

24 Q. Okay. And how much --- I'm sorry.

25 A. Give or take.

1 Q. Okay. How much of that experience has been with
2 Massey companies?

3 A. Ten years --- ten and a half.

4 Q. Okay. Where did you work before you joined
5 Massey?

6 A. Target Drilling from Pittsburgh, Pennsylvania.

7 Q. Okay. What'd you do for them?

8 A. Dig gas longwall panels, directional drilling.

9 Q. Okay. How many years were you with Target?

10 A. Less than a year.

11 Q. Okay. What about prior to Target, who'd you work
12 for?

13 A. Princess Polly Anna Coal.

14 Q. How long were you there?

15 A. Three years, give or take a while.

16 Q. Okay. What position did you hold there?

17 A. Electrician.

18 Q. Okay. Now, when did you come to work with Massey?
19 About ten years, is that right?

20 A. Yes, sir, February of 2000, I think.

21 Q. Okay. When did you begin working at the Upper Big
22 Branch Mine?

23 A. I've been at Upper Big Branch the whole time.

24 Q. Okay. And that's about ten years?

25 A. Yes, sir.

1 Q. Okay. If we do the math, that takes it back to
2 around 2000; is that ---?

3 A. Yes, sir.

4 Q. Okay. What West Virginia coal miner
5 certifications do you have, do you possess?

6 A. Well, underground card, mine foreman and fire
7 boss, electrical certification, underground, surface.

8 Q. Okay. How long have you had the electrician
9 certification?

10 A. Fifteen (15), 16 years.

11 Q. Okay. What about the mine foreman and fire boss
12 certification?

13 A. '80, so 30 years, yeah.

14 Q. You say 1980?

15 A. 1980.

16 Q. Okay. Now, did you get --- I assume you got it
17 after you started working in the coal mines?

18 A. Yes, sir.

19 Q. Because I think you indicated earlier you had
20 about 23 years of experience?

21 A. I left the mines for 14 years.

22 Q. Okay. So apparently you have --- the 23 years is
23 sort of divided up then, it's not ---

24 A. Yes.

25 Q. --- consecutive?

1 A. Yes.

2 Q. I've got you. All right. Were you employed at
3 the Performance Coal Upper Big Branch Mine on April
4 5th of this year?

5 A. Yes.

6 Q. Okay. And what was your job on April 5th?

7 A. I am a maintenance foreman.

8 Q. Okay. Now, are you still employed at the Upper
9 Big Branch Mine?

10 A. Yes, sir.

11 Q. Okay. You're still a maintenance foreman?

12 A. Yes, sir.

13 Q. Okay. Now, on April 5th, what was your shift?

14 A. Dayshift, 6:00 to 4:00.

15 Q. Okay. So you were at the mine at the time of the
16 explosion?

17 A. Yes, sir.

18 Q. Okay. Now, was dayshift your normal shift?

19 A. Yes, sir.

20 Q. Who was your immediate supervisor at UBB?

21 A. That would have to be Paul Thompson.

22 Q. Okay. Now, if I understand correctly, your
23 position was that of maintenance foreman?

24 A. Yes, sir.

25 Q. Okay. Does that mean you were a salaried

1 employee?

2 A. Salaried, non-exempt. I am salaried, but I get my
3 overtime.

4 Q. All right. Now, what were your normal duties as
5 maintenance foreman as of April 5th of this year?

6 A. Basically we take care of the belts. I check the
7 fan daily, CO monitors. If --- outby equipment. I'm
8 basically outby.

9 Q. Okay. Now, when you say outby, are you
10 responsible for a specific area of the mine or
11 everything not involved with coal producing sections?

12 A. Everything not involved with production.

13 Q. Okay. Which would that include the entire mine?

14 A. Yes, sir.

15 Q. Okay. Now, where did you normal portal?

16 A. At the UBB Portal.

17 Q. Okay. At Mont Coal?

18 A. Yes, sir.

19 Q. Okay. Is that regular routine?

20 A. Yes, sir.

21 Q. Okay. Now, on April 5th, what time did you arrive
22 at the mine that day?

23 A. Probably between 5:00, 5:15.

24 Q. Okay. Prior to April 5th, what was your last
25 shift worked? I believe that was a holiday weekend.

1 A. Yes, sir. I can't give you a positive answer. I
2 would say holiday weekend, it was probably Friday.

3 Q. Okay.

4 A. I can't be definite.

5 Q. I think that may have been --- as I recall, may
6 have been Easter weekend. Easter Sunday may have been
7 April 4th. Do you recall working on that day?

8 A. No, sir. I would have to check my records.

9 Q. Okay. What were you assigned to do on the morning
10 of April 5th? What were your plans for that day?

11 A. Plans that day, we were in the process of
12 installing a new Mother Drive. We --- I worked
13 basically on putting the cables from the kVA box to
14 the starter box for the Mother Drive.

15 Q. Okay. Now, when you say the Mother Drive, do you
16 mean in the area ---?

17 A. Headgate 22.

18 Q. Where the Headgate 22 belt dumps on to ---

19 A. Yes, sir.

20 Q. --- Seven North? Is that approximately ---

21 A. Yes.

22 Q. --- the area you're talking about?

23 A. This area right here.

24 ATTORNEY HAMPTON:

25 Can you tell us what are you're pointing

1 to specifically?

2 A. Oh, I'm sorry. This --- I have to get it right
3 here. This would --- I can't --- it would be one
4 break outby Seven North Tail.

5 BY MR. FARLEY:

6 Q. If you don't mind, sir, why don't you simply make
7 the area or draw a circle around it and ---?

8 ATTORNEY HAMPTON:

9 I'm handing the witness an orange marker.

10 And I am going to mark this map as Exhibit Number Two,
11 Sheets 7/27/10.

12 (Sheets Exhibit Number Two marked for
13 identification.)

14 BY MR. FARLEY:

15 Q. Draw a circle around --- maybe draw a line out
16 from it and indicate Mother Drive or ---.

17 WITNESS COMPLIES

18 A. Here we go.

19 BY MR. FARLEY:

20 Q. Thank you, sir. Now, apparently you were
21 responsible for a pretty large area. How many people
22 reported directly to you? How many people did you
23 actually supervise?

24 A. Zero. Virgil Bowman and I worked together. We
25 were both supervisors. I sued to be a maintenance

1 boss on the section, and then when we put in the north
2 belt system, six foot belt system, I was in charge of
3 that. And so Virgil and I worked hand in hand every
4 day.

5 Q. Okay. Now, you and Virgil would have been
6 responsible then for the belts, the fan. Would your
7 duties also include CO monitors?

8 A. Yes, sir.

9 Q. Okay. Now, what was your responsibility with
10 respect to the Mother Drive?

11 A. We basically wire them up. We don't do the
12 installation of the drive itself. We take care of the
13 electrical end. We wire them up. We tune them up to
14 make sure they run right.

15 Q. So ---.

16 A. Fire suppression.

17 Q. So you wouldn't show up at a construction site
18 like that until they're ready to have wired?

19 A. No, sir.

20 Q. That's a fair assessment of what you do?

21 A. Yes, sir.

22 Q. Okay. I've got you. Now, what time did you
23 actually travel to the Mother Drive on April 5th?

24 A. I'm going to guess somewhere between eight and
25 nine o'clock. Transportation is a problem. We have

1 to wait 'til our ride comes out before we go in.

2 Q. Sure. Okay. Now, who traveled with you?

3 A. Virgil and myself.

4 Q. Anyone else?

5 A. No, sir.

6 Q. Okay. Now, how long did you stay at the Mother
7 Drive area on April 5th?

8 A. I can state that we came under the Mother Drive
9 belt at Headgate 21 somewhere between 2:00 and 2:15.

10 Q. P.M.?

11 A. Yes, sir.

12 Q. Okay. All right. When you first arrived at the
13 Mother Drive on the morning of April 5th, who else was
14 there? Was anyone else there?

15 A. I don't think so. No, I think we were basically
16 up there, just us two that day.

17 Q. From the time you arrived at the Mother Drive on
18 April 5th until the time you departed in the
19 afternoon, 2:20 or so, did you see anyone?

20 A. I never saw anyone. Virgil saw the --- Elswick,
21 the fire boss that had just been there a few days. He
22 asked me who was that old man. I said, what old man?
23 I didn't see him. He was just there a few days.

24 Q. Okay. Do you recall when and where Virgil saw Mr.
25 Elswick?

1 A. No. It had to be somewhere around two o'clock.

2 Like I say, I can't give you a definite on that.

3 Q. Okay. Did Mr. Elswick offer any indication as to
4 how he was feeling?

5 A. I never saw the man. I can't answer that.

6 Q. Okay. Did Virgil say anything about, Mr. Elswick
7 said that he wasn't feeling well or his eyes were
8 burning or anything like that?

9 A. No, sir.

10 Q. Okay. While you were at the Mother Drive in the
11 time --- from the time you arrived at the mother until
12 the time you left, 2:20 in the afternoon, did you
13 experience any burning sensation in your eyes at any
14 time?

15 A. No, sir.

16 Q. What about Mr. Bowman?

17 A. He never said anything.

18 Q. Okay. Now, I hope I'm not repeating this section,
19 but what exactly did you do at the Mother Drive on
20 April 5th?

21 A. I was hooking up the 350 MCM cables into the
22 starter box. And let's see. I think I had to, you
23 know, pull one and hang it. And as --- I have to
24 recollect that there was a motor crew that came by
25 that day, you know, because you asked me if I saw

1 anybody. A motor crew came by, and I think they
2 stopped and helped me hang the cable. I'm not
3 positive.

4 Q. Okay. Did you see Everett Hager on April 5th?

5 A. I can't remember if I saw Everett that day. No, I
6 just can't remember if I saw him or not.

7 Q. Okay. Now, when you were in the area of the
8 Mother Drive on April 5th, did you notice anything
9 such as doors open that should not have been open or
10 holes in stoppings, anything of that nature?

