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Transcript of the Testimony of Donald Winston

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STATEMENT UNDER OATH
OF
DONALD WINSTON

taken pursuant to Notice by Brett Steele, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health and Safety Academy, 1301 Airport Road, Room C-123, Beaver, West Virginia, on Friday, May 21, 2010, beginning at 8:07 a.m.

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ATTORNEY BABINGTON:

My name is Matt Babington. I'm with the Office of the Solicitor, United States Department of Labor. With me is ---.

MR. PHILLIPSON:

Sandin Phillipson.

ATTORNEY BABINGTON:

Thank you. Write that down. An accident investigator with the Mine Safety and Health Administration. Also present are officials of the State of West Virginia. I ask that they state their appearance for the record.

MS. MONFORTON:

Celeste Monforton, with the Governor of West Virginia's special team.

MR. FARLEY:

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

ATTORNEY BABINGTON:

All right. Today is May 21st, 2010. Mr. Phillipson will start the questioning today and then followed by the other members of the State team. I also note that several other members of the

1 investigation teams are also present.

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

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 After the investigation is complete, MSHA
5 will issue a public report detailing the nature and
6 causes of the fatalities in the hope that greater
7 awareness about the causes of accidents can reduce
8 their occurrence in the future. Information obtained
9 through witness interviews is frequently included in
10 these reports. You should know that if you request
11 confidentiality, confidentiality will only be granted
12 on a case-by-case basis. Your statement may also be
13 used in other enforcement proceedings.

14 You may have a personal representative
15 present during the taking of this statement and may
16 consult with the representative at any time. Do you
17 have a representative with you?

18 MR. WINSTON:

19 No.

20 ATTORNEY BABINGTON:

21 You may refuse to answer any question and
22 you may request a break at any time. Since this is
23 not an adversarial proceeding, formal Cross
24 Examination will not be permitted, however, your
25 personal representative may ask clarifying questions,

1 if appropriate. In this case, you can ask clarifying
2 questions if you have any.

3 A court reporter will record your
4 interview. Please speak loudly and clearly. If you
5 do not understand a question asked, please ask that
6 the question be rephrased. Please answer each
7 question as fully as you can, including any
8 information you've learned from someone else.

9 I'd like to thank you in advance for your
10 appearance here. We appreciate your assistance in
11 this investigation. Your cooperation is critical in
12 making the nation's mines safer.

13 After we've finished asking questions,
14 you'll have an opportunity to make a statement and
15 provide us with any other information that you believe
16 to be important. If at any time after the interview
17 you recall any additional information that you believe
18 might be useful, please contact Norman Page at the
19 telephone number or e-mail address provided to you.

20 -----
21 DONALD WINSTON, HAVING FIRST BEEN DULY SWORN,
22 TESTIFIED AS FOLLOWS:

23 -----

24 EXAMINATION

25 BY MR. PHILLIPSON:

1 Q. Good morning, Don.

2 A. Good morning, Sandin.

3 Q. I've just got a few background questions at first.
4 Could you please state your full name and spell your
5 last name?

6 A. Donald Eugene Winston, W-I-N-S-T-O-N.

7 Q. Thank you. Can you please state your address and
8 telephone number?

9 A. Home address?

10 Q. Sure.

11 A. [REDACTED]

13 [REDACTED]

14 Q. Are you appearing here today voluntarily?

15 A. Yes.

16 Q. And how long have you worked for MSHA?

17 A. Over 17 years.

18 Q. What's your current duty station?

19 A. I'm the supervisor of the Roof Control Department
20 in Mount Hope.

21 Q. And how long have you been doing that?

22 A. Since July of 2007, give or take a week or two.

23 Q. And prior to that, you were a roof control
24 specialist?

25 A. I was a roof control specialist since April the

1 11th, 1999, and six years prior to that I was an
2 inspector in the Madison field office.

3 Q. Who's your current supervisor?

4 A. Richard Kline.

5 Q. And prior to your MSHA experience, what was your
6 mining-related experience?

7 A. I was the manager of mines at Valley Camp. I'm
8 sorry. Let me --- I should say I was the manager of
9 engineering at the Valley Camp Donaldson operation for
10 approximately six years. And prior to that, I was the
11 chief mining engineer at the Olga Coal Company. I
12 don't remember the exact number of years, but I was
13 there for a total of 11 years. But I was not chief
14 mining engineer that entire time.

