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Transcript of the Testimony of **Joseph Mackowiak**

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CONTINUED STATEMENT UNDER OATH

OF

JOSEPH MACKOWIAK

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 Tuesday, May 18, 2010, beginning at 1:08 p.m.

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

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P R O C E E D I N G S

1
2 -----
3 ATTORNEY BABINGTON:

4 We're here to continue the interview from
5 yesterday, May 17th, with Joe Mackowiak of MSHA.

6 Today is May 18th, 2010. It's about 1:00 p.m. in the
7 afternoon. Before we begin, I want to remind you that
8 you're still under oath.

9 My name is Matt Babington. I'm an
10 attorney with the Office of the Solicitor. And I'd
11 like everyone else at the table to reintroduce
12 themselves.

13 MR. STOLTZ:

14 Richard Stoltz, with MSHA.

15 MR. FARLEY:

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

18 MR. O'BRIEN:

19 John O'Brien, with the Office of Miners'
20 Health, Safety and Training.

21 MR. BECK:

22 Jim Beck, with Davitt McAteer's
23 independent team.

24 ATTORNEY BABINGTON:

25 Okay. And Rich, continue when you're

1 ready.

2 -----

3 JOSEPH MACKOWIAK, HAVING BEEN PREVIOUSLY SWORN,

4 TESTIFIED AS FOLLOWS:

5 -----

6 EXAMINATION

7 BY MR. STOLTZ:

8 Q. Okay. Joe, I guess yesterday you went through
9 some of the approved plans at the Upper Big Branch
10 Mine from a time frame of about August 16th, 2009
11 through, I believe it was March 22nd, 2010. There are
12 probably several plans that have been reviewed by you
13 and denied during this time frame. Would you
14 basically, if you could, please, just go over the
15 number and maybe a very brief description of some of
16 the important denials that you --- or some of the
17 denials?

18 A. Sure. I have before me a list that you provided
19 to me, starting with 8/25/2009, a request to construct
20 a 50 psi Minova seal in front of a Strata Packsetter
21 seal. That was as a result of a citation issued by
22 the field office in which a Strata Packsetter seal had
23 some damage. It was denied because it was an
24 incomplete submittal, as I recall.

25 Install set of doors between Number Nine and 11 on

1 Number One tailgate in order to correct neutral air
2 outby the longwall face. It was submitted on
3 September 3rd, 2009. It was a denial.

4 Change the intake air course on, again on
5 September 3rd. Change the intake air course from
6 Birchton Portals to the junction of parallel North
7 Mains from the intake air course to the neutral air
8 course. Again, it was a denial.

9 And on 9/4/2009, drill a dewatering hole in the
10 Number One entry inby break number 131, also was a
11 denial. Those were early on in the mining of the
12 longwall panel, and in particular what we look for is
13 the required items under 75.371 with regard to a
14 ventilation plan or 372, with regard to if it is a map
15 revision to assure that it is complete and
16 functionally ventilates. Each one of those denials is
17 on record, maintained on record in the Mount Hope
18 District Office, and the denials themselves are marked
19 up for their exact reasons.

20 Q. Can I just ask you a question? On 9/3, were there
21 two or were there one?

22 A. There were two.

23 Q. Okay.

24 A. On 9/16/2009 to drill a dewatering hole and
25 convert the Number Four entry of the Number One

1 headgate into a return air course. It was denied.

2 On 9/17 to drill dewatering hole and convert

3 Number Four entry and Number One headgate to an intake

4 air course. It was denied.

5 9/18 there was an approval. Again, a denial on

6 November 20th, modify face to the previous revision

7 for the longwall approved on 8/6/2009. It was a

8 denial. Revised on 11/20, again, revise face sketch

9 for Three entry gate road. That was resubmitted on

10 11/12/2009, so that was a submittal due to a previous

11 denial that was again denied.

12 On 12/1/2009 the ventilation scheme for future

13 mining of LBB Number Five, that was denied. And LBB

14 Number Five is a small longwall panel near the Ellis

15 Portal, which is where the longwall was to go after it

16 was completed, this panel number 21 in which the

17 accident occurred.

18 And that one stands out in particular because I

19 asked for several --- additional information,

20 including quantities and pressure drops to assure that

21 the ventilation system itself could handle the burden

22 of an additional panel in another area of the mine.

23 And that was done as an additional safety precaution

24 above that of what's normally asked for.

25 On 12/3/2009 there was a denial to reroute a

1 portion of the return from MMU 0-29, which is Headgate
2 22 down North Glory Mains to mix with return off of
3 Two section and flow down Tailgate One North.

4 On 12/4/2009, ventilation controls to shear
5 pillars for new longwall belt for Headgate 22. It
6 also was a denial. As I recall, that one had issues
7 with regard to contamination from the return air
8 course into a neutral air course. And it was a deny
9 to assure that that return air course was isolated as
10 required within the regulations.

11 On 12/4/2009, at face sketch for Three entry gate
12 road development with belt air course located in
13 Number One entry flowing outby. An additional denial
14 was issued for a submittal on December 9th. The route
15 of travel will return from Headgate 22 into a common
16 entry with the MMU-040, which I believe was in that
17 wedge area at the time to make Number Three headgate a
18 common intake air course with existing primary
19 escapeway.

20 And 12/11 ventilation to move this 004-MMU, which
21 is another area of the mine, from --- Number One panel
22 to Number 16 panel was denied.

23 On 1/7/2010 a six-phase revision to mine LBB
24 Number Five was denied. Again, we were asking for
25 additional information with that denial on any new

1 submittals with regard to both pressure drops and
2 quantities in the area to assure that the ventilation
3 system itself could handle the burden of an additional
4 panel.

5 Then on to 2/11/2010, move the Section 004 from
6 Number 16 panel to Number 11 panel was denied. And
7 then again on 3/23/2010 there was a request to install
8 an exhaust fan at Ellis Mains and entries parallel to
9 the Ellis Mains to conduct mining, which actually
10 would've resulted in additional intake entries.

11 And there's a 500 scale map on the wall which
12 shows those actual projections, and it's right off of
13 Ellis Mains to the north or to the right if you're
14 looking inby. That's those entries there.

15 Now, the reason that was denied was because as
16 that mining was shown on the mine map, as it would
17 progress, it would drive into and connect to the
18 intake air course. And due to mining into the intake
19 air course, it would've resulted in contamination from
20 the return air of that section into the main intake to
21 the mine, and therefore causing a mine-wide
22 contamination issue, and that's one of the reasons why
23 that was denied as well. The mine itself has a ---
24 has a high number of denials, and I would say that's
25 due to haphazard planning.

1 Q. I guess yesterday you --- after we talked about
2 the approvals, you mentioned that or stated that you
3 believe this type of ventilation system was a Band-Aid
4 approach? Would you please elaborate on that,
5 especially since you went through --- we went through
6 the approvals, went through a majority of the denials
7 now. So what did you mean by Band-Aid approach?

8 A. As an inspector would find issues in the mine and
9 they would issue violations or citations and orders,
10 the company would react to that with generally a plan
11 change, but you would only see a small component of
12 it, whatever was necessary to abate that condition and
13 then move on. And that was done a myriad of times.

14 Additionally, the operator's submitting revisions
15 at such a quick pace that there were multiple changes
16 going on. Now, there isn't any mechanism to
17 essentially track when these are completed other than
18 during a quarterly inspection. And as you can see,
19 there's a high number of 'em that that could be both
20 confusing to the inspector, as well as the Ventilation
21 Department with regard to that.

22 So what we do when we get a submittal is we look
23 at the previous submittals to assure that there isn't
24 a conflict, to the best of our ability. Of course,
25 with the higher number of submittals, that becomes

1 increasingly more difficult due to the complexity of
2 the system.

3 Additionally, truly only the mine operator has the
4 intimate knowledge of the system as they're in it and
5 walking it every week. To truly evaluate its
6 effectiveness, we look at it on paper to assure that
7 there aren't any conflicts and it complies with the
8 regulations with regard to intake. Its primary and
9 secondary escapeways are isolated. We look at
10 compliance, obviously, from what I told you yesterday,
11 with the new belt air regulations from 2008. And we
12 actually take those plans and review 'em either
13 verbally or in person with field office personnel to
14 get their input as well.

15 Q. Well, I guess to elaborate or put something
16 additional, you're allowing the operator, then, whose
17 mine this is, to make those changes and evaluate those
18 changes to make sure they're appropriate, because we
19 can't be there seven days a week, I mean, around the
20 clock. So you've got a lot of trust into the
21 operator.

22 A. Correct. Furthermore, let me add that the
23 Regulation 370 itself says these mine operators should
24 develop and follow a plan. And a plan revision is
25 necessary when it's --- basically can have a material

1 effect on health and safety.

2 Now, to further describe that for both the AD
3 operators and my employees, as well, we have described
4 that to the operators as something that could
5 materially effect health and safety. Of course it's a
6 broad definition, but at a bare minimum, we would
7 consider that any time that they would reverse an air
8 course, change its direction or change its type from
9 intake to return or return to intake, vice-versa.

10 And the reason being is, we've always found those
11 to have potential to have material effects. We want
12 to set that as a minimum. Now, of course there is no
13 maximum to what that could be. It's somewhat
14 subjective, but the operator seems, with their plan
15 submittals, to change things often.

16 Q. I guess I'm going to jump off that a little bit
17 and just ask you in general, how is your working
18 relationship with Massey?

19 A. Fair. I mean, it's strained at times due to just
20 the nature of the position. The worse the submittals
21 get, of course it gets a little more difficult. I'm
22 sure they don't appreciate getting a denial. However,
23 we always try to refer them to a section of the
24 regulation which was applicable and the reason for
25 denial.