11 A. No, sir. No, sir.

12 Q. Did the ventilation in the area of the Mother
13 Drive seem to be normal or normal as you had
14 previously experienced it?

15 A. Yes, I would say they were normal that day.

16 Q. Okay. Now, prior to April 5th, when would you
17 have last visited the Mother Drive area?

18 A. The day before probably. April 5th, is that
19 a ---?

20 Q. Monday.

21 A. Monday. Whatever day I worked last, ---

22 Q. Okay.

23 A. --- the --- prior to April 5th.

24 Q. Okay. All right. Was anything different about
25 April 5th as opposed to the previous day that you

1 worked there in the Mother Drive area?

2 A. No, sir.

3 Q. Okay. On the morning of April 5th, would you have
4 any idea when the longwall began producing coal?

5 A. No, sir.

6 Q. Okay. Have you since learned when the longwall
7 might have began producing coal that day?

8 A. I know they were down that day, and by down, I
9 mean they were broke down. And I think it was a
10 ranging arm pin. I recall someone saying normal
11 startup time, they're usually 7:15, 7:30. I think
12 they were down to approximately 2:30 for a ranging arm
13 pin, and they started back up.

14 Q. Okay. Now, this information, is this based on
15 conversations with people after April 5th?

16 A. Somewhat. As I stated when we left the Headgate
17 22 area and came under the belt at Headgate 21, it is
18 our job to know if the belts are running or not.
19 Somewhere between 2:00 and 2:15, the longwall belt was
20 not running, and Virgil and I --- Virgil looked at me.
21 He says, is that belt running? I said, no, it wasn't
22 --- or no, I don't think. I'm not sure on the
23 comment, but I do know after --- after the fact, that
24 I was told that the longwall started at 2:30.

25 Q. Okay. Could you recall who told you that?

1 A. Greg Clay.

2 Q. When did you have that conversation with Mr. Clay?

3 A. Probably --- probably sometime that night.

4 Q. Okay.

5 A. The night was real hectic.

6 Q. Sure. Now, once you and Virgil determined that
7 the longwall belt was not running when you passed
8 through there on April 5th, did you make any calls to
9 inquire as to why it was not running?

10 A. No, sir.

11 Q. Okay. You just continued to the surface?

12 A. Yes, sir.

13 Q. Okay. So you had no idea that the longwall was
14 down that day until later after the explosion; is that
15 correct?

16 A. I can't recall if we knew at some point that day
17 that the longwall was down for a pin, but if the belts
18 is down for a reason that concerns us, we know real
19 quick, which is why we don't get alarmed. The
20 longwall belt starts up, shuts down all day long. If
21 they're going to service the shearer, they stop the
22 belt. If they have to pull belt structure out, they
23 stop the belt. So when they call us is when we have
24 to get concerned.

25 Q. Okay. So they would call you when there's

1 actually a problem with the belt?

2 A. Yes, sir.

3 Q. All right. Okay. As you and Mr. Bowman pursued
4 to the surface at 2:20 or so in the afternoon on April
5 5th, did you encounter any other people as you pursued
6 to the surface?

7 A. We talked to Scotty Halstead. We were at ---
8 called for the road at 78 Break, and Scotty Halstead
9 called us on the radio. He had a problem with a mid
10 belt dust spray at Five North belt, and he wanted to
11 know if we could check it. And he said the solenoid
12 was working. We'd had problems previously, belt
13 sprays stopping up, and we did not shut down a six
14 foot belt for the water spray.

15 Q. Okay. Now, you saw Mr. Halstead around 78?

16 A. I did not see Mr. Halstead. He called us on the
17 radio.

18 Q. Oh, okay. Did you actually see anyone ---

19 A. No, sir.

20 Q. --- on your way out?

21 A. No, sir.

22 Q. Okay. No other trips, no other people?

23 A. No, sir.

24 Q. Okay. When you passed through the 78 area, did
25 you --- what was the status of the doors there, the

1 track doors?

2 A. The track doors were closed. We closed them as we
3 went through them. We opened and closed the doors.

4 Q. Okay. What time would you estimate that you
5 passed through those doors?

6 A. It's --- as I said, we were --- come under the
7 Mother Drive for the longwall between 2:00 and 2:15.
8 It's another five minutes to go --- five, ten minutes
9 from the Mother Drive to go through the doors.

10 Q. Okay. So the last time you saw those doors at 78
11 Switch they were closed?

12 A. Yes, sir.

13 Q. On April 5th, that is?

14 A. On April 5th.

15 Q. Excuse me. Okay. What time did you arrive on the
16 surface later on April 5th?

17 A. Approximately three o'clock. And it depends on
18 which watch you looked at, which computer you looked
19 at.

20 Q. Okay. Now, when the explosion occurred, what was
21 your location?

22 A. I do not know if it --- I've given statements,
23 like I said, before and I try to think back on it. I
24 was either in the motor barn or walking between the
25 motor barn and the warehouse. I think I was between

1 the motor barn and warehouse when it happened.

2 Q. Okay. Now, as best you can, just describe what
3 you saw, what you heard, what you felt when the
4 explosion occurred on April 5th.

5 A. As I said, I'm walking towards the warehouse to
6 put up my light, and the fan's making --- it's really
7 --- it sounds like it's going to come off the
8 foundation. So I start running towards the fan. John
9 Henline come down and started running towards the fan
10 with me. Dust started coming out the track entry. We
11 got to the fan house. The --- I started to shut the
12 fan down. I didn't know what happened. I just didn't
13 think that quick, but I thought the fan was coming off
14 the foundation, and I don't want the fan blades going.
15 That's quite a mess, and then just in a matter of
16 minutes it was all over. Pressure came down. I
17 previously stated that the pressure closed the door,
18 but thinking back on it, it was just pressure. It
19 didn't close the doors on the fan. It was just the
20 pressure on the fan itself. I don't think it closed
21 the doors. It just ---.

22 Q. Do you mean the explosion doors?

23 A. Yes, sir.

24 Q. Okay. Now, I think you indicated earlier that
25 part of your duties were to check the fan; ---

1 A. Yes.

2 Q. --- correct? Now, was that the same fan that your
3 duties ---

4 A. Yes.

5 Q. --- required you to check? When was the last time
6 you checked that particular fan on April 5th or
7 before?

8 A. I usually checked those 5:00, 5:15 in the morning.

9 Q. Okay. Did you see anything usual about it that
10 morning?

11 A. No, sir.

12 Q. As far as you know, was it functioning as it
13 routinely did?

14 A. Oh, yes, sir.

15 Q. Okay. Did you typically look at charts, fan
16 charts?

17 A. Yes, sir.

18 Q. Okay.

19 A. If I see anything unusual, if I see where it's
20 going up abnormally or down, I would go to the
21 superintendent, mine foreman and say, hey, did you
22 make an air change, you know, did they report a
23 stopping blowed or anything like that.

24 Q. Would air changes typically cause something to
25 occur on one of the fan charts that you might notice?

1 A. I'm not sure --- if doors are left open, you can
2 see a difference in the chart.

3 Q. Okay. All right.

4 A. I'm not a ventilation expert. I just do notice a
5 difference.

6 Q. I understand. All right. Please continue your at
7 the fan, and after a few moments, the fan seems to
8 normalize. Please continue with what you experienced
9 from there.

10 A. That was basically it. We knew we had an
11 explosion at this point. John Henline said she's blew
12 up and ---. So after the fan settled down, we went
13 back to the mines. Then --- I can't recollect just
14 how long it was. We went to the substation and pulled
15 all the power on the mines, because --- I know the
16 longwall circuit was knocked. I can't recollect if
17 Headgate 22 was knocked or not. I think it was, but
18 it didn't knock all of the power in the mines.

19 Q. Okay. But you and Mr. Henline de-energized the
20 rest of the power?

21 A. Yes.

22 Q. Okay. Now, can you estimate approximately when
23 you did that?

24 A. Somewhere I'm --- not being exact, maybe 3:30,
25 maybe quarter 'til 4:00. I would say it was --- at

1 that point, we were concerned with people underground,
2 trying to contact people. We had had the explosion
3 and it had settled down and people were my concern at
4 that point rather than ---.

5 Q. Sure. Okay. But I want to make sure I understood
6 your correctly. When you and Mr. Henline were at the
7 fan after the fan resumed normal operation, Mr.
8 Henline said something like it's blown up or it blew
9 up?

10 A. Yes, sir.

11 Q. Okay. Was there any doubt in what you were
12 thinking about what occurred at that point?

13 A. Not when --- as we were going over, dust started
14 blowing out the drift. We pretty much know that --- I
15 guess you would say, I panicked a lot. I know things
16 have to be done, but maybe I can't connect everything
17 quite as fast as I should, but ---.

18 Q. No problem. That's fine.

19 A. We knew what happened.

20 Q. Okay. Did you go into the UBB office after the
21 explosion?

22 A. Yes, sir.

23 Q. Okay. Do you recall who the dispatcher was at the
24 time?

25 A. It may have been Adam Jenkins, and I don't want to

1 tell you wrong, but it may have been Adam Jenkins that
2 day.

3 Q. Okay. Did you see Gary May after the explosion on
4 the surface?

5 A. Yes, sir. Gary May went in the mines immediately.

6 Q. Did anyone --- I'm sorry. Go ahead.

7 A. As we're going to the fan, Gary May started
8 running underground.

9 Q. Okay. Was anyone with him?

10 A. He told --- Gary May was in the office and he come
11 out of the office and started underground. He told
12 Rick Foster to --- I think, to get the mantrip and
13 follow him in. He had to go see what happened.