15 Q. Oh, the Rocket Boys, Olga Coal Company?

16 A. That's correct.

17 Q. Do you have any specialized training or
18 certifications?

19 A. Well, I'm a Registered Professional Engineer in
20 the State of West Virginia. I have a Bachelor of
21 Science in Engineering Technology and Civil
22 Engineering at Bluefield State College. And I have a
23 Master's of Mining Engineering from Virginia Tech.

24 Q. What are your primary areas of responsibility as
25 roof control supervisor?

1 A. Well, we deal with all of the roof control plans
2 in the district. We also deal with the ground control
3 plans, and those are the two primary. Now, obviously
4 when there's problem areas, that comes under the roof
5 control part, so we investigate those and try to
6 improve on the condition.

7 Q. What's the SOP for reviewing a submitted roof
8 control plan, just ---?

9 A. If I understand it right --- when we receive it
10 from the company, our secretary logs it in and she'll
11 put it in a file, basically a first come, first served
12 type file. And then a specialist will review it, and
13 if it meets all of the requirements ---. Well, let me
14 back --- if it doesn't meet the requirements, then the
15 company is notified of the deficiencies. If it meets
16 the requirements, then they recommend approval and it
17 goes to the field office for the supervisor and the
18 inspector assigned to the mine to review. They make
19 their comments and recommendations, and then it comes
20 to me.

21 If I recommend approval, it goes to Richard Kline,
22 who is the ADM for technical services. If he
23 recommends approval, then it goes to the ADM of
24 enforcement for that division. And if he recommends
25 approval, then it goes to the district manager for his

1 signature.

2 Obviously, if any of those don't approve it, then
3 it comes back to me. We have to address whatever
4 concerns they have.

5 Q. Can you give an example of some of those
6 requirements or are their standardized lists or a list
7 of requirements that that plan has to meet?

8 A. Well, there are --- I mean, first of all, if you
9 look in the 30 CFR, there are requirements or at least
10 there are definite requirements in the 30 CFR that it
11 has to meet. And then there are some criteria or
12 recommendations that it should meet, but in all cases
13 it may not apply.

14 We also have now a list from --- that was
15 generated by Arlington that has --- I would describe
16 it as a suggested checklist. I don't think it's
17 exactly required in every plan, but we also do fill
18 out that checklist and make sure that everything that
19 is appropriate is in the plan.

20 Q. Was that the pill generated as a result of
21 Crandall Canyon for ground stability issues or is that
22 something else?

23 A. I don't know that it was a pill. Casey Sears at
24 the time was the one that headed that up, and I was
25 actually a part of the team that put that together,

1 but it was mainly just a checklist of safety
2 precautions.

3 Q. Okay. Who normally submitted roof control plans
4 for the Upper Big Branch Mine? Was there a specific
5 person or ---?

6 A. One of their engineers. It wasn't necessarily a
7 specific person, but it was one of their engineers.

8 Q. Do they have a geological or engineering staff
9 dedicated to ground control issues that you'd work
10 with?

11 A. They have an engineering staff. I don't know how
12 much they were geological oriented or anything like
13 that. I mean, they were mining engineers.

14 Q. Do you think, in your opinion of course, that they
15 had expertise in ground control issues when they'd
16 submit these plans?

17 A. I guess I'm going to have to ask what time period,
18 because they've changed a lot of engineers over the
19 years that I've been dealing with them.

20 Q. Okay. Well, that's a good point.

21 A. So I mean, I don't --- they've had some good
22 engineers that are gone. The ones that are there now
23 don't seem to be as experienced.

24 Q. Well, that's a good point. So you've noticed some
25 degradation in the quality of the engineering over the

1 years?

2 A. I'll say less experienced.

3 Q. What time frame would that be?

4 A. Wow. I don't know exactly, but when the coal boom
5 was really at its peak and everybody was looking for
6 an engineer, some of them left and went to other
7 companies during that period of time, and that's when
8 they seemed to have the less experienced ones.

9 Q. Okay. Who normally reviews the ground control
10 plans for the Upper Big Branch Mine?

11 A. Now, are you talking ground control or roof
12 control?

13 Q. Well, that's a good point. Roof control.

14 A. Well, it'll be one of the specialists. Really
15 it's either Brian Morris or Lee Barker, are the two
16 specialists that would likely review it. Now, and
17 again, the Roof Control Department has changed over
18 the years, too. But since I've been supervisor, those
19 are the two specialists that normally review it. I do
20 have two other specialists working for me that
21 occasionally review a plan, but Lee and Brian deal
22 with most of them.

23 Q. Just for some explanation, what really is the
24 difference between a roof control plan and a ground
25 control plan?

