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Transcript of the Testimony of Gary Chad Neil

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Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

CONFIDENTIAL STATEMENT UNDER OATH
OF
GARY CHAD NEIL

taken pursuant to Notice by Alicia R. Brant, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Friday, July 23, 2010, beginning at 1:03 p.m.

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MATTHEW N. BABINGTON, ESQUIRE
U.S. Department of Labor
Office of the Regional Solicitor
1100 Wilson Boulevard
22nd Floor West
Arlington, VA 22209-2247

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

ERIK SHERER
Mine Safety and Health Administration
1100 Wilson Boulevard
Arlington, VA 22209-3939

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

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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

CHRISTOPHER SEARS, ESQUIRE
Shuman, McCuskey and Slicer, PLLC
1411 Virginia Street East
Suite 200
P.O. Box 3953
Charleston, WV 25301

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EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

One

Mine Map

74*

* Exhibit not attached

P R O C E E D I N G S

ATTORNEY BABINGTON:

My name is Matt Babington. Today is July 23rd, 2010. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is Erik Sherer, an accident investigator with the Mine Safety and Health Administration, MSHA, an agency of the U.S. Department of Labor. Also present are several people from the State of West Virginia. I ask that they state their appearance for the record.

MR. FARLEY:

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

MR. O'BRIEN:

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

ATTORNEY BABINGTON:

There are several members of the investigation team also present in the room today. Erik Sherer will be conducting initial questioning. All members of the Mine Safety and Health Accident Investigation Team and all members of the State of West Virginia Accident Investigation Team participating in the investigation of the Upper Big

1 Branch Mine explosion shall keep confidential all
2 information that is gathered from each witness who
3 voluntarily provides a statement until the witness
4 statements are officially released. MSHA and the
5 State of West Virginia shall keep this information
6 confidential so that other ongoing enforcement
7 activities are not prejudiced or jeopardized by a
8 premature release of information.

9 This confidentiality requirement shall
10 not preclude investigation team members from sharing
11 information with each other or with other law
12 enforcement officials. Your participation in this
13 interview constitutes your agreement to keep this
14 information confidential.

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

24 You may have your personal attorney
25 present during the taking of this statement, or

1 another personal representative, if MSHA has permitted
2 it, and you may consult with your attorney or
3 representative at any time. Your statement is
4 completely voluntary. You may refuse to answer any
5 question and you may terminate your interview at any
6 time or request a break at any time.

7 Since this is not an adversarial
8 proceeding, formal Cross Examination will not be
9 permitted. However, your personal legal
10 representative may ask clarifying questions as
11 appropriate.

12 Your identity and the content of this
13 conversation will be made public at the conclusion of
14 the interview process and may be included in the
15 public report of the accident unless you request that
16 your identity remain confidential or your information
17 would otherwise jeopardize a potential criminal
18 investigation. If you request us to keep your
19 identity confidential, we will do so to the extent
20 permitted by law. That means that if a judge orders
21 us to reveal your name or if another law requires us
22 to reveal your name or if we need to reveal your name
23 for other law enforcement purposes, we may do so.

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

1 or other information we may ask you to provide in the
2 future in other investigations into and hearings about
3 the explosion. Do you understand?

4 MR. NEIL:

5 Yes.

6 ATTORNEY BABINGTON:

7 Do you have any questions?

8 MR. NEIL:

9 No.

10 ATTORNEY BABINGTON:

11 After the investigation is complete, MSHA
12 will issue a public report detailing the nature and
13 causes of the fatalities in the hope that greater
14 awareness about the cause of accidents can reduce
15 their occurrence in the future. Information obtained
16 through witness interviews is frequently included in
17 these reports. Since we will be interviewing other
18 individuals, we request that you not discuss your
19 testimony with any person aside from a personal
20 representative or Counsel.

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

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

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

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

23 MR. FARLEY:

24 Mr. Neil, on behalf of the Office of
25 Miners' Health, Safety and Training I want to advise

1 you that the West Virginia Coal Mine Health and Safety
2 Regulations also protect miners against potential
3 discrimination resulting from participation in these
4 type interviews. And I've just handed you some
5 contact information for the West Virginia Board of
6 Appeals that hear complaints from miners regarding
7 discrimination. Also, you have my business card.
8 There's a phone number on there for Mr. Bill Tucker,
9 who's our lead underground investigator. Should you
10 have any problems, you can give us a call. We'll try
11 to help you out. We'd caution you that you have ---
12 if you should have some problem with discrimination
13 and need to file a claim, you need to do it within 30
14 days of the event; okay?