14 Q. Okay. Do you know if Mr. Foster or anyone else
15 then followed Mr. May underground?

16 A. As far as I know, Rick Foster and Gary May were
17 the only two that went in from the UBB Portal at
18 Montcoal.

19 Q. Okay. When you went into the office, did you
20 happen to see the purchasing agent, Greg Clay?

21 A. Yes.

22 Q. Okay. Did you have any conversation with Mr.
23 Clay?

24 A. I'm sure I did.

25 Q. I think you said earlier that Mr. Clay told you

1 that the longwall had been down that day?

2 A. Yes, sir. Like I say, we were all discussing
3 where is everybody at. And unless you've been there
4 when that actually happens, you have no idea what it
5 is.

6 Q. Did Mr. Clay or anyone else tell you the last time
7 he had made contact with the longwall prior to the
8 explosion?

9 A. I think he said that they called out at 2:30, they
10 were running coal, I think is what he said. The
11 longwall has to --- if they're down, they have to call
12 out reports. They have to call out every 30-minute
13 report.

14 Q. I understand. Who else did you see in the mine
15 office around that time?

16 A. I can't remember.

17 Q. Did you see the president, Mr. Blanchard?

18 A. No, sir.

19 Q. Okay. How about Jason Whitehead?

20 A. No, sir.

21 Q. After the explosion, did you take any notes of any
22 kind?

23 A. No, sir.

24 Q. Okay. All right. Now, you went to the fan with
25 Mr. Henline. You go back to the office. Now, 3:30, a

1 quarter 'til 4:00, something like that, what did you
2 do then? What were you assigned to do after that?

3 A. We were --- there was no assignment. We were ---
4 like I say, it was ---.

5 Q. Well, just give me an idea of what you did do
6 then.

7 A. Just listening on the phone, trying to talk to
8 somebody. We were looking at the tracking system,
9 trying to find out where people's at. We were really
10 concerned because when the explosion occurred the CO
11 monitor in the office showed all the high
12 concentrations of CO, but it froze. You know, that
13 was the last readings of everything. It froze in that
14 position, and we knew we had a high concentration of
15 CO up in that area. Let me --- I need to clarify
16 that. We knew we had high concentration on Five North
17 and part of Four North because everything inby was
18 totally wiped out.

19 Q. Okay. Now, I think you indicated also that you
20 tried to make some determination as to the location of
21 people from the communication and tracking system.
22 What was the status of the communication and tracking
23 system at that point?

24 A. It was wiped out also. They could tell the last
25 point that someone passed a tracking device.

1 Q. Okay.

2 A. A tag reader.

3 Q. All right. I think you indicated earlier that as
4 part of your duties you were involved in maintaining
5 the CO monitors.

6 A. Yes.

7 Q. Now, as of the morning of April 5th, was the CO
8 monitoring system at UBB functioning as designed?

9 A. To the best of my recollection, it was.

10 Q. Okay. Were you involved in the installation and
11 maintenance of the communication and tracking system?

12 A. No, sir. No, sir.

13 Q. Okay. Who was assigned to do that?

14 A. Derrick Kiblinger and Patrick Lamas.

15 Q. Okay. Following the explosion on April 5th
16 throughout that evening and into the morning of April
17 6th, did you participate in any meeting involving
18 Performance Coal Company management personnel, UBB
19 management personnel or Massey Coal Services
20 personnel?

21 A. Not as a meeting, but being coal miners you
22 understand when something happens, everybody has an
23 ear to the phone.

24 Q. Right.

25 A. And during --- after the explosion, people was

1 trying to go in and see if they could find surveyors.
2 They had no communications, and the only thing I
3 really had was --- they had communications at 41
4 Break, had one at 78 Break. And I informed Chris
5 Adkins as to how the phone line was run, that it was
6 probably tore up there, where they could get extra
7 phone line so they could have communications up in
8 that area, so vital to have communications, and it
9 speeds things up.

10 Q. Okay. Do you recall approximately what time Mr.
11 Adkins arrived on April 5th?

12 A. It wasn't --- it wasn't a very long time. I have
13 no idea.

14 Q. Okay.

15 A. Like I say, it was confusing.

16 Q. Sure. Now, we've established that you were
17 responsible for the outby area. Your area of
18 responsibility didn't include sections. Who would
19 have been the maintenance foreman responsible for the
20 longwall section on April 5th?

21 A. Danny Laverty.

22 Q. Okay. Do you know if Mr. Laverty went to the
23 longwall section while it was down on April 5th?

24 A. No, sir, I do not.

25 Q. If there was a major breakdown, would he normally

1 do that?

2 A. I don't know. Longwallers are different people.

3 Q. Okay. But if one of your belts were down, would
4 you routinely go to that belt to see what the problem
5 was?

6 A. Yes, sir.

7 Q. Okay. Were there any other maintenance people
8 assigned to the longwall that day or as of that day?

9 A. Grover Skeens was an electrician on the longwall
10 that day and Nick McCroskey.

11 Q. Okay. Who would have the longwall coordinator?

12 A. That would be Jack Roles.

13 Q. Do you know if Mr. Roles or any of the --- if Mr.
14 Roles had visited the longwall that day?

15 A. I think he did.

16 Q. Did you have any conversation with Mr. Roles after
17 the accident?

18 A. As far as where he was at, no.

19 Q. Okay. How long has your assignment --- well, your
20 assignment was for the outby area. How long has it
21 been since your assignment last changed, your area of
22 responsibility that is?

23 A. Five years maybe.

24 Q. So it's maybe five year since you had
25 responsibility for any of the coal producing sections?

1 A. Yes.

2 Q. Okay.

3 MR. FARLEY:

4 Mr. Sherer?

5 MR. SHERER:

6 Okay. I've got some follow-up questions.

7 Let me suggest that we take a short break.

8 SHORT BREAK TAKEN

9 ATTORNEY HAMPTON:

10 Okay. Let's go back on the record.

11 EXAMINATION

12 BY MR. SHERER:

13 Q. Okay. Mr. Sheets, just a comment. You know,
14 we've been associated with a lot of mine explosions
15 and such, and it's very common to have a lot of
16 confusion, and I will be quite honest with you.

17 Nobody --- no matter how hard we train and prepare for
18 these things, nobody is ready for one of these things.

19 For what I've heard, you did exactly what you needed
20 to do. You checked the fan out and you pulled the
21 power on the mine, and that's a reasonable response.

22 Let's talk about the fan just a little bit just to
23 help me out. We're trying to figure out exactly what
24 went on and we've gotten different reports from a lot
25 of different people. Some people said that they

1 thought the fan reversed. Were you able to determine
2 if it had reversed?

3 A. No, sir.

4 Q. Do you think it was stalling out?

5 A. Yes, sir.

6 Q. Okay. Now, you know, there's two systems you can
7 use to reduce pressure on the fan from the explosion.
8 You can have what we call a weak wall, which is
9 basically blocks stacked up, but not mortared together
10 to protect the fan from the explosion pressures. Do
11 you know if the two UBB fans had a system like that?

12 A. Not to my knowledge, no.

13 Q. Did they have --- then did they have explosion
14 doors that opened up ---

15 A. Yes.

16 Q. --- to relieve the pressure?

17 A. Yes.

18 Q. Did you observe whether those doors were opening
19 up?

20 A. No, sir.

21 Q. Okay. Now, you ---.

22 ATTORNEY MCCUSKEY:

23 You might want to just clarify. I'm not
24 sure whether he meant, no, sir, they didn't open up or
25 no, sir, he didn't observe them.

1 MR. SHERER:

2 Okay.

3 A. No to both. To my knowledge, no.

4 BY MR. SHERER:

5 Q. Okay. So you don't think they opened up and you
6 didn't observe them open?

7 A. No, sir.

8 Q. Thank you. Now, you mentioned that you were
9 getting ready to throw the power on the fan, I think?

10 A. Yes, sir.

11 Q. Did you actually do that?

12 A. No, sir.

13 Q. Okay. So the pressure went down and the fan
14 resumed normal operation on ---

15 A. Yes, sir.

16 Q. --- its own? Okay. That's very helpful because
17 again we've gotten numerous reports from different
18 people.

19 A. It didn't --- on our fan, we have vibration set on
20 it, and I can't remember what it normally runs, but it
21 was up above the limits of what it should have been.

22 Q. Okay.

23 A. I had concern with the fan.

24 Q. Sure. Well, there's no doubt that it was
25 subjected to extreme forces during that explosion.

1 Are those like the vibration sensors on the bearings
2 or the motor?

3 A. Yes.

4 Q. Okay. Is that information recorded?

5 A. No, sir.

6 Q. It's just a readout?

7 A. Yes, sir.

8 Q. Okay. And did that readout read the peak velocity
9 or the peak acceleration?

10 A. I can't remember.

11 Q. Okay. Thank you. How about the Bandytown fan?
12 Are you responsible for that fan?

13 A. No, sir.

14 Q. Do you know who is?

15 A. I think Glen Farley.

16 Q. Okay. And what's Mr. Farley's title? Do you
17 recall?

18 A. I think he's foreman of overland belts.

19 Q. Okay.

20 A. But that's not definite.

21 Q. Okay. Sure. We're just trying to get some more
22 information. This explosion is like a puzzle to be
23 quite honest with you. We're getting a lot of little
24 pieces and we got to fit them all together, so we're
25 going to ask you some questions that may seem kind of

1 trivial and they're just trying to help us fit some of
2 these things together.

3 Now, you were talking about the --- going out of
4 the mine about, I think, 2:00 --- 2:30 or so. You
5 think you were near the longwall Mother Drive, 2:15 or
6 2:30 you think. When you were in that area and to the
7 point where you passed the 78 Break switches, do you
8 recall anything unusual?