1 A. A roof control plan deals with the control of the
2 ground underground. The ground control plan is the
3 surface ground control.

4 Q. Would that extend to things like impoundments?

5 A. Not that much. They have their own plans that
6 they have to deal with. There may be a little
7 overlap, but it deals more with highwalls, spoil
8 banks, that type of thing.

9 Q. Faceups?

10 A. Faceups, of course, yes.

11 Q. And if there are issues with mining under bodies
12 of water, is that something that goes to District 4 or
13 is that something you seek assistance from, like, Mine
14 Waste and Geotechnical Engineering Division?

15 A. The Impoundment Branch or Department deals with
16 that in District 4. Oftentimes they will go to the
17 Technical Support branch for assistance.

18 Q. Okay. Are you aware of any problematic ground
19 conditions at the Upper Big Branch Mine?

20 A. At what time? I mean ---.

21 Q. Well ---.

22 A. I mean, like, recently?

23 Q. Let's say recently.

24 A. Well, I knew that they were having some problems
25 on their Headgate, on the ---. I'll have to get my

1 glasses. I don't know the exact crosscut, but I know
2 somewhere in the 70, 75, 65, up in this (indicating)
3 crosscut, they were having some blocks crushing and
4 some bottom hooving.

5 ATTORNEY BABINGTON:

6 And so now you're pointing to the
7 Headgate One North?

8 A. One North. And I learned that not firsthand, but
9 I did learn that from people in the ventilation
10 department, Joe Mackowiak and Mike Haynes, to be
11 specific.

12 BY MR. PHILLIPSON:

13 Q. Is that part of the reason why the mine had to
14 drive this new parallel 22 Tailgate?

15 A. That is my understanding that's the reason.

16 Q. So you've never visited this One North panel
17 headgate?

18 A. No, I have not.

19 Q. Have you visited the tailgate or One North panel
20 at all?

21 A. No.

22 Q. Okay. And are you aware of problematic ground
23 conditions in the past, say five years?

24 A. Nothing significant, no.

25 Q. Okay. And I think that would probably take us

1 back into the sealed area anyway. So there were
2 issues with the One North panel headgate design. And
3 had the mine been required to submit a plan or a
4 stability analysis that dealt with their gate road
5 designs? Had they submitted such a plan?

6 A. I'm not aware of it.

7 Q. Okay. And after discussion with the ventilation
8 division, that there were these problems with the
9 headgate design or problems with the headgate, did
10 anyone ask the roof control group to do an analysis of
11 that design?

12 A. The best of my knowledge, they did. It wasn't me.
13 I know that Lee Barker looked at --- looked at it. I
14 never saw what exactly what he did, but I know they
15 asked Lee to look at something there.

16 Q. Okay. So do you know what any of his conclusions
17 were or what his thoughts on what the causes of the
18 deterioration might have been?

19 A. I can remember discussing it, but honestly I
20 cannot remember what he said.

21 Q. So when it came time for the mine to drive this
22 parallel 22 Tailgate for the next panel, did they have
23 to submit a design for that for review by District 4?

24 A. Well, they should have. I didn't see it.

25 Q. Okay. It just strikes me that it seems like the

1 pillar sizes on 22 Tailgate and the One North panel
2 headgate really look the same, and you think that they
3 might have elected to do something differently.

4 A. I did notice they made the headgate bigger.

5 Q. Okay.

6 ATTORNEY BABINGTON:

7 When you say headgate, you're referring

8 Headgate 22?

9 A. That's correct.

10 BY MR. PHILLIPSON:

11 Q. So when Lee --- we think it might've been Lee ---
12 looked at this new design for the 22 Tailgate, were
13 there some certain specifications that he --- some
14 target values that he would've been ---

15 A. Okay.

16 Q. --- looking for?

17 A. I need to clarify. I don't know that he looked at
18 the 22 Tailgate. I'm pretty sure he looked at --- is
19 this the 21?

20 ATTORNEY BABINGTON:

21 This is One North.

22 A. One North?

23 ATTORNEY BABINGTON:

24 Headgate One North.

25 A. I'm pretty sure he looked at the area where it was

1 crushing.