15 MR. NEIL:

16 Yes.

17 -----

18 GARY CHAD NEIL, HAVING FIRST BEEN DULY SWORN,

19 TESTIFIED AS FOLLOWS:

20 -----

21 ATTORNEY BABINGTON:

22 Please state your full name, address and
23 telephone for the record, please.

24 A. (b) (7)(C)

25 (b) (7)(C)

1 ATTORNEY BABINGTON:

2 And your phone number?

3 A. (b) (7)(C)

4 ATTORNEY BABINGTON:

5 And could you spell your last name for
6 the record?

7 A. N-E-I-L.

8 ATTORNEY BABINGTON:

9 Okay. Do you have a personal legal
10 representative with you today?

11 A. Yes, I do.

12 ATTORNEY BABINGTON:

13 Could he identify himself, please?

14 ATTORNEY SEARS:

15 Christopher Sears with the law firm of
16 Shuman, McCuskey & Slicer.

17 ATTORNEY BABINGTON:

18 Mr. Sears, are you legally representing
19 the witness in this matter?

20 ATTORNEY SEARS:

21 I am.

22 ATTORNEY BABINGTON:

23 Do you understand that you may not
24 communicate with Massey Energy, its affiliates or its
25 officers or directors or attorneys concerning the

1 substance of this representation?

2 ATTORNEY SEARS:

3 I understand that I am bound by the West

4 Virginia Rules of Professional Conduct and I agree to
5 do that.

6 ATTORNEY BABINGTON:

7 All right.

8 ATTORNEY SEARS:

9 And that's going to be my answer for any
10 other questions you have, and respectfully decline to
11 answer any more questions regarding that
12 representation.

13 ATTORNEY BABINGTON:

14 Well, I'll ask you one more, and you can
15 feel free to decline if you're going to do that, which
16 is, are you being paid by a third party to provide
17 such representation?

18 ATTORNEY SEARS:

19 I decline to answer that.

20 ATTORNEY BABINGTON:

21 All right.

22 ATTORNEY BABINGTON:

23 Mr. Neil, just a couple questions. Did
24 you voluntarily choose to have Mr. Sears as your
25 personal legal representative?

1 A. Yes.

2 ATTORNEY BABINGTON:

3 All right. Are you yourself paying Mr.

4 Sears to represent you?

5 A. I decline to answer that.

6 ATTORNEY BABINGTON:

7 Okay. How did you choose this individual

8 as your representative?

9 A. Recommendation of a friend.

10 ATTORNEY BABINGTON:

11 When did you choose this individual to be

12 your representative?

13 A. Two days ago.

14 ATTORNEY BABINGTON:

15 And do you consent now to having this

16 individual as your representative?

17 A. Yes.

18 ATTORNEY BABINGTON:

19 Okay. Erik?

20 EXAMINATION

21 BY MR. SHERER:

22 Q. Okay. Thanks for coming down here, Mr. Neil.

23 A. Thank you.

24 Q. How many years have you been employed in the

25 mining industry?

1 A. Since May of 1997.

2 Q. Okay. Has that entire employment been with the
3 Massey organization?

4 A. No, it has not.

5 Q. Where'd you start out at?

6 A. I need my --- I had to form a list of where I've
7 been just to make sure I can recall correctly of where
8 I've been, because --- just to make sure of record.

9 Q. Okay. Yeah. And we're not looking for exact
10 times and dates ---

11 A. Oh, good.

12 Q. --- or anything. We just want to get a general
13 idea of what your experience is.

14 A. Yes, sir. From May of '97 until the present I
15 have worked for Massey, other than approximately a
16 year and a half to two years.

17 Q. Okay.

18 A. And that was with one other coal company, and then
19 I actually went out of the mining industry for
20 approximately six months.

21 Q. Okay. What other coal company was that?

22 A. Newtown Energy, Kanawha Eagle.

23 Q. Okay. And when you went out of the mining
24 industry, what'd you do?

25 A. I was a marketing director for a windows and

1 siding company.

2 Q. Okay. What's your current position with --- or
3 first of all, where are you currently employed?

4 A. Upper Big Branch Mine.

5 Q. Still at Upper Big Branch Mine. What was your
6 position at the time of the explosion?

7 A. Was a maintenance foreman on the longwall.

8 Q. Okay.

9 A. Midnight shift.

10 Q. Midnight shift. That's where most of the
11 maintenance work took place?

12 A. Yes.

13 Q. Okay. When did that shift start?

14 A. Our shift starts at 11:30 of the evening, of the
15 night.

16 Q. Okay. When does it end?

17 A. Approximately eight o'clock, 8:30 that next
18 morning.

19 Q. Okay. About what time would you get out to the
20 mine?

21 A. Would time would I arrive?

22 Q. Yes.

23 A. I would arrive at the mines usually around 11
24 o'clock, 15 until 11:00 to 11 o'clock.

25 Q. And on average what time would you get away from

1 the mines next day?