9 A. No, sir.

10 Q. Any smells that were unusual?

11 A. No, sir.

12 Q. What was the air like?

13 A. Just seemed normal to me.

14 Q. It seemed normal. Did you notice any fog or ---

15 A. No, sir.

16 Q. --- any fogging up? Okay.

17 A. No, sir.

18 Q. Thank you. Now, you were talking about Mr. Roles,
19 and I understand he's the longwall coordinator.

20 A. Yes, sir.

21 Q. Now, did you have any conversation with Mr. Roles
22 on April the 5th or within a few days thereafter?

23 A. No, sir.

24 Q. Okay. Did you speak with anyone who worked on or
25 around the longwall during that time period?

1 A. No, sir.

2 Q. As far as you know, was there anything going on
3 with the ventilation on the mine on April the 5th?

4 A. Not that I'm aware of.

5 Q. Okay. And you didn't even hear of anybody making
6 changes to ventilation?

7 A. No, sir.

8 Q. Okay. How about the --- that long weekend? And
9 we understand the mine was shut down on Sunday, Easter
10 Sunday. Does that sound correct?

11 A. Yes, sir.

12 Q. Okay. Do you know if anybody had talked about or
13 mentioned any ventilation changes over that weekend?

14 A. Nobody that I talked to.

15 Q. Okay. Did you ever go up around the longwall?

16 A. Yes, sir.

17 Q. How did they get equipment on and off the wall?
18 Did they have permanently installed doors to do that
19 or did they occasionally knock a stopping out to do
20 that?

21 A. I have to be clear on this. Are you talking the
22 actual working on the wall, the production end or when
23 they're setting up the wall?

24 Q. Well, let's talk about both of those. When the
25 --- of course, the wall was in production at the time

1 of the explosion, so that's of greater interest to us.
2 We know there's a lot of equipment that has to be
3 moved around.

4 A. Yes, sir.

5 Q. It's basically a massive logistical exercise to
6 pull a wall out. Everything's moving all the time.

7 A. Yes, sir.

8 Q. Do you know if occasionally stoppings were knocked
9 out to do that?

10 A. Not to my recollection, no.

11 Q. Okay. Was there a system of equipment doors to
12 prevent that?

13 A. Yes, sir.

14 Q. Do you know where those doors were located?

15 A. As far as in the face area or outby?

16 Q. Outby along the Mother Drive.

17 A. I'm sorry. Excuse me. I have to look here at the
18 map.

19 Q. Sure. Just take your time.

20 A. We come down --- I can't remember the break
21 number, but we come to the longwall switch. There was
22 a set of doors, airlock doors, and then they installed
23 another set at some point. And I think there was a
24 regulator.

25 Q. Okay. Now, was that regulator part of the door?

1 Do you recall?

2 A. Yes, sir.

3 Q. Okay. Was that the most inby door or doors or the
4 most outby?

5 A. I think it was the most outby. I only saw them
6 one time.

7 Q. Okay. Every little bit of information helps us.
8 This is a big puzzle.

9 A. I'm not sure as to where I saw the regulator.

10 Q. Sure. Were you working in the mine when the Glory
11 Hole was in use?

12 A. Yes, sir.

13 Q. Could you describe what that Glory Hole is to us?

14 A. On the north mains, the Number Seven belt, I think
15 128 Break and the Glory Hole is maybe six breaks off
16 of the track.

17 Q. Okay.

18 A. Five or six.

19 Q. Okay. Do you recall which mine that Glory Hole
20 connected to the UBB Mine?

21 A. Logan's Fork.

22 Q. Okay. Logan's Fork. Do you know if that mine was
23 active at the time of the explosion?

24 A. Yes, sir.

25 Q. Okay. Were they running coal down into the Glory

1 Hole prior to the explosion?

2 A. No, sir. As --- you mean that day?

3 Q. Yes.

4 A. No, sir. There was no belt into the Glory Hole.

5 Q. From the UBB Mine?

6 A. Right.

7 Q. Okay.

8 A. Excuse me. The beltline --- the Glory belt that
9 dumps on the Number Seven north belt, that beltline
10 has been removed.

11 Q. Oh, okay. Okay. Do you know about when they did
12 that, just roughly?

13 A. Let's see. This was started up --- we ---. I'm
14 going to say that we quit using Glory Hole somewhere
15 --- I can't be exact, somewhere between May and maybe
16 June of 2009, ---

17 Q. Okay.

18 A. --- give or take a while.

19 Q. That's plenty close enough. Do you know if they
20 filled that Glory Hole up at that point in time?

21 A. As far as I know they put coal in the bottom at
22 that time.

23 Q. Okay. Now, you said that you keep with the CO
24 monitoring system.

25 A. Yes, sir.

1 Q. Are you aware of a problem with CO migrating from
2 the UBB Mine up into the Logan's Fork Mine immediately
3 after the explosion?

4 A. Yes, sir.

5 Q. Do you know what was done to address that?

6 A. They evacuated Logan's Fork Mines.

7 Q. Okay. Do you know if they put some additional
8 material in the Glory Hole to try to stop that
9 migration?

10 A. That would be hearsay and ---.

11 Q. Well, hearsay is certainly of interest to us in
12 this sort of investigation.

13 A. I've heard that.

14 Q. You've heard that?

15 A. Yes, sir.

16 Q. Who'd you hear that from?

17 A. It would have been one of the longwallers that is
18 not at our mines now, and he got as hearsay.

19 Q. Okay.

20 A. So ---.

21 ATTORNEY MCCUSKEY:

22 Call that triple hearsay.

23 A. So we're playing round-robin there.

24 BY MR. SHERER:

25 Q. Sure. Okay. I appreciate the information. You

1 mentioned you went back in the mine office after the
2 explosion and you checked the CO readout ---

3 A. Yes.

4 Q. --- system. And you mentioned that you had some
5 alarm conditions and you thought that part of the
6 system was offline as best I remember?

7 A. Yes, sir.

8 Q. Okay. Did you --- did anybody ask you about that
9 system or do you recall anybody asking you about that
10 system?

11 A. Yes, sir.

12 Q. Who was that, please?

13 A. I can't give a name. MSHA was there.

14 Q. Okay.

15 A. The State. Everyone was asking questions.

16 Q. Sure.

17 A. Massey people.

18 Q. Do you recall who was in charge of the evacuation
19 of the mine and then the subsequent rescue attempt
20 from the Massey organization?

21 A. Massey. I know Gary May, Rick Foster went in from
22 the UBB Side. Everett Hager, Chris Blanchard, Jason
23 Whitehead from the Ellis Portal. And there may have
24 been more. I don't recall.

25 Q. Sure. We've heard that from several people. Did

1 there appear to be anybody that took charge and tried
2 to coordinate this effort? Are you aware of anybody
3 that did that?

4 A. Yes, sir.

5 Q. Who was that?

6 A. Chris Adkins.

7 Q. Chris Adkins. Now, when did --- roughly, do you
8 recall when you first saw him at the mine?

9 A. This was very shortly after. I suppose the
10 chopper brought him to the mines.

11 Q. Okay.

12 A. He was there ---

13 Q. Very quickly.

14 A. --- very quickly.

15 Q. Okay. Do you recall if Mr. Adkins was one of the
16 responsible people or responsible persons listed for
17 the mines?

18 A. As on where we have the responsible party ---

19 Q. Yeah.

20 A. --- listing? No, sir.

21 Q. Okay. Do you recall who the responsible persons
22 were for that shift?

23 A. I'm thinking that would have been Gary May, Rick
24 Foster, Everett Hager and Terry Moore.

25 Q. Okay. Sure. Now, you mentioned you looked at the

1 fan charts. I guess you changed those fan charts out?

2 A. Yes, sir.

3 Q. And you mentioned you could see some different
4 movements of the pressure and you would always check
5 those out?

6 A. Yes, sir.

7 Q. Do you recall if ventilation changes frequently
8 resulted in pressure changes on the fan?

9 A. I'm trying to think about this one.

10 Q. Sure. Take your time.

11 A. If --- let's see. If you would short circuit the
12 air by some way --- I'm just --- it's just
13 speculation. But if you would, your pressure would go
14 down on the fan. It's not forcing as much air. If a
15 stopping blew out, it should come around. It would
16 take less pressure.

17 Q. Sure.

18 A. If you had a fall that was blocking the intake,
19 pressure goes up. So that's why you always question a
20 spike or a dip.

21 Q. Now, how often did you change those fan charts?

22 A. At that time, I changed them every Wednesday.

23 Q. Okay. So they lasted roughly a week?

24 A. Yes, sir.

25 Q. And did you change the fan charts on both fans at

1 the same time?

2 A. Five to ten minutes apart.

3 Q. Okay. Okay. Now, just on average when you
4 changed the charts every Wednesday, would you notice
5 an anomaly, a spike or a depression of the pressure?

6 A. Yes, sir.

7 Q. Would you notice, just on average, say one event
8 per week or one event every other week or just a
9 guess?

10 A. One, two --- it depends on the weather. Weather
11 changes the charts, barometric pressure.

12 Q. Sure. Yeah. When you checked on those anomalies,
13 did you talk with the other people and try to
14 determine what caused it?

15 A. I would ask the mine foreman or superintendent if
16 they changed anything.

17 Q. Okay.

18 A. I looked for spikes.

19 Q. Sure.

20 A. Yeah.

21 Q. That makes sense.

22 A. I don't look for a dip that stays there for a
23 while. I look for a spike.

24 Q. And you also mentioned that just having doors open
25 could affect that. Were most of the anomalies that

1 you notices --- were those caused by ventilation
2 changes when you checked up on it?

3 A. No, sir. Well, I really can't recall. I'm sorry.
4 I ---.

5 Q. Okay. Okay. When you spoke with the mine
6 foreman, do you recall if they ever mentioned
7 ventilation changes?

8 A. Yes, sir. If I was off for the weekend and I came
9 in Monday morning, looked at my chart. I saw a big
10 difference. I would say, did you all make a change
11 this weekend, did you have a fall. If they made an
12 air change, he would tell me they made an air change.

