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Transcript of the Testimony of Bruce Vickers

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Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

STATEMENT UNDER OATH
OF
BRUCE VICKERS

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Friday, July 16, 2010 at 1:05 p.m.

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A P P E A R A N C E S

1
2
3
4
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ROBERT S. WILSON, ESQUIRE
U.S. Department of Labor
Office of the Regional Solicitor
1100 Wilson Boulevard
22nd Floor West
Arlington, VA 22209-2247

DAVID STEFFEY
National Mine Safety and Health Academy
1301 Airport Road
Room C-137
Beaver, WV 25813-9426

TERRY FARLEY
West Virginia Office of Miners' Health
Safety and Training
1615 Washington Street East
Charleston, WV 25311

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

1
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JOHN O'BRIEN
Safety Inspector
West Virginia Office of Miners' Health
Safety and Training
Welch Regional Office
891 Stewart Street
Welch, WV 24801-2311

PATRICK C. MCGINLEY
West Virginia Independent Investigation
West Virginia University College of Law
P.O. Box 6130
Morgantown, WV 26506-6130

I N D E X

1		
2		
3	OPENING STATEMENT	
4	By Attorney Wilson	7 - 12
5	STATEMENT	
6	By Mr. Farley	12
7	STATEMENT	
8	By Mr. McGinley	12 - 13
9	WITNESS: BRUCE VICKERS	
10	EXAMINATION	
11	By Mr. Steffey	13 - 42
12	EXAMINATION	
13	By Attorney Wilson	42 - 44
14	EXAMINATION	
15	By Mr. Farley	44 - 52
16	RE-EXAMINATION	
17	By Attorney Wilson	52 - 54
18	EXAMINATION	
19	By Mr. McGinley	54 - 63
20	RE-EXAMINATION	
21	By Mr. Steffey	63 - 86
22	RE-EXAMINATION	
23	By Attorney Wilson	86 - 88
24	RE-EXAMINATION	
25	By Mr. Steffey	88 - 89

I N D E X (cont.)

1		
2		
3	RE-EXAMINATION	
4	By Mr. Farley	89 - 90
5	RE-EXAMINATION	
6	By Mr. Steffey	90 - 91
7	RE-EXAMINATION	
8	By Mr. Farley	91 - 93
9	RE-EXAMINATION	
10	By Mr. McGinley	93 - 97
11	RE-EXAMINATION	
12	By Mr. Farley	97 - 98
13	RE-EXAMINATION	
14	By Mr. McGinley	98 - 99
15	CLOSING STATEMENT	
16	By Attorney Wilson	99 - 101
17	CERTIFICATE	102
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

One

Map

23*

Two

Map

28*

* Exhibit not attached

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
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ATTORNEY WILSON:

Good afternoon. My name is Bob Wilson.

I'm with the Solicitor's Office, United States Department of Labor. With me here is Dave Steffey. Dave's an investigator with the Mine Safety and Health Administration. Also present are individuals with the State of West Virginia, and I'll let them identify themselves.

MR. FARLEY:

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

MR. O'BRIEN:

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

MR. MCGINLEY:

Patrick McGinley with the Governor's independent investigation team.

ATTORNEY WILSON:

Today is July 16, 2010, and we're here to conduct an interview of Bruce Vicker. Mr. Vicker, thank you for coming in this afternoon.

MR. VICKERSS:

That's with an S on the end.

1 ATTORNEY WILSON:

2 Vickers. I apologize. All members of

3 the Mine Safety and Health Administration Accident

4 Investigation Team and all members of the State of

5 West Virginia Accident Investigation Teams conducting

6 the investigation of the Upper Big Branch Mine

7 explosion shall keep confidential all information that

8 is gathered from each witness who voluntarily provides

9 a statement until witness statements are officially

10 released. MSHA and the State of West Virginia shall

11 keep this information confidential so as not to

12 jeopardize or prejudice other ongoing enforcement

13 activities 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. Everyone's participation in this interview

18 constitutes their agreement to maintain

19 confidentiality.

20 Government investigators and specialists

21 have been assigned to investigate the conditions, the

22 events and circumstances surrounding the fatalities

23 that occurred on April 5th, 2010 at the Upper Big

24 Branch Mine-South. The investigation is being

25 conducted by MSHA pursuant to Section 103(a) of the

1 Federal Mine Safety and Health Act and by the West
2 Virginia Office of Miners' Health, Safety and
3 Training. We appreciate your coming in today and
4 providing us with your information.

5 Mr. Vickers, you may have an attorney or
6 a personal representative present with you today. Do
7 you have a representative?

8 MR. VICKERS:

9 No.

10 ATTORNEY WILSON:

11 Your statement is completely voluntary.

12 You may refuse to answer any question, and you may
13 terminate the interview at any time. This is not an
14 adversarial proceeding. Formal Cross Examination is
15 not permitted, but each of the parties will ask
16 follow-up questions. If at any time you need to take
17 a break, just let me know.

18 MR. VICKERS:

19 Okay.

20 ATTORNEY WILSON:

21 Your identity and the content of this
22 conversation will be made public at the conclusion of
23 the interview process and may be included in a public
24 report concerning the accident unless you specifically
25 request that your identity remain confidential or if

1 your identity would otherwise jeopardize a potential
2 criminal investigation. If you request us to keep
3 your identity confidential, we will do so to the
4 extent permitted by law. In other words, if a judge
5 orders us to turn over your name or some other law
6 requires that we reveal your identity, we may do so.

7 Also, there may be a need to use the
8 information that you provide to us in reports that are
9 going to be issued or in other proceedings or hearings
10 concerning the explosion. Do you understand your
11 right to request confidentiality?

12 MR. VICKERS:

13 Yes, I do.

14 ATTORNEY WILSON:

15 Do you have any questions about that?

16 MR. VICKERS:

17 No, I don't believe I do.

18 ATTORNEY WILSON:

19 Okay. After the investigation is
20 complete, MSHA will issue a public report detailing
21 the nature and causes of the fatalities in the hope
22 that greater awareness about the causes of accidents
23 will reduce their occurrence in the future.
24 Information obtained through witness interviews such
25 as we're doing here today is frequently included in

1 those reports. We will be interviewing additional
2 witnesses, so we ask that you not discuss your
3 testimony today with anyone outside of this room.
4 A court reporter will be recording the
5 interview, so please speak loudly and clearly. If you
6 do not understand a question, please ask that the
7 question be rephrased. Please answer each question as
8 fully as you can, including any information that you
9 may have learned or heard from someone else.

10 Again, I would like to thank you in
11 advance for your appearance here today. Your
12 cooperation, it is very important in making the
13 nation's mines safer. After we have finished asking
14 questions, we will provide you with an opportunity to
15 add any additional information that you believe to be
16 important, or if you would like, you can make a
17 statement at that time. If after the interview is
18 complete, you recall any additional information that
19 you believe would be useful, please contact us here at
20 the Mine Academy. Do you receive a letter
21 requesting ---?

22 MR. VICKERS:

23 Yeah.

24 ATTORNEY WILSON:

25 Okay. Our contact information is in that

1 letter, or you can contact the State and Terry has
2 some contact information that he'll give to you.
3 Terry?

4 MR. FARLEY:

5 Mr. Vickers, on behalf of the Office of
6 Miners' Health, Safety and Training, we'd like to
7 provide you with the West Virginia Coal Mine Health
8 and Safety regulations that also provide protection to
9 coal miners for potential discrimination which may
10 result in participating in these type of interviews.
11 I want to pass along some contact information to you
12 which includes the address for the West Virginia Board
13 of Appeals which hears complaints on such matters
14 along with my phone number and a phone number for Bill
15 Tucker, who is our lead underground investigator. I
16 would advise you that in the event that you have a
17 problem, you need to file a complaint within 30 days
18 to do that. Okay?

19 MR. VICKERS:

20 Okay.

21 MR. MCGINLEY:

22 I would just add --- emphasize that we're
23 here to try to answer questions that the families of
24 the men we've lost have, you know, to see if we can
25 figure out the cause. If somebody was responsible,

1 hold them responsible. And so your truthful answers
2 will be a great assistance to us, and we appreciate
3 you coming in here today to assist us in this.

4 ATTORNEY WILSON:

5 Mr. Vickers, if you would, face the court
6 reporter please and she'll swear you in.

7 -----

8 BRUCE VICKERS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
9 AS FOLLOWS:

10 -----

11 ATTORNEY WILSON:

12 Would you please state your full name for
13 the record?

14 A. Bruce Wayne Vickers.

15 ATTORNEY WILSON:

16 And would you please tell us your mailing
17 address and telephone number?

18 A. (b) (7)(C) My
19 phone number is (b) (7)(C) .

20 ATTORNEY WILSON:

21 Thank you. Dave Steffey will start the
22 questioning for MSHA.

23 EXAMINATION

24 BY MR. STEFFEY:

25 Q. Good afternoon.

1 A. Good afternoon.

2 Q. You appeared here today voluntarily?

3 A. Yes.

4 Q. Anybody made any promises to you concerning the
5 testimony you're about to give?

6 A. No.

7 Q. Has anybody made any threats concerning the
8 testimony you're about to give?

9 A. No.

10 Q. Has anybody given you anything in exchange for the
11 testimony you're about to give?

12 A. No.

13 Q. Has anybody else interviewed you concerning your
14 knowledge of the conditions in this mine and the
15 possible causes of the accident?

16 A. Yes.

17 Q. And who was that?

18 A. It was Massey lawyers, and I had an MSHA man and
19 an FBI agent come to my house.

20 Q. Okay. The Massey lawyers, do you remember who
21 they were?

22 A. No.

23 Q. Do you remember when they interviewed you?

24 A. It was the day right after the MSHA and the FBI
25 was there. I can't remember the dates.

1 Q. What kind of questions did they ask you?

2 A. Asked about where I was at, what I done and about
3 the doors and if I knowed anything about gas and asked
4 about Chris Blanchard and some ventilation changes
5 that was being done and about people working back inby
6 the longwall when the longwall was running.

7 Q. Did they record it or take notes?

8 A. They took notes.

9 Q. Okay. Did they caution you or give you any
10 instructions concerning this interview?

11 A. No.

12 Q. Okay.

13 A. It was an MSHA man and FBI man that came to my
14 house.

15 Q. Mr. Vickers, can you tell me how many years of
16 mining experience you have?

17 A. I started in 1975.

18 Q. Okay. Can you give me a brief description of your
19 coal mine employment history, just very briefly?

20 A. I started with Westmoreland Coal Company in 1975,
21 the Hampton Division, Number Four Mines. And when
22 they shut it down for water issues, they transferred
23 me to Ferrel 17 Mines. I worked there 'til '82. And
24 after they had the mine explosion there and killed
25 five people there, they finally shut the mines down,

1 and then I worked other jobs not in the mine for a
2 couple years until I went back to work for Long Branch
3 Energy. I worked a year with Long Branch Energy, and
4 they shut the mines down. Then I went to work for Red
5 Oak Coal Company, which was owned by Gulf Brothers
6 --- or leased out by Gulf Brothers. Worked for them a
7 year, and it was a subsidiary of Massey Coal. And
8 they changed hands, and they went to Koppers Coal. I
9 worked for Koppers Coal up until April '95 and I went
10 to work for Upper Big Branch.