2 A. Between 8:30 and 9:00 that next morning.

3 Q. Okay. What would you do when you first arrived at
4 the mine, once you got, say, changed out or anything.

5 A. We would go into the longwall office and find out
6 our work list for that night.

7 Q. Okay. And was that up on a board on the wall or
8 did you have a form or ---?

9 A. Written down.

10 Q. Written down. Who would write that down?

11 A. Our maintenance chief, which would be Danny
12 Laverty.

13 Q. Danny Laverty; okay. Now, Mr. Neil, did you have
14 anybody that reported to you?

15 A. No.

16 Q. You did not have anybody report to you. And did
17 you report to Mr. Laverty?

18 A. Yes.

19 Q. Okay. Did you report to anybody else?

20 A. The maintenance foreman on my shift on the
21 longwall, my direct supervisor, would be Robert Hale.

22 Q. Okay. So you reported to Mr. Hale?

23 A. Yes.

24 Q. Did you have any dotted line reporting
25 relationships with anybody else?

1 A. No.

2 Q. Okay. Were you hourly or salary?

3 A. Salary.

4 Q. Salary. Do you consider yourself part of the
5 management structure of this mine?

6 A. At the lowest level.

7 Q. At the lowest level; okay. Step back just a bit.
8 Did you participate in planning for this longwall in
9 any way?

10 A. No.

11 Q. Okay. When did you first become involved with
12 this longwall system?

13 A. The actual date I am unsure of, ---

14 Q. Well, roughly.

15 A. --- but it was most likely at the end of August of
16 2009.

17 Q. Okay. And seems like it was just right before the
18 actual startup of the wall; wasn't it?

19 A. We was still setting up, yes, sir.

20 Q. Still setting up. About how long did it take
21 before you made the first pass?

22 A. From when I arrived until ---

23 Q. Uh-huh (yes).

24 A. --- the first pass? Within days.

25 Q. Okay. So you pretty much had been with it since

1 it started operation?

2 A. Yes, sir.

3 Q. Oh, okay. Now, when the wall started up, about
4 how long did it have to go before you got a good cave?

5 A. I do not recall.

6 Q. You don't recall; okay. Do you recall how the
7 ventilation was when the wall was set up?

8 A. Excellent.

9 Q. Excellent. In comparison to the last time you
10 remember prior to the explosion, was that a greater
11 quantity of air or lesser quantity of air?

12 A. Approximately close to the same.

13 Q. About the same quantity of air; okay. Tell me
14 about the period of time, what --- oh, probably eight
15 or nine months between the startup of the wall and the
16 explosion. Is there anything that stands out during
17 that period of time compared to just the normal
18 operation of the longwall?

19 A. Out of the ordinary? Would there've ---

20 Q. Yes.

21 A. --- been an event? No, sir.

22 Q. Okay. So things are going along about what you'd
23 expect.

24 A. Yes.

25 Q. Okay. What about water on the face? Was there

1 any water along the face of the longwall prior to the
2 explosion?

3 A. Always.

4 Q. Okay. Water in excess of what you would normally
5 expect?

6 A. I do not recall.

7 ATTORNEY SEARS:

8 Can you clarify, do you mean standing

9 water or, like, flooded water or are you talking about
10 water used in a process or ---?

11 BY MR. SHERER:

12 Q. Not spray water, just any ---.

13 A. Standing water.

14 Q. Yeah, uh-huh (yes), or water you'd have to pump
15 possibly.

16 A. As normal, on longwall operations at times when
17 there are dips in the face ---

18 Q. Sure, uh-huh (yes).

19 A. --- you will have water that you will have to
20 pump.

21 Q. Okay.

22 A. And we experienced that normally.

23 Q. Okay, sure.

24 ATTORNEY SEARS:

25 On this wall?

1 A. Yes, sir.

2 ATTORNEY SEARS:

3 Okay.

4 BY MR. SHERER:

5 Q. Now, as I understand it, the water generally
6 flowed from the tail side of the wall to the head
7 side.

8 A. Depending on face grade.

9 Q. Okay. Did the grade or did the coal seam roll
10 around much throughout this panel?

11 A. Just as the coal seam would roll. The shearer
12 would follow the coal seam.

13 Q. Okay. Were there any significant rolls that you
14 recall?

15 A. No.

16 Q. Do you recall every having to drive up over a
17 sandstone channel?

18 A. Not that I can recall.

19 Q. Okay. Look at this map in front of you. In
20 December 2009 --- there's a very small little ledge
21 called Second Half. Do you recall any incident that
22 occurred along there?

23 A. Not to my knowledge. I can't recall.

24 Q. Okay. Do you recall having to chain shields
25 together to get over the roll in the coal seam at that

1 point?

2 A. No, I did not participate in that.

3 Q. Okay. You didn't; okay. Did you work during the
4 second half of December?

5 A. Yes, I did.

6 Q. You did; okay. Thank you. Do you recall any
7 significant inflows of water along the face of the
8 longwall during this period of time?