13 Q. Okay. Now, do you recall if any of those air
14 changes were made while production was occurring?

15 A. It has happened.

16 Q. Could you explain that further?

17 A. Just ---.

18 Q. Does anything stand out? Do you recall any
19 specific incident?

20 A. No. I really don't know what you want. If you
21 ask the question, I'll answer it, but I ---.

22 Q. Okay. Okay. We may get back to you on that.

23 A. Okay.

24 Q. Thank you. Now, we understand that there was a
25 lot of ventilation changes at this mine.

1 A. Yes, sir.

2 Q. We have written several violations because of both
3 ventilation changes being made while people were
4 underground and for --- more often for ventilation
5 changes that were made when they weren't approved in
6 their ventilation plan. Are you aware of any
7 incidents like that?

8 A. Probably.

9 Q. Okay. Are you aware of any ventilation changes
10 that took place within a week or so prior to the
11 explosion?

12 A. The only thing that I know of, and I don't even
13 know if it would be considered a ventilation change,
14 was the set of doors with the regulator.

15 Q. Okay. I've never seen a set of doors with a
16 regulator, but I would certainly think that may have
17 been a ventilation change.

18 A. Well, I've never either, but I have.

19 Q. Okay. Thank you. Did you have a schedule for
20 checking the CO monitoring system?

21 A. Yes, sir.

22 Q. How often did you have to examine that system?

23 A. They have to be calibrated every 30 days.

24 Q. Okay. Were you in charge of doing that
25 calibration?

1 A. As I previously stated, Virgil Bowman and I work
2 hand in hand. It's not like he goes one way and I go
3 the other way. We're ---.

4 Q. Sure. So would you guys split that up?

5 A. We were --- as our belt and track are separated,
6 every ten breaks coming down the beltline, there is a
7 CO monitor. So say, for instance, I'm going to Four
8 North belt. Virgil drives a Jeep. I get off every
9 ten breaks, go over, calibrate a CO monitor. And we
10 may get to Five North belt. I'll drive a Jeep and
11 Virgil goes ---

12 Q. Okay.

13 A. --- to do it.

14 Q. Okay. Did anybody else do CO monitor
15 calibrations?

16 A. Only if --- if a CO monitor went bad on second
17 shift or third shift, John Henline would basically do
18 it on the evening shift, Bill Graham on third shift.

19 Q. Okay. So if there was a maintenance issue or some
20 exception, somebody else would do it?

21 A. Something out of the norm.

22 Q. Okay. Do you recall when the --- well, let me ask
23 a different question. Excuse me. Did you have a set
24 schedule for going through and calibrating those CO
25 monitors?

1 A. We tried to keep a set schedule.

2 Q. Okay. Do you recall when the last time you would
3 have calibrated the CO monitors in the northern part
4 of the mine where the explosion occurred? Do you
5 recall about when that would have been?

6 A. No, sir. Right off I can't recall.

7 Q. Okay. Do you recall if there was any problem with
8 your calibration prior to the explosion? Had other
9 work come up or anything that delayed it?

10 A. Not at that time.

11 Q. Okay. Thank you. Do you know a gentleman by the
12 name of Dean Jones?

13 A. Dean Jones?

14 Q. Yes.

15 A. Yes, sir.

16 Q. Who was that, please?

17 A. Dino, Dean Jones was the section foreman on
18 Headgate 22.

19 Q. Okay. And as we understand, he was one of the
20 victims of this explosion.

21 A. Yes, sir.

22 Q. Did you hear anything over the mine phone or hear
23 anybody talk about Mr. Jones complaining about some
24 problem with methane the day of the explosion?

25 A. I heard rumors.

1 Q. All right. Where did you hear those rumors at?

2 A. Bath house.

3 Q. Okay. Do you know --- do you recall who was
4 talking about that incident?

5 A. No, sir.

6 Q. Okay. Thank you. Did you hear that he was told
7 to start mining coal anyway?

8 A. Yes, sir.

9 Q. If those rumors were correct, and this is pure
10 speculation, who would have given him that order?

11 A. The rumor was Chris Blanchard.

12 Q. Chris Blanchard.

13 A. Yes, sir.

14 Q. Have you ever heard Mr. Blanchard tell somebody to
15 run coal when there may have been any problem?

16 A. Personally, no.

17 Q. Have you heard rumors about it?

18 A. Yes.

19 Q. Okay. How common were those rumors? Was that a
20 one time thing or were there several instances
21 mentioned in those rumors?

22 A. More than once.

23 Q. Okay. Did Mr. Blanchard ever ask you to do
24 anything that you thought was --- would be a potential
25 safety hazard?

1 A. No, sir.

2 Q. Okay. I'm going to ask you some questions about
3 the mine back before they got the Bandytown fan
4 installed, and we've got numerous reports that there
5 were a lot of ventilation problems at that time and
6 they were still running the mine off of those fans
7 down at the UBB Portal.

8 A. Yes, sir.

9 Q. Were you involved in --- when they were driving
10 the Headgate out to the Bandytown fan? Were you back
11 up in that area?

12 A. Yes, sir.

13 Q. Are you aware of any ventilation problems at that
14 point in time?

15 A. Low air.

16 Q. Low air. Were you aware of any problems with
17 methane at that point in time?

18 A. Yes, sir.

19 Q. Can you give me some more information on that,
20 please?

21 A. Sometimes you would be riding up the track and
22 your detector would detect methane riding up the
23 track.

24 Q. And by detect methane, I assume the detector would
25 alarm?

1 A. Yes, sir.

2 Q. Do you recall what your detector was set to alarm
3 at?

4 A. No, sir.

5 Q. Okay. Have you had your detector alarm like that
6 at any other time while you've been working in this
7 mine?

8 A. No, sir.

9 Q. Okay. Do you recall any specific place where the
10 detector would alarm?

11 A. I'm trying to say in the area of maybe 90 Break,
12 maybe the 105, 110, in that area.

13 Q. Okay. That's roughly the area that's inby the
14 diagonal.

15 A. Yes, sir.

16 Q. Okay. Did you hear people on the production
17 section talking about methane problems or low air
18 about that same point in time?

19 A. Low air especially.

20 Q. Did you ever hear of anybody talking about
21 explosive concentrations of methane at that point in
22 time?

23 A. No, sir.

24 Q. Okay. Were you involved in the installation of
25 the belts up through that headgate development?

1 A. Wiring the belt head, yes, sir.

2 Q. Okay. Did you set the belt heads out near the
3 Bandytown fan or how far are the belt heads, excuse
4 me?

5 A. I can't recollect every belt head I've wired up
6 there.

7 Q. I can't imagine, sir. There's a lot of belt heads
8 in this mine.

9 A. Yes, sir. Chances are more likely than not.

10 Q. Do you recall if your detector ever went off when
11 you were wiring on those belt heads?

12 A. No, sir.

13 Q. Okay. Now, back --- you say you were working on
14 the Mother Drive at the mouth of the 22 Headgate
15 section immediately prior to the explosion. Do you
16 recall who did the pre-shift examinations in that
17 area?

18 A. That --- before the second shift?

19 Q. Yeah.

20 A. That would have been the gentleman I've never met,
21 the Elswick ---

22 Q. Mr. Elswick.

23 A. --- that was a victim.

24 Q. The old guy?

25 A. Yes, sir, like me.

1 Q. Yeah, I was just thinking like me. That's a
2 personal issue. Do you recall if --- I think you
3 mentioned that Mr. Bowman saw this gentleman. Did he
4 mention anything about that examination, if any ---
5 did he ask any questions? Was there any communication
6 that you're aware of?

7 A. No, sir.

8 Q. Okay. Now, before going into that area on April
9 the 5th, did you check the pre-shifts done prior to
10 the dayshift?

11 A. Check the book or ---?

12 Q. Yeah.

13 A. No, sir.

14 Q. Okay. Would you normally do that before you went
15 into an area to work or ---?

16 A. No, sir.

17 Q. Okay. Okay. How long had you been working up in
18 this area where you were wiring up that Mother Drive?

19 A. The day of the explosion or ---?

20 Q. No, just had you been up there two, three days or
21 a week or ---?

22 A. It's ---.

23 Q. Just roughly.

24 A. Probably two, maybe three days steady at that.

25 We're hit and miss as far as when we're doing

1 something like that.

2 Q. Sure. I understand that. So you've been up there
3 a few times?

4 A. Yes, sir.

5 Q. Had you noticed anything out of the ordinary any
6 of those times you were up there?

7 A. No, sir.

8 Q. Okay. Do you recall if doors --- ventilation
9 doors had been installed in this area where you were
10 installing that Mother Drive?

11 A. I think this is a set of doors inby the Mother
12 Drive going on the Headgate 22, I think. These are
13 those.

14 Q. Okay. Did you ever go --- while you were working
15 in and around that Mother Drive, did you ever go up
16 through those doors?

17 A. Yes, sir.

18 Q. What did you do that for?

19 A. Basically COs.

20 Q. Okay. So you were working on your CO monitoring
21 system obviously?

22 A. Yes, sir.

23 Q. Do you recall roughly when that was in
24 relationship to the explosion?

25 A. Doing the CO calibration or ---?

1 Q. Yeah, or installing the CO monitors or ---.

2 A. Well, as a section advances, we have to install a
3 CO monitor every 1,000 feet.

4 Q. Okay.

5 A. And so as I say, unless something is wrong up
6 through here, I'm not normally in that area.

7 Q. Okay. But you had passed through these doors?

8 A. Yes, sir.

9 Q. Would it have been roughly a week before the
10 explosion or ---?

11 A. I probably was at some point.

12 Q. Do you recall if there was any problems with these
13 doors?

14 A. No, sir.

15 Q. Okay. Did you ever talk with Mr. Jones?

16 A. Not for a long time. They used --- I used to talk
17 to him every morning. We were both early arrivals.

18 Q. Sure.

19 A. But when they transferred over to the Ellis
20 Portal, that kind of separated everybody.

21 Q. So they were portalling out of the Ellis Portal.
22 You were portalling out of UBB.

23 A. Yes, sir.

24 Q. Let me ask you to help us out. We've asked a lot
25 of questions. Like I explained earlier, we're still

1 trying to get all the pieces to the puzzle and we're
2 trying to fit some of those pieces together. Is there
3 anything that you would recommend based on what you
4 know, the mine itself, and you're obviously very
5 knowledgeable of the mine, and the conditions in the
6 mine and what you've heard or become aware of since
7 the explosion? Would you have any recommendations for
8 us as far as what we need to look at to try to
9 determine what caused this explosion?