1 Probably is difficult with them as any coal
2 company in the district due to the high volume of plan
3 submittals, the high number of denials. Their denials
4 exceed that of any other coal company we deal with.
5 Additionally, in January of 2009, I drafted a
6 letter to mine operators, which was issued through Bob
7 Hardman, where we actually changed our internal SOP
8 with regard to how we handled annual ventilation maps.
9 And it was done exclusively due to the actions of this
10 mine.
11 And what had happened was they're required under
12 75.372 to submit an annual ventilation map. Well, due
13 to four separate submittals --- it took four separate
14 submittals in order to approve that map. Now, it's
15 actually just acknowledged, but we won't acknowledge a
16 map that contains errors. It's not the best interest
17 of the miners at the mine.
18 So it took 11 months to get an annual map. So as
19 soon as an annual map was acceptable at this location,
20 one month later they would do their next annual map.
21 To say the least, I was upset, and so we modified
22 our SOP. And that SOP states, after --- it was
23 issued, let me say first, with regard to the 1992
24 questions and answers, the Blue Book, that a violation
25 can be issued upon first submittal. Now, it had

1 always been the district's policy before then, they
2 allowed three submittals.

3 And we took that leniency away and decided that we
4 would issue a violation on the first submittal if it
5 did not materially affect the --- if there was a
6 ventilation issue shown on the map that could
7 materially effect health and safety, that that was
8 unacceptable and we would take immediate violative ---
9 immediately issue a violation. And that was
10 exclusively due to the poor submittals from Upper Big
11 Branch Mine.

12 Q. Okay. Are you aware of any conditions that
13 affected production at the Upper Big Branch Mine other
14 than the ventilation issues you already previously
15 discussed yesterday?

16 A. I think every citation or order that was issued
17 was brought to my attention through the --- through
18 the field office. We discussed those yesterday.
19 Other than those, I'm not aware of any.

20 Q. Are you aware of any conditions which required all
21 or a portion of the miners to be evacuated, other than
22 the ventilation issues previously discussed?

23 A. No.

24 Q. Was the mine on --- this mine on a 103(i) spot
25 inspection?

1 A. Yes, sir.

2 Q. Has an inspector or supervisor ever expressed any
3 concerns about the ventilation of UBB?

4 A. Yes, multiple times. Keith Stone did. Kevin
5 Lyall did, and Joey Athey did. And as a result of
6 each time they expressed their concerns, I sent
7 ventilation specialists to the mine, which resulted in
8 the orders that I issued, and Mike Haynes, on
9 September 1st, the 107(a) order in the headgate
10 entries and also the order issued at the tailgate
11 entries at Tailgate One North.

12 And we responded to each, each and every one of
13 those. In fact, I responded a little more than that
14 by finishing the last quarter by having my specialist
15 run dust on both the tailgate and the headgate section
16 in order to have more specialist presence at the mine.

17 Q. Did you raise your concerns, then, to the
18 assistants or Mr. Hardman?

19 A. Yes. I made each one aware that we were going to
20 the mine each time. I also had several meetings with
21 Link Selfe, in which the company and the operator
22 would come in. I always make sure that I try to
23 include an ADM in every meeting that we have
24 concerning one of their mines. It's just nice to get
25 a little more senior level MSHA management involved.

1 Q. How about Rich, Rich Kline?

2 A. Rich Kline, as well. I visit Rich daily and I
3 would tell him where we were going and why.

4 Q. And Rich Kline is ---?

5 A. Assistant District Manager of Technical Programs,
6 as well as my supervisor.

7 Q. Has Richard Kline ever asked you about the
8 ventilation of UBB, I mean come down to your office?

9 A. Not that I recall.

10 Q. Did anybody, either Mr. Hardman or Mr. Selfe or
11 Mr. Kline, ever discuss UBB with you or --- I guess so
12 many of the submittals and denials. Did you have an
13 in-house meeting?

14 A. Not a formal meeting, no.

15 Q. Was technical support ever utilized due to
16 problems with the mine?

17 A. No, sir.

18 Q. The mine map shows a three-year gap in longwall
19 production. Do you know why?

20 A. I don't know exactly why. I've never asked that
21 question of anyone, but I can only surmise that they
22 had completed their developed reserves and the
23 longwall had gone elsewhere.

24 Q. Okay. Let's see. Also, on the mine map various
25 portions of the longwall districts have been skipped.

1 Would you know why?

2 A. The overlying maps indicate that there is a
3 beltline in that area, and, therefore, subsidence was
4 avoided.

5 Q. Okay. In a recent ---?

6 A. Again, I wasn't in ventilation during that period
7 and at that time that that was actually mined, so I
8 can only go from what's on the map.

9 Q. Okay. In a recent press release by Mr. Don
10 Blankenship, Massey's Chairman and Chief Executive
11 Officer, Mr. Blankenship inferred that MSHA dictated
12 the ventilation design. Do you have any idea what he
13 was referring to?

14 A. I think he was referring to our requirement that
15 they address the belt air regulations. Now, how it
16 was addressed is entirely up to the mine operator.
17 Also, the citations and orders that were issued
18 whenever they violated their plan, 370(a)(1)
19 violations, specifically with regard to this tail, he
20 may be referring to that as well. However, that is a
21 condition which they violated their plan and they had
22 to reach abatement. Other than that, I don't know
23 what he may be referring to.

24 Q. And the Belt Air Rule, that was a regulation that
25 went through the procedures passed in December of

1 2000 ---?

2 A. Eight.

3 Q. Eight? And they were given a lot of notice, if I
4 remember, you had said. And it took them until
5 sometime in December to --- of 2009 to make an
6 attempt?

7 A. Correct.

8 Q. Okay.

9 A. Additionally, the order that was issued was for
10 the water in the headgate entries, approximately Break
11 70 to 80, as well as the poor conditions. He may be
12 reflecting to that as well. However, the area became
13 unstable, unsafe for passage.

14 And the mine operator chose how to address the
15 plan change as a result of that, because the change
16 that resulted from that was the January 22nd plan,
17 which the tailgate was being driven and mined. I
18 honestly never even seen something like that before.
19 It certainly didn't come from us.

20 Q. Okay. Are you aware of any complaints lodged
21 against the mine?

22 A. With regard to health and safety for miners or
23 from ---

24 Q. Yes.

25 A. --- internal? No, sir.

1 Q. Okay. How about internal, since you asked?

2 A. Only those issues that were raised from the three
3 inspectors I had described earlier, which they came to
4 me and we promptly responded.

5 MR STOLTZ:

6 Terry?

7 EXAMINATION

8 BY MR. FARLEY:

9 Q. Okay. Bear with me on this one. I'm not in any
10 way trying to prejudge the outcome of this
11 investigation or anything, but all this back and forth
12 on ventilation plans kind of leads me to this
13 question. First of all, you quoted 75.3-something
14 there that reads only the mine operators shall develop
15 and follow a plan. Would it be your opinion that we
16 may be moving toward the day when that will be
17 reversed and the agency and/or agencies shall develop
18 a plan that the operator will follow?

19 A. No. I certainly hope not, because the intimate
20 knowledge it requires to develop a plan can only be
21 imparted by the operator. I simply ---

22 Q. Uh-huh (yes).

23 A. --- don't have those resources. Additionally, due
24 to the volume of mines that must be inspected ---
25 because as I told you yesterday, we have 245 --- it's

1 simply impossible to staff that.

2 MR. STOLTZ:

3 Okay. Jim?

4 EXAMINATION

5 BY MR. BECK:

6 Q. Joe, in your discussion there with Richard, you
7 talked about where MSHA, the agency, couldn't be at
8 the mine seven days a week, 24 hours a day. It just
9 doesn't happen. And I believe you mentioned or stated
10 something about you got to have some trust in the
11 operator; is that right? Remember that?

12 A. In our absence, it should be expected that they
13 would follow regulations.

14 Q. Did you trust Massey as an operator?

15 A. No, sir.

16 Q. Okay. I counted, and you don't need to count up,
17 but somewhere around 18 denials from August '09 to
18 March 23rd, 18 or 19. I might have missed one, but
19 that's a lot; right?

20 A. It's exceptional.

21 Q. Exceptional? Was there one person that submitted
22 these or did they come from an array of people or ---?

23 A. They essentially come from --- they appear to be
24 prompted by Chris Blanchard, but they come literally
25 from either Matt Walker or Eric Lilly most often. The

1 one rare occurrence of that was when, I believe it was
2 December 23rd when Bill Ross and Chris Adkins brought
3 a plan to my office. Oftentimes they can be
4 transmitted electronically as via e-mail. Certainly
5 those are all catalogued and recorded. And sometimes
6 they're hand delivered.

7 Q. Okay. Were a lot of them, I need this approved
8 today? I mean ---.

9 A. I receive more pressure for plan approvals from
10 Massey subsidiaries than the entire rest of the
11 district mines combined, and that's not just this
12 mine. This mine was fairly bad with regard to that.
13 The other mine that is the worst in the district would
14 be the Justice Mine, which is also a Massey Energy
15 subsidiary.

16 In fact, there are days when there seems to be a
17 call each hour, and if I'm not in my office, then
18 someone within my office will get the call. I try to
19 field those away from my inspectors, from my
20 specialists who are conducting the primary reviews,
21 for several reasons. First of all, I feel like if
22 they're rushed doing a review that they're more prone
23 to make a mistake. And I've told each of my guys,
24 what I absolutely expect is perfection. Secondly, it
25 takes time away from their review, so, therefore, it

1 decreases the overall efficiency of our group.

2 Because we are somewhat backlogged ---

3 Q. Uh-huh (yes).

4 A. --- it takes --- every minute is important, so I
5 try to field the majority of those.

6 Q. So when they're submitting one of these plans, I
7 mean they're submitting it for a reason? There's a
8 problem somewhere out there; right? I mean, they're
9 not just submitting it to submit it?

10 A. Well, it's not always for a problem. There may be
11 a goal. They may want to, like, for example, the
12 beginning of the Headgate 22 mining, there was no
13 problem. But however, their goal was to develop an
14 additional longwall panel to facilitate the future
15 production of the longwall.