2 BY MR. PHILLIPSON:

3 A. That's the only thing I'm pretty sure on. And
4 again, I didn't see his work, but I'm pretty sure he
5 looked at that. I can't say for sure he looked at
6 that, ---

7 Q. Okay. Thanks. I was confused.

8 A. --- at the tailgate. He may have, but I can't say
9 that for sure.

10 Q. Looking at the pattern of the One North panel
11 tailgate, it strikes me that it doesn't ---.

12 A. Are you talking the --- oh, this here on this
13 side, ---

14 Q. Yeah, this would be over on ---

15 A. --- the tailgate; okay.

16 Q. --- the south side.

17 A. Okay.

18 ATTORNEY BABINGTON:

19 The Tailgate One North.

20 A. Tailgate One North.

21 BY MR. PHILLIPSON:

22 Q. And I understand the confusion, because when I
23 look at, as well, it doesn't look like a typical
24 tailgate design. Do you have any comment on why they
25 would start out with what appears to be a five or

1 seven-entry main and turn it into a tailgate?

2 A. It's obviously unusual. I don't know that I've
3 seen that before, but --- so I don't know why they did
4 it.

5 Q. Does it look like there are other sort of erratic
6 parts of this mining development?

7 A. Such as ---?

8 Q. Well, maybe that's really my own comment. When I
9 look at this pattern, that's one of the things that
10 stands out. And then they have these crossovers.
11 Does this --- does this seem to be a typical sort of
12 longwall design?

13 A. Well, this tailgate's not typical, no. I mean,
14 you'll typically have three or four entries in a
15 tailgate.

16 Q. Was this considered a gassy mine?

17 A. Yes.

18 Q. And would it be typical in that condition to use a
19 three-entry or a four-entry gate road?

20 A. You could use either.

21 Q. And what would --- what would some of the factors
22 be, deciding whether they'd use a three-entry or four-
23 entry?

24 A. From ground stability, I don't know that it would
25 be that much different. I know Pinnacle Mine uses a

1 four-entry, and the one reason they use it is because
2 they have bottom hooving. So they put a very large
3 block in the middle and two smaller blocks on the
4 outside that will yield and help with the bottom
5 hooving. So that would be one reason for a four-
6 entry. If you have some serious bottom hooving, you
7 would put your outside yield blocks. Other than that,
8 I don't know.

9 Q. It would seem that there are a number of mine
10 seams above Upper Big Branch in general and One North
11 panel, specifically. Are multiple seam conditions
12 something that should be accounted for in designing a
13 mine?

14 A. Yes.

15 Q. Do you know that Upper Big Branch had incorporated
16 any of that in their designs?

17 A. I can't say that I know that.

18 Q. Do you have available the mine overlays showing
19 the upper seams for Upper Big Branch?

20 A. They're in the ventilation department and they are
21 available to me if I need them.

22 Q. Have you ever had any meetings with upper mine
23 management at the mine concerning submitted or
24 proposed plans?

25 A. I've had meetings with their engineers. If that's

1 upper management, then, yes.

2 Q. It's somebody. It's a name. And do you recall
3 who those people were?

4 A. If you go way back, I can remember discussing it
5 with George Levo, who is no longer living.

6 Q. Okay.

7 A. But the most recent was Eric Lilly.

8 Q. Do you recall what that meeting was for, what
9 specific issue?

10 A. It was to discuss the update of the roof control
11 plan. We had noted some deficiencies on what he had
12 submitted and I went through the deficiencies and
13 explained to him what he needed to do to correct 'em.

14 Q. Were those things that related to ground stability
15 issues?

16 A. No.

17 Q. How would you describe the mine's working
18 relationship with the district?

19 A. Somewhat non-cooperative.

20 Q. Are there specific instances that elucidate that?

21 A. Well, we had asked them to update the plan earlier
22 and they really didn't even respond to it, so ---.
23 They only responded once they needed a supplement to
24 the plan and we wouldn't approve it unless they
25 updated it.

1 Q. Has that been typical with them?

2 A. I would have to say, yes, at least recently.

3 Q. Would it be fair to say that you don't hear
4 anything from them until they need something and then
5 they need it immediately?

6 A. That's very fair to say that.

7 Q. Are you aware of any conditions that affected
8 production at the Upper Big Branch Mine recently or in
9 the past?

10 A. I was aware in this --- is it One North
11 Headgate ---? There was water in the back portion
12 here (indicating) that caused a shutdown. I don't
13 remember the time frame, but I was aware that there
14 was some water.

15 ATTORNEY BABINGTON:

16 And the area you're pointing to is on
17 Headgate One North at ---?

18 A. Well, I don't know the exact crosscuts, but it was
19 in the inby --- somewhere in the upper inby portion.
20 It wasn't outby.

21 ATTORNEY BABINGTON:

22 Okay.

23 A. I don't know exactly where it was, but ---.

24 ATTORNEY BABINGTON:

25 But you seem to be indicating that it was

1 above the longwall panel ---.