10 A. Are you asking me what I thought happened at this
11 mine?

12 Q. Sure. That's part of it, yeah.

13 A. What I think?

14 Q. Sure. You're as knowledgeable as anybody and
15 probably ---.

16 A. This has happened to me twice at this mines, the
17 bottom broke, from what I've talked to people. I
18 think it happened right on the tailgate of the
19 longwall.

20 Q. Okay.

21 A. Until they come up with something, that's what I
22 think. That's what I thought the night it happened.

23 Q. Okay. Well, that's certainly of interest to us.

24 Now, you mentioned two previous instances where that's
25 happened. Were you on or near the longwall when that

1 occurred?

2 A. Not at that time, no.

3 Q. Okay. You also mentioned that you had spent a
4 year at Target Drilling, and I've run into those folks
5 a few times.

6 A. Yes, sir.

7 Q. They're pretty good at drilling those horizontal
8 holes.

9 A. Yes, sir.

10 Q. Do you know if Target or anybody like that had
11 done any degas work at this mine?

12 A. Not degas, no.

13 Q. Had they done any work?

14 A. Yes, sir.

15 Q. Do you recall what that was?

16 A. This map doesn't show it.

17 Q. How about this larger map up here?

18 A. Yes, sir. If I may?

19 Q. Sure.

20 A. And I'm going back, so you'll have to bear with
21 me.

22 Q. Sure.

23 A. I think it would have been in this area on the
24 Headgate 20 area, because we have a barrier block
25 here. Target Drilling was in here drilling. They do

1 that also, to test to make sure how much barrier block
2 you have there.

3 Q. Okay. So basically they were looking for adjacent
4 workings?

5 A. Yes, sir.

6 Q. Okay.

7 A. Yes, sir.

8 Q. Now, you're obviously familiar with the horizontal
9 in-mine drilling. Do you know if anybody had even
10 mentioned that after those two previous gas outbursts?

11 A. No, sir.

12 Q. Okay.

13 A. Can I offer an opinion on that?

14 Q. Yes, sir. Please go ahead.

15 A. Our coal bed is a sleeper.

16 Q. Okay.

17 A. Target Drilling, I worked Pittsburgh seam, hot
18 seams. Miner section cannot advance unless you're
19 relieving gas as you're doing this. 2003, 2004, the
20 bottom broke. The gas came from below. Horizontal
21 drilling will not take care of that. You have to
22 borehole from the top.

23 Q. Okay. Have you spoken with anybody in the mine
24 about that?

25 A. As far as?

1 Q. Trying to address the bottom outbursts.

2 A. No, sir. It's sad to say. It's just a thing with
3 coal mining. That's --- I've lost 29 friends on
4 account of this.

5 Q. Do you know who was in charge of ventilation at
6 this mine? Was there like a ventilation engineer, a
7 ventilation specialist?

8 A. Massey has a ventilation --- I can't think of his
9 name. He worked for MSHA.

10 Q. Bill Ross?

11 A. Bill Ross, yes.

12 Q. Do you know if Bill was involved with this
13 particular mine?

14 A. Somewhat.

15 Q. Did you have any dealings with Bill?

16 A. No, sir, I'm just a peon.

17 Q. I understand that, but that makes two of us. Do
18 you know who did ventilation changes at this mine?
19 Was it Bill? Do you know?

20 A. I don't think so.

21 Q. Who do you think did --- keep up with the
22 ventilation here and made changes?

23 A. I've heard Chris Blanchard called the shots. I've
24 heard Jamie Ferguson called the shots, Jason
25 Whitehead.

1 Q. Okay. So as I understand, they were the top
2 management of this organization?

3 A. Yes, sir.

4 Q. Is that common, that the president and vice
5 president are in charge of ventilation?

6 A. I don't know. I'm old school mining, so that's
7 --- that's not the old school mining.

8 Q. I understand that, and I appreciate that. I'm
9 pretty old school myself. Have you ever worked at
10 another mine that had a president working on the
11 ventilation?

12 A. No, sir.

13 Q. Okay. Thank you.

14 MR. SHERER:

15 That's all the questions I got.

16 MS. SPENCE:

17 I just have one.

18 EXAMINATION

19 BY MS. SPENCE:

20 Q. Did you have any problems with ventilation when
21 you were working on that Mother Drive?

22 A. No, ma'am.

23 MS. SPENCE:

24 That's all I got.

25 RE-EXAMINATION

1 BY MR. FARLEY:

2 Q. Let me call on your experience here as a
3 driller ---

4 A. Okay.

5 Q. --- at Target. Okay. At the UBB Mine, were you
6 aware of the existence of a lower Eagle coal seam
7 below the Eagle seam being mined?

8 A. Yes, sir, I know it's there.

9 Q. Okay. Now, you indicated earlier it was your
10 opinion that the explosion might have occurred on the
11 longwall tailgate as a result of a crack or an
12 outburst ---

13 A. Yes.

14 Q. --- in the floor. Now, if we assume that's
15 correct, do you think the gas that was released would
16 have come from the lower Eagle coal seam or the strata
17 below it?

18 A. As far as coming from the coal seam, I don't know.
19 I just know that it has happened twice that I know of,
20 and I'm assuming it happened a third time.

21 Q. Okay. Now, based on your experience with drilling
22 for degasification purposes, how effective is
23 degasification of strata, not coal seams, or let's say
24 the strata below the lower Eagle coal seam --- how
25 would you go about that? Is there a process that

1 you're aware of that would even work?

2 A. The strata, I have no idea. If I may?

3 Q. Sure.

4 A. Just before I left Target Drilling, there were
5 going to Oklahoma to start drilling out there,
6 surface. And it takes a long time to bleed a coal bed
7 from the surface. Directional drilling underground,
8 horizontal drilling, we would set up drilling into the
9 panel. We may drill up 4,000 feet, back up our drill
10 up, shoot over maybe 800 feet across the panel and put
11 another three and a half, four inch hole. We would
12 bleed the gas off that way. As far as the strata, I
13 have no idea.

14 Q. Okay. All right. A couple --- three things here
15 just to clarify some stuff. When you were working in
16 the area of the Mother Drive on April 5th, did anybody
17 come by making any sort of pre-shift, on-shift
18 examination at any time?

19 A. The Elswick. And I'm sorry. I don't know the
20 man's name.

21 Q. Okay. And I think I asked earlier what was the
22 condition of the CO monitor system as of April 5th,
23 and I think you said it was okay as far as you know.
24 Do you know if any particular monitors were disabled
25 on that day?

1 A. I do not know. No one called me about it.

2 Q. Okay. How frequently did you have what you would
3 call nuisance alarms with the CO monitoring system?

4 A. The CO monitors, the sensor in them has a life of
5 about two years, so it just depends on the change out
6 time when they start malfunctioning. And you'll get
7 nuisances there. Sometimes all you have to do is hit
8 the reset button on them. Sometimes you recalibrate
9 them. They'll be okay. Sometimes you have to change
10 them out.

11 Q. Okay. You have been at UBB for approximately ten
12 years.

13 A. Yes, sir.

14 Q. Now, in the last five years or so, have you
15 personally participated in any major equipment moves?

16 Now let me define major equipment move. A major
17 equipment move would be a scenario where you transport
18 a continuous mining machine, a shuttle car, a roof
19 bolting machine, something of --- a full size piece of
20 mining equipment, transport it via flatcar from the
21 surface on a track-mounted car, pulled or pushed by a
22 locomotive. Have you participated in equipment moves
23 like that?

24 A. Yes, sir.

25 Q. When was the last time you participated in such a

1 move?

2 A. I can't give you a date. We were setting up the
3 barrier section. We were bringing equipment from off
4 the old Four section to barrier section.

5 Q. Okay.

6 A. Whenever that started. I can't give you a date on
7 it.

8 Q. Can we estimate? Was it this year, last year?

9 A. Oh, it was this year.

10 Q. Okay. All right. Who assisted you in that
11 equipment move?

12 A. Let's see. That would have been --- Gary May was
13 in charge. David Taraczkozy was the --- he is the
14 maintenance chief for that section.

15 Q. Okay. So you moved equipment from the Four
16 section to the soon --- what was soon to become the
17 barrier section?

18 A. Yes, sir.

19 Q. As you were transporting the equipment, would
20 people have been working inby the equipment move in
21 the same split of air?

22 A. Yes, sir.

23 Q. Okay. Do you know how many people?

24 A. It just depends as to fire bosses, who was in that
25 area. Say at least a section worth of men, you know,

1 nine, ten people.

2 Q. All right. Has it been your experience at Upper
3 Big Branch Mine that equipment moves were routinely
4 made with people working inby in the same split of
5 air?

6 A. Yes, sir.

7 Q. Okay. Can you give me another instance of such a
8 move other than the one you just described?

9 A. Longwall setup.

10 Q. Okay. Do you recall any instances where equipment
11 moves were made when the equipment might have been
12 trammed such as continuous mining machine, shuttle
13 car, equipment with trailing cables that would have
14 been trammed to facilitate the move with people inby?

15 A. I know of one time on the barrier --- or the move
16 from Four unit to barrier section, actually from
17 Plumley Switch to ---. And I need to correct one
18 thing.

19 Q. Sure.

20 A. When I say on the longwall setup, I'm not sure
21 which way the air was going at this time because as
22 you know we made ventilation changes and I can't
23 remember which direction air was going.