9 A. You'd have to be more specific. I'm not sure ---.

10 Q. From the startup of the current panel to the time
11 of the explosion, do you recall ---

12 A. Yes, sir.

13 Q. --- any significant inflows of water along the
14 middle, mid-face area of the longwall?

15 A. There was a time during production, during the
16 time of startup to now, or the time of the accident,
17 that we had to pump water that was on the face, yes.

18 Q. Okay. Do you recall water coming in that looked
19 like a waterfall?

20 A. A waterfall?

21 Q. Yes, sir.

22 A. I would not consider it a waterfall. There was
23 water that came from the top.

24 Q. Okay.

25 A. I'd have to define a waterfall. I'm not sure.

1 Q. Okay. Massive quantity of water, water that came
2 up over the backboards?

3 A. No, sir.

4 Q. You don't recall that?

5 A. Not during my --- not that I saw. I did not
6 witness water overtop of them, no.

7 Q. Did you witness water came halfway up the
8 backboards?

9 A. Sure. Yes, sir.

10 Q. Okay. Do you recall about when that event
11 occurred?

12 A. No, sir.

13 Q. Okay.

14 A. Not a time.

15 Q. Okay. Thank you.

16 A. Yes.

17 Q. Now, let me step back a bit. You worked on the
18 midnight shift.

19 A. Yes.

20 Q. Do you recall what was the last shift you worked
21 prior to the explosion?

22 A. I worked the night prior to the explosion.

23 Q. So it would've been Sunday night?

24 A. Sunday night.

25 Q. Sunday night.

1 A. The 5th, yes, sir.

2 Q. Okay. Did you have a long weekend prior to that?

3 A. If I recall, that was Easter weekend.

4 Q. Yes, uh-huh (yes).

5 A. Yes.

6 Q. Yes, it was. So what was the previous shift you
7 worked prior to that Sunday nightshift?

8 A. I do not recall. The way our schedule would fall
9 where we work a shift five on, three off, I'm not sure
10 how my days fell.

11 Q. Oh, okay.

12 A. So I'm really not sure.

13 Q. Okay. I understand that. Okay.

14 ATTORNEY BABINGTON:

15 Sorry. Would it have been two or three,

16 four days? I mean ---.

17 A. It could've been, simply because of the way our
18 days off would fall with the holiday.

19 BY MR. SHERER:

20 Q. Sure.

21 A. The mines shut down, actually no production, on
22 Easter Sunday. So the way my days fell, I could've
23 possibly had four days off prior. So I cannot recall
24 that, though.

25 Q. Okay. No problem. Excuse me one sec. Could you

1 get me --- tell me the people that normally worked on
2 the maintenance shift that you worked on?

3 A. Our maintenance crew that I worked on, our --- my
4 direct supervisor was Robert Hale, and then myself and
5 another electrician, whose name was Mike Medley.

6 Q. Uh-huh (yes).

7 A. And then during the week, normally the actual week
8 itself, there was a crew that was maintenance that
9 worked on shields. They had a foreman, as well, Steve
10 Gration. And then ether was shield techs that worked
11 for him.

12 Q. Okay, sure. About how many people would be on the
13 wall during that midnight shift?

14 A. On the face?

15 Q. Yeah, uh-huh (yes).

16 A. On the face there would normally be the three of
17 us, Robert Hale, myself and Mike Medley, and then
18 Steve Gration and his shield techs. So that would
19 approximately be up to six people.

20 Q. Okay. During the average midnight shift, would
21 anybody else typically come on the wall?

22 A. Always our section foreman.

23 Q. Okay.

24 A. And that was Larry Brown.

25 Q. Larry Brown. Anybody else?

1 A. Not that I can recall, not normally. No, sir.

2 Q. Okay, sure. Okay. Now, you mentioned that you
3 were an electrician.

4 A. Yes.

5 Q. Okay. How long have you had your electrical card?

6 A. Since February of '99.

7 Q. February of '99. Did you train for that or study
8 for that under the Massey organization?

9 A. Yes.

10 Q. Okay. Did you have to sign a contract to work for
11 that card or get the education you needed?

12 A. No, sir.

13 Q. Okay. Thank you. Do you have any other Federal
14 or State mining certificates?

15 A. Yes.

16 Q. What are those, please?

17 A. Of course my miner's card, an electrical card. I
18 have a mine foreman card, shot firer, dust sampling,
19 EMT. I believe that's all.

20 Q. That's a gracious plan, well qualified.

21 A. Job security.

22 Q. There you go. That last shift you worked, ---

23 A. Yes.

24 Q. --- would you say that everything was about the
25 way it normally was?

1 A. Normal.

2 Q. Okay. Do you recall anything that stands out?

3 A. No, sir, nothing out of the ordinary.

4 Q. Okay. Did you smell anything that was unusual?

5 A. No, sir.

6 Q. Okay. Did you hear anything unusual?

7 A. No.

8 Q. What about the methane coming out of the face or
9 the floor? Do you remember if it was making a hissing
10 sound or anything like that?