11 Q. Okay. So you've been at Upper Big Branch since
12 April of '95?

13 A. Yes.

14 Q. Do you have any mine certifications?

15 A. Uh-huh (yes). Just the one they give me when I
16 started in the mines after six months.

17 Q. So you're a certified miner?

18 A. Yeah.

19 Q. And are you presently employed?

20 A. Yes.

21 Q. Where at?

22 A. I'm at Round Bottom at Sylvester.

23 Q. Okay. And when did you start there?

24 A. I'm thinking April 16th maybe. It was a couple
25 weeks after the mine explosion.

1 Q. Okay. And what's your present job title?

2 A. Well, they got me classified as a bolt man, but
3 I'm a motor man. They got me on a motor.

4 Q. Okay. Is your mining history with Massey just
5 since April of '95?

6 A. Yes.

7 Q. Did you work with Massey at any point prior to
8 that?

9 A. No.

10 Q. Other than these Gulf Brothers, which you said ---

11 A. Yeah.

12 Q. --- was a subsidiary?

13 A. And Koopers Coal. They was also --- Koppers Coal
14 took Red Oak over.

15 Q. Okay. What was your job title at Upper Big
16 Branch?

17 A. I'm classified as an outby bolt man at Upper Big
18 Branch.

19 Q. What did you really do, though?

20 A. Well, I ran a supply motor because the guy that
21 used to run it retired, and they didn't have nobody on
22 the dayshift that knowed how to haul equipment. And
23 the bolt machine they had to have down the road, so
24 they put me on the motor to run the motor.

25 Q. And how long have you been running the motor for?

1 A. Altogether probably about five years.

2 Q. Okay. So you've been a motor man at this mine for
3 the past five years?

4 A. Yeah, pretty much.

5 Q. Anybody ever task train you on a motor there?

6 A. Yeah.

7 Q. And what did they --- how do they do that?

8 A. They show you all the controls on it.

9 Q. Anything else?

10 A. And well, you kind of ride one until --- they
11 train you like that.

12 Q. Okay. Are you qualified by MSHA to take oxygen
13 and methane deficiency checks?

14 A. Well, yeah, I could do methane checks. Yeah.

15 Q. Okay. How were you qualified?

16 A. In the annual retraining and stuff they give to us
17 in a class.

18 Q. Have you participated in evacuation drills in the
19 mine?

20 A. Yeah.

21 Q. How often did you participate in those?

22 A. Now, that I run the motor not as often as I was
23 supposed to.

24 Q. Did you ever walk the intake escapeway?

25 A. Yeah.

1 Q. What was that like?

2 A. It was a long haul.

3 Q. Long haul. What were the conditions like in the
4 intake?

5 A. Some of it was kind of rough. Others would have
6 been you just had enough to walk through where they'd
7 have timbers set in between where the ribs would roll
8 and rock fell out over the bolts.

9 Q. Any water?

10 A. Some places, yeah.

11 Q. How about wide spots?

12 A. I can't remember seeing any wide spots in the
13 intakes.

14 Q. Okay. Do you know who was designated as a
15 responsible person for each shift?

16 A. Let's see. Everett Hager, I think, was the
17 dayshift. He's the mine superintendent. And Terry
18 Moore was the mine foreman.

19 Q. Okay. And how were you informed of this?

20 A. Of what?

21 Q. Of who was the responsible person.

22 A. They have it posted.

23 Q. Okay. And when this person changed, how did they
24 inform you?

25 A. It's posted.

1 Q. And when you were working as a motor man at this
2 mine, were you by yourself or did you have somebody
3 with you?

4 A. No, most the time we had somebody with us. We run
5 two motors together, but sometimes they'd separate us.

6 Q. Okay. How many cars did you haul in?

7 A. One car to one motor.

8 Q. One car to one motor. So if you had two motors
9 together, did you have two cars?

10 A. Two cars.

11 Q. Did you all haul that in hooked together?

12 A. No, not always.

13 Q. Not always?

14 A. No.

15 Q. Did you typically push or pull your cars?

16 A. Well, you usually pull them in and push them out.

17 Q. Did you carry a methane detector?

18 A. Yes.

19 Q. Did you take it home?

20 A. Yeah.

21 Q. Who did the maintenance and calibration on this?

22 A. We did at the mines.

23 Q. At the mines. Which portal did you typically
24 enter when you was ---?

25 A. UBB side.

1 Q. UBB side?

2 A. Yeah.

3 Q. Okay. And what sections did you supply?

4 A. Headgate 22 and sometimes --- I guess that's
5 Tailgate 21 down here.

6 Q. Okay.

7 A. And every once in a while, we'd have to make ---
8 or take something to the longwall.

9 Q. Okay.

10 ATTORNEY WILSON:

11 When you were saying Tailgate 21 over

12 here, you were referring to what's labeled as MMU-040?

13 A. I guess that new tailgate they was driving.

14 BY MR. STEFFEY:

15 Q. Okay. Did you ever take supplies anywhere else in
16 the mine?

17 A. Every once in a while we'd have to take something
18 over on the north side, the east main side, yeah.

19 Q. Okay. What about to the construction section
20 where they were getting ready to run off the mini
21 panels, did you ever take anything there?

22 A. That's the one out next to ---.

23 Q. Yeah, out next to Ellis Portal.

24 A. Yeah, we took a few stuff out there.

25 Q. Took some stuff out there. Okay. Let's talk

1 about equipment, and we'll start over there at the
2 construction site. There's a set of doors right there
3 just off the track; is that correct?

4 A. Well, they --- it all depends on which way you're
5 going. If you're going out the outside in, there's
6 some just right after you get out the foot of the hill
7 there, probably about 15 breaks from outside, I'd say.

8 Q. What about when you turn toward the mini panel?

9 A. There was a set right there just as you start in
10 the switch.

11 Q. Okay. Could you get that supply motor through
12 there with the car without opening both sets?

13 A. No, I don't think. If it would, it'd be tight.

14 Q. Were there any other equipment doors in that area
15 that you know of besides the ones going toward the
16 Ellis Portal and those right there where you turn
17 towards the mini panel?

18 A. There's a set at the mouth at Ellis coming out
19 from the UBB side.

20 Q. If you could --- this map up here on the wall,
21 could you take a highlighter and indicate the
22 locations of these doors?

23 ATTORNEY WILSON:

24 A blue highlighter?

25 MR. STEFFEY:

1 Yeah, a blue highlighter.

2 A. Let's see. This being the Ellis Portal.

3 BY MR. STEFFEY:

4 Q. Okay.

5 A. This is --- let's see where I am at here.

6 Q. And the UBB Portal would be down here.

7 A. All right. This is the mouth of the North Mains
8 right here. There's a set of doors right here. I
9 believe they're at just --- this is the track entry.

10 ATTORNEY WILSON:

11 Why don't we do this? Let's go off the
12 record.

13 OFF RECORD DISCUSSION

14 ATTORNEY WILSON:

15 We have a map scale one inch to 200 feet
16 of the outby areas of the mine we've marked as Vickers
17 Number One Exhibit. And Mr. Vickers has marked on the
18 map three locations where there were doors. He's
19 circled those with a blue highlighter and written out
20 in the margin doors at each of the three locations.
21 (Vickers Exhibit Number One marked for
22 identification.)

23 BY MR. STEFFEY:

24 Q. Mr. Vickers, let's talk about these doors right
25 here again at the mouth by the mini panel. You've

1 circled here. All right. You mentioned before that
2 was kind of tight ---

3 A. Yeah.

4 Q. --- getting a motor through there?

5 A. I think they're sitting within One Break area.

6 Q. Yeah. Okay. Have you ever found those doors
7 open?

8 A. Only when we go through them.

9 Q. Only when you go through them?

10 A. Yeah.

11 Q. Okay. Have you ever come up there while they were
12 cutting in the area, getting the belt channeled with
13 the miner?

14 A. No.

15 Q. No?

16 A. No, because they were done --- I either hauled
17 stuff before they started or after they done cut all
18 the --- most of it. They was done down in here.

19 Q. Okay. Of the doors that you have circled, have
20 you ever found any of the others open?

21 A. Well, they was still working these, but the last
22 time I was up there ---.

23 ATTORNEY WILSON:

24 When you say these ---?

25 A. They just finished them.

1 ATTORNEY WILSON:

2 When you say these, can you identify
3 them?

4 A. These going out the Ellis, the Ellis doors.

5 ATTORNEY WILSON:

6 So the ones closest to the Ellis Portal?

7 A. Yeah.

8 BY MR. STEFFEY:

9 Q. Okay. Did you happen to notice the air direction
10 in that area?

11 A. I think it usually went out toward Ellis.

12 Q. Out toward Ellis?

13 A. Yeah.

14 Q. Do you know what direction the air was supposed to
15 go in that area?

16 A. I think that's the way it was supposed to went,
17 because I think that's the reason why they put these
18 doors here, to separate this air from this air.

19 Q. Okay. You mentioned going out toward --- I
20 believe you called it 16?

21 A. Yeah, down here.

22 Q. You said there were numerous doors going out
23 towards ---?

24 A. I'm not sure what kind of doors were down in here,
25 if there's any.

1 Q. Did you ever travel that area?

2 A. It's been a long time ago, when they first
3 developed it.

4 Q. Okay. All right. So did anybody ever go over the
5 approved ventilation plan with you?

6 A. It's been a long time.

7 Q. It's been a long time.

8 A. Yeah.

9 Q. Did you have the Massey annual retraining?

10 A. Yeah.

11 Q. Did they cover it then?

12 A. Some.

13 Q. Some?

14 A. Yeah.

15 Q. What did they cover?

16 A. Mostly just what way you knew intake was going to
17 go out. It was going to come out and come out Ellis,
18 the shorter route.

19 Q. Did you ever walk that intake?

20 A. Not the new one, no.

21 Q. Not the new one?

22 A. No.

23 Q. Okay. When you were ---?

24 A. I had walked it from --- I'll rephrase that. We
25 was right here. I had walked it from there out,

1 because we took a scoop out.

2 ATTORNEY WILSON:

3 Dave --- again, when you say we walked

4 from there out, can you explain what you were saying?

5 A. I'd say that's probably the mouth where the ---.

6 ATTORNEY WILSON:

7 The mouth of ---?

8 A. Ellis --- well, that's what they called this. But

9 this was --- right here where those four doors was

10 out.

11 ATTORNEY WILSON:

12 Okay. Those most outby doors that you

13 mentioned before?

14 A. Yeah, because we took a scoop through these doors

15 and went out.

16 BY MR. STEFFEY:

17 Q. Scoop through the main panel doors and went out

18 through the Ellis doors?

19 A. Yeah, out the Ellis --- well, out the intake side

20 of Ellis.

21 Q. The intake. Okay. All right. What condition

22 were the doors in generally?

23 A. Well, the doors themselves on that end was pretty

24 good shape doors because they hadn't been used that

25 much.

1 Q. Okay. What about other areas of the mine?

2 A. Yeah, there was a lot of them.

3 Q. Were the doors in the mine typically automatic or
4 were they --- did you have to get out and open them?

5 A. Well, the first two going in from UBB side was
6 automatic. Then there was a set of doors at 80 Break
7 that was supposed to have been automatic, but they
8 wasn't.

9 Q. Okay. Eighty (80) Break, the map in front of you,
10 can you refer to me where that's at?

11 A. Let's see. Let's see. I believe right here is
12 where we turned down in there. Eighty (80) --- right
13 in here.

14 Q. Okay. Would you circle those and write door on
15 the map there for me?

16 WITNESS COMPLIES

17 BY MR. STEFFEY:

18 Q. Okay.

19 MR. MCGINLEY:

20 Let the record show, this exhibit is
21 being marked as Vickers Number Two.

22 (Vickers Exhibit Number Two marked for
23 identification.)