24 Q. Now, when I refer to --- when I describe people
25 working inby in the same split of air, I mean very

1 simply the air passing over the equipment you are
2 moving will ventilate the area where these people are
3 working.

4 A. Probably so, yes.

5 Q. Okay. All right. Were written records kept of
6 equipment moves?

7 A. Indeed, I don't know. I didn't fill any out.

8 Q. All right. Would you think the barrier section
9 move from Four section to the barrier section occurred
10 sometime in 2010?

11 A. Yes, sir.

12 Q. Okay. I think the last thing I have here is ---
13 you were talking about old school mining earlier.
14 Under the rules of old school mining, who would
15 ordinarily take care of the mine ventilation? Who
16 would ordinarily be responsible for it?

17 A. The mine foreman.

18 MR. FARLEY:

19 Okay.

20 MR. SHERER:

21 Have you got any, Beth?

22 RE-EXAMINATION

23 BY MR. SHERER:

24 Q. Okay. I got a few, Mr. Sheets. You mentioned
25 that you worked at this mine during the two previous

1 methane outbursts.

2 A. Yes, sir.

3 Q. Do you recall where those outbursts occurred?

4 Were they mid-face?

5 A. The only one that I wasn't on there, but I

6 remember them talking about where --- when it did

7 happen they could see the gas. It was like a cloud

8 coming down the face. Whereabouts, I don't know. You

9 would really have to talk to some of the longwallers

10 that was there.

11 Q. Okay. Sure. Okay. Thank you. Did you ever hear

12 about iron pyrite or sulfur balls in this coal seam?

13 A. No, sir.

14 Q. Okay. How about the roof strata, did you ever

15 hear of that?

16 A. We have bad roof at this mines.

17 Q. Okay. Do you know if there's --- did you ever see

18 any iron pyrite? It's sometimes referred to as fool's

19 gold. It looks like kind of brassy looking.

20 A. Not that I recall. Not that I recall.

21 Q. Okay. Sure. How was the mine ventilated before

22 they tied in this Bandytown fan? Do you recall how

23 the ventilation went up there?

24 A. Yes, sir. I'd have to go back to this map.

25 Q. Yes, please.

1 A. Right in here would be our fan. We would come up
2 through here --- oh, I'm sorry.

3 Q. We're going to help you out a bit.

4 A. Yeah. Okay.

5 Q. So you're pointing to the UBB Portal area?

6 A. Yes, sir. And ---.

7 ATTORNEY HAMPTON:

8 Could you circle the area? And I'm going

9 to mark this map as Exhibit Number Three, Sheets
10 7/27/10.

11 (Sheets Exhibit Three marked for
12 identification.)

13 A. And anyway, it would come up through parallel
14 north mains. And at that time prior to the Bandytown
15 fan, it would come up the north mains and then ---.

16 BY MR. SHERER:

17 Q. Could you just draw a line from that fan, just a
18 rough line? There you go.

19 A. Oh, it will be rough with my hand.

20 Q. It's good enough for what we're doing, sir.

21 A. Okay. Then here is where we had the airlock
22 doors.

23 ATTORNEY HAMPTON:

24 Could you make an arrow off into the

25 empty space there and write airlock doors?

1 WITNESS COMPLIES

2 ATTORNEY HAMPTON:

3 Thank you.

4 BY MR. SHERER:

5 Q. Okay.

6 A. And at that time, we had two sections, but the ---
7 going to Bandytown fan, came up, circled around and
8 come back down and went this way.

9 Q. Okay.

10 A. Some went this way.

11 MR. SHERER:

12 Okay. And the witness has marked up
13 through the ---.

14 A. Wait a minute. I'm sorry. This is wrong here.
15 It came through here.

16 ATTORNEY HAMPTON:

17 Let's make a correction in a different
18 color pen.

19 A. Okay.

20 ATTORNEY HAMPTON:

21 I'm going to hand you ---.

22 A. I'm sorry.

23 ATTORNEY HAMPTON:

24 That's okay. That's okay. I'm going to
25 hand you the green pen to make a correction from the

1 airlock doors is where ---.

2 A. Okay.

3 BY MR. SHERER:

4 Q. Just start from the airlock doors.

5 A. The airlock doors --- let's see. I have to
6 remember this. And it returned out.

7 Q. Okay. Do you recall if the return was through the
8 headgate, or did it possibly connect back up with the
9 tailgate?

10 A. I'm trying to think. I think this cut in after
11 this cut was made after they were up in here.

12 Q. Okay.

13 A. I can't remember how far.

14 Q. Okay. So you think they drove most of the way out
15 and then they cut those connectors in?

16 A. Yes, sir.

17 Q. Okay. Do you recall anything about the
18 ventilation changes that possibly were made while they
19 were trying to reach that fan? Were there any
20 problems that you're aware of?

21 A. No. I just know it was low air up here. It had a
22 lot of problems later on.

23 Q. Now, was Mr. Blanchard involved in this
24 ventilation, or was he even at the mine during that
25 period of time?

1 A. I'm trying to think of what point he came there.

2 I'm --- yes, sir, he was involved. Yes, sir.

3 Q. Okay. Do you know a gentleman --- I think his
4 name was Andy Kozar?

5 A. Kolson?

6 Q. Kolson.

7 A. Yes, sir.

8 Q. Who was he?

9 A. At one --- he was the section boss driving this
10 area. Then he became mine foreman.

11 Q. So he was a section boss driving the tailgate.
12 And did he become mine foreman while they were driving
13 these gate roads?

14 A. I think. He was up through here. I can't
15 remember. It was somewhere in this point he became a
16 mine foreman.

17 ATTORNEY HAMPTON:

18 Just so it's clear, you're pointing at
19 the tailgate; is that correct?

20 A. Yes, ma'am.

21 BY MR. SHERER:

22 Q. Near the end of the longwall panel, ---

23 A. Yes, sir.

24 Q. --- near the setup rooms?

25 A. Yes, sir.

1 Q. Okay. Do you recall if he was involved with any
2 of the ventilation issues?

3 A. Yes, sir.

4 Q. Do you recall anything specific?

5 A. Just the one ventilation change that they didn't
6 do a ventilation change, had to tear everything out.

7 Q. Okay. That sounds interesting. Could you explain
8 the ventilation change that almost occurred?

9 A. I think it was a Sunday. We wanted to start the
10 Bandytown fan. It was posted that there was a
11 ventilation change going on. MSHA inspector showed
12 up. How you doing, Tom? Doing okay. What are you
13 doing? I said, well, I'm just sitting out here in
14 case they need something. What are they doing? I
15 said, well, they're making the ventilation change.
16 They better not be making a ventilation change. So if
17 they're making a ventilation change, I'll pull them
18 out of the mines. Called Mr. Blanchard. He said,
19 they weren't making a ventilation change. I talked to
20 Andy Kolson. I talked to Gary May. This was before I
21 got to talk to Mr. Blanchard.

22 Q. Sure.

23 A. I talked to Jamie Ferguson. They were all
24 underground. Told them what was happening. They
25 said, well, they couldn't make the call, so I went and

1 talked to Mr. Blanchard. He said, we weren't making a
2 change, and the work they had done, they tore it all
3 apart, tore walls off of overcasts. And Monday they
4 proceeded to do the ventilation change.

5 Q. Okay. And you say that was putting the Bandytown
6 fan online?

7 A. Yes, sir. I think it was on a Monday we put it
8 online.

9 Q. Okay. I don't know about you, but I've never been
10 able to put a fan online without having a major
11 ventilation change. Just an observation on my part.

12 A. Yes, sir.

13 Q. Have you ever worked with the methane monitors?

14 A. Yes, sir.

15 Q. Did you ever hear of the methane monitors being
16 bridged out at this mine?

17 A. Not that I know of.

18 Q. Okay. Did you ever hear of anybody putting a bag
19 over methane monitors?

20 A. Not that I know of.

21 Q. Did you ever hear of loading coal all day and then
22 calling out at the end of the shift, we need a methane
23 monitor?

24 A. Yes, sir.

25 Q. When did that happen?

1 A. Different occasions.

2 Q. Are you --- have you ever heard of a regulation
3 where if the methane monitor went bad during a
4 production shift you could continue to run coal and
5 use a handheld detector?

6 A. I've heard that, and that is what I stated to the
7 people from the Department of Labor. I'm just not
8 involved in production.

9 Q. Sure. Do you recall where you heard that from?
10 Did anybody tell you that?

11 A. No, sir.

12 Q. Thank you. When you've been underground at this
13 mine, did you ever hear over the mine phone or get
14 some other information that inspectors were on the
15 property and coming in the mines?

16 A. Yes, sir.

17 Q. How common was that?

18 A. It's been common since 1975.

19 Q. Okay. Any particular reason why it's been common
20 since 1975?

21 A. Indeed, I really don't know. It's something I
22 never pondered on.

23 Q. Okay. Thank you. Do you think the ventilation in
24 this mine was adequate at all times?

25 A. No, sir.

1 Q. Why do you think that it wasn't at some particular
2 time or instance?

3 A. Just talking to the men talking about no air in
4 the face area.

5 Q. Was there any place in particular that that was a
6 problem?

7 A. On this headgate, Headgate 21 when they drove it.
8 I've heard that the air on Headgate 22 was the best.
9 Somebody was up there prior to the explosion, said it
10 was the best air they've had in couldn't remember how
11 long. I don't know.

12 Q. Okay. Are you aware of any problems they had with
13 air on the 22 Headgate? They said that was the best.
14 Had there been problems prior to that?