2 A. Yeah, somewhere in there.

3 BY MR. PHILLIPSON:

4 Q. And again, you've never been to this One North
5 panel?

6 A. That's correct.

7 Q. Are you aware of any methane floor feeders or
8 outbursts of gas on the panel? Have you heard
9 anything?

10 A. Not on this one, but an old one, yes.

11 Q. And where --- how long ago and in which panel was
12 that?

13 A. I don't know. I mean, it's been --- I don't, just
14 don't remember that time frame, Sandin. It's been
15 years.

16 Q. There was some other testimony that they thought
17 there might've been a gas outburst sometime prior to
18 2001. Do you recall anything about that?

19 A. I don't remember that one. The one I'm talking
20 about would have been after that. I'm quite sure.

21 Q. It's not apparent ---. The dates aren't apparent
22 from the map, but there's a three-year gap in the
23 longwall production in the sealed area. And do you
24 know why that was?

25 A. They moved the longwall to the Castle Mine.

1 Q. Okay. Also, looking at this wall map, there are
2 some various portions of different panels that were
3 skipped. This (indicating) is panel 12. They
4 terminated it around halfway. And there are some
5 other gaps. Do you know why they terminated any of
6 those panels early?

7 A. No.

8 ATTORNEY BABINGTON:

9 For the record, Mr. Phillipson is
10 referring to the one inch equals 500 feet map.

11 MR. PHILLIPSON:

12 Thank you.

13 BY MR. PHILLIPSON:

14 Q. Are you aware of any flooded mine workings above
15 the Upper Big Branch Mine?

16 A. No, I'm not aware of 'em.

17 Q. So you don't know if any part of Upper Big Branch
18 has been mined underneath flooded works?

19 A. I do not know that.

20 Q. And I guess the answer to this next question would
21 be obvious, but so do you know if there was ever a
22 plan submitted for operations under water or mining
23 under bodies of water?

24 A. No. That would've been a 1716 plan and we do not
25 handle that in our Roof Control Department. That

1 would've been the Impoundment Division that would've
2 handled that.

3 Q. Thank you. Do you know if this mine has or did it
4 ever have a degasification plan?

5 A. I don't know.

6 Q. Have you ever had an occasion to visit any of the
7 mines above Upper Big Branch and overlying seams?

8 A. Probably.

9 Q. These would be mines like Black Knight, Black
10 Night II, Black Castle, White Knight, any of the old
11 Bethlehem Mines, 116 or 131.

12 A. I'm sure I probably did, Sandin, at least one of
13 them ---

14 Q. Okay.

15 A. --- or two of 'em, but I just --- you know. I
16 cover the entire district. I mean, I have a lot of
17 mines I go to.

18 Q. Do you know of any complaints that have been
19 lodged against this mine, regarding this mine?

20 A. I'm not aware of 'em.

21 Q. Have you heard of anybody or heard of any
22 complaints, like ---?

23 A. Are we talking after the explosion or before or
24 any time?

25 Q. Well, I guess say, again, the five years?

1 A. Well, the only thing I know is one of the guys
2 that work for me was there during the, you know, after
3 the explosion occurred, and a guy came to him and
4 wanted to talk. And I think he even may have talked
5 to the team, but that's the only one I'm aware of.

6 Q. Do you recall who one of --- who that person was
7 that talked to the miner?

8 A. David Sturgill.

9 Q. Were you involved in the accident's emergency
10 response?

11 A. No.

12 Q. Did you go to the mine following the accident?

13 A. Yes.

14 Q. When and how were you notified of the accident?

15 A. I was watching the six o'clock news.

16 Q. Uh-huh (yes). And so then you called the district
17 to see if they needed help or ---?

18 A. No, I was not contacted and ---

19 Q. Oh.

20 A. --- I didn't call them.

21 Q. Okay. So were you involved --- you weren't
22 involved in any of the rescue or recovery efforts,
23 then?

24 A. No. I did man the phone on the midnight shift at
25 the office.

1 Q. Okay. Did you have any involvement in locating
2 any of the boreholes relative to the rescue effort ---

3 A. No.

4 Q. --- or the gas sampling effort?

5 A. No.

6 Q. Do you have any familiarity with the gob
7 characteristics, as far as does the gob cave easily?

8 A. I can't say that I know that this is any different
9 than a typical mine.

10 Q. Okay. You haven't heard about any unusual front
11 abutment stresses, ---

12 A. No.

13 Q. --- rides ---?

14 A. I've not heard of 'em, no.

15 MR. PHILLIPSON:

16 Okay. Well, that's, I think, all that I
17 have for now. Terry?

18 EXAMINATION

19 BY MR. FARLEY:

20 Q. Don, I think you just said that a person by the
21 name of David Sturgill approached someone after the
22 explosion and wanted to talk. Who was the person ---?