24 BY MR. STEFFEY:

25 Q. Okay. Now, let's talk about those doors there.

1 Now, these particular doors, what kind of condition
2 were they in?

3 A. Bent.

4 Q. Bent. Why were they bent?

5 A. Where rides bump them. Instead of getting out and
6 opening them, they bump them open or they swing back
7 shut while they're coming through it and they catch
8 them.

9 Q. So was that a common occurrence for them, to
10 either bump them or hit them?

11 A. Yeah.

12 Q. Okay. How often did they replace these doors?

13 A. Not very often. As a matter of fact, they'd still
14 been up when all of this went on.

15 Q. When you approached these doors --- when you were
16 approaching the most outby door, could you tell if the
17 door inby that --- in that set, given that there's two
18 sets of doors there from one set --- could you tell if
19 the inby set was open by approaching the outby area?

20 A. Well, there's a --- most of these doors, you got a
21 glass panel or a flexible panel sheet in it to where
22 you can see through them.

23 Q. Okay. And when you opened the doors to get your
24 supply motor through, could you open one door at a
25 time and pull in or did you have to ---?

1 A. Yeah.

2 Q. So you could open one at a time?

3 A. Yeah, you could.

4 Q. Did you typically do that?

5 A. No.

6 Q. Okay. When you opened these doors up, what can
7 you tell me about the air?

8 A. It short circuited the intake.

9 Q. Short circuit them. Which way did it go?

10 A. It went outby the doors.

11 Q. Okay. Have you ever found the two sets of doors
12 there that you got circled both sets open?

13 A. No, not both of them. Other than if we --- say
14 the front motor goes first, he opens them and the last
15 one shuts them ---

16 Q. Okay.

17 A. --- usually.

18 Q. Okay. Anybody ever say why they installed all
19 these doors?

20 A. They didn't want to take the time to cut the
21 overcast for the track.

22 Q. And who was they?

23 A. Chris Blanchard, I guess, the management.

24 Q. Okay. Did you ever him say anything to that
25 effect?

1 A. Well, not him personally, no. But the
2 superintendent at the time said he was told to put
3 doors up instead of letting them cut the overcast.

4 Q. And who was that?

5 A. Rick Hodge.

6 Q. Rick Hodge. Okay. And who told him to do that?

7 A. I guess Chris Blanchard because that's who his
8 boss is.

9 Q. Okay. All right. Why do you think Mr. Blanchard
10 was in such a hurry?

11 A. He was in a hurry to get back in the coal, I
12 guess.

13 Q. Okay. What can you tell me about the ventilation
14 at this mine? Was there ever any ventilation problems
15 associated with this mine that you knew of?

16 A. Evidently, they must have had quite a bit because
17 they was doing a lot of air changing there, especially
18 after they was brining the longwall back.

19 Q. Okay. What do you mean by they did a lot of air
20 changes?

21 A. Well, they --- where they put that new fan back
22 here behind the wall, they had to do a lot of
23 restopping and changing to ventilate off of here to
24 pull air off of Headgate 22.

25 Q. Did they ever explain to you and the crews when

1 these ventilation changes were being made what they
2 were doing and what was going to occur?

3 A. Not a whole lot, no.

4 Q. Were these changes ever made with people
5 underground? By that, I mean miners working at the
6 face or supplying sections?

7 A. I can't say what they done, you know, when they
8 would go back into neutral works, these old panels and
9 take air readings and stuff. I don't know what they
10 was doing back in there.

11 Q. Okay.

12 A. All I know is when they wanted stuff to build
13 stoppings, we'd haul the stuff to build stoppings and
14 set it off in certain spots.

15 Q. How often did you haul stuff to build stoppings?

16 A. Well, when they first started this up, we had to
17 haul three or four times probably. We had to re-vent
18 all this air so it would go out that exhaust fan up
19 behind the wall.

20 Q. What about these little foam canisters, how many
21 of those did you take in typically?

22 A. They used bunches of them there.

23 Q. Why would they use bunches of them?

24 A. It's easier, faster. Then they used --- lots of
25 times they used them Kennedy stopping panels and used

1 it to seal them.

2 Q. What about plastering? Did you know of them to
3 plaster the stoppings?

4 A. Yeah, we hauled plaster, too.

5 Q. Okay. Did you ever know of any air reversals in
6 the mine?

7 A. I heard about that one they got that citation on
8 is the only one I know of.

9 Q. Okay. To your knowledge, was mine ventilation
10 adequate?

11 A. At that time, probably not.

12 Q. When did these problems begin with the
13 ventilation?

14 A. When they started setting us back up for the
15 longwall.

16 Q. You may or may not know this. Do you know if
17 mining ever took place in this mine without a
18 ventilation curtain?

19 A. Yeah. We all had to go --- a lot of us had to go
20 to grand jury over that.

21 Q. When was this?

22 A. That's when Pete Hendricks was there.

23 Q. Okay. Well, how long ago was that?

24 A. Probably, I'm guessing '98, somewhere in that
25 area.

1 Q. Okay. What about after that? Did you know of
2 them cutting coal without a curtain?

3 A. Well, yeah.

4 Q. How often did that occur?

5 A. They just about done it every day really.

6 Q. Why would they do that?

7 A. In a hurry.

8 Q. Did that comply with their approved ventilation
9 plan?

10 A. No.

11 Q. Who told them to cut without a curtain?

12 A. Well, now, once --- let's see. Let me think
13 because once --- I'm trying to think what happened
14 that --- it might have been after this grand jury
15 thing, they started telling them to hang curtain.

16 Q. Okay.

17 A. Because at one time, Pete Hendricks wouldn't put
18 fly boards up in the mines.

19 Q. And what was his reason for that?

20 A. He said you didn't need them.

21 Q. Okay. Right now have you ever heard anybody from
22 management give the order to cut without a curtain,
23 anybody in the current management structure at the
24 mine?

25 A. No, not the section bosses.

1 Q. Not the section bosses?

2 A. No. Now, what they tell him, I don't know.

3 Q. Okay.

4 A. But they usually --- I know --- the two section
5 bosses I know that was on the dayshift, I know they
6 hung them all the time.

7 Q. How often did you have to haul ventilation
8 curtains into the section?

9 A. They took it themselves on the mantrips.

10 Q. Took it themselves on the mantrips?

11 A. Yeah.

12 Q. So you don't know how much they used or if there
13 were allotted so much or ---?

14 A. No.

15 Q. Okay.

16 A. And a lot of times they would leave the curtain
17 outside

18 Q. Okay. What about methane monitors, did you ever
19 hear of them being bridged out?

20 A. No.

21 Q. Do you know if miners were subjected to
22 retaliation and threats if they reported safety issues
23 or other concerns, particularly if they reported them
24 to MSHA?

25 A. Not that I know of.

1 Q. Not that you know of?

2 A. No, not that I know of.

3 Q. When you entered the portal with your supplies and
4 your motor, who did the pre-op check on your motor?

5 A. I did.

6 Q. And approximately how long was your travel time to
7 where you typically delivered supplies to?

8 A. Anywhere from 45 minutes to an hour.

9 Q. Okay. You mentioned before that when you opened
10 those doors right there, that it would short circuit
11 the intake. Where'd that intake go to?

12 A. It went to the longwall and Tailgate 21 and
13 Headgate 22.

14 Q. Okay. So what happened to the intake air on those
15 sections when those doors were opened?

16 A. Short circuit it.

17 Q. So they didn't have enough air?

18 A. (Indicates yes).

19 Q. Would I be correct in ---

20 A. Yeah.

21 Q. --- saying that? Okay. Did the men ever complain
22 about that? Did you ever hear any complaints about
23 not enough air on the sections?

24 A. Oh, yeah.

25 Q. Who did they typically make these complaints to?

1 A. I guess --- well, see, all them guys --- this crew
2 of men ---.

3 Q. This crew of men meaning ---?

4 A. Headgate 22 crew. They went out the Ellis side,
5 so I didn't get to talk to them much, so I don't know.

6 Q. And what about the tailgate section, the 040-MMU?

7 A. I can't really say if they said a whole lot about
8 the air. I know at one time they was having trouble
9 with the air up in there, ---

10 Q. Okay.

11 A. --- not having enough.

12 Q. Okay.

13 A. But they come out with that new plan and we went
14 in --- let me see where we're at here. This is the
15 longwall.

16 Q. Yes.

17 A. These set of doors here at the mouth of the
18 longwall, they went back inside them doors and put up
19 a set of doors here to regulate and put a regulator in
20 this set of doors to regulate the air on the longwall.

21 Q. Okay.

22 A. And so this air come across this way and down in
23 there ---

24 Q. Okay.

25 A. --- and split right here.

1 Q. Who made that decision to regulate that air going
2 towards the longwall?

3 A. I guess Massey and MSHA, I guess.

4 Q. Okay.

5 ATTORNEY WILSON:

6 All right. Let's just go back for a
7 second just so we can clarify for the record. We're
8 looking at the headgate side of the longwall out
9 around --- it looks like around seven to eight blocks
10 or crosscuts; is that right?

11 A. Something like that.

12 ATTORNEY WILSON:

13 Okay. And you circled four doors
14 indicating that they're doors. And then the
15 regulator ---.

16 A. Was built on this side of the doors right here.
17 The doors went across right here on the track, and
18 they put air locks in them to regulate the air going
19 down this way.

20 ATTORNEY WILSON:

21 Okay. When you say down this way, down
22 the headgate of the longwall?

23 A. Yeah.

24 BY MR. STEFFEY:

25 Q. So they regulated their intake going to the

1 longwall?

2 A. Yeah.

3 Q. Did you ever get a chance to talk to the longwall
4 crew when they thought about that?

5 A. No, because I didn't know that --- I hadn't went
6 down there but once or twice after they put them up
7 there.

8 Q. Okay. Do you ever see Mr. Blanchard or Mr.
9 Whitehead in the mine?

10 A. Yeah.

11 Q. Typically what were they doing?

12 A. They'd sometimes go to the sections and sometimes
13 they'd go to the longwall and sometimes I don't know
14 where they went.

15 Q. Did you ever hear of what they did when they were
16 on the sections?

17 A. Other than just going up and watching the men, I
18 don't know.

19 Q. Did you ever of them making any ventilation
20 changes?

21 A. I can't say --- during while the crew was in
22 there, I can't say.

23 Q. Okay. Did you ever talk to Mr. Whitehead or Mr.
24 Blanchard?

25 A. Not very often.

1 Q. When they did talk to you, what did they talk
2 about?

3 A. Not much of nothing. They wasn't real friendly.

4 Q. Did you ever --- when they were driving toward the
5 Bandytown fan, were you ever delivering supplies to
6 that area?

7 A. Yes.

8 Q. What can you tell me about that area?

9 A. It was sloppy and wet and water.

10 Q. Okay. So they had water problems down there?

11 A. Yeah.

12 Q. Where was this water coming from?

13 A. Out of the bottom, I guess, or out --- it could
14 have been coming out of them old longwall panels. I
15 don't know where it came from.

16 Q. Okay. What about the roof conditions?

17 A. It was kind of rough looking.

18 Q. How wide were the entries up through there?

19 A. Well, the track and the belt run together, so I
20 think it's 22 feet.

21 Q. Is that --- and that was according to the plan?

22 A. Yeah, because they put props --- or sand jacks
23 between the track and the belt.

24 Q. Were there places in there wider than 22 feet?

25 A. Some places. They put cribs and sand jacks in it.

1 Q. Okay. What about methane? Did you ever know of
2 any methane up in there?

3 A. A little bit.

4 Q. A little bit?

5 A. Yeah. That's back away from the face. I don't
6 know what --- somebody said they had quite a bit of
7 gas in the face.