16 Q. But there's an issue out there that ---?

17 A. An issue or a goal.

18 Q. Okay. And were there any more visits by Chris
19 Adkins or Bill Ross in regards to any of the denials?

20 A. That I'm unaware of, sir. I can tell you that
21 inspector Keith Stone had issued low air operating
22 volume on Headgate 22 section in the early portion of
23 March ---

24 Q. Uh-huh (yes).

25 A. --- 2010. I found that shocking the first time it

1 was issued, because the mine is basically sitting on
2 top of a bleeder fan and, therefore, should've had
3 plenty of operating volume.

4 The second time it occurred, I actually picked up
5 the telephone and called Bill Ross and told him of its
6 occurrence. He seemed surprised. He didn't know that
7 it occurred.

8 And I asked him --- he'd asked me on several
9 previous occasions that any time there was a problem
10 to give him a call and he would be more than happy to
11 go to that mine and help. And he worked for the
12 operator. Now, we ought to already --- we being MSHA
13 and Keith Stone specifically, had issued an order for
14 this.

15 So I called Bill Ross and I said --- and I don't
16 normally do this. I said, there is a problem, here's
17 what it is, low operating air volume on Headgate 22.
18 This is the second time that's happened and it's
19 inexcusable. And he said, hey, I'd love to come,
20 however, they won't let me. And I asked him who they
21 was, and he stated it was Chris Blanchard.

22 And I asked him way, and he didn't get into it.

23 And he told me that if I would pay him the courtesy to
24 email Chris Adkins, again, the Senior Vice-President,
25 I guess, of Massey Energy, that maybe he'd be able to

1 go, but he was working on other issues. So I did
2 that. I e-mailed him. And I believe that e-mail was
3 somewhere around March 17th. And I actually have a
4 copy of that in my car I can bring to you, if you
5 would like.

6 Q. Yeah, I'd like to have a copy.

7 A. And my purpose in doing that, as it was out of the
8 ordinary, was number one, I would never interfere with
9 an order issued from one of our inspectors. I wanted
10 to supplement that order and essentially elevate this
11 issue from a mine level to a corporate level to where
12 someone would respond to this appropriately, because
13 the second time I have a low --- low operating air
14 volume on a section is inexcusable.

15 Q. The independent team would like to get a copy of
16 that email.

17 A. And I have a copy of the actual letter we sent to
18 mine operators, ---

19 Q. Okay.

20 A. --- that I alluded to earlier that I can make
21 available, as well.

22 Q. And the letter also.

23 A. And I brought both of those. They're in my car.

24 Q. Just one more question. Prior to the accident,
25 where were the approvals and denials kept? And after

1 the accident, where are they kept?

2 A. Okay. They were kept in the map room of --- it's
3 several locations, actually. They're kept in the map
4 room of the Ventilation Department, in which we have a
5 series of file cabinets. Each plan is separated by ID
6 specific to each mine operator. The pending plans
7 were in the secretary's office in a series of bins
8 that are, you know, required for that purpose. And
9 after the accident, they are all located in my office
10 because I like to look at them every day with regard
11 to their security. And my office is closed.

12 Q. All the approvals and all the denials?

13 A. Yes, sir. Now, there is a duplicate copy in the
14 Uniform Mine File of all the approvals and a cover
15 sheet of all the denials, which is upstairs in our
16 field office. Now, furthermore, there should be ---
17 also be a copy at the mine. They're required of every
18 plan and plan revision to post it on the mine bulletin
19 board. Of course, due to their extensive volume, I
20 would expect that they kept those referenced in a
21 file, and a note on the bulletin board stating their
22 location would've been acceptable.

23 Q. When the accident happened and people were going
24 to the mine to respond, were the approvals taken to
25 the mine so that they'd have a reference there ---?

1 A. No, sir.

2 Q. No? Neither were the denials, then, I guess?

3 A. Correct.

4 MR. BECK:

5 Okay. That's all.

6 RE-EXAMINATION

7 BY MR. FARLEY:

8 Q. I have maybe another one or two. I think we've
9 counted approximately 14 plan changes, approvals since
10 August of 2009, and by Mr. Beck's count, 18 or 19 plan
11 denials during the same period of time. Now, my ---
12 let me go back to my earlier question and rephrase it
13 just a little bit. Are we moving toward the day when
14 we get away from plans submitted by the operator and
15 work more toward specific regulatory requirements that
16 specify how the mine operator would ventilate the mine
17 in part or in its entirety?

18 A. I don't believe so, no.

19 Q. Okay. Why?

20 A. I don't think the regulation can be all-
21 encompassing for all the different safety items that
22 can be observed from a trained observer. And the
23 reason being, as you change air courses, it's too easy
24 to make a mistake. It's done too often. I mean, even
25 a mine operator developing their own plan, you would

1 take the protective mechanism of the 18 denials away.
2 And I think that that's significant in that even
3 if they were going to take the two air courses and
4 make them common, our general rule of thumb is a third
5 of the stopping every 600 feet to assure that it's
6 made common. And you'll even see that something as
7 simple as that is not done properly. So I think what
8 you'd see is an increase in the number of citations of
9 violative conditions which are potentially hazardous
10 underground, should that occur.

11 Q. Okay.

12 A. There are operators, sir, let me also say, that
13 could probably follow those rules very well, but I
14 don't believe this was one of them.

15 Q. Okay. Are we moving towards a day where we may
16 choose overcasts as opposed to doors for mine
17 ventilation?

18 A. Each one has its own application. Certainly
19 75.333 allows either. If I had a preference, I would
20 always prefer overcasts when properly constructed.

21 However, I can tell you that some of my
22 specialists came back at later times through the past
23 year telling me that overcasts in this mine were
24 limited in their height, and therefore, were
25 restrictive in nature. So you know, that's kind of a

1 plus and a minus, depending on how you look at it,
2 with regard to overcasts are a good thing to separate
3 air courses, however, if they're not properly
4 constructed they could have a detrimental effect, as
5 well.

6 Q. Okay. Would you consider an overcast a little
7 more reliable in that you don't have doors that
8 someone can leave open, thereby short-circuiting the
9 mine ventilation?

10 A. Yes, I would.

11 MR. FARLEY:

12 Okay.

13 RE-EXAMINATION

14 BY MR. STOLTZ:

15 Q. Yes, one additional question here on plans,
16 approvals and denials. Were there any plans pending
17 at the time of the accident?

18 A. Yes, I believe there were three or four plans
19 pending.

20 Q. Okay. Could you just provide a little bit of
21 overview, a quick ---?

22 A. Well, I'm not ---.

23 Q. Was it in this area of the mine? When I say this
24 area, affecting Headgate 22, Tailgate 22 or the
25 longwall?

1 A. I have not reviewed those.

2 Q. Okay.

3 A. So I'm honestly afraid to say.

4 Q. Okay, Joe. Also, just ---.

5 A. They're available. I mean, should you want a
6 copy, it's certainly available.

7 Q. Okay. And just to make sure that the record's
8 straight, the plans --- we went --- some of the
9 approved plans ---. That was not all of them. That
10 was mainly the plans that was --- had something to do
11 with the One North longwall, Headgate 22 or Tailgate
12 22. There were other plans, approved plans, in place
13 and pending --- and probably some denials that
14 affected other portions of the mine; is that true?

15 A. Yes. Specifically, I believe there's two
16 operating sections, one out of the South Portal and
17 one just immediately inby the North Portal that had
18 plans associated with them as well.

19 Q. Okay. Joe, I'm going to move off, get off the
20 plans now totally. And I guess I wanted to get your
21 take on your observations. I know you said you came
22 underground and inspected a couple times and wrote
23 some citation or orders, but as you traveled in the
24 mine, where did you travel from and on your way in,
25 just your overall observations of the mine?

1 A. I traveled in the North Portal, and it looked like
2 an old coal mine. It had been there for several
3 years. The ribs had spalled some, nothing I would
4 consider unsafe, but certainly it's not like a new,
5 cleanly excavated opening. You could see where it had
6 just slightly deteriorated over time and gained some
7 age.

8 As you went north on the North-South Portals up
9 towards the Ellis Switch, it seemed to improve
10 somewhat over, over the distance. And as you turned
11 and went west along what would be the area where seal
12 set 14 and 15 is, I traveled that secondary escapeway
13 via track up through there. Nothing was outstanding
14 in my mind.

15 I had several years ago actually been to the Glory
16 Hole area, and nothing really stands out in my mind at
17 that time other than the Glory Hole, from mining the
18 upper seam, was operating. And it was quite high in
19 that area and quite muddy just due to the volume of
20 water that was in the coal in that area.

21 September --- or the one prior to September, we
22 traveled all the way back to the operating section,
23 which was in the general neighborhood --- I'm going to
24 say around Break 115 and driving toward the Bandytown
25 fan. And it looked like a typical section. And as I

1 traveled down through there, I was actually looking
2 and smoking for leakage to determine why the section
3 air had decreased to the point where it was just
4 minimally legal, so to speak, just slightly over what
5 was the minimum specified in the methane dust control
6 plan, to determine why the operating air had decreased
7 so much.

8 And I'd found some just general poor practices
9 with regard to double doors not --- not sealing
10 extremely well. I wouldn't call them violative
11 conditions, just more poor practice. There was an
12 overcast at one area that --- I don't believe it's any
13 longer on this map, and it may have been here around
14 Break 13 or 14 that had some small amounts of leakage.

15 But at that day I was absolutely nitpicking,
16 because I felt like if you could gain the section
17 there by 5,000 that that would be, you know, a
18 benefit. So those items, as I recall, weren't
19 violative in nature. They weren't hazardous,
20 certainly, at that time.