11 A. No, it was not making a hissing sound.

12 Q. Was not. Do you remember if there were any
13 bubbles coming up through the puddles?

14 A. Not that I can recall.

15 Q. Okay. Did you guys do any welding or burning that
16 night?

17 A. Yes.

18 Q. What'd you do?

19 A. Both welding and cutting.

20 Q. Okay. Can you explain what you did and where you
21 did it at?

22 A. At the head we replaced a CIU blade, the head end
23 CIU blade on the shearer which involved cutting and
24 welding.

25 Q. Okay.

1 A. And also, we added 12 face conveyor flights ---

2 Q. Okay.

3 A. --- to the face chain, which involved welding.

4 Q. Sure, uh-huh (yes). Okay. What sort of shape was
5 that face chain in?

6 A. Normal.

7 Q. Normal? Was it getting near the end of its life
8 or was it fairly new?

9 A. It had been used that panel.

10 Q. Okay.

11 A. The entire panel.

12 Q. Okay. Would you normally replace one of those
13 chains after you ended this panel? Do you know?

14 A. New face chain each panel.

15 Q. Okay. So it was probably getting near the end of
16 its life? I'm just saying because it's near the end
17 of the panel.

18 A. I don't judge that, no, sir.

19 Q. Okay.

20 A. Because of the length of the panel, I don't ---.

21 Q. Okay.

22 A. Not my decision.

23 Q. Okay. Sure. I understand it's not your decision.

24 If you cut a panel half the length of this current

25 panel, would you go ahead and replace that face chain?

1 A. Yes.

2 Q. Okay. So it's just a preventative maintenance?

3 A. Yes, sir.

4 Q. Okay.

5 A. Or if this panel was 1,000 feet longer, we would
6 still use that same face chain.

7 Q. Okay. I understand that. Okay. Thank you. So
8 you worked on the CIU blade and the face chain. Do
9 any other burning or welding?

10 A. Not that I can recall, no, sir.

11 Q. Okay. Did you have a welding lead down the face
12 for if you had to weld mid-face or further on down?

13 A. Yes.

14 Q. Where was that located?

15 A. In the pan line.

16 Q. In the pan line. Do you recall if it was one lead
17 or two leads?

18 A. Two leads.

19 Q. Two leads. Did you have any connector plugs on
20 that ---?

21 A. Yes, one for a ground and also one for the
22 stinger, the huff.

23 Q. Sure, uh-huh (yes).

24 ATTORNEY SEARS:

25 Let him finish asking his question before

1 you answer; okay?

2 A. Yes, sir.

3 BY MR. SHERER:

4 Q. I'm fine with that.

5 ATTORNEY SEARS:

6 Well, more so probably for her, too.

7 ATTORNEY BABINGTON:

8 Cleaner record; right.

9 MR. SHERER:

10 Oh, thank you.

11 BY MR. SHERER:

12 Q. Did you have any plugs located along the length of
13 the longwall so you could plug in at various places?

14 A. Yes.

15 Q. Do you recall roughly how many those were?

16 A. No, sir.

17 Q. Do you recall roughly how far apart they were?

18 A. No, sir.

19 Q. Okay. How long were the welding leads that you
20 would use? Were they 50 foot long, 100 foot long?

21 A. I would have to speculate.

22 Q. Sure, uh-huh (yes).

23 A. And if I would speculate, I would have to
24 approximately speculate it to be 25 to 50 feet long.

25 Q. Okay. Good enough. That's exactly what we needed

1 to know. Now, who did the welding and burning? Did
2 you do any?

3 A. Yes, sir.

4 Q. What'd you work on? Both of them?

5 A. Yes.

6 Q. Oh, okay. You're the welder? Okay.

7 ATTORNEY BABINGTON:

8 Is that a yes?

9 ATTORNEY SEARS:

10 Is that a question? Is that a question,
11 first of all?

12 ATTORNEY BABINGTON:

13 Sir, you're a welder?

14 A. As part of my job, I do weld at times.

15 BY MR. SHERER:

16 Q. Okay. Thank you. Do you carry a methane monitor?

17 A. Yes.

18 Q. What brand of methane monitor?

19 A. Solaris.

20 Q. Okay.

21 A. That is a methane monitor that we carry as a crew.

22 Q. Okay.

23 A. Robert Hale actually, as far as to transport the
24 detector in and out of the mines, he is responsible
25 for it as our chief, but we use it when needed.

1 Q. Okay. Just pass it around as needed?

2 A. Yes, sir.

3 Q. Okay. No problem with that. Were you using ---
4 when you're normally welding or cutting, do you take
5 the methane readings yourself?