23 A. No, that wasn't what I meant to say.

24 Q. Okay.

25 A. Someone approached David ---

1 Q. Okay.

2 A. --- and wanted to talk.

3 Q. Okay. Do you recall who that person was?

4 A. No, I never knew his name.

5 Q. You indicated earlier that this tailgate setup is
6 not typical, in that it has more entries; is that
7 correct?

8 A. That's correct.

9 Q. Okay. And you indicated most --- most folks use
10 three or four entries?

11 A. Yes.

12 Q. Is it mostly three or mostly four that people use?
13 What's your experience with that?

14 A. In this division, District 4, ---

15 Q. Uh-huh (yes).

16 A. --- I would have to say mostly three.

17 Q. Okay. Why would they choose three as opposed to
18 four, typically?

19 A. Again, the only thing I can really think of is if
20 you have a lot of bottom hooving problems, the four-
21 entry with the yield pillar is a better design, is the
22 only answer I can give you.

23 Q. Okay.

24 A. It may be a production thing. Obviously you could
25 advance faster with three.

1 MR. FARLEY:

2 Okay. Celeste?

3 EXAMINATION

4 BY MS. CELESTE:

5 Q. Thank you, Mr. Winston. You mentioned that you
6 were aware that they were having some block crushing
7 and bottom hooving, I think you mentioned at headgate
8 and you said between 75 and 65?

9 A. Well, I can't say --- I know it's somewhere in
10 that area. I can't pin it down.

11 Q. Right. And I'm just wondering, can you give us a
12 time period for that? Was it in the last year, the
13 last ---?

14 A. It was definitely in the last year.

15 Q. In the last year. Thank you. Have you been in
16 the Upper Big Branch Mine in the last year?

17 A. No.

18 Q. In the last two years?

19 A. No.

20 Q. Mr. Phillipson had asked you about overmining and
21 some of the other mines that are located above the
22 Upper Big Branch Mine. And I believe that he asked
23 you if the mining plan for the Upper Big Branch
24 would've incorporated that information or that reality
25 in their plan. And I believe you said that that

1 wouldn't be something that your division would look
2 at.

3 A. Let me make sure I'm clear.

4 Q. Okay.

5 A. They do list all of the mines that are above and
6 below in the roof control plan. Where it would not
7 --- I would not be involved if it's flooded.

8 Q. Okay. If it wasn't flooded, then you would be
9 involved because it's part of the roof control?

10 A. If we felt that that would cause unusual stresses,
11 then, yes.

12 Q. So that's part if your division's ---

13 A. Yes.

14 Q. --- responsibility?

15 A. Yes.

16 Q. Thank you. You mentioned a meeting that you had
17 with Eric Lilly to discuss an update of the roof
18 control plan and that there were some deficiencies
19 that concerned you in the roof control plan.

20 A. That's correct.

21 Q. Could you put a time period on that? When did
22 that occur?

23 A. Wow.

24 Q. In the last six months?

25 A. More than likely.

1 Q. Okay. I believe that you also indicated that your
2 experience with the mine was that from time to time
3 they were --- you called them somewhat non-
4 cooperative?

5 A. That's correct.

6 Q. Can you elaborate a little bit about how that
7 works in your own division? You're having meetings
8 with them and they're uncooperative. At what point
9 did you or did you need to elevate that up your chain
10 of command?

11 A. I didn't elevate it up my chain of command. It's
12 more --- what I'm saying, like, if --- the best
13 example is we had asked them to update the plan
14 probably a year and a half before they actually got it
15 updated. If you look at --- I don't have the exact
16 dates, but if you have a record of the roof control
17 plans ---

18 Q. Uh-huh (yes).

19 A. --- you can --- you can see when --- we even wrote
20 'em a deficiency letter at one time.

21 Q. That's very good to know. Thank you so much.
22 What are the procedures for you to be aware of any
23 citations that an inspector issued with regard to them
24 not complying with the roof control plan? How does
25 that work in your district?

1 A. It doesn't --- they don't normally go through me.
2 I mean, unless it would be some unusual situation
3 where the plan may need changed, they wouldn't go
4 through me.

5 Q. They wouldn't go through you, but is there ---
6 does an inspector normally ---? Would you know about
7 that? Would you know about citations for violating
8 the roof control plan?