21 And then again on September 1st, I found a lot of
22 what appeared to be emphasis on getting the longwall
23 into production and very little emphasis on what I
24 would call outby work. And by that I would say,
25 there's a lot of things that make a mine run, and much

1 of it is dependent upon its infrastructure.
2 And infrastructure is every bit as important as
3 the coal extraction itself in determining a long-term
4 effect on success of a mine. And with that I'm
5 referring to citations that we issued pursuant to
6 370(a)(1), I believe Michael Haynes issued, for the
7 lack of two temporary regulators that were to be
8 positioned on the back end of the longwall panel near
9 the tailgate EP, which was to force air across that
10 Number One setup entry. They were missing or properly
11 (sic) constructed.

12 People were moving refuge chambers into the area
13 that were capable of use that day, so certainly we
14 didn't issue a violation on that, but the longwall
15 appeared ready to run. And here it was that these
16 infrastructure items weren't complete. And I think
17 they're every bit as important and should have
18 received the same degree of emphasis.

19 Q. Okay. Do you recall having any meetings with the
20 mine workers before or after or at any time, I mean
21 in ---?

22 A. On September 1st, I met with some mine workers,
23 both up here at the site as they began to construct
24 these regulators, which are shown approximately Break
25 85, those regulators which would actually force air

1 across the longwall face. As they began their work
2 there, I gave a brief safety talk to those
3 individuals. Everyone was quiet. They didn't voice
4 any opinions. Of course I just issued a mine-wide
5 withdrawal and those tend to be tense situations.

6 Additionally, as we were heading into that area,
7 there was a refuge chamber that was being positioned
8 down somewhere near the beginning of Headgate One
9 North, and I stopped and talked to those gentlemen as
10 well. Again, nobody --- they were working around
11 mobile equipment, and we talked about the hazards of
12 mobile equipment and nobody came forth and gave me any
13 head's up on some things.

14 You know, sometimes you go to mines and miners
15 want to talk to you and are open, and other times they
16 aren't, you know? What factors change that, I'm
17 unsure of.

18 Q. Okay. Moving on, I guess at the end of December,
19 the longwall intake went from approximately 60,000 cfm
20 to about 150,000 cfm ---

21 A. Uh-huh (yes).

22 Q. --- for one month. Then it went back down to
23 about 90,000. Any idea of the reason why?

24 A. No, sir.

25 Q. Okay. In November, the latter part of November, I

1 guess, the pressure at Bandytown fan almost tripled.

2 Could this have been due to water?

3 A. Well, it could have been due to water. I think it
4 may have also --- could have been affected by how they
5 regulated the mine, should they have choked something
6 off. Certainly it can be manmade as well. And that's
7 just about the time they should've started having
8 falls propagate fairly often at the back of the
9 longwall, although one would hope that those actually
10 occurred in October, just based on the geometry of how
11 I'm looking at the mine map.

12 Q. Yeah, but wouldn't the --- I mean you get a
13 baseline for the fan condition, fan pressure. Fan
14 almost triples.

15 A. That's excessive.

16 Q. Yes. And then it comes back down. It doesn't ---
17 at least in my eyes it doesn't --- I don't think it
18 would be a roof --- you know, of the longwall fall.

19 A. Well, if it was the longwall falling, it would've
20 been persistent. It wouldn't ---

21 Q. Yes.

22 A. --- have come back down. Without seeing the fan
23 chart, you know, that's somewhat difficult to guess,
24 but certainly could be due to water.

25 Q. And do you think they continued to mine through

1 this time --- time frame?

2 A. To my knowledge, it's likely they did, because I
3 don't know of any mine shutdowns or withdrawals.

4 Also, that's right around the time, as I believe,
5 somewhere around November 14th, that the water was
6 cited by MSHA inspectors. So those two events may
7 coincide.

8 Q. Uh-huh (yes).

9 MR. STOLTZ:

10 Terry, I'm going to move. Go ahead.

11 RE-EXAMINATION

12 BY MR. FARLEY:

13 Q. Let me ask a question about ---. You found air on
14 the longwall face in, I think it was December?

15 A. Yes.

16 Q. Based on my reading of the longwall pre-shift/on-
17 shift exam book, in the month of March, during the
18 first week in March, the intake air measurement
19 entered in the book was about 115,000 cfm. Now, by
20 mid to latter part of the month that had worked its
21 way down to an average of 55,000 to 60,000 cfm per
22 day. Any thoughts on how that might've --- what had
23 prompted that change?

24 A. Well, certainly it's had water issues that may
25 have --- may have impacted it. Additionally, these

1 other sections and the amount of air that they
2 required could have an impact on it. I'm probably not
3 in a very good position to answer that. I mean, it
4 would be basically a guess.

5 MR. FARLEY:

6 Okay. Jim?

7 RE-EXAMINATION

8 BY MR. BECK:

9 Q. Joe, back, back to that email you sent to Chris
10 Adkins on, I think it was March 17th ---

11 A. Somewhere thereabout. Maybe a day before,
12 but ---.

13 Q. --- that allowed you and Bill Ross to get together
14 on a problem that they had with ventilation ---?

15 A. Yeah, I wasn't trying to get together. I was
16 actually trying to get them to get their own internal
17 ventilation specialist to the mine.

18 Q. Did Chris ever respond to you?

19 A. No, sir.

20 Q. Have you ever heard any --- found or heard or ---
21 anything about methane monitors being bridged out or
22 baggies being put over sniffers so that they wouldn't
23 work?

24 A. At this mine or anywhere ---?

25 Q. At this mine.

1 A. No, sir. And certainly if I had, I would've went
2 to the mine and issued a violation.

3 Q. But I mean, just, you know how people say they're
4 doing it, but we can't prove it. Was there any kind
5 of that talk like that?

6 A. Nothing came before me. No, sir.

7 MR. BECK:

8 Okay. Terry?

9 RE-EXAMINATION

10 BY MR. FARLEY:

11 Q. I think the map should reflect that in the
12 vicinity of the 78 switch there's some doors; so is
13 that correct?

14 A. Yes.

15 Q. Okay. Now, based on your understanding of the
16 mine ventilation, if you left those doors wide open,
17 what would --- how would the air short-circuit there
18 or ---?

19 A. Potentially the air could short-circuit in that
20 the neutrals could reverse on you depending on what
21 the resistance is from that point towards the outside.
22 Or you could add additional air into this neutral air
23 course that is going towards the tailgate ---

24 Q. Uh-huh (yes).

25 A. --- which would cause a bypass in the active

1 mining sections of both Headgate 22, Tailgate 22 and
2 the longwall. There's a regulator that would show you
3 an increased air flow. That's actually circled. That
4 was instituted on the 9/18 plan, which is about
5 Crosscut 30 --- between 33 and 34, and the air would
6 go around the longwall to the tailgate.

7 Q. Okay. What, if any, impact would that have
8 potentially on the longwall gob area in terms of any
9 methane that might --- might exist in the longwall gob
10 area?

11 A. The Bandytown Bleeder Fan and its effect on the
12 tailgate entries would produce a negative pressure
13 that could potentially reverse air in the headgate,
14 tailgate and a portion of this headgate entry,
15 depending on how the controls are constructed. I
16 mean, it's a complex question, so I can't give you an
17 exact answer off the top of my head. It's something
18 that I would recommend you model.

19 Q. Okay. Is it possible that it could influence, you
20 know, the longwall gob atmosphere back towards the
21 face to any extent or toward this crossover area
22 towards 22 Headgate? Is that possible?

23 A. It is possible, but I also want to point out that
24 the Bandytown fan would still produce a negative
25 pressure upon the tailgate entry itself, which would

1 also fight that. So how likely, I really can't say.

2 I mean, ---

3 Q. Okay.

4 A. --- it's a very complex question.

5 MR. FARLEY:

6 Okay. Jim?

7 RE-EXAMINATION

8 BY MR. BECK:

9 Q. Yeah. Are there computer programs out there,
10 models that a mine's ventilation plan could be put on
11 that one could look at and say, I want to make a --- I
12 want to make a change? I want to move these doors
13 from point A to point B, what will that do to my
14 ventilation plan? Are there programs out there like
15 that?

16 A. There are several ventilation programs that could
17 be used to calculate the effective changes.

18 Q. Would it be a good idea for a operator to ---
19 mines such as this, so large, to have that mine on a
20 program like that?

21 A. You know, I'm not that experienced with the
22 programs and certainly don't have one in-house that I
23 use on a regular basis or at home. I think that's
24 something that should be evaluated.

25 Q. But if you could have such a program, have the

1 mine's --- a model of the mine's ventilation, and each
2 time you make a change, before you make it, you enter
3 that change into this program and it told you what
4 would happen, would that be a good thing?

5 A. If such a program is --- I ever find that exists,
6 that would be helpful.

7 Q. Okay.

8 A. I don't really have a recommendation for that,
9 though. Again, I'm not an ---

10 Q. I just wondered.

11 A. --- expert on that subject.

12 MR. BECK:

13 That's all.

14 RE-EXAMINATION

15 BY MR. STOLTZ:

16 Q. Joe, I'm going to, I guess, move to the April 5th
17 accident. And I'm going to provide you a copy of your
18 --- I believe, your notes from while you were at the
19 accident or during that time frame.

20 A. Uh-huh (yes).

21 Q. Okay. When and how were you notified of the April
22 5th accident?

23 A. I'd finished working for the day and I actually
24 went home. I changed clothes and I left my cell phone
25 in the car, so I came out to get my cell phone and saw

1 where I had two voicemail messages. I may have been
2 without my cell phone for approximately ten minutes.
3 I listened to my messages and it was Melissa
4 Hinte, the District Manager's secretary, telling me
5 that they had an accident, it appeared to be very bad,
6 at the Upper Big Branch Mine and to call immediately.
7 Of course I jumped in the car and I actually was going
8 back to the office. It's not a very long drive.

9 Q. Uh-huh (yes).

10 A. So I was en route whenever I called her, and she
11 gave me the information, which was basically on where
12 Jonah Bowles had called in. And it stated that they
13 had lost --- or had a air change in CO and they lost
14 communications. It didn't tell me that there was an
15 explosion. However, when I heard that, it's --- just
16 knowing what I thought, could've happened but hoped
17 had not.