6 A. Yes, continuous monitoring.

7 Q. Okay. Would you hang the methane monitor up on a
8 wire or just place it somewhere?

9 A. It's usually clipped on the shield itself, up high
10 on the shield or we just --- we wire it on our person.

11 Q. Okay. What if you're welding or cutting on, like,
12 near the pan line for the conveyor chain? Where would
13 you put it?

14 A. It's usually --- I mean, we would take our checks
15 and then we would usually clip it on our person.

16 Q. Okay. Would you try to jack up the pan line and
17 take a reading under the pan line?

18 A. If possible.

19 Q. Okay. Did you do it that night?

20 A. I do not recall.

21 Q. Okay. Did you have an extendable probe for that
22 methane meter?

23 A. There was one available.

24 Q. Okay. Did you use it?

25 A. It was not needed that night.

1 Q. Okay. Have you used it?

2 A. I have used it.

3 Q. Where would you typically use it at?

4 A. In areas where the height would require that, that
5 I could not reach the top.

6 Q. Okay. Would you take the ---?

7 A. Or if we were cutting in a situation where the
8 flames or slag would be in the shield area.

9 Q. Okay. Thank you. Do you recall anytime that the
10 longwall shut down for ventilation-related problems?

11 A. Not that I can recall.

12 Q. Okay. When you're using that methane detector, do
13 you ever pick up any methane along the face?

14 A. Zero.

15 Q. Zero. Okay. The shearer on the longwall, had it
16 been giving you any particular maintenance-type
17 problems?

18 A. None out of the ordinary.

19 Q. None out of the ordinary. Are you familiar with
20 the hinge pin on that unit?

21 A. Yes.

22 Q. Are you aware that the unit was down most of the
23 day of the explosion with hinge pin related problems?

24 A. No.

25 Q. Okay. Had you ever observed problems with that

1 hinge pin?

2 A. Yes.

3 Q. Can you describe those problems, please?

4 ATTORNEY SEARS:

5 I'm sorry. On this particular machine or

6 just in general?

7 BY MR. SHERER:

8 Q. On this particular shearer.

9 A. On this particular shearer the face side hinge pin
10 for the ranging arm, we had difficulty with it.

11 Q. Okay. Had you had to replace that in this panel?

12 A. Not that I can recall.

13 Q. Okay. When you say it had difficulty, was it ---
14 had you had to re-insert it or add lock, replace the
15 locks on it or anything like that?

16 A. I recall a time when the pin had slid out ---

17 Q. Okay.

18 A. --- toward the face and it had to be reinstalled,
19 just pushed back in and the lock replaced.

20 Q. Okay. Do you know if during that repair you had
21 to heat it up or weld or burn on it, or could you do
22 it all ---?

23 A. I did not the time that I was --- I did that job.

24 Q. Oh, okay. You did the job. Was there anything
25 different about that hinge pin than you'd encountered

1 with previous hinge --- previous shearers?

2 A. That particular hinge pin only had one lock, ---

3 Q. Okay.

4 A. --- B lock on the inside.

5 Q. Okay.

6 ATTORNEY SEARS:

7 Was that V lock or B?

8 A. B, B as in boy. B lock.

9 BY MR. SHERER:

10 Q. Okay. Do you know if there was any reason to go
11 to that different style of hinge pin?

12 A. Not that I know of.

13 Q. Okay, okay. Thank you.

14 A. Manufacturer.

15 Q. Oh, yeah. They always change things on you.

16 ATTORNEY SEARS:

17 Was that a question?

18 MR. SHERER:

19 That was a comment.

20 ATTORNEY SEARS:

21 Okay. Thank you.

22 ATTORNEY BABINGTON:

23 Sorry.

24 ATTORNEY SEARS:

25 I didn't know if you were expecting a

1 response from him or not.

2 MR. SHERER:

3 No.

4 ATTORNEY BABINGTON:

5 Sorry. Just a quick question. When was

6 it, do you recall, when you had to do the work on the

7 hinge pin?

8 A. I do not recall.

9 ATTORNEY BABINGTON:

10 Was it within a month of the accident?

11 A. More than a month.

12 BY MR. SHERER:

13 Q. Okay. Thank you. What do you know about the

14 condition on the longwall at the time of the

15 explosion?

16 A. Could you be more specific? Condition.

17 Q. Yeah. Have you heard where the shearer was at?

18 A. Where was the shearer at the time of the

19 explosion? The shearer was on the tail approximately

20 four feet from cutting out.

21 Q. Okay. Well, let me tell you what all we know and

22 ask you to help us.

23 A. Yes, sir.

24 Q. We know that the shearer had just --- was either

25 cut out or close to being cut out.