9 A. Not necessarily, no.

10 Q. Okay. So you have kind of an engineering
11 department and you do your work and the inspection
12 force ---?

13 A. Yeah, and we have an overlap, but naturally we try
14 to assist them any way we can, but ---

15 Q. Right.

16 A. --- we don't know what they do day to day.

17 Q. Okay. Thank you. You mentioned that at some
18 point in the past, sometime after 2001, you recall
19 they had a gas outburst.

20 A. Yes.

21 Q. Would that have been something that the mine
22 operator would've been required to report under part
23 50?

24 A. Yes.

25 Q. So there should be a record of it?

1 A. Yes, there should be a record.

2 Q. A record of that.

3 MS. MONFORTON:

4 Okay. Very good. Thank you.

5 RE-EXAMINATION

6 BY MR. PHILLIPSON:

7 Q. I just have a couple. You mentioned going back to
8 this Headgate One North section where they're having
9 the roof control problems around the 65 to 75 Break,
10 and you said that Lee Barker performed some kind of
11 analysis for them. Was there --- you said that you
12 didn't get a chance to see that analysis that he did?

13 A. That's correct.

14 Q. Is there a typical review process for reviewing
15 analyses or do they generally just stay with ---
16 between the person who wrote it and the mine?

17 A. It depends on what we're talking about, okay? I
18 mean, normally if it's a roof control issue and we're
19 changing the plan, then, yes, we all --- but we
20 weren't necessarily changing the plan, so that
21 particular one, the ventilation people had asked Lee
22 to look at that and he did.

23 Q. Okay. On the Tailgate One North section, you
24 know, we've talked a little bit about the difference
25 between a three-entry and a four-entry tailgate, you

1 know, and you also pointed out that this tailgate has,
2 it looks like five to seven entries.

3 A. Correct.

4 Q. I guess there's two parts here. One is, can you
5 conceive of a reason why you would want five to seven
6 entries rather than three or four?

7 A. I don't know why they did it. And I mean, like I
8 mentioned to Terry, the three-entry advances much
9 faster, so I mean, I don't know why they did it.

10 Q. Did they have to submit a plan for the Tailgate
11 One North?

12 A. As far as roof control?

13 Q. Right.

14 A. No.

15 Q. Okay. You mentioned early on that as time has
16 gone on, it seems like the engineering staff has
17 become less experienced than it has been previously?

18 A. That's my opinion.

19 Q. So you mentioned Eric Lilly versus the other
20 gentleman who you worked with a couple years ago.

21 A. George Levo.

22 Q. George Levi.

23 A. Levo.

24 Q. Levo, okay. What was your --- how was your
25 experience with Eric Lilly?

1 A. Well, as far as him personally, he was very
2 cordial in any meetings we had. I got the impression
3 that he didn't make the call, you know. I mean, he
4 worked for somebody else.

5 Q. Did you get an impression of who that person was
6 who had ---?

7 A. I can't say for sure.

8 Q. This is my last one. You talked about how --- you
9 know, going back to this somewhat non-cooperative
10 attitude. And you said that this was an attitude that
11 had seemed to appear more recently, like in the last,
12 I guess, few years. I was wondering what was the time
13 period when it seemed that they went from just being
14 somewhat cooperative to somewhat non-cooperative?

15 A. Well, they were never really cooperative.

16 Q. Okay.

17 A. But I don't know exactly whether I can answer
18 that.

19 Q. Would you say several years or would you say more
20 than five?

21 A. I can't answer that.

22 MR. PHILLIPSON:

23 Okay.

24 ATTORNEY BABINGTON:

25 That's all I have. Let's take a break,

1 figure out if we have any follow-ups and then we can
2 close up.

3 SHORT BREAK TAKEN

4 ATTORNEY BABINGTON:

5 Let's go back on the record.

6 RE-EXAMINATION

7 BY MR. PHILLIPSON:

8 Q. Don, we had a couple of follow-up questions. A
9 question about the gate road design between One North
10 Headgate and the new 22 Tailgate. So they had some
11 sort of floor heave problem in One North Headgate.
12 And apparently it looks like they had the same
13 conditions but they drove the 22 Tailgate, basically
14 with the same three-entry design and the same pillar
15 sizes. So do they have any expectation the conditions
16 are going to be different from where they had problems
17 on One North headgate?

18 A. I would have to know more information to answer
19 that, because the cover could be different here
20 (indicating), which is, what, One North headgate. It
21 could be different. There could be some multiple seam
22 interactions over this that's not over the other. I
23 don't know that, but I mean those could, could or
24 could not come into play. If those don't come into
25 play, everything being the same, then I don't know why

1 you would expect it to be any different.