18 Q. And about what time was that again?

19 A. I think I left the office at 3:30, sometime
20 between 3:30 and 4:30. I think it was closer to four
21 o'clock. I immediately decided, of my own --- before
22 I talked to any Assistant District Manager or anyone,
23 that I would call and notify all of my specialists
24 because I wanted a good strong effort on our part with
25 regard to whatever needed done.

1 And I asked all of them but one to meet me at the
2 office. And the reason I didn't ask the one is he is
3 on --- he's actually a plan reviewer. He's not a
4 specialist, per se. He's not --- due to physical
5 restrictions, doesn't do field work, and I knew that I
6 couldn't take him with me. But I also called him to
7 let him know what was going on, just as a general
8 precaution, you know, should we need any logistical
9 support in the office during that time.

10 I actually called and notified another one who
11 actually had another physical limitation due to a
12 kidney stone at the time and put him on notice as
13 well. But I think I had --- Clyde Gray, Benny Clark
14 and Keith Sigmon met me at the office, and we all went
15 together, essentially changed clothes as quick as
16 possible and went to the mine.

17 Q. What time did you leave the office, then, to go to
18 the mine?

19 A. Honestly, I didn't look at my watch. Before I
20 left, I'd been requested to submit maps to Arlington
21 for use in their tracking of the situation, and I made
22 sure that was done. That caused me approximately an
23 hour delay, so I'll guess I got at the office
24 somewhere around five o'clock, probably didn't leave
25 the office until 6:00 or 6:30 as a result of those

1 efforts.

2 Q. Did you notify headquarters of the ---?

3 A. I did not. I asked if headquarters was notified.

4 As I recall, Rich Kline was in the office, and I
5 believe he was handling that. He was the one who
6 directed me to send maps to Arlington, and it appeared
7 that he was talking to them.

8 I was primarily concerned not so much with
9 Arlington's involvement, but to get to the mine and
10 get a handle on what was going on. And I didn't have
11 a lot of communications with --- well, I didn't have
12 any communication with anyone onsite at the time.

13 Q. I guess when you arrived at the mine site then,
14 who was in charge for MSHA; MSHA, State?

15 A. Well, that's interesting because I actually went
16 to the Ellis Portal, thinking that the closest portal
17 would be the most likely where the rescue would be
18 performed. I was unaware that there was a power
19 outage there, be --- well, I just didn't know. And
20 the weather --- I think it had rained a little bit and
21 I got up on site. A light plant was burning at that
22 time.

23 I don't know exactly what time I got there. I
24 didn't write it down. I only took enough notes to ---
25 I want to apologize for the quality of my notes. I

1 only took enough notes in order to prompt my action.
2 If I needed to know what was going on in one location
3 --- I went from site to site to assure that we were
4 making progress on every level throughout this thing,
5 so my primary function wasn't on note-taking, it was
6 literally action.

7 But I got there and Larry Ward was at the mine,
8 and Mike Dickerson was at the Ellis Portal, and the
9 mine office was dark. Wayne Persinger was in the mine
10 office. He was dirty and it appeared that he had been
11 in the mine. I looked at the mine map, asked our
12 onsite individuals --- there were State
13 representatives as well. Honestly, everything was
14 moving so fast, I'm sorry I didn't catch who it was.
15 I got briefed.

16 I asked Wayne Persinger if he had been in the
17 mine. He said he had. I asked him conditions of
18 where he had seen damage and was shocked at the extent
19 of the damage.

20 And after I realized there wasn't a whole lot to
21 be done there, I asked why they didn't have power.
22 Someone told me that they were --- it was fed from
23 underground. And I asked them if there were
24 electricians onsite. They said there were. They were
25 working on the issue. And I asked them if they could

1 isolate themselves from underground mine power in
2 order to feed the lights, lighting circuit on the mine
3 from one of those diesel generators that they had
4 onsite.

5 And when I left, it seemed like they liked that
6 idea. I told them just make sure they followed the
7 applicable regulations in doing that with regard to
8 isolation of the circuit, the electrical code and
9 grounding of the diesel generator. And I shot out of
10 there in order to get to the other portal as soon as
11 possible.

12 Q. Okay. So Wayne Persinger was in charge of the
13 Ellis Portal, then, for the company?

14 A. No, it didn't appear that anyone was really in
15 charge of the Ellis Portal as that nothing was
16 happening there.

17 Q. Okay.

18 A. It just seemed more or less that everyone was
19 there somewhat astounded and in shock. Upon arrival
20 at the North Portal, it was the complete opposite. It
21 was a well-coordinated effort with a lot of manpower.
22 The command center was set up and it appeared that
23 people were getting a handle on the situation and
24 taking action.

25 Q. Who was in charge for MSHA, then, at the North

1 Portal when you arrived?

2 A. When I arrived, I wasn't sure exactly where to go,
3 so I went into --- well, they went into the bathhouse
4 and started asking questions to people. And I went up
5 to the command center which was upstairs in a
6 foreman's office. I think it was second door on the
7 right. And within there was Link Selfe and Bob
8 Hardman. State people were there as well, and I
9 believe that there were notes being taken that are
10 probably better off to tell you who was in there ---
11 Q. Okay.

12 A. --- because ---.

13 Q. And what time was that?

14 A. To be honest, it was sometime after eight o'clock.
15 I wrote here --- I know I was in there when we started
16 working together. Bob didn't realize that I was
17 standing behind him for a period of time as he was
18 dealing with the company and the mine phone.

19 And I wrote, got courier en route to Bandytown fan
20 at 8:40. 8:58, teams were at Break 98. Bob Hardman
21 was on the phone. The people who were in there were
22 Chris Adkins, Johnny Jones, Terry Farley, Stan
23 Suboleski, Dan Snyder, the Office of Miners' Health,
24 Safety and Training.

25 I gave Bob a list of missing miners, which is

1 something he had asked me to do. And I went across
2 the way. We had an inspector with the company and
3 they were pulling names off the tracking system. And
4 then I called Mount Hope and gave them the fax number
5 for the mine just so that I could facilitate the
6 intercommunications that would go on.

7 Then I was in the command center basically
8 listening and assisting Bob in whatever he needed. We
9 may discuss something off to the side and probably ran
10 around doing whatever he needed me to do at the time.
11 I mean, to be honest, now it's like one really long
12 day. I didn't sleep much through the whole ordeal.

13 And then 11:08 p.m., I wrote that there were 22
14 people, 5 found, 17 left to find, the location of the
15 5 that were found. And my notes, again, are scant.

16 At 12:45 there are other people had actually been
17 found. I was trying to keep track of who was
18 unaccounted for, because one of my worries at the time
19 was it was obvious at this time that it was a
20 devastating accident. And I was afraid that there
21 would be miners that we didn't know where they were.
22 And certainly in an attempt to find any survivors, I
23 was trying to keep track of that, as everyone was in
24 the command center.

25 At some point we decided that the fan charts --- I

1 got worried and I raised a question as to whether or
2 no the fan charts had been changed. I didn't want the
3 fan charts to loop around themselves and potentially
4 cost us both evidence, but also the knowledge of what
5 occurred, which may tell us --- some of our future
6 actions may dictate that.

7 And I retrieved the fan charts with Chris
8 Blanchard and Randy Bell from West Virginia Office of
9 Miners' Health, Safety and Training. We were assisted
10 by an electrician. I didn't grab his name. Again, we
11 were moving fast.

12 And I noted at that time the north fan was running
13 ten minutes behind. And that's just something I've
14 been taught years ago, that if you change a fan chart,
15 you check its time versus your watch. And so there
16 was a little time discrepancy there. It didn't appear
17 to be major.

18 We put the new fan chart on and at about 3:00 a.m.
19 I'd noticed what the peaks were and what it went to.
20 I noted in my notes on page four that it was a big
21 explosion, about 11-inch pressure jump, that the north
22 normal was at 5.1 and normal south was at 1.6. And
23 the north had actually gone to about 11, or excuse me,
24 14.4 inches. And I was shocked. I couldn't believe
25 the --- you know, the size of the pressure wave.

1 On the 5th --- I went home after several days and
2 slept about three hours and came back. I'm assuming
3 that that was on the 7th. I didn't track those. And
4 again, it kind of runs together. At that time,
5 several other things were set up with regard to State
6 trailers and Federal trailers that were assisting it
7 and different offices that we had brought in. I took
8 the numbers down.

9 There was a MEO recorder being used that actually
10 had a website there where they had set up onsite.
11 Virgil Brown --- Virgil Brown was concerned with
12 coding his time. He asked me to open an event. I
13 asked one of my employees to open that event so he
14 could code his time to it.

15 Then I started traveling between the command
16 center and keeping up with the issues that were going
17 on at the command center and assisting Bob and
18 traveling to the drill sites to assure that the drill
19 sites were properly located, that we had good
20 communication from the drill sites back to the command
21 center, to see that our sampling equipment was set up
22 properly so we could trust and rely on the samples
23 that were being done. I was assisting both tech
24 support at time running tubing.

25 Q. And what day was that ---?

1 A. That's the 7th, I believe ---

2 Q. 7th?

3 A. --- according to here, yeah.

4 Q. So you were there the 5th, all night the 5th, 6th,
5 and then now we're on to the 7th?

6 A. Yeah, and at some time my notes jumped to the 9th,
7 but I went home after about two days and slept three
8 hours. I went home after about another two days and
9 slept three hours, maybe three days and slept three
10 hours. I don't know, but I only slept --- I worked
11 about three days and I slept three hours, worked
12 another days, slept three hours. And then at some
13 point, maybe two days after that, I slept about six or
14 seven hours and then I worked through 'til Tuesday.