8 Q. Did you ever pick up any methane on your detector?

9 A. Yeah.

10 Q. How high did it get?

11 A. Just a couple points, percent, one or two percent.

12 Q. Did you ever have a shift delayed, or did you ever
13 have to evacuate the mine due to methane?

14 A. Just that --- back when the longwall got into it
15 before.

16 Q. Okay. And when was that?

17 A. '03 and '04, I believe.

18 Q. Okay. Water up here you mentioned coming out of
19 the floor going toward the Bandytown fan. Did anybody
20 ever report that to management outside?

21 A. Well, yeah, because they set pumps and tried to
22 pump it.

23 Q. Tried to pump it out.

24 A. Before they pulled out, they even done a lot of
25 grading back in there to --- so they could get that

1 big pump to go --- that they set down from outside the
2 pump.

3 Q. Did you ever see engineers in the mine?

4 A. Yeah.

5 Q. Surveyors?

6 A. Yeah.

7 Q. What were they typically doing?

8 A. Surveying for the sections.

9 Q. Surveying for the sections. Did you ever see them
10 down on the beltline doing check surveys or anything
11 like that?

12 A. I can't say that I did.

13 MR. STEFFEY:

14 That's all I got right now if you guys
15 have questions.

16 EXAMINATION

17 BY ATTORNEY WILSON:

18 Q. Okay. If I could just go back for a second. I
19 just want to clarify something. On Exhibit Number
20 Two, you were talking about the sets of doors near the
21 mouth of the headgate side of the longwall and you've
22 labeled those as doors. Just to clarify for the
23 record, the two inby doors, those have regulators
24 built into the doors?

25 A. Yeah. Yeah, built out of block.

1 Q. Can you describe what --- well, was the door and
2 the regulator the same thing?

3 A. No. The doors was across the track, and then you
4 had probably ten feet on this side of the door. Then
5 they put block in it, and they left a hole in the
6 block, probably about a four by six or something hole,
7 for air to shot through there for the longwall.

8 Q. Okay. All right. I understand. So the regulator
9 was built on one side of the entry, the door was on
10 the other side of the entry?

11 A. Yeah, but it was all together.

12 Q. Okay.

13 A. Because that's --- that entry there is 22 foot
14 long --- or wide ---

15 Q. Right.

16 A. --- because the track and belt was together.

17 Q. So how wide were the doors?

18 A. The doors was 14 foot.

19 Q. And then the rest of that width was the regulator?

20 A. Would be block. Would be block. And they blocked
21 up and left a hole about four by six or something, you
22 know, for the air --- the intake air to go down the
23 longwall.

24 Q. And so then that would allow some of the intake
25 air to go up to the longwall and then ---

1 A. Yeah.

2 Q. --- some of it to go up towards the Headgate 22;
3 is that right?

4 A. Yeah. And before all this was intake for the
5 longwall until they set this all back up.

6 Q. Okay. And what you're saying there is the intake
7 air coming in used to all go up to the longwall ---?

8 A. Most all of it went to the longwall.

9 Q. All right. And then when they put in these
10 doors, ---?

11 A. They regulated the air down the longwall.

12 Q. And that would have reduced the amount of air to
13 the longwall?

14 A. Yeah.

15 Q. And then were those regulators adjustable?

16 A. Yeah, you can take block out or add block.

17 Q. And by doing that, you could then adjust how much
18 air goes to either the longwall or to the development
19 section; is that right?

20 A. Right.

21 EXAMINATION

22 BY MR. FARLEY:

23 Q. This ventilation change you're talking about here
24 that you marked on the map, Exhibit Two, did that
25 occur sometime early in March of this year?

1 A. I'm not sure when they done that. Like I say, I
2 didn't know until I just had to take something up
3 there, and there they was.

4 Q. Okay. Do you know why they made this ventilation
5 change?

6 A. The only thing I can figure out is to get more air
7 up in here.

8 Q. When you say up in here, are you saying ---?

9 A. Up in the Headgate ---

10 Q. 22 Headgate section?

11 A. --- 22 and Tailgate 21.

12 Q. Okay. All right. At the time they made this
13 change that you've marked on Exhibit Two, did that
14 also reroute the intake to the 22 Headgate section?

15 A. Well, it used to run down this way and across.

16 Q. Well, you're indicating down the ---

17 A. Down the old intake.

18 Q. --- the old longwall --- the longwall headgate
19 entries and turning up the cross over.

20 A. Yeah. And they changed it over and put it over on
21 this entry.

22 Q. Which would be the Number One entry in Seven
23 North ---

24 A. Yeah.

25 Q. --- proceeding towards ---?

1 A. They put it down there.

2 Q. Okay. Did you ever talk to anybody about what the
3 end result of this ventilation change was? Did anyone
4 say that it improved ventilation on Headgate 22 ---

5 A. I don't think ---.

6 Q. --- or anything like that?

7 A. I don't think it improved too much on Headgate 22,
8 because I think they still had a little bit of air
9 issues up there.

10 Q. All right. But is it fair to say that it did
11 reduce the quantity of air going to the longwall?

12 A. Yes.

13 Q. Okay. Clarify a couple things here. Now, the
14 regulators that were constructed here as you pointed
15 out ---

16 A. Yeah.

17 Q. --- on Exhibit Two here, did you ever notice a
18 change in the opening of the doors or the regulators
19 there?

20 A. No. Like I say, I was only up there once or twice
21 after they built them.

22 Q. Okay. I think --- earlier I think you were asked
23 if you carried a detector.

24 A. Yeah.

25 Q. And you said you may have detected one or two

1 percent.

2 A. That was down over in these old works, down over
3 in the old headgate.

4 Q. Out toward the Bandytown?

5 A. Yeah, way down in there.

6 Q. Now, when you said --- did you mean one or two
7 percent ---?

8 A. .1, .2.

9 Q. .1 or .2?

10 A. .1 or .2, yeah.

11 Q. Okay. All right.

12 A. Because we was always over in the intake side
13 unloading over here and over here we had to unload and
14 return.

15 Q. Okay. You indicated that in 1998 you referred to
16 appearing before a grand jury?

17 A. Yeah.

18 Q. Did you personally have to appear before a grand
19 jury?

20 A. Yes, I did.

21 Q. Okay. And that involved mining without mine
22 curtains; is that correct?

23 A. Mine curtain, running both miners in the same
24 split air, falsifying dust pumps.

25 Q. Okay. And you mentioned an individual by the name

1 of Peter Hendricks.

2 A. Yeah.

3 Q. What was his role in all that? What was his
4 position at the time?

5 A. He was president of Performance Coal.

6 Q. Okay. Have you heard that Mr. Hendricks is going
7 to be part of the Massey investigating team at some
8 point ---

9 A. I heard something about ---.

10 Q. --- as far as this accident and investigation's
11 concerned?

12 A. I heard something about it. I heard something
13 about it.

14 Q. Okay.

15 A. He was in --- he was one of them.

16 Q. Okay. Do you recall when Mr. Hendricks left
17 Performance Coal or left Massey?

18 A. It was right after this investigation.

19 Q. In '98 or ---?

20 A. Yeah, somewhere in there. I can't remember
21 exactly when it was we went. Shortly after.

22 Q. Do you know if he resigned or was fired or what?

23 A. I think he resigned, ---

24 Q. Okay.

25 A. --- I believe. That's when we went to Speed, I

1 believe.

2 Q. Okay. At the beginning of your interview, if I
3 understood you correctly, you ended up as a supply
4 motor man again because they didn't have anybody
5 qualified to haul equipment. Is that what you said?

6 A. Yeah.

7 Q. What did you mean by that?

8 A. Well, hauling miners on the lowboys or buggies or
9 longwall equipment.

10 Q. Okay. How often were you called upon to haul
11 continuous miners or such equipment on lowboys at UBB?

12 A. Well, at different points because when they
13 started that --- I guess it would be the tailgate side
14 of the wall, we hauled all new equipment in for it.
15 And then we had to haul all the old equipment back
16 out.

17 Q. Okay. Did you always --- whenever you hauled the
18 equipment into and out of the mine, did you do it when
19 people were not working inby the same split of air?

20 A. No, we did it when the mines was operating.

21 Q. Okay. And when was this?

22 A. I can't remember the dates. Probably 2008,
23 somewhere in that area.

24 Q. 2008. Do you recall who directed you to do that?

25 A. Gary May helped me on the motor. He was ---.

1 Q. Okay. Did any other management person help you
2 with it?

3 A. Some electricians.

4 Q. Okay. You say that was sometime in 2008?

5 A. Yeah.

6 Q. Okay. And ---.

7 A. '08, 2008, somewhere in that area. It was when
8 they was developing this.

9 Q. If I understood you correctly, that involved
10 towing continuous miner loaded onto a lowboy track
11 mounted car with locomotive with people working
12 inby; ---

13 A. Yeah.

14 Q. --- is that correct? Okay.

15 MR. MCGINLEY:

16 Can I just interrupt for a second to
17 clarify the record? Sir, you said when they were
18 developing this. Can you describe that just so that
19 the court reporter can know the area you're talking
20 about?

21 A. It would be the tailgate side of the longwall.

22 MR. MCGINLEY:

23 Okay.

24 BY MR. FARLEY:

25 Q. Was that called Two section or One section back

1 then?

2 A. Two. Two, the tailgate side was.

3 Q. Do you recall approximately when that was in 2008?

4 A. No, I couldn't tell you ---

5 Q. Okay.

6 A. --- exactly the dates.

7 Q. All right.

8 A. It might not have even been 2008. It might have
9 been earlier or later.

10 Q. Okay. Was Gary May superintendent then or ---?

11 A. He was --- I think then he was titled as block
12 supervisor.

13 Q. Block supervisor. Was any other foreman involved
14 in any of those equipment moves?

15 A. No, not at that one. No.

16 Q. Okay. All right. Were those equipment moves
17 usually done on dayshift?

18 A. No, sometimes they would do it on evening shift.

19 Q. Sometimes evening shift, but sometimes on
20 dayshift?

21 A. And evening shift would move, yeah.

22 Q. Okay. So if you hauled --- if you transported the
23 equipment from the surface to underground, then people
24 outside would have been aware of it, too?

25 A. Yeah, they posted outside moving equipment.

1 Q. Okay. All right.

2 A. But at the time we hauled all this up here, there
3 was no working sections outby us.

4 Q. Okay. Were there working sections inby you?

5 A. Yeah.

6 Q. Okay. Did you have people working on the section
7 you were hauling to?

8 A. Yeah.

9 Q. Were they producing coal at the time?

10 A. Yeah, yeah.

11 Q. Okay. All right.

12 MR. FARLEY:

13 I got it.

14 MR. MCGINLEY:

15 Can we just go off the record for a
16 second?

17 OFF RECORD DISCUSSION

18 RE-EXAMINATION

19 BY ATTORNEY WILSON:

20 Q. Just for the record, Mr. Vickers indicated on
21 Exhibit Two with a pink highlighter and arrows showing
22 the direction of the intake air prior to the air
23 change and then the direction of the intake is shown
24 on the map in green the way it was directed after the
25 change; is that correct?