1 A. Yes, sir.

2 Q. And we know that ---.

3 ATTORNEY SEARS:

4 Hold on a second. I just want to

5 clarify. When you say, yes, sir, are you saying that
6 you agree with that or that you are understanding what
7 he's saying to you?

8 A. Okay. To clarify, I have seen the shearer since
9 the accident.

10 BY MR. SHERER:

11 Q. Okay. Thank you, thank you.

12 A. And I was agreeing with ---

13 Q. Yeah.

14 A. --- your statement. So go ---.

15 Q. Okay.

16 A. You do your question and I'll answer it.

17 Q. Sure. There you go, buddy. We know that the pan
18 line was clear of coal. We know that the drums were
19 not retracted. Looks like they had just recently been
20 cutting. We know that the water was turned off at the
21 headgate. We know that most of the day the wall had
22 been down. We know that the wall supposedly had
23 started up about 15, maybe 20 minutes prior to the
24 explosion.

25 We know that the victims were --- the nearest

1 victims to the tailgate side were found about mid-face
2 and the rest of the victims, of course, were up near
3 the headgate. Do you have any idea what may've been
4 going on, you know, as far as the normal production
5 cycle?

6 A. No, sir.

7 Q. Okay. Could you help us understand why the
8 shearer may have been cutting out at the tailgate and
9 the victims been further up the face? Is there
10 anything that would cause that that you're aware of?

11 A. Speculation.

12 Q. Sure. That's all we got at this point in time.

13 A. Loss of power.

14 Q. Loss of power; okay. Can you speculate on the
15 potential possible loss of power?

16 A. No, sir.

17 Q. Okay. Thank you. Is there any reason you could
18 think of that the water would've been cut off?

19 A. The water is cut off when the face chain shuts
20 off.

21 Q. Oh, okay. Is it an automatic thing?

22 A. No, sir. It's a manual operation by the headgate
23 operator.

24 Q. Okay. What's the reason for that?

25 A. To keep too much water from being placed on the

1 face.

2 Q. Oh, okay. That's reasonable. Do you know, when
3 the shearer was bitted up, would it normally be back
4 at the headgate side?

5 A. Just making sure I understand your question. Do
6 you normally bit the shearer on the head?

7 Q. Exactly.

8 A. Yes, sir, you normally bit the shearer on the
9 head.

10 Q. Okay. Do you know roughly how many passes along
11 this, the face as it was within the week or two prior
12 to the explosion they could get out of a set of bits?

13 A. No, sir. It changes daily.

14 Q. Oh, okay. Did you ever see bit changes or maybe
15 just a few bits replaced away from the head?

16 A. Yes, sir.

17 Q. How common was that?

18 A. If there was hard cutting on the tail or at
19 mid-face, depending on your sandstone, you would bit
20 away, or if they carried bits on the shearer for
21 downtime reasons.

22 Q. Sure.

23 A. They could spot bits.

24 Q. Okay. Well, you didn't work production?

25 A. No, sir.

1 Q. Okay. Thank you. On the last shift you worked,
2 that Sunday night, could you describe the cutting
3 conditions that you observed along the face? Were
4 they cutting more or less rock than normal?

5 A. On the night prior to?

6 Q. Yes, uh-huh (yes).

7 A. I honestly never made it past approximately Ten
8 Shield.

9 Q. Okay.

10 A. Fifteen (15), that area.

11 Q. So you were just up at the headgate?

12 A. Yes, sir.

13 Q. Okay. Thank you. Do you know what a JANA box is?

14 A. Yes, sir.

15 Q. What is that?

16 A. The JANA is the computer system that operates the
17 shearer.

18 Q. Okay. Does JANA stand for some acronym or
19 something? It's just what you call that?

20 A. No idea.

21 Q. Okay.

22 A. I do not know.

23 Q. Thank you. Is there one or two of those units?

24 A. There's a JANA Zero and a JANA One.

25 Q. Okay.

1 A. There are two units, individual.

2 Q. Okay. Did you guys normally keep spare units on
3 the --- near the wall?

4 A. Outside.

5 Q. They were outside?

6 A. Yes, sir.

7 Q. Okay.

8 A. To my knowledge.

9 Q. Okay. And the reason I'm asking that is we found
10 two units near the headgate in addition to the units
11 that were installed. Did you guys --- on the last
12 shift that you worked, did any --- did you observe
13 anybody working on those units?

14 A. There was no work performed, to my knowledge, on
15 those.

16 Q. Okay. Thank you. How many remote control units
17 did you normally have on or around the wall?

18 A. On the face there would be two, one for the
19 headgate operator, one for the head side shearer
20 operator and one for the tail shearer operator.