15 Q. Okay.

16 A. And I left there maybe at 1:00 a.m. Tuesday, eight
17 days, nine days after the accident.

18 Q. So I guess come the 7th, then, you were basically
19 running back and forth, what I gathered, from the
20 boreholes to the command center, keeping track of the
21 boreholes?

22 A. Yes, initially the 1A borehole to check it. When
23 it hit and had success, then the borehole here at the
24 refuge chamber on Headgate 22 was started, and it
25 experienced some difficulties and subsequently it

1 missed. I then started inquiring what the company ---
2 as far as what surveying they had conducted, whether a
3 closed loop survey and what the quality of those
4 surveying were. I didn't want more futile efforts. I
5 wanted success. So I pursued that. The 1B borehole
6 came on line.

7 Q. Hold it. Stop there. Surveying. You said you
8 talked to the operator about surveying. You got
9 anymore details? Did they do a closed loop? I mean,
10 what were their efforts?

11 A. My answers that I got from Paul McCombs at the
12 time was that he was sure they did close loops. He
13 talked to the surveyors and got back to me, found out
14 that they had actually come off control points from
15 another surveying company. I think he said P&A
16 Engineers and that they did not survey them with
17 closed loop, that they actually ran a single line down
18 there.

19 I asked him at that time to, please, if he could
20 at any way do closed loop surveys to assure their
21 accuracy, that that would only be a supplement to what
22 was being --- what was being done, that certainly
23 drilling a borehole that doesn't hit the mine, it's of
24 no use to either the drilling company or the rescue
25 workers and that we needed to make sure that we hit

1 the mine. Then when the 1B borehole came online, I
2 believe we put a fan on 1A. At some point we put a
3 fan on 1A.

4 Gary Frampton from the company and I were actually
5 the guys who wrestled the pipe in order to get it on
6 there. And at that point it was essentially doing
7 whatever it took to get the task done in order to
8 achieve some success. And we felt like it was very
9 important to get that area with some positive
10 ventilation going, not only to mitigate the potential
11 for a further explosion, but additionally to
12 facilitate the progress of the mine rescue teams.

13 MR. STOLTZ:

14 I guess ---.

15 ATTORNEY BABINGTON:

16 This may be a good --- it's been about an
17 hour, so this might be a good time ---

18 MR. STOLTZ:

19 Okay.

20 ATTORNEY BABINGTON:

21 --- for a break. Let's take five
22 minutes.

23 SHORT BREAK TAKEN

24 ATTORNEY BABINGTON:

25 Let's go back on the record. Jim had a

1 follow-up question about testimony from yesterday.

2 RE-EXAMINATION

3 BY MR. BECK:

4 Q. Joe, on this mining that the ---?

5 ATTORNEY BABINGTON:

6 Sorry, Jim. One second. Testimony from

7 earlier today.

8 A. Yes.

9 BY MR. BECK:

10 Q. Joe, I'm pointing to the one inch 500 foot Upper
11 Big Branch map, and I have a question about the mining
12 that the Upper Big Branch wanted to do parallel to the
13 three entries from the Ellis Portal. They had
14 submitted a plan to do that; is that correct?

15 A. Yes, sir, and that plan was denied on March 23rd,
16 2010.

17 Q. Could you explain why it was denied?

18 A. Yeah. They wanted to mine and connect every
19 crosscut into an existing intake that appeared that it
20 would result in a contamination of the area of that
21 intake escapeway, and therefore, it was denied. There
22 wasn't any submittal or response to that denial, but
23 the issues that we had with that submittal were
24 actually, as I recall, written on the mine map as we
25 do with virtually all of ours and circled with a

1 highlighter so that they would stand out from the mine
2 operator's submitted CAD drawing.

3 MR. BECK:

4 Okay.

5 RE-EXAMINATION

6 BY MR. STOLTZ:

7 Q. Okay. I have one follow-up question then. As we
8 talked about at December 2009, the longwall intake
9 ventilation quantity changed from 60,000 cfm to
10 150,000 cfm for one month, and then it dropped back
11 down to 90,000 cfm. Were you aware of that?

12 A. No, sir.

13 RE-EXAMINATION

14 BY MR. FARLEY:

15 Q. I think you told us that on the night of the
16 explosion or during the evening after the explosion,
17 you acquired the fan charts; is that correct?

18 A. Yes, sir.

19 Q. Okay. Now, are we correct that the Bandytown fan
20 chart showed a spike around 3:00 p.m. in the
21 afternoon?

22 A. Yeah, the exact time ---.

23 Q. Yeah, give or take a couple minutes.

24 A. Yeah, I can't exactly remember the fan chart, but
25 yeah, it showed --- no, it did not show a spike. It

1 showed actually a reduction in the ventilating air
2 pressure.

3 Q. Okay. Did you also --- did you review the North
4 fan chart?

5 A. Yes, sir. That's the one that showed the pressure
6 peak of 14.4 psi, ---

7 Q. Okay.

8 A. --- or inches of water ---.

9 Q. Okay.

10 A. Excuse me.

11 Q. Did it show any, any fluctuations on the North fan
12 chart in the three, four days preceding ---?

13 A. I didn't review three or four days preceding. I
14 looked at that impact or the pulse itself, the
15 overpressure, ---

16 Q. All right.

17 A. --- and essentially just wanted to make sure we
18 secured that record, then made copies for the State
19 for the purpose of future accident investigations.
20 And also, you know, it's of paramount importance
21 during a rescue and recovery that you watch those fan
22 charts and keep a close eye on 'em, because if you're
23 seeing additional pressures, then that could show that
24 there's a hazard to the people who are in the mine.

25 Q. Okay.

1 A. So my primary concern really wasn't so much the
2 accident investigation, although that is important,
3 but I also wanted to make sure we had a fresh fan
4 chart so that we could always see what was going on.

5 MR. FARLEY:

6 Okay. Go ahead.

7 RE-EXAMINATION

8 BY MR. BECK:

9 Q. The fan charts, where are they at now, Joe?

10 A. I turned them over to --- the ones that I was in
11 possession of, to the accident team.

12 MR. BECK:

13 Could we get those entered into the
14 record somehow?

15 ATTORNEY BABINGTON:

16 We don't have them here present in the
17 room, but we can probably get copies.

18 MR. STOLTZ:

19 Which ones are you --- when you say
20 interested, which ones are you referring to, Jim?

21 MR. BECK:

22 Just prior to the explosion.

23 MR. STOLTZ:

24 So based upon the April 5th ---?

25 MR. BECK:

1 Yeah.

2 MR. STOLTZ:

3 Those three fan charts you pulled?

4 MR. BECK:

5 Three fan charts.

6 MR. STOLTZ:

7 Yeah, we can get those probably as part
8 of the --- marked as part of the record.

9 MR. BECK:

10 And the document that you're reading the
11 approvals and denials from, I think you got that from
12 Rich. Can we get that entered into the record, too?

13 ATTORNEY BABINGTON:

14 Yes.

15 MR. STOLTZ:

16 I don't have a problem ---.

17 ATTORNEY BABINGTON:

18 Yeah. I don't see any, any problem with
19 that.

20 MR. STOLTZ:

21 You want the one he's marked there?

22 A. Yeah, and I produced that just ---

23 MR. STOLTZ:

24 Okay.

25 A. --- for my own usage afterwards.

1 MR. BECK:

2 Okay.

3 A. That's not something that's normally done, but
4 certainly you can have my copy as well. I can produce
5 as many as I need.

6 ATTORNEY BABINGTON:

7 Okay. So we'll make copies of Joe's
8 copy, and we can distribute that to the independent
9 team, Dave's team.

10 MR. STOLTZ:

11 He's just checked those ---

12 ATTORNEY BABINGTON:

13 Okay.

14 MR. STOLTZ:

15 --- as we walked through it.

16 A. I just checked off as we talked through 'em.

17 MR. STOLTZ:

18 So we can make that one part of the
19 record, then.

20 ATTORNEY BABINGTON:

21 Okay.

22 MR. STOLTZ:

23 Okay. Terry, any follow-ups? Do you
24 have any?

25 RE-EXAMINATION

1 BY MR. FARLEY:

2 Q. I have a couple more. Joe, when you went into the
3 North Portal, you said it looked like an old coal mine
4 on one visit.

5 A. Uh-huh (yes).

6 Q. Did you make a statement that it was --- looked
7 like 70 years old or it was 70 years old?

8 A. No, I don't know how to ---

9 Q. Just it looked like an old coal mine?

10 A. --- how to age --- it just looked like a coal mine
11 that's been there for a while. Yeah.

12 Q. And then you said that tech support was never
13 called in; is that right?

14 A. Correct.

15 Q. Who decides if tech support gets called in?

16 A. I guess virtually anybody in the district can
17 determine it --- a manager. If I were to do it, I
18 would go through Richard Kline and get his approval to
19 do it. I've done that in the past on other items that
20 I felt were very complex. I didn't feel like their
21 system --- couldn't be understood without reading a
22 map, per se, so ---. We have the ability to request
23 tech support's assistance. It's just not done
24 extremely often, you know?

25 A lot of their issues were site-specific. I

1 didn't see a systemic issue, per se. I didn't see
2 anything that looked like it could be so widespread
3 that traveling there you couldn't address.

4 Q. Now, I wanted to go back one more time to the
5 approvals and denials at the time you're getting
6 prepared to go to the accident. I believe there was
7 earlier testimony by another MSHA employee that he was
8 told to separate the denials from the approvals?

9 A. That was after the fact and that was just to
10 facilitate --- if you wanted to read everything that
11 was approved at one time, you could read that.

12 Q. Okay.

13 A. However, although they were separated, they were
14 never like physically separated. They were put in
15 expandable file folders and they set right beside one
16 another ---

17 Q. You just ---?

18 A. --- so it's literally just like you put one on one
19 stack and one on the other, but they stayed together.
20 They didn't move physical locations. And it was just
21 purely an understanding so that you could ---. I
22 mean, it's difficult to read that many mine plans in a
23 row when only the ones that are approved are truly
24 applicable to the underground portion of the mine as
25 far as what they're allowed to do. So it was nice to

1 see all the approvals all at one spot.