1 A. Yeah.

2 Q. And do you recall approximately when that change
3 was made to redirect the air?

4 A. It had to have been in February or March, I
5 believe.

6 Q. Of 2010?

7 A. 2010.

8 Q. And do you recall approximately when they started
9 to drive the Headgate 22 development section?

10 A. Before 2010 I'm pretty sure because they had ---
11 like I said, they had to do a lot of cutting in here
12 before I could get up there and get it developed and
13 put the track in before I could do anything. So they
14 had a lot of redeveloping and bolting and stuff before
15 they started, so probably the first of the year, maybe
16 in December ---

17 Q. So in ---

18 A. --- of '09.

19 Q. --- the second part of 2009 they were doing all
20 that redevelopment and working the area; is that
21 right?

22 A. Yeah.

23 Q. And then somewhere --- either towards the end of
24 2009, beginning of 2010, they started driving the
25 headgate, ---

1 A. Yeah.

2 Q. --- Number 22? Okay. Just one more. I know you
3 said the doors that you've marked here towards the
4 mouth of the longwall headgate were two inby doors
5 that you've circled in blue. I know you said that you
6 weren't up there very often, but do you --- when was
7 the last time you recall being by those doors?

8 A. Probably the 1st of March maybe.

9 Q. Do you recall the condition of the doors at that
10 time?

11 A. The doors that I seen was --- they was all up
12 straight and tight.

13 EXAMINATION

14 BY MR. MCGINLEY:

15 Q. Just for clarification, when you answered Mr.
16 Wilson's questions here, you were talking about all
17 the work they had to do up here. Can you just for the
18 record identify that area with a little more
19 specificity?

20 A. Well, they had to cut out for belt heads and ---.

21 Q. This is up around the Glory Hole?

22 A. Well, it's the mouth of Headgate 22.

23 Q. Okay. That's what I mean. You referred to the
24 grand jury proceedings back in 1998 or thereabouts.
25 Was that Federal or State court?

1 A. Federal.

2 Q. Was there any indictments returned from that ---

3 A. No.

4 Q. --- proceeding?

5 A. We never heard nothing else from it.

6 Q. Were there --- do you know whether there were any
7 people from the mine that you worked for that were
8 called in ---?

9 A. Yes, there was quite a few.

10 Q. And which Federal court did you go to?

11 A. Charleston.

12 Q. Is Mr. Hendricks related to Mr. Blankenship?

13 A. Do what ---?

14 Q. Is he related to Mr. Blankenship?

15 A. I don't know. I'm not for sure on that part.

16 Q. Also just in terms of clarification, you said in
17 response to one question, you talked about when they
18 put the new fan in behind the longwall. Are you
19 referring to the Bandytown fan?

20 A. Yeah.

21 Q. You said it had been a while since they went over
22 the UBB ventilation plan with you. Just again for
23 clarification, how long are we talking about, six
24 months, a year, a month?

25 A. Let's see. We had our retraining in March, and

1 usually all they done was just showed up here on the
2 map where the intake is and how to get out.

3 Q. Okay. You said you were interviewed by an MSHA
4 man and folks from the FBI ---

5 A. Yeah.

6 Q. --- and then the next day the Massey ---

7 A. Lawyers.

8 Q. --- lawyers. Did they call you, or was that set
9 up before?

10 A. Well, they just told us at the mines if any of us
11 happened to talk to them, they wanted to talk to us,
12 we can talk to them.

13 Q. Did the Massey lawyers ask you about the
14 FBI's ---?

15 A. Yes.

16 Q. What did they ask you about that?

17 A. They wanted to know what they wanted to know. I
18 said basically the same questions you asked.

19 Q. Does anything stand out to you from when Massey
20 lawyers interviewed you that you thought it was
21 unusual or unexpected?

22 A. No. All they wanted to know mostly how everybody
23 thought about Chris Blanchard. That was the biggest
24 part of the talk, was Chris Blanchard and Don
25 Blankenship.

1 Q. Did they --- well, strike that.

2 A. Yeah. What I told them about Mr. Blanchard, I
3 said if you want to know what the people thought about
4 him, tell him you want a copy of the survey that the
5 men at the mines done and then you'll know what they
6 think.

7 Q. We heard something about that. Did you get the
8 result of that survey?

9 A. Yes.

10 Q. What was that result?

11 A. He ranked one of the lowest men in Massey.

12 Q. All of Massey?

13 A. Yeah.

14 Q. When they took the survey, did you have to put
15 your name on it?

16 A. No.

17 Q. It might have been different if people ---?

18 A. Of course, I didn't get one, so ---.

19 Q. You didn't get to vote?

20 A. No.

21 Q. Are you familiar with the term S1 and P2?

22 A. Yeah.

23 Q. What do they mean to you?

24 A. Well, it's supposed to be safety first.

25 Q. Okay. P2?

1 A. There ain't much said about P2 part.

2 Q. Is that production second?

3 A. Yeah, I guess.

4 Q. Have you heard that or ---?

5 A. No.

6 Q. You don't ---? Is that your sense at this UBB
7 Mine, that safety was first and production was second?

8 A. It all depends on who you got to work for.

9 Q. Did it change when Mr. Blanchard came?

10 A. Yes, quite a bit.

11 Q. Much more pressure for production?

12 A. Yeah.

13 Q. Would you say there was less emphasis on safety
14 than when --- after Blanchard came than before?

15 A. I believe so.

16 Q. Keeping in mind 1998, ---

17 A. Yeah.

18 Q. --- the issues.

19 A. Because things kind of changed after we went
20 through the grand jury part. Things kind of
21 straightened up some.

22 Q. I would expect.

23 A. Then when they done away with Performance --- it's
24 its own identity and put us with Marfork. Then that's
25 when things started changing.

1 Q. What do you mean they ---?

2 A. We used to be set up --- like Elk Run's got their
3 own. Marfork's got theirs. Performance had their
4 own.

5 Q. I see.

6 A. And then they combined us with Marfork.

7 Q. What was Blanchard --- what was his relation to
8 Marfork?

9 A. I don't know what --- he's president of Marfork,
10 so that made him president of us, too.

11 Q. Okay. Other than S1 referring to safety first,
12 what else did it mean, if you know?

13 A. I don't know.

14 Q. Don't know?

15 A. (Indicates yes).

16 Q. Just a slogan?

17 A. Biggest part of the time it is. Like I say, it
18 all depends on who you work for.

19 Q. Sure. Safety first is what you would expect at
20 any job ---

21 A. Yeah.

22 Q. --- where there was danger whether it was a mine
23 or anyplace else?

24 A. Yeah. Just like I told them investigators when
25 they asked about Blankenship, I said him and his panel

1 sets down rules. They send them down to the
2 president. They send them down to our management. If
3 they don't follow from the president down, then whose
4 fault is it?

5 A. Let me ask you this. In late 2009, early 2010,
6 were you aware that there were two --- for lack of a
7 better word, two safety specialists come in from
8 outside, I don't know, from other Massey mines or
9 consultants that were looking at what was the reason
10 they were getting so many MSHA violations in 2009?
11 Did you know anything about that?

12 A. I know Gary Frampton come in. I think he had
13 something to do with Massey, check on violations.

14 Q. Was there a second person?

15 A. I don't know about the second one. He's the only
16 one I --- I know him because he used to be the
17 superintendent down there.

18 Q. At UBB?

19 A. Yeah, at one time.

20 Q. How long ago was that?

21 A. Back in mid '90s maybe, from '95 to '99, in that
22 area.

23 Q. What did he do when he came in to check on these
24 violations?

25 A. He went inside the mines and looked it all over.

1 Q. Did he talk to people?

2 A. I don't know if he talked to people on the section
3 or not.

4 Q. And do you recall what time frame would have been,
5 the end of 2009 or early 2010 or ---?

6 A. It was --- well, when he was there, it was either
7 --- it was in 2009, I believe, when we was getting all
8 the violations.

9 Q. Okay. Was there talk among the people working
10 underground about all those violations?

11 A. Yeah.

12 Q. Some of them had to with ventilation, the air
13 reversal that you mentioned?

14 A. Yeah.

15 Q. Was that a matter of significant concern?

16 A. Well, that part would have been, yeah.

17 Q. How do you think that would have happened, to have
18 air reversal for a couple weeks and not have it fixed?

19 A. They probably had a lot of gas buildup.

20 Q. Why would management let that happen?

21 A. I don't know. I'll tell you that goes with ---
22 it's the same thing with all these doors they got in
23 these mines. There should never be a door blocking
24 your intake. It should always be an overcast instead
25 of them doors right there.

1 Q. Right.

2 A. Them should have never been allowed.

3 Q. There were a lot of doors. How does that compare
4 --- is there any comparison between the number of
5 doors in this mine and --- have you worked at a mine
6 this large before?

7 A. Well, if you leave UBB side and go to Headgate 22,
8 you're opening 10 to 12 doors. These two out here by
9 the UBB side, I understand them. That's to hold the
10 air pressure back. The doors at the mouth section, I
11 understand them. That's to help hold the feedback
12 from the sections. But the doors for intakes, that
13 should never be allowed.

14 Q. And then when they get banged up ---?

15 A. Banged up, tore up, left open, don't shut, won't
16 stay shut. Your air's gone.

17 Q. And they don't --- did they ever replace those
18 doors? How frequently?

19 A. Not very often.

20 Q. And when you say not very often, once every couple
21 years?

22 A. Well, that one sitting down there had been tore up
23 for --- bent up for six months.

24 Q. The 80 Break?

25 A. Yeah. They supposed to have the new doors

1 ordered, but they never did get them and put them up.

2 MR. MCGINLEY:

3 Okay. That's all I have. Thank you.

4 MR. STEFFEY:

5 Do you need a break? You okay?

6 A. I'm fine.

7 RE-EXAMINATION

8 BY MR. STEFFEY:

9 Q. Okay. A few questions here. You said those doors
10 have been banged up there at Break 80 for about six
11 months.

12 A. Yeah.

13 Q. But you also said they didn't replace them near
14 often enough, so they had replaced them in the past?

15 A. Every now and then when --- yeah.

16 Q. Did they ever replace those doors with people
17 working inby? I may have asked that, but I don't
18 remember.

19 A. They probably have.

20 Q. Okay. Let's talk about your ventilation plan ---
21 your approved ventilation plan at this mine. You
22 mentioned that they covered it during your annual
23 retraining.

24 A. Yeah.

25 Q. What they covered was your escapeways ---

1 A. Yeah, they just showed you on the map.

2 Q. --- and changes in your intake. Were there any
3 other times during the course of the year that they
4 covered changes to the ventilation plan with you or
5 any of the section crews?

6 A. I can't say for section man, a section boss. I
7 know Dino and that Steve Harrah --- I didn't know him
8 that well because he hadn't been there that long. I
9 know when I worked the section with Dino and I was on
10 his section, every morning he'd go over something on
11 the roof control plan every day.

12 Q. Were changes to the ventilation plan posted on the
13 board at the mine when they were going to make changes
14 or when they were proposing changes?

15 A. Sometimes they would.

16 Q. Are you aware that regulation requires them to
17 post proposed changes?

18 A. No.

19 Q. Are you aware that regulation requires them to go
20 over these proposed changes with all affected persons?

21 A. No, I didn't know that.

22 Q. Okay. Do you think management knew that?

23 A. Well, they're supposed to, I guess. Since they
24 applied for it, I guess they do.

25 Q. Do you think this had a negative impact on the

1 morale at the mine?

2 A. What part?

3 A. Management not informing people of changes or not
4 talking ---?

5 A. I think most of it was --- the morale of men was
6 because you couldn't get management to do nothing.

7 Q. Okay. What do you mean?

8 A. Just like down in behind this longwall right here,
9 they got it on the record where they caught men down
10 in behind this longwall while it was running, and they
11 wanted a willful endangerment citation on it. Two
12 weeks later they sent them right back down in there.
13 They pulled that whole section off the longwall down
14 there.