15 A. I don't know, sir.

16 Q. Okay. Did you ever hear of mining taking place
17 without ventilation curtains in place?

18 A. Yes, sir.

19 Q. At UBB?

20 A. Yes, sir.

21 Q. How long ago did you hear about that?

22 A. I couldn't give you a definite answer.

23 Q. Has it been recently?

24 A. Well, like I say, I couldn't give you a definite
25 answer. I know they've been wrote up for no curtain.

1 It's ---.

2 Q. Okay. Now, we know that there was a safety
3 program called S1. Are you familiar with that?

4 A. Yes, sir.

5 Q. Did you ever get any training in that program?

6 A. I don't think so.

7 Q. Okay.

8 A. It's --- other than memos we get all the time on,
9 you know, do this right, do that right, safety memos.

10 Q. Okay. Did you ever get chewed out for not getting
11 something done at this mine?

12 A. Well, yes, sir.

13 Q. Okay. Would you have felt comfortable saying,
14 well, I didn't do that because I had a problem with
15 the safety related aspects?

16 A. No, sir. It wouldn't have bothered me to tell
17 someone that.

18 Q. Okay. Did you ever hear of anybody being
19 threatened or retaliated because they did bring up a
20 safety concern?

21 A. Yes, sir.

22 Q. Anybody in particular?

23 A. Yes, sir.

24 Q. Who was that, please?

25 A. Brian Collins.

1 Q. Brian Collins.

2 A. We call him Hammer.

3 Q. What was his position? Do you recall?

4 A. I think he was a section foreman at the time.

5 Q. Okay. Do you recall any --- roughly when that
6 incident occurred?

7 A. It was in the area of driving --- let me look.
8 The tailgate, ---

9 Q. Okay.

10 A. --- in this area somewhere.

11 Q. The current --- the tailgate, the current panel?

12 A. Yes, sir.

13 Q. Was he a section boss down on that area?

14 A. Yes, sir.

15 Q. Okay. Any other instances that come to mind?

16 A. I can't be specific on anything else.

17 Q. Okay. Sure. What about --- you mentioned the
18 longwall had to call out production and downtime and
19 things like that. When they --- and I know you
20 weren't directly involved in production for quite a
21 while. When they would call that out, if you were
22 near a mine phone, did you ever hear them calling out
23 downtime and problems?

24 A. Oh, yes, sir.

25 Q. Did you ever hear anybody calling back in saying,

1 well, you need to get in the coal, you need to run
2 coal or anything like that, you need to produce?

3 A. Oh, they always want you to produce. Yes, sir.

4 Q. Okay. Do you feel like they were putting pressure
5 on the production crew to do that?

6 A. Yes, sir.

7 Q. Do you know of anybody that got reprimanded,
8 suspended, fire or anything like that because they
9 didn't get into production?

10 A. Just Brian Collins the one time.

11 Q. Okay.

12 A. And that wasn't on the longwall.

13 Q. Okay. He was running a continuous miner section?

14 A. Yes, sir.

15 Q. Okay.

16 MR. SHERER:

17 That's all the questions I got.

18 RE-EXAMINATION

19 BY MR. FARLEY:

20 Q. What's the nature and scenario involving Brian
21 Collins? Why was he threatened?

22 A. That's a long story. He was gone --- hadn't had
23 his paper that long. He went to section. The section
24 wasn't ventilated properly. It was dirty. He had the
25 section down for over two hours. I know he got three

1 days suspension without --- with the intent of
2 discharge. I think he was discharged at that time.

3 Q. Okay. And that was because he had ceased
4 production on the section because of ventilation and
5 cleanup problems?

6 A. Yes, sir.

7 Q. Okay. Would that have been sometime in 2008 or
8 2009?

9 A. I don't see any dates on them driving this ---.

10 ATTORNEY MCCUSKEY:

11 I think that's what the lines are.

12 A. Well, this is longwall mining.

13 ATTORNEY MCCUSKEY:

14 Yeah, that's longwall mining.

15 A. It probably would have been --- let's see, 2009

16 --- probably in 2008 maybe.

17 MR. FARLEY:

18 Okay. Thank you, sir.

19 ATTORNEY HAMPTON:

20 Let's just take a quick one minute break.

21 A. Okay.

22 SHORT BREAK TAKEN

23 ATTORNEY HAMPTON:

24 Let's go back on the record.

25 RE-EXAMINATION

1 BY MR. SHERER:

2 Q. Mr. Sheets, you indicated you've been at this mine
3 about ten years?

4 A. Yes, sir.

5 Q. You've talked about the two previous methane
6 outbursts. Who was the mine foreman in charge of this
7 mine when those two outbursts occurred?

8 A. It would have been Wendell Wills or Dempsey Petry.

9 Q. Okay. Mr. Wills we understand was very
10 knowledgeable concerning the ventilation of this mine?

11 A. Yes, sir.

12 Q. And we also understand that he did a good job of
13 keeping things well ventilated?

14 A. Yes.

15 Q. Do you know if Mr. Wills made as many --- or made
16 ventilation changes as often as we understand had
17 occurred in this mine?

18 A. No, sir. No, he did not.

19 Q. Do you know of any reason why --- why that
20 practice was different from when he ran the mine until
21 the condition of the mine prior to the explosion?
22 What had changed?

23 A. Well, I'm sorry I'm looking around. It's coal
24 mine experience.

25 Q. Mine experience.

1 A. Yes, sir.

2 Q. Thank you. One thing about the period of time
3 after the explosion, you say that Mr. Adkins came up
4 to the mine relatively soon after the explosion.

5 A. Yes, sir.

6 Q. And he was directing the rescue attempts.

7 A. Yes, sir.

8 Q. And you mentioned earlier that Mr. May, Mr.
9 Foster, I think, Mr. Blanchard and Mr. Ferguson and
10 Mr. Whitehead had gone underground?

11 A. Not Ferguson at this point.

12 Q. Oh, okay. Okay.

13 A. Everett Hager.

14 Q. Everett Hager. Okay.

15 A. Yes.

16 Q. Do you know if there were communicating back to
17 Mr. Adkins?

18 A. Yes, sir.

19 Q. Do you recall if they --- you said the
20 communication was good to the 41 Switch.

21 A. Yes, sir.

22 Q. Did they call out when they got to that point in
23 the mine?

24 A. At 40, 41 Break is when Rick Foster first called
25 out, and I informed him what he had. And anyway, they

1 went to 78 Break and they had to come back to 41 Break
2 and call. And they asked Mr. Adkins, you know, where
3 they could go. He told them where they could go,
4 where they could try to go. He informed him that
5 anytime they found bad air, toxic gases that they had
6 to withdrawal, and he was very specific. I can't
7 forget his words. He informed them do not disobey me.
8 He said, do you understand, do not disobey me. I've
9 never had any dealings with Mr. Adkins up to this
10 point, but I was impressed with the way he handled the
11 situation.

12 Q. Okay. Thank you.

13 MR. SHERER:

14 Terry, any questions?

15 MR. FARLEY:

16 I'm done.

17 MR. SHERER:

18 Okay.

19 ATTORNEY HAMPTON:

20 Beth?

21 MS. SPENCE:

22 I'm finished.

23 ATTORNEY HAMPTON:

24 Okay. On behalf of MSHA and the Office

25 of Miners' Health, Safety and Training, we'd like to

1 thank you for appearing and answering questions today.
2 Your cooperation is very important to the
3 investigation as we work to determine the cause of the
4 accident.

5 We do request, as we mentioned earlier,
6 that you not discuss your testimony with any person
7 other than an attorney or your pastor, if you need.
8 After questioning other witnesses, we may call you if
9 we have any follow-up questions. And if at any time
10 you have additional information you'd like to share
11 with us, you have Norm Page's contact information in
12 the letter that was given to you, either his e-mail
13 address or his phone number. Either would be fine.

14 So now we'd like to give you an
15 opportunity if there anything else that you would like
16 to tell us or if there's any answer that you've given
17 that you have additional information you'd like to
18 give us or any other statement you'd like to give at
19 this point, you may do so.

20 A. No. I'm satisfied. Just I want to find out what
21 happened, and I think there's a few areas I know
22 everybody is proposing new laws and everything. If
23 you have any input on it, I think our barricades is
24 something that needs to be addressed. The way I
25 understand it I haven't been there, but the walls to a

1 permanent barricade are missing, so something needs to
2 be done to strengthen those. These men didn't stand a
3 chance to get to it anyway, but at some point maybe
4 that will save someone's life. I don't know. We just
5 want to find out what happened and never let it happen
6 again.

7 ATTORNEY HAMPTON:

8 Again, we'd like to thank you for your
9 cooperation.

10 ATTORNEY MCCUSKEY:

11 I'd like to make a request, as I have in
12 the past, to have a copy of the transcript for him ---
13 for the witness, Mr. Sheets, to be able to read and
14 sign as soon as it's available. Is that permissible?

15 ATTORNEY HAMPTON:

16 I know people have been making that
17 request, and we haven't quite figured out the protocol
18 we're going to be following for that request, but yes,
19 it's my understanding that people will at some point
20 down the road be able to review their transcript.

21 ATTORNEY MCCUSKEY:

22 Well, I know for --- I shouldn't say I
23 know for a fact. It is my understanding from Federal
24 investigators that they are requesting copies of this
25 and using it, and it would seem highly unusual if

1 you're sharing this information with Federal people,
2 but not giving the witness a chance to read and sign.
3 So I don't know if you're aware that's occurring, and
4 I can't swear that it is, but that's my understanding.

5 ATTORNEY HAMPTON:

6 Okay. Well, we will certainly --- we
7 have it now in the transcript, and I'll make a note of
8 it.

9 ATTORNEY MCCUSKEY:

10 Okay. Thank you.

11 ATTORNEY HAMPTON:

12 Okay. Thank you.

13 * * * * *

14 STATEMENT UNDER OATH CONCLUDED AT 11:04 A.M.

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CERTIFICATE

I, Alison Salyards, a Notary Public in and for the State of West Virginia, do hereby certify:

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

That the proceeding is herein recorded fully and accurately;

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



Alison Salyards