2 And they exist that way now. They're actually
3 split between approvals and denials in my office and
4 --- but they're together.

5 Q. And you said you'd met with or discussed the
6 concerns with Upper Big Branch with --- about
7 ventilation with the District Manager and the
8 Assistant District Manager.

9 A. Yeah, but it wasn't anything to talk --- like, I
10 would walk in their office and say, I've got three
11 guys going to Upper Big Branch tomorrow because the
12 inspectors are concerned.

13 Q. They were concerned ---?

14 A. Yeah.

15 Q. Their concern was the ventilation which, as well,
16 was yours?

17 A. Well, I mean if I'm sending ventilation
18 specialists, yeah, that was kind of known. I didn't
19 know if I ever really ever spelled that out, but my
20 guys know that you cite everything you see. And I
21 even tell them, if you can figure out a section of the
22 law, you cite them that on the wall.

23 Q. Thank you.

24 RE-EXAMINATION

25 BY MR. STOLTZ:

1 Q. Okay, Joe. I'm going to go back to the --- bring
2 it back to, I guess, maybe the 7th or something or
3 prior to the 7th. And I got some specific questions
4 about the boreholes and see your overall involvement
5 with those. Did you have any role in the plans for
6 drilling the boreholes?

7 A. During the rescue and recovery?

8 Q. Yes.

9 A. Yeah. At some point Bob would hand all the plans
10 to me and ask me what you thought. And I'm sure I
11 missed some because I was at the drill sites or in or
12 out between 'em. At one point I --- when it appeared
13 that samples were critical, I was tasked with assuring
14 that we got prompt samples as quick as possible, so at
15 some points I would take 'em. I would go visit the
16 Bandytown fan, pick up the ones that they had made and
17 courier 'em back. But, yeah, I'd seen some plans for
18 the boreholes.

19 Q. So you reviewed some of 'em?

20 A. Yes.

21 Q. And you can't remember exactly which boreholes?

22 A. No, sir. Mr. Hardman was doing the (k) order
23 modifications and he was receiving those. I only
24 acted as a consultant role to him.

25 Q. Do you know when the decision was made to drill

1 the boreholes?

2 A. No, I do not.

3 Q. Okay. Who decided on their location, and did you
4 have any input in it?

5 A. I did not have any input. It appeared to me that
6 the borehole locations were being openly discussed
7 with the company in the command center. Paul McCombs,
8 I asked him several times where he thought future
9 boreholes would be. I knew that he was looking at
10 overlying mine maps to determine what the most
11 advantageous drill hole position would be in order to
12 prevent perforating those other mines and trying to
13 drill through barriers. And to my knowledge, Paul
14 McCombs was relaying his information directly to the
15 company personnel in the command center, and then they
16 would propose a plan to the District and to the State
17 of West Virginia for approval.

18 Q. What considerations were given to determine the
19 diameter of the boreholes?

20 A. I don't know.

21 Q. Do you have any idea how long it took to get a
22 survey established to the drill --- drill hole site?

23 A. No, sir.

24 Q. I guess you coordinated the drilling with the
25 command center then? Or if you didn't, who did?

1 A. I did, however, we kept inspectors onsite that
2 would call regularly back to the command center to
3 give them information. I called as well. There were
4 times when I'd get back to the command center and no
5 one had called Arlington, so I would call --- I'd then
6 slip away and I may give an update to Arlington. It
7 just seemed like wherever there was a deficiency, I
8 tried to fall in and fill it.

9 I believe me and Mr. Hardman probably worked the
10 most onsite hours of anyone from MSHA. It didn't seem
11 like he ever went home. And I don't --- he told me at
12 one point it didn't seem like I ever went home. We
13 were just basically doing everything we could to
14 facilitate the rescue, with regard to MSHA's reaction.

15 Q. Do you know if the mine was evacuated before the
16 boreholes penetrated the mine?

17 A. I believe that they were evacuated each time that
18 the boreholes penetrated the mine. We had had
19 discussions of that and it was understood that that
20 was necessary. And I believe there were safety
21 precautions after having --- of course I was with the
22 drillers on the surface, so I don't know exactly what
23 was going on in the command center at all times. But
24 I know that they took some safety precautions with
25 regard to preventing sparking or arcing, because they

1 didn't want to propagate an additional explosion by
2 drilling the last 50 feet wet and so forth.

3 Q. Do you have any type --- or idea what type of
4 drilling equipment was used?

5 A. I don't know the actual drills themselves as far
6 as model number or size. I can tell you that they all
7 were rubber tired over-the-road drills, and I would
8 only guesstimate 60,000 to 80,000 pound drills. The
9 majority of 'em were drilling 20-inch holes, I think.
10 But there were times, of course, they varied their
11 drill hole sizes as a result of the casing that was
12 available. And Tim Comer was over the Massey drilling
13 rig. There was a C.J.'s Drilling rig that was there.
14 They were all out of Virginia.

15 All of that was being coordinated essentially
16 onsite by Mike Snelling for the mine operator. I
17 would ask Snelling where they were. If he didn't
18 know, I went directly to the driller. I got those
19 depth reports. I might write it on a sticky paper.
20 Most of the time I just remembered it. I got to a
21 phone and called 'em, called --- called the command
22 center to give updates on a regular basis.

23 Q. So I guess --- what was the size of the various
24 boreholes drilled? Are you familiar with ---?

25 A. I can't quote 'em to you. It seemed like some of

1 them started larger because they would lose size due
2 to casing, and then they would narrow that diameter
3 the deeper they went in order so that the casing was
4 always receptive to the size of the hole, but I think
5 there should be --- the drillers can probably explain
6 that to you better than anyone.

7 Q. Okay. And it would be this Matt --- Mike Snelling
8 who coordinated the Massey effort? Did you know if he
9 kept a drilling log and ---?

10 A. That I don't know. I don't know if he has a log,
11 but he was onsite throughout virtually all of it,
12 whereas I ran between the command center and the drill
13 holes.

14 Now, actually, once sampling began, I realized
15 that sampling and ventilation was somewhat more
16 critical than the drilling with regard to making
17 proper decisions within the command center. So the
18 setup of the fan on 1A or 1B borehole, I assisted with
19 that. I assisted getting samples there.

20 I'm seeing here on 4/9/2010 that 3.5 million cubic
21 feet of nitrogen had been pumped in. Hole ten had
22 missed due to deviation. 5B was at 730 feet. And
23 then I have a note, Bubba, tripod. And we were
24 concerned with tubing that was being placed in the
25 mine with the stretch and losing that because it was

1 such a deep hole. 1,000 feet wouldn't generally do
2 it. We had to have a splice in it, so there was some
3 concern that that splice would separate, and
4 therefore, we wouldn't get accurate samples.

5 So I asked a gentleman by the name of Bubba ---
6 and I don't know his last name, but he worked for the
7 mine operator --- to make a tripod. And I described
8 it to him what I wanted, and that was so that we could
9 put the line on a wire and anchor it to the tripod so
10 that we had a proper location for the use of that
11 sampling. And the reason I asked Bubba was he was
12 somewhat the de facto leader for the group of guys
13 that was up there. And I told him it was so important
14 that if he couldn't pull it off, he and I would have
15 to tango, and that kind of made me the crazy little
16 guy that was getting stuff done, I guess.

17 Q. Do you know that once a hole was completed, did
18 they try to make --- communicate with miners, miners
19 underground? Any communication attempts made?

20 A. I'm not aware of that.

21 Q. Do you remember how many holes were sampled up
22 until the 12th?

23 A. Oh, my. I believe they sampled 1A, 1B. There was
24 a hole in Eight North. The 15B borehole, which is on
25 the refuge chamber, was essentially it for a while.

1 And additional drill holes were constantly being
2 drilled, but it seemed like after a period of time,
3 about three or four days drilling, everything seemed
4 to slow down a bit, just maybe due to the fatigue of
5 the workers.

6 And those drill crews worked absolutely as hard as
7 anyone anywhere, possibly ever. I mean they literally
8 gave their best effort. Or because of at that time
9 that their equipment had been stressed to the point
10 where things had started to slow down due to repairs.
11 I know the Massey crew had several shutdowns due to
12 issues.

13 Q. You talked about remembering the installation of
14 the fan on the 1A borehole?

15 A. Uh-huh (yes).

16 Q. Do you recall any details about the installation,
17 how much air it was supposed to withdraw or when it
18 was put on?

19 A. I was told it would draw several thousand. We
20 took an air reading at one time and it was
21 significantly less than that. I was also told it was
22 a 22-inch fan. I didn't have a Mag-Gage with me, so I
23 couldn't confirm that.

24 I can tell you that it was a piece of black flex
25 pipe that came from the top of the borehole. It had a

1 small box fabricated with four bolts in it that --- I
2 set that tube, as well as the four bolts, wrestled
3 that tube to get a fairly round angle on it, a curve,
4 in which to attach it --- to minimize losses, I didn't
5 want a kink in it --- to a small diesel powered
6 centrifugal fan.

7 We started the fan. We were reading high levels
8 of carbon monoxide. The exact levels, I didn't write.
9 I did have a Solaris detector with me at the time. I
10 assured that everyone was --- on the mine bench was
11 safe. However, as the wind would blow, we'd see a 30
12 part per million spike in the ambient CO just in the
13 general area of the drill bench. I was concerned. I
14 requested that the company contact someone and get
15 drill --- get tubing to put it over the hill as soon
16 as possible to assure the safety of those workers.