15 Q. And when did that happen?

16 A. When the longwall started up in September.

17 Q. What can you tell me about that?

18 A. They wouldn't give them time to pull the section
19 off.

20 Q. The section meaning the Bandytown fan section?

21 A. Yep. That would be Headgate 22's crew was up
22 there.

23 Q. So these guys were still mining ---?

24 A. They was pulling their equipment out.

25 Q. They were pulling their equipment out?

1 A. Yeah, coming up this way with their equipment
2 while the longwall was running.

3 Q. And there was a citation issued?

4 A. Yeah, for --- because they sent us down there to
5 get a kVA box the day they got it. And they was down
6 in there getting high voltage cables and moving some
7 equipment and inspectors coming in behind us and
8 pulled us out.

9 Q. Okay.

10 A. They sent everybody else out other than people to
11 build stoppings and regulator on that track entry.

12 Q. How did management react to all this? Did you see
13 it?

14 A. I don't know. I don't know if they liked it or
15 not, but ---. Then about two weeks after that, they
16 sent us back down in there to get that kVA box.

17 Q. Now, when you say they, who ---?

18 A. Andy Kolson.

19 Q. Kolson. And what did he do?

20 A. He told us to go get that.

21 Q. What was his job title?

22 A. He was block supervisor.

23 Q. Block supervisor. And who was his supervisor?

24 A. Let me think who was there. I can't remember if
25 Homer Wallace was there or if Everett took over.

1 Q. Okay. Now, you said your official job title was
2 roof bolter?

3 A. Yeah.

4 Q. Did you ever bolt top on the section?

5 A. No, not down in there. No. Not down in here, no.

6 Q. When was the last time you bolted top?

7 A. Here at this mines was when they cut through for
8 these doors and come across right here.

9 Q. Okay. What can you tell me about that area when
10 it was bolted?

11 A. It was sandstone top.

12 Q. Sandstone top?

13 A. Yeah.

14 Q. About how wide were most of the entries?

15 A. Twenty (20) feet.

16 Q. Twenty (20) feet.

17 A. Because on the left and the track entry was 22.

18 The belt and the track run in the same entry on that
19 area until they come across here and they set up all
20 new belt heads and stuff over here.

21 Q. Okay. Who was working on the section screw prior
22 to entering the mine --- did you hot seat with the
23 other crew?

24 A. No, not up there we didn't.

25 Q. Not there. Was the section pre-shifted before you

1 went underground?

2 A. I guess. There's a hoot owl crew up there, so I
3 guess the boss ---.

4 Q. How'd they tell you about the hazards that were up
5 there?

6 A. All I know is he calls out and tells --- and puts
7 it in a book, and they write in a book.

8 Q. Were you ever told about any hazards?

9 A. Well, if there's any danger, I guess the boss
10 would tell us that morning before we go in on the
11 section.

12 Q. Did you ever go up there and find anything?

13 A. No.

14 Q. Let's talk about inspectors. When you were
15 working on the section and as a supply motor, did you
16 know when inspectors were on the property?

17 A. Well, yeah.

18 Q. How did you know that?

19 A. They told us.

20 Q. Who's they?

21 A. Well, they --- it starts from the guard shack.

22 Q. It starts from the guard shack. So the guard
23 shack call uphill and let's people inside know?

24 A. That he's on the property.

25 Q. Do they specify whether it's a State inspector or

1 Federal?

2 A. Yeah.

3 Q. Okay. Then what happens?

4 A. Then if he comes to the mines, then they call and
5 said he's outside.

6 Q. Did you ever stop cutting coal because there's an
7 inspector getting ready to come in the mines?

8 A. They have to make sure everything was right when I
9 was on there, make sure everything was up to par.

10 Q. Okay. Why did they stop and make sure everything
11 was up to par?

12 A. So they wouldn't get any violations.

13 Q. Weren't they supposed to be checking for that all
14 along?

15 A. Yeah. But you know, like who some miners, they're
16 supposed to have a curtain hanging within ten foot of
17 face. They might quit at 15 foot or it might not be
18 bolted and might not keep your curtain up as tight as
19 it's supposed to be.

20 Q. What would you say the attitude is at this mine on
21 production versus safety?

22 A. I would say production was overruling safety on
23 some of it --- most of it.

24 Q. Were you ever on the section or had you ever been
25 in the mines or around when an inspector had issued a

1 citation?

2 A. Yeah.

3 Q. How does management react to that?

4 A. Well, ---.

5 Q. Do they argue? What ---?

6 A. Well, I don't know what they do when they go back
7 outside with it.

8 Q. Okay. What about when they're underground? Have
9 you ever seen a section boss try to argue with an
10 inspector?

11 A. Well, you know they do.

12 Q. And how do they do that?

13 A. Well, they try to talk them out of it.

14 Q. How do you try to talk a man out of a citation?

15 A. Just make promises, deals, I guess. Say we won't
16 do it no more, give us a chance to fix this.

17 Q. Did they ever say anything about, well, you're
18 putting us out of business?

19 A. Well, I don't know about that part.

20 Q. Don't know about that part?

21 A. No.

22 Q. Has anybody from management ever informed the crew
23 that production at the mine's lagging, vacation is
24 going to have to be cancelled or the weekend that you
25 thought you were going to get off, you ended up

1 working due to lagging production?

2 A. Yeah.

3 Q. How often did that occur?

4 A. It occurred quite a bit I think before the
5 longwall come back.

6 Q. Okay.

7 A. Because the longwall covered up a lot of our
8 mistakes.

9 Q. What do you mean by that?

10 A. Well, not being down all day or the section being
11 down, can't run. The belts would be down. The
12 longwall would run enough coal to cover production for
13 that day.

14 Q. So how did the longwall run enough to cover
15 production for that day, or are you saying that they
16 --- what are you saying there?

17 A. Well, they kind of got us based on at least 200
18 feet a shift or 250 feet a shift. Well, if they run
19 150 feet, if the longwall's running, well, they got
20 enough coal going out to cover the 100 feet we don't
21 run.

22 Q. So they falsified the records?

23 A. No.

24 Q. So well, ---.

25 A. Well, say this section runs 100 feet, but their

1 production outside ain't up to par --- well, the
2 longwall runs enough to cover their part and probably
3 some of our part, too.

4 Q. So did they take production off the longwall and
5 add it on to those reports for the sections that
6 weren't making it?

7 A. Well, I guess it just goes out as a big total of
8 the whole mines, I guess, but it's still separated.
9 But there's enough tonnage there to cover for what
10 they allowed for that day.

11 Q. Okay. Was this a common occurrence?

12 A. I guess. I don't know exactly how they do that
13 part.

14 Q. When you were working on the section, did you ever
15 see the section boss do his on-shift exam?

16 A. No. No, he goes up and does his face run before
17 they start running, but ---

18 Q. Okay.

19 A. --- he don't do a pre-shift for hisself other than
20 just go up and make his face runs while we're getting
21 ready.

22 Q. What about during the course of the day, does he
23 examine the faces then?

24 A. Yeah.

25 Q. Now, you're a roof bolter and you were operating a

1 roof bolter. What'd you do typically when you got
2 onto the section?

3 A. Well, after the safety talk, I went up and checked
4 the bolter, greased it unless I was down. I'd make
5 sure my tank bars and all that worked on it.

6 Q. Okay. Did you ever have respirable dust run on
7 you?

8 A. Dust pumps, yeah.

9 Q. Did you change the way you ran coal during ---
10 when you were running dust pumps?

11 A. Well, after the grand jury, yes. Before, it's
12 different.

13 Q. How was it different?

14 A. Well, before we set on the intake and let somebody
15 do our job.

16 Q. And then after?

17 A. After they run them like they was supposed to.

18 Q. Okay. When you didn't have a dust pump on you,
19 did you ever bolt downwind while the miner was
20 cutting?

21 A. Yes.

22 Q. Okay. What about when you had a dust pump on?

23 A. No.

24 Q. No? So would you classify that as changing the
25 way you mine?

1 A. Yeah, I guess because they just --- they only
2 allow them so many feet when you got a dust pump that
3 they can run a certain amount of footage. Well, if
4 they can get that certain amount of footage and keep
5 me in the intake, in fresh air, then that's what
6 they'll do.

7 Q. Okay. Why would they do something like that?

8 A. I don't know. That's something that management
9 and MSHA's got to work out.

10 Q. Now, other than management --- did somebody
11 specifically tell you to stay --- to not go downwind
12 of the miner?

13 A. No. But they cut --- when you go to dust pump,
14 they set their cut plan up to work with the dust pump.

15 Q. So they changed their cut cycle?

16 A. Yeah, because our roof control plan calls for us
17 to bolt in the returns one time a shift.

18 Q. So how often did you normally bolt in the dust?

19 A. Probably two or three times.

20 Q. Two or three times. So you didn't comply with
21 that part of the plan. Who told you to go down there
22 two or three times and bolt?

23 A. They cut it, it's got to be bolted, so I'll follow
24 that.

25 Q. Did you ever tell the section boss, you know, you

1 need to hold up on cutting upwind of us until we're
2 done bolting?

3 A. No.

4 Q. Who was your section boss?

5 A. I've had a bunch of them.

6 Q. Had a bunch of them.

7 A. Bunches of them.

8 Q. Do you think they were under a lot of pressure?

9 A. Probably not as much now as they used to be,
10 especially since Upper Big Branch started getting all
11 these violations. They started complying more and
12 more the way things was set up.

13 Q. How would you describe the pressure to run coal at
14 Upper Big Branch?

15 A. Well, it's about like everywhere. It's pressure
16 to run.

17 Q. Anybody ever tell you to take shortcuts?

18 A. No.

19 Q. Okay. Did you ever see Don Blankenship or Chris
20 Adkins underground or anybody from upper management?

21 A. A long time ago.

22 Q. A long time ago.

23 A. Yeah.

24 Q. Did you ever talk to them?

25 A. Some, not much.

1 Q. What'd you talk about?

2 A. Not a whole --- well, not --- a whole lot of
3 nothing really. Just hey, how you doing and ---.

4 Q. And you mentioned you saw Mr. Blanchard and Mr.
5 Whitehead.

6 A. Yeah, they come in --- they'd go in and stay about
7 a half shift sometimes and be gone. That would be the
8 last of them you'd see for a while.

9 Q. All right. Let's talk about the day of the
10 accident. Were you --- I've got one more question
11 before we talk about the day of the accident, a couple
12 more actually while you were on the section. Was your
13 air split air or just single split? Was it double
14 split?

15 A. Single.

16 Q. Single. So it swept across the section?

17 A. Yeah.

18 Q. How many continuous miners do you have on the
19 section?

20 A. Two. There's two, up here.

21 Q. Up there?

22 A. Yeah.

23 Q. Did you run both of them at the same time?

24 A. No, not now they didn't.

25 Q. What about before?

1 A. Before the grand jury, yeah.

2 Q. Okay.

3 ATTORNEY WILSON:

4 And you're referring to 22 Headgate?

5 A. Yeah. Now, I think down here they had split air
6 when we --- when I was on a bolter down here, we had
7 split air.

8 ATTORNEY WILSON:

9 Okay. And you're talking outby?

10 A. Yeah, outby.

11 ATTORNEY WILSON:

12 That would have been a long time ago;
13 right?

14 A. Yeah.

15 BY MR. STEFFEY:

16 Q. Okay. All right. Let's talk about the day of the
17 accident. Where were you at when you heard about the
18 accident?