2 Q. And the company didn't submit anything to document
3 why the same design is going to be better?

4 A. Not to my knowledge.

5 Q. Thank you. How many roof control specialists do
6 you supervise?

7 A. Currently, four.

8 Q. And it sounded like there were two people that do
9 a lot of the work and then two people help out, or is
10 the official number four?

11 A. The official number is four. Two of 'em have been
12 there quite a while. I don't remember the exact time,
13 but --- and they are very familiar with the plans and
14 the requirements of the plans, so they do the majority
15 of the review of plans. The other two have come on
16 board in the last year. They're very experienced and
17 they do more field work. We're now required to
18 inspect every retreat section once a month, so they
19 fulfill that obligation quite a bit.

20 Q. So that's basically just the division based on
21 experience or --- based on experience?

22 A. That's correct.

23 Q. Have you ever sent one of those specialists to
24 Upper Big Branch or to look at conditions on One North
25 panel?

1 A. Not on One North panel. I did send a specialist,
2 Frank Hartenstein, to look at a request to split some
3 blocks. And I'm not sure, but I ---. It may be in
4 where this says, Six North belt, somewhere between
5 where you have these blocks split here between ---
6 somewhere in the neighborhood of Crosscut 105. I
7 would have to go back and actually look at the plan to
8 make sure that's where it was, but I do know they had
9 a plan to split some blocks, and I'd have to actually
10 look at the plan to be sure. But anyhow, Frank did go
11 to look at that block split plan.

12 ATTORNEY BABINGTON:

13 For the record, you're pointing to the
14 area on the Six North belt, which appeared to be the
15 switch to the Headgate One North.

16 A. Right. But I want to make it very clear, I'd have
17 to look at the plan to say specifically that that was
18 it.

19 BY MR. PHILLIPSON:

20 Q. You mentioned that you'd had some discussions with
21 Eric Lilly about plan deficiencies. Do you recall
22 what those deficiencies were?

23 A. Well, let's see. There was numerous. Some of
24 'em had to do with the checklist that I had discussed.
25 They just, you know, didn't meet what we had asked for

1 in the checklist. One of 'em I specifically remember,
2 they still had in there where they could use cable
3 bolts as primary support. And that was put in there
4 probably in the '90s and just never taken out. They
5 didn't do it, so I asked them to take that out. But
6 it was more checklist type stuff, you know, the things
7 that we had been asked to put in. And that's the best
8 I remember, Sandin.

9 Q. Despite this checklist, are plans approved on a
10 mine-by-mine basis?

11 A. Sure. Yes.

12 Q. And that's based on the conditions at the mine?

13 A. That's correct.

14 MR. PHILLIPSON:

15 I think that's all I have.

16 EXAMINATION

17 BY ATTORNEY BABINGTON:

18 Q. Just one little idea. Just to be sure, you
19 mentioned these, the cable bolts for primary support.
20 That was an actual provision of the roof control plan?

21 A. It was in there, yes.

22 Q. And when --- when was that roof control plan
23 updated to take that provision out?

24 A. The best I remember, somewhere around the end of
25 2009. It's in that --- it may have been the first of

1 2010, but it was in that time frame.

2 ATTORNEY BABINGTON:

3 Okay. Terry, do you have ---?

4 MR. FARLEY:

5 No, sir.

6 MS. MONFORTON:

7 Uh-uh (no).

8 ATTORNEY BABINGTON:

9 Okay. On behalf of MSHA and the Office
10 of Miners' Health, Health, Safety and Training, I want
11 to thank you for appearing and answering questions
12 today. Your cooperation is very important to the
13 investigation as we work to determine the cause of the
14 accident. We require that you not discuss your
15 testimony with any person aside from your personal
16 representative or counsel. After questioning other
17 witnesses, we may call you if we have any follow-up
18 questions that we feel that we need to ask you. If at
19 any time you have additional information regarding the
20 accident that you would like to provide to us, please
21 contact us at the contact information that was
22 previously provided.

23 If you wish, you may now go back over any
24 answer you've given during this interview. You may
25 also make any statement that you would like to make at

1 this time.

2 A. I have no statement.

3 ATTORNEY BABINGTON:

4 All right. Again, I want to thank you

5 for your cooperation in this matter. Off record.

6

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STATEMENT UNDER OATH CONCLUDED AT 9:08 A.M.

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CERTIFICATE

I, Brett Steele, 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.



Brett Steele