17 And when I made one of the trips off the hill to
18 the command center and was gone for a couple hours and
19 came back, that tubing was installed. I wasn't
20 reading any CO there at the site. I checked the fan
21 discharge to make sure it was putting out. I was
22 interested that the air from the fan was actually
23 warm. And later on I talked to tech support personnel
24 and it --- they felt like it was the fan itself
25 creating that, you know, warmth. It wasn't from the

1 mine. And it wasn't excessively warm. It wasn't fire
2 warm, but at the same time we felt like we were
3 getting --- due to the presence of CO and fire gasses,
4 we knew we were getting air from the mine. I think we
5 even went back at a later time and did take some
6 measurements. I don't know if those made it into
7 notes or not.

8 Q. Do you remember when was the decision to inject
9 the nitrogen ---?

10 A. No. From one of my excursions from the drilling
11 rig back to the command center, the nitrogen decision
12 had already been made when I --- upon my arrival.

13 Q. Do you have any details to provide about the
14 nitrogen injection?

15 A. I visited the nitrogen injection when they put the
16 7,000,000 cubic feet, I believe down 1A or maybe 1B
17 borehole, and the other borehole was plugged at the
18 time. I was impressed with the --- I was impressed
19 with the professionalism of the nitrogen injection
20 people.

21 Of course, due to the blower, it's very loud.

22 It's difficult to communicate. They used hand
23 signals, as well as headphones and microphones, two-
24 way communications to get the nitrogen on there. I
25 was impressed with the swap-out of the trucks. I

1 don't know if it could've been done any faster if you
2 had practiced it for weeks prior to. They were very
3 professional, very quick, and it went very well.

4 Q. Do you remember if a camera was set up and used
5 on any of the boreholes?

6 A. Not that I can recall.

7 Q. How about a robot?

8 A. No, sir.

9 Q. Was any geophysical logging done on the boreholes?

10 A. As far as an E-log with a nuclear-density device,
11 no, sir.

12 Q. Okay.

13 A. I do know that a seismic truck was set up and
14 available. And I visited a seismic truck during the
15 drilling just to ask general questions of what was
16 going on. I could see the drill noise --- another
17 time it was raining and they could pick up the noise
18 of the rain, and that there was somebody constantly
19 watching --- watching the results of the geophones.

20 Q. I guess my question was to address the actual hole
21 where they drop the device down the hole and determine
22 how much they were off.

23 A. That didn't occur until after the 15B borehole
24 missed and then it was topped --- I believe that was a
25 driller from Virginia. They brought Marshall Miller &

1 Associates in who actually had, I guess it was the
2 camera and the deviation device. Now, his deviation
3 device wasn't a gyro, per se, according to what I was
4 told on site. It would only tell you the variance, it
5 wouldn't tell you, you know, as far as the azimuth of
6 the variance. So it was an indicator but it wasn't
7 all-inclusive. It wasn't --- couldn't give you enough
8 to correct the hole. And at that time, that was later
9 on in the drilling they were talking, maybe after
10 three or four days that they were going to get --- a
11 gyroscope was coming down from, I want to say Ohio,
12 but, you know, I'm not really sure, in order to start
13 checking the accuracy on the holes.

14 Q. Okay.

15 A. There was a period of time there where the
16 drillers seemed to think that the surveyors were off
17 and the company seemed to think that they were
18 crowding the drill, and that was causing the holes to
19 wander as well. And it may have been a factor of
20 both, you know. I never checked that work, so I can't
21 really say.

22 MR. STOLTZ:

23 Okay. That's all I have on boreholes.

24 Do you got anything to follow-up, Terry?

25 MR. FARLEY:

1 No.

2 MR. STOLTZ:

3 Jim?

4 RE-EXAMINATION

5 BY MR. BECK:

6 Q. Another follow-up. Joe, you said that prior to
7 the accident that the company had three plans for ---?

8 A. Three or four, yeah, somewhere ---.

9 Q. I don't know if you have any with you or not, but
10 could we get those entered into the record?

11 A. I don't have 'em, but certainly they're available.
12 I believe they were going to scan them today in the
13 office and transmit electronically through you, Rich.

14 ATTORNEY BABINGTON:

15 We can talk about that.

16 MR. STOLTZ:

17 Everybody else done?

18 RE-EXAMINATION

19 BY MR. STOLTZ:

20 Q. I was going to move on to just --- you started to
21 talk a little bit about the seismic equipment that was
22 set up. Could you, I guess, kind of walk us through
23 what you remember about the seismic equipment, where
24 it was set up? Was it deployed?

25 A. The seismic equipment was deployed. I was

1 actually very pleasantly surprised with the quickness
2 of the deployment of both gas chromatographs and the
3 seismic equipment. I mean, I don't know if you had it
4 in the district, you could have gotten it out any
5 faster. The seismic truck was positioned in the head
6 of the hollow leading to the 1A and 1B boreholes. I
7 don't know exactly where over the mine its position
8 was, but I do know that the first time I went in the
9 truck, I was told by its director, Mr. Kravitz, that
10 the seismic ray was already out and recording. Or
11 reporting back, I don't know whether it was recording,
12 but it has a series of needle graphs that it puts out
13 and I just asked some general questions as to what
14 this was. And it was different frequencies which he
15 was listening perpetually or constantly to what was
16 going on. And it's all the drill noise.

17 Q. Do you remember when it arrived onsite?

18 A. No, sir. I do know it seemed to be very quick.

19 Q. I guess overall we talked about setup and it was
20 fairly quick. Do you remember how quick, I mean any
21 details?

22 A. No, sir.

23 Q. You mentioned what Mr. Kravitz was operating, I
24 thought I heard?

25 A. Yes.

1 Q. Okay. Do you remember how long or over what
2 period of time it was used?

3 A. I believe it was used all the way through until I
4 left late Tuesday night. Left the mine during
5 daylight hours, and I want to say it was on Wednesday.
6 I'm not really sure, but I think it was on Wednesday,
7 the week after the meeting --- after the accident,
8 excuse me.

9 Q. Okay. Do you remember if any attempts were made
10 to signal the miners?

11 A. Not that I recall. And it could have happened
12 when I was offsite.

13 MR. STOLTZ:

14 Terry, do you have any ---?

15 MR. FARLEY:

16 No.

17 MR. STOLTZ:

18 Okay, Joe. That pretty well wraps up my
19 questioning. Do you have anything that you'd like to
20 add that may be relevant to the investigation?

21 A. No, sir.

22 ATTORNEY BABINGTON:

23 I have a closing statement to read for
24 this. Do we want to take a couple minutes first to
25 ask if we have any other follow-ups? Okay. Let's

1 take five minutes.

2 SHORT BREAK TAKEN

3 ATTORNEY BABINGTON:

4 Can we go back on the record. Jim, you

5 had a comment to make?

6 RE-EXAMINATION

7 BY MR. BECK:

8 Q. Yeah. Looking at this in the big picture, I mean,
9 you have six people and a secretary, I believe, that
10 work for you and you're responsible for somewhere
11 around 245 mines, ventilation plans; correct?

12 A. Yes.

13 Q. And all these mines submit plans to be approved,
14 submit revisions, maps, so there's a lot of stuff
15 coming into you; right?

16 A. Yes.

17 Q. Yet you've got Massey over here submitting all
18 these revisions, a lot more than anybody else, so
19 you've got to spend a whole lot of time with them,
20 because they even came to your office, the Chief
21 Operating Officer and another official, with plans to
22 get approved; right?

23 A. Yes.

24 Q. I mean, they obviously were taking up a whole lot
25 of time, but you accommodated them the best you could,

1 the way I see it, probably way beyond --- you know,
2 way beyond what you normally would have to do?

3 A. Correct.

4 Q. You sent specialists to the mine to help fix the
5 problems. You yourself went on a couple occasions to
6 address --- to see what the problems were and cite 'em
7 if they needed cited, or shut 'em down if they needed
8 shut down?

9 A. Yes, sir.

10 Q. And you know, we talked about probably --- I think
11 there was 14 approved plans we talked about and 18 or
12 19 denied revisions, plans, that we talked about just
13 related to this particular situation, that being the
14 longwall area and Headgate 22 and whatnot. I think
15 you did a really good job addressing the situation. I
16 can't see where you could have done a whole lot more.
17 You brought it to the attention of your supervisors
18 and I think you really went out of your way in trying
19 to accommodate them.

20 A. Thank you. I work for an agency that's absolutely
21 diligent --- vigilant for miners' safety. And I will
22 honestly tell you that within my group we are, and
23 within the district we are. And of course we've taken
24 this extremely seriously, as it should have been, and
25 we will continue to try to do an outstanding job for

1 every coal miner in this district and nationally.

2 MR. FARLEY:

3 What Mr. Beck just said is sort of the
4 thinking I had, something like the thinking I had when
5 I asked the question about would it be better to just
6 give them a plan rather than what you wanted ---.

7 A. I'd like to add something to that. The Massey
8 Mines tend to have a lot of plans. There are large
9 mines within the district that can operate within the
10 confines of their typical base plan and I see very few
11 revisions from them annually. A major move perhaps or
12 a change, the level of planning is different. And the
13 level of engineering support that those mines have is
14 additionally significantly more, and we don't have
15 issues with those mines. I visited those, you know, I
16 try to get to all the mines that are substantial in
17 size, are on the 103(i) spots, as often as I can, but
18 I certainly don't visit those mines near as often as
19 mines that don't appear to be planned as well or have
20 been receiving exceptional citations and orders as
21 what we saw here in the case of this mine.

22 ATTORNEY BABINGTON:

23 I just want to make a comment to clarify.

24 There have been a couple requests for documents to be
25 put on the record. For the time being, the

1 investigation teams are going to be sharing that
2 information through the channels they've already been
3 following at this point, but the State independent
4 team reserves the right to move to place those
5 documents in the record at sometime later.

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

21 If you wish, you may now go back over any
22 answer you've given during this interview. You may
23 also make any statements that you'd like to give at
24 this time.

25 A. I have no further statements. Thank you.

1 ATTORNEY BABINGTON:

2 Thank you, Joe. Again, I want to thank
3 you for your cooperation in this matter.

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STATEMENT UNDER OATH CONCLUDED AT 3:05 P.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