19 A. Outside.

20 Q. Outside. So had you just complete ---?

21 A. Well, I was down home really, but I was there when
22 the accident happened. We just thought they had a
23 fall.

24 Q. Okay. So you had just completed your shift?

25 A. Yeah.

1 Q. Where had you been that day?

2 A. I had been at Headgate 22, at these doors about
3 ten breaks inby the switch at Headgate 22, which would
4 be somewhere in this area here.

5 Q. Okay.

6 A. And I was here, and I was also at the end of the
7 track at Tailgate 21.

8 Q. Okay.

9 A. Right here.

10 Q. Okay.

11 ATTORNEY WILSON:

12 And you marked Exhibit Two, on Headgate
13 22, you wrote door ---

14 A. Yeah, and this would be the track.

15 ATTORNEY WILSON:

16 --- and you put an X? You put an X, a
17 blue X outby the tailgate section.

18 BY MR. STEFFEY:

19 Q. Okay. Did you find any doors open?

20 A. No.

21 Q. Okay. Was there anything different about that
22 day?

23 A. No.

24 Q. You don't know of any ventilation problems or
25 anything ---

1 A. No.

2 Q. --- they were having?

3 A. Didn't pick up no gas or nothing.

4 Q. So you were outside when the explosion occurred?

5 A. Yeah.

6 Q. Do you know if anything was called out on the mine
7 phone prior to the explosion?

8 A. I couldn't tell you, because when I --- we got
9 outside about ten minutes 'til 3:00, me and the other
10 motor man and ---. UBB, there's a --- from one drift
11 mouth to the other side is about 150 yards maybe. And
12 on the other side, we put our motors up inside there
13 to keep them out of the weather. And we just put them
14 up there when we heard something sound like a jet
15 engine blowing out the other side.

16 Q. And can you describe what happened after that?

17 A. Well, everybody looked to see what was going on,
18 and well, we went ahead and put our lights and stuff
19 up and went to shower. We thought maybe they had a
20 fall.

21 Q. Could you physically see stuff coming out of the
22 portals?

23 A. Well, all I seen was the dust blowing up off the
24 road.

25 Q. Okay. When did you find out that it was something

1 more than a roof fall?

2 A. When the guy called me --- called the house to see
3 if I was at home.

4 Q. And who was that?

5 A. Roger Kantley.

6 Q. What'd he tell you?

7 A. After he found out I was home, he told me that
8 they had an explosion up there.

9 Q. And did he tell you to come back to the mine ---

10 A. No.

11 Q. --- to help or anything?

12 A. No.

13 Q. Have you set foot back on the property since?

14 A. Yeah.

15 Q. What'd you go back for?

16 A. They called me Wednesday evening, I believe it
17 was, to come out Thursday to run a motor to haul them
18 rubber-tired rides in for the inspectors to ride. And
19 after I got there, they decided they wouldn't let us
20 go in because we didn't have training to wear the
21 breathing apparatuses.

22 Q. Okay. Was that the last time you were on the
23 property?

24 A. No, I go up and see --- they got us new uniforms
25 coming. I go up every now and then to see if my

1 uniforms have come in.

2 Q. Okay. Other than that time that you went up there
3 to run the motor and haul in the rubber-tired trips,
4 the rubber-tired vehicles to haul the inspectors
5 around in, have you been back underground at all?

6 A. Not up there, no.

7 Q. Did the explosion --- did it surprise you that
8 there was an explosion of this magnitude at the mine?

9 A. No, because I just thought maybe where they had
10 this new section shut up down at the outside maybe
11 they had a fall or something up there and short
12 circuited the fan.

13 Q. But were you shocked when you found out it wasn't
14 a fall?

15 A. Yeah.

16 Q. You got any idea what happened?

17 A. No. The only past evidence, the longwall hit gas
18 before.

19 Q. When you traveled in when you were running
20 supplies inside, how often were you next to the belt
21 --- belt and track in the same entry?

22 A. Well, they ain't no more.

23 Q. They ain't no more?

24 A. No, not the way that was set up.

25 Q. Did you ever --- even with the track in the next

1 entry over, did you ever notice any float dust?

2 A. Yeah.

3 Q. What areas did you see float dust in?

4 A. Lots of times I'd see it around the heads.

5 Q. Around the heads?

6 A. Yeah. The only times I was ever on a belt was
7 when you was going out Ellis is the only time you were
8 back on the belt, I believe, because all the rest of
9 it --- the belts was all in separate entries coming
10 out the UBB side.

11 Q. How often would you see float coal dust around
12 these heads?

13 A. About every time you got around them.

14 Q. Okay. So that was common. How often were these
15 areas rock dusted?

16 A. Well, they had them dusting machines there, them
17 twinkle dusters.

18 Q. How good of a job did they do?

19 A. Well, from where they had outby, they go probably
20 about three or four breaks outby and it looks pretty
21 good.

22 Q. What about the rest of the belts? Did you ever
23 see anybody rock dusting?

24 A. Well, they had a crew on the hoot owl that was
25 supposed to have been dusting belts, but I couldn't

1 tell you how much they got done or where they was at.

2 Q. Do you know how they dusted the belts?

3 A. They was supposed to drug a hose over from a track
4 duster.

5 Q. Is there anything else you can tell us about this,
6 anything about the conditions of the mine?

7 A. Can we go off the record for a second? Let me ask
8 you a question.

9 ATTORNEY WILSON:

10 Sure. Go off.

11 OFF RECORD DISCUSSION

12 ATTORNEY WILSON:

13 We can go back on the record.

14 BY MR. STEFFEY:

15 Q. All right. Mr. Vickers, when you were hauling
16 supplies in the mines, typically how would you unload
17 the supplies?

18 A. Forklift. Forklift.

19 Q. What kind of forklift was that?

20 A. ALE.

21 Q. An ALE.

22 A. I believe that's what it's called.

23 Q. Where would you supplies at? Given that a gate
24 road is three entries wide, where typically would you
25 have to store these supplies?

1 A. Well, under the old way, we unloaded in the
2 intake. And under this new way they had it, we had to
3 unload in the return.

4 Q. You unloaded in the return.

5 A. Yes.

6 Q. Was this forklift permissible?

7 A. No.

8 Q. Okay. Did you do this while they was running
9 coal?

10 A. Yes.

11 Q. And how often did this occur?

12 A. Every day.

13 Q. Every day. Management aware of this?

14 A. Yes, he was.

15 Q. Okay. Who in management was aware of this?

16 A. Wayne Persinger.

17 Q. Whose idea was it to do it this new way?

18 A. Management, I guess.

19 Q. Did they just come out and have a talk with you
20 guys and say this is how we're doing this now?

21 A. No, they said this is how they was going to
22 develop it. They was going to --- see, used to --- we
23 run the track and the belt together in the old entries
24 and make this a return --- or intake and make the
25 other one a return. We could unload in here in the

1 intake because that five-foot belt wasn't put in. So
2 they decided to go ahead and put the five-foot belt in
3 to start with and keep the track entry separate, and
4 that put us unloading in the return.

5 Q. Now, the old way that you talked about there, so
6 it had a five-foot belt in for the longwall. What
7 belt did they run up ---?

8 A. Four foot.

9 Q. Four foot. So they had a 48 inch belt in with a
10 track beside it?

11 A. Yeah.

12 Q. Okay.

13 A. And that put us to unloading in the intake. And
14 then later they'd have a crew come in and put the belt
15 in behind us.

16 Q. What was their reason for changing?

17 A. They thought they'd simplify it, go ahead and put
18 the five-foot belt in as they went and then they
19 wouldn't have to fool with having a crew of men
20 putting it in.

21 Q. So this was a cost cutting measure?

22 A. Yeah. And then you wouldn't have to take time to
23 pull a four-foot belt out if you come out.

24 Q. Any idea who came up with this idea?

25 A. No, I don't. Management's all I know.

1 Q. Have any of these management people that you know
2 of --- have they ever worked under the old system
3 versus the new system, actually worked on the section?

4 A. I don't believe. I'm not sure how --- I know
5 Homer Wallace was there when the old section was
6 there, but see, we go back to Chris Blanchard. I
7 don't know what he knows about the longwall and the
8 longwall setups.

9 Q. Okay.

10 ATTORNEY WILSON:

11 I just have a couple follow-ups on that.

12 RE-EXAMINATION

13 BY ATTORNEY WILSON:

14 Q. The forklift that you were using to bring in
15 materials over into the return, ---

16 A. Yeah.

17 Q. --- how old was that?

18 A. Fourteen (14) years old.

19 Q. What kind of condition was that in?

20 A. Kind of rough. You had open contactors on it.

21 Q. And you said that Mr. Persinger was aware of you
22 bringing that forklift into the return; is that
23 correct?

24 A. Yeah.

25 Q. How was he aware of that?

1 A. I told them that we'd have to have a permissible
2 forklift if we was going to unload in the return.

3 Q. And what did he say?

4 A. He'd say he would go and check on getting one.

5 Q. And when was that conversation?

6 A. Probably about the first of the year.

7 Q. And did you ever follow up on that?

8 A. I asked, but I never would get an answer.

9 Q. Who did you ask?

10 A. Let me think of his name. Paul Thompson, he was
11 the supervisor over maintenance.

12 MR. STEFFEY:

13 What do you know about Massey's
14 purchasing system?

15 A. I don't other than it's a long, drawn out deal.

16 MR. STEFFEY:

17 Do you know who all has to sign off on
18 any requisition?

19 A. All I know is I guess Wayne Persinger has to sign
20 it and then Chris Blanchard and it goes on up the
21 line, I guess

22 MR. STEFFEY:

23 Do you know if there was a requisition
24 submitted?

25 A. No, I don't.

1 BY ATTORNEY WILSON:

2 Q. Was that forklift in use ---

3 A. Yes.

4 Q. --- at the time of the accident?

5 A. Well, the same day, yes.

6 Q. Did you use it that day?

7 A. Yes, I did.

8 Q. And where did you use it?

9 A. In the return.

10 Q. Up on 22 Headgate?

11 A. Yeah.

12 RE-EXAMINATION

13 BY MR. STEFFEY:

14 Q. What about over here on the tailgate section? Did
15 you have something similar, a situation similar over
16 here?

17 A. Their forklift wasn't in the return. It was in
18 the intake side.

19 Q. Okay. And what about the longwall over here?

20 A. I think they had the old ones, too.

21 Q. They had the old ones. Did you have to unload in
22 the return over there?

23 A. No, they unloaded off the intake side because
24 their track was in the intake.

25 Q. So on the headgate entry, they had a problem and

1 it was due to the setup of their belt?

2 A. Yeah, Headgate 22.

3 Q. Okay. That's interesting.

4 RE-EXAMINATION

5 BY MR. FARLEY:

6 Q. Make sure I got you here. Okay. Now, you
7 indicated that rather than have a four-foot belt in
8 the middle entry, they would install ---?

9 A. They went ahead and put the five foot.

10 Q. Put the five-foot belt in the Number One entry,
11 which would be in place ---

12 A. Yeah.

13 Q. --- for the longwall eventually. Now, when you
14 --- on April 5th, you indicated you used the non-
15 permissible forklift in the return?

16 A. Yeah.

17 Q. Now, what time did you leave between the 2
18 Headgate section?

19 A. I left up there --- we left up there about 20
20 after 2:00.

21 Q. Okay. Where was the non-permissible forklift when
22 you left?

23 A. It was sitting between the track and the five-foot
24 belt. We had a charger setting right there.

25 Q. Okay.

1 A. Sitting there on the charge.

2 Q. Is that where you normally charge it?

3 A. Yeah.

4 Q. Okay.

5 ATTORNEY WILSON:

6 Do you think you could mark on the map

7 where that forklift was located at the end of your
8 shift?

9 A. Well, it's right here, right there at them doors.

10 ATTORNEY WILSON:

11 Why don't you go ahead with this orange

12 marker and put an arrow out into the area here and
13 write forklift?

14 RE-EXAMINATION

15 BY MR. STEFFEY:

16 Q. Now, how did you get it over into the returns?

17 Was there a set of equipment doors there?

18 A. Yeah.

19 Q. Did they have one door or ---?

20 A. Two.

21 Q. Two?

22 A. Yeah.

23 Q. What kind of shape were those doors in?

24 A. They was in pretty good shape.

25 Q. Pretty good shape?

1 A. Yeah.

2 RE-EXAMINATION

3 BY MR. FARLEY:

4 Q. Okay. Now, on April 5th after you put the
5 forklift at the location where you just indicated and
6 you left --- who was your partner that day?

7 A. Joe Massey.

8 Q. Joe Massey. Okay. Now, when you were unloading
9 supplies here in the area you indicated on the map in
10 the return, who was with you at the time other than
11 Joe?

12 A. Well, Ralph Plumley and Eric Jackson and another
13 red hat. I can't remember his name. Everett told us
14 there was a high voltage set two breaks outby the
15 doors he wanted us to go get. Well, Eric Jackson went
16 up to the section and brought the scoop down the
17 return, and we was going to get that box with the
18 scoop. Well, when the scoop got down to the doors, it
19 quit, it quit running ---

20 Q. Okay.

21 A. --- about 15 after 2:00. So we just parked it and
22 left.

23 Q. Where did you park the scoop?

24 A. Left it right where it was at because it wouldn't
25 tram --- right at the doors. It would be sitting

1 right there.

2 Q. Okay. In the Number Three entry return?

3 A. Yeah.

4 Q. Okay.

5 A. It quit running right there.

6 Q. Okay. Did you see Everett Hager in that area
7 before you left?

8 A. He was there that day, but I didn't see him before
9 I left.

10 Q. When did you see him there?

11 A. Probably about noontime maybe, ---

12 Q. Okay.

13 A. --- somewhere in that area, maybe a little
14 earlier.

15 Q. Okay. I have one more question about this
16 equipment move in 2008 ---

17 A. All right.

18 Q. --- over in the tailgate entries, what was called
19 Two section at the time. You indicated that Gary May
20 was with you as this was ongoing. Who else was with
21 you at the time?

22 A. Let's see. The mechanic was --- don't ask me his
23 name because I can't tell you. I know his first name
24 is David, but we always called him Doughnut.

25 Q. Okay.

1 A. He was with us.

2 Q. Doughnut still worked there at the time of the
3 explosion?

4 A. Yes.

5 Q. Okay. We've heard the name Doughnut several
6 times. I'm not sure what his real name is, but we've
7 heard Doughnut many times.

8 A. I'm thinking there was somebody else, but I can't
9 remember who it was.

10 Q. Okay.

11 A. But I run one motor and Gary May run the other.

12 Q. And Gary May was a block supervisor ---

13 A. Yes.

14 Q. --- at the time? Okay.

15 ATTORNEY WILSON:

16 Do you have any follow-ups?

17 MR. MCGINLEY:

18 Just a couple.

19 RE-EXAMINATION

20 BY MR. MCGINLEY:

21 Q. April 4th was Easter Sunday.

22 A. Yeah.

23 Q. You worked dayshift on April 5th?

24 A. Right.

25 Q. On that weekend, did you work at all?

1 A. No.

2 Q. Did you have ---?

3 A. No, because Good Friday was a holiday for us, and
4 I was off until Monday.

5 Q. So do you know whether the longwall ran on
6 Saturday?

7 A. No. I can't tell you what they done.

8 Q. And you recalled in an answer to an earlier
9 questions the gas burst at the longwall some years
10 ago. You were working at UBB at the time. Were you
11 in the mine when that happened?

12 A. Yeah.

13 Q. Were you anywhere near ---? We've heard people
14 describe what it sounded like.

15 A. No, I wasn't on the longwall side. No. I think I
16 might have been on the section then --- let's see, in
17 2003. No, I was outby, but I wasn't nowhere around
18 it.

19 Q. We have reports that it occurred twice, once in
20 July of 2003 and once in February of 2004. Do you
21 remember both of those occasions?

22 A. A little bit, not much.

23 Q. The 2004 floor burst at the longwall, men were
24 removed and out for a couple days? Is that ---

25 A. Yeah.

1 Q. --- your recollection?

2 A. I believe so, yeah.

3 Q. What about the earlier 2003, do you remember ---
4 were both times those outbursts happened at ---?

5 A. I'm thinking they pulled us out. I can't
6 remember.

7 Q. Was that a matter of concern at the time? I
8 assume it was, but ---.

9 A. I guess it was, yeah.

10 Q. Anybody ever talk to you or talk to the crews
11 about that event after it happened ---

12 A. Not that much.

13 Q. --- sort of explain ---?

14 A. Not much, I don't believe.

15 Q. Did you work on Massey Appreciation Day this year
16 in 2010?

17 A. I can't remember what day that was on.

18 Q. It was in February, mid-February.

19 A. I can't say for sure, but I got --- I keep my time
20 wrote down, but I can't say for sure if I had to work
21 that one or not.

22 Q. What is Massey Appreciation Day?

23 A. Let's see. Is that the one that they do at John
24 L. Lewis Day, I believe, maybe. There's one of them
25 there we get for John L. Lewis Day, for that one, I

1 think.

2 Q. They don't call it that at ---

3 A. No.

4 Q. --- Massey?

5 A. No. See, what a lot of the --- see, they had
6 these guys on this section up here at Headgate 22.

7 They had them on six on and three off, but I went with
8 whatever posted schedule they had for us to have
9 weekends off and holidays.

10 Q. Okay.

11 A. So mine would be different from theirs. If they
12 was scheduled to work that holiday, then they had to
13 work them because they got them --- they was on six,
14 three and off three --- or six and three.

15 Q. Have you talked to anybody that worked over that
16 Easter weekend, you know, maybe working on
17 ventilation?

18 A. No, I ain't heard nobody really say anything about
19 that.

20 Q. I want to get back in this --- this is the last
21 couple questions I have. You were talking about the
22 grand jury investigation. You mentioned a number of
23 things that were asked of you.

24 A. Yeah.

25 Q. And can you go over those again, the violations

1 they were looking at and asking you?

2 A. Well, they wanted to know during this grand jury
3 investigation if we run both miners in the same split
4 air. I told them yes. They asked about a curtain. I
5 said only when people come up, we hang curtain because
6 you can run 300 or 400 foot shift.

7 Q. All right. Anything else?

8 A. They asked about falsifying dust pumps.

9 Q. And did you know that had happened as well?

10 A. Yeah, on both sides, on company and Federal.

11 Q. Anything else?

12 A. Basically I think that's about it and deep cuts.

13 Q. So of that --- of those things that you knew with
14 your own knowledge, which of those things would Pete
15 Hendricks have known? Would he have known all of
16 those or none of those?

17 A. I'd say he knows all of it.

18 MR. MCGINLEY:

19 Okay. No further questions. Thank you.

20 RE-EXAMINATION

21 BY MR. FARLEY:

22 Q. One little thing. On April 5th on your way out of
23 the mine there at 2:20 or so, did you notice any
24 unusual smell?

25 A. No.

1 Q. Any burning sensation in your eyes?

2 A. No.

3 Q. The reason I ask we have a report reportedly once
4 some individual had called out from the Mother Drive
5 area complaining of a burning sensation in his eyes
6 early in the shift.

7 A. I know when we come out there was two electricians
8 working on this new Mother Drive at the mouth of
9 Headgate 22. So when we come out, they went out and
10 that fire boss that fire bossed the longwall was
11 standing there at the track at the motor drive on the
12 longwall. That might have been him. I don't know.
13 He was standing there when we come out.

14 Q. Okay. All right.

15 RE-EXAMINATION

16 BY MR. MCGINLEY:

17 Q. Did you come out with Ralph Plumley?

18 A. Well, 'til we got down there --- I come out UBB
19 side and he went out the other side.

20 Q. Okay. Right.

21 A. Yeah. And the electricians was --- Virgil Bowman
22 and Tom Sheets was up here working on the Mother
23 Drive, and they come out in front of us.

24 Q. Plumley would have --- would he have gone after
25 you I mean in terms of getting a rail?

1 A. I believe his ride was behind us. He come out
2 behind us.

3 Q. We've heard from some that there was --- on that
4 ride, there was a problem with air and there was
5 visibility --- this is before the explosion.

6 A. No, we didn't have ---.

7 Q. You didn't experience any of that?

8 A. No.

9 Q. Did you hear anything about that?

10 A. No.

11 MR. FARLEY:

12 That's all.

13 A. No. See, when I went out to --- when we got to
14 the mouth of North Mains, I went through another set
15 of doors.

16 BY MR. FARLEY:

17 Q. Right.

18 A. So that set me different from their air, so that
19 air might have caught them before they got outside.

20 Q. Right. That sounds like that's what happened.

21 A. I guess they come out the return side. I was in
22 that neutral.

23 Q. Right. Well, thank you.

24 ATTORNEY WILSON:

25 Mr. Vickers, on behalf of MSHA and the

1 Officer of Miners' Health, Safety and Training, I want
2 to thank you for appearing and answering questions
3 today. Your cooperation is very important to the
4 investigation as we work to determine the cause of the
5 accident. We request that you not discuss your
6 testimony with anyone outside of the room because we
7 will be interviewing additional witnesses. After
8 questioning other witnesses, we may call you if we
9 have any follow-up questions. And as I stated
10 earlier, if you think of any additional information
11 that you think would be helpful, please contact either
12 MSHA or the Officer of Miners' Health, Safety and
13 Training.

14 I do want to inform you of your rights
15 under the Mine Act as a miner. Any statements given
16 by miner witnesses to MSHA are considered to be an
17 exercise of statutory rights and protected activity
18 under Section 105(c) of the Mine Act. If you believe
19 any discharge, discrimination or any other type of
20 adverse action is taken against you as a result of
21 your cooperation with this investigation, you are
22 encouraged to immediately contact MSHA and file a
23 complaint under Section 105(c) of the Mine Act.
24 Remedies under the Act include back wages and
25 immediately temporary reinstatement to your most

1 recent position pending a complete investigation of
2 your complaint. In order to file such a complaint,
3 you should contact the MSHA District Office in Mount
4 Hope, West Virginia. Their contact information as
5 well as other information concerning your rights as a
6 miner are available at MSHA's website, which is
7 www.MSHA.gov.

8 Again, I want to thank you for appearing
9 here today. Before we go off the record, I'll give
10 you a final opportunity if there's anything else that
11 you want to add to the record or if there's any
12 statement that you would like to make, you may do so
13 now.

14 A. No, I don't have nothing else.

15 ATTORNEY WILSON:

16 Okay. Well then, again, thank you very
17 much. And we'll go off the record.

18 * * * * *

19 STATEMENT UNDER OATH CONCLUDED AT 3:00 P.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

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

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

That the proceeding is herein recorded fully
and accurately;

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



Alison Salyards