21 Q. Okay.

22 A. And at the mule train itself on top of the power
23 center or starter ---

24 Q. Okay.

25 A. --- there would be usually two spares for each

1 side, ---

2 Q. Okay.

3 A. --- approximately six total on the wall.

4 Q. Okay. Thank you. How about the cables in the
5 britby? Were they good --- were they in good shape?

6 A. Yes.

7 Q. Do you recall if you had replaced those during
8 this panel?

9 A. The shearer cable had been replaced.

10 Q. Okay. Do you recall about when that was?

11 A. Do not recall a specific ---

12 Q. Okay.

13 A. --- date, no, sir.

14 Q. Do you know if the water line had ever been
15 replaced in this --- during this panel?

16 A. When the shearer cable was replaced, I am not sure
17 if they replaced the water line or not, so no, I would
18 not know.

19 Q. Okay.

20 A. Just to clarify, there are two maintenance crews.

21 Q. Oh, okay.

22 A. And where we work a five on, three off schedule,
23 there's work performed for three days that we really
24 are unaware of.

25 Q. Okay. Sure, sure. I understand. How did you

1 communicate with the other maintenance crew? When you
2 guys were ---?

3 A. Every fourth shift is a lap night where both crews
4 are there.

5 Q. Oh, okay. Do you guys schedule, say, some of the
6 tougher maintenance jobs on those lap nights?

7 A. Yes.

8 Q. Okay. Just need more hands to do it? Okay.

9 ATTORNEY SEARS:

10 I'm sorry. Was that a question and did
11 you respond to that?

12 A. Need more hands to do it? I said ---.

13 ATTORNEY SEARS:

14 Was that a comment or a question?

15 MR. SHERER:

16 Did you need? Did.

17 ATTORNEY SEARS:

18 Okay. And did he answer?

19 MR. SHERER:

20 It was a question.

21 ATTORNEY SEARS:

22 Okay. That's fine. I didn't hear the
23 did part and ---

24 MR. SHERER:

25 Okay.

1 ATTORNEY SEARS:

2 --- I certainly didn't hear an answer.

3 He may've nodded, but ---.

4 A. Lap night we scheduled for scheduled maintenance.

5 BY MR. SHERER:

6 Q. Sure.

7 A. We would try to schedule larger jobs ---

8 Q. Sure.

9 A. --- or maybe two jobs for one night ---

10 Q. Okay.

11 A. --- because of the extra people, yes.

12 Q. Okay. Thank you. Was there any floor hooving
13 that you're aware of around the longwall face near the
14 time of the accident?

15 A. Not to my knowledge.

16 Q. Okay. Were you ever sent home or told not to show
17 up for work due to ventilation problems at this mine?

18 A. Not that I recall.

19 Q. You ever heard of problems with methane outbursts
20 or methane inundations at this mine?

21 A. Not at my time of employment, no.

22 Q. Has anyone spoken to you about times before you
23 were employed here?

24 A. No, sir.

25 Q. Okay. When you were underground, do you recall

1 ever hearing or receiving some sort of notification
2 that inspectors were on the property?

3 A. Not that I can recall.

4 Q. Okay. Thank you. Do you think that mine
5 ventilation was adequate at all times?

6 A. To my knowledge, air velocity on the longwall face
7 was, yes.

8 Q. Okay. Do you recall what the required quantity of
9 air and/or the velocity along the face was necessary?

10 A. Not an exact measurement, no, sir.

11 Q. Okay. Thank you. Are you aware of any
12 ventilation changes that were made in the week
13 preceding the explosion?

14 A. I'm not sure of a time frame, so no. I would not
15 want to speculate of a time frame of when a
16 ventilation change was made.

17 Q. Okay. Are you aware of any ventilation changes
18 made on this longwall?

19 A. There was a time when a ventilation change was
20 made and we had to stay --- as a safety --- we had to
21 stay outside while this change was made, but I'm not
22 sure of a date or actually even what was performed.

23 Q. Okay, sure. Has that been since Christmas?

24 A. I don't recall.

25 Q. Okay.

1 A. One instance, to my knowledge, and I do not recall
2 when it was.

3 Q. Okay, sure. You say you had to stay outside while
4 changes ere made. Did you get to go --- did you go in
5 the mine after the changes were made?

6 A. I don't think we did. Not to my knowledge that I
7 can recall.

8 Q. Okay. So you got basically some time off?

9 A. Some time off.

10 Q. And you don't recall that?

11 A. Not a date.

12 Q. Okay. You ever hear of mining taking place
13 without ventilation curtains in place?

14 A. No, sir.

15 Q. Okay. That last shift you worked, was there a
16 curtain on the tailgate?

17 A. I never went to the tailgates.

18 Q. Oh, you never went to the tail.

19 A. No, sir.

20 Q. Oh, that's right. Was there a curtain on the
21 headgate?

22 A. There was a curtain at our last open break. And
23 there was a curtain from the last open break, extended
24 to Number One Shield.

25 Q. Okay. Do you recall if those curtains were real

1 tight or were they flapping around?

2 A. I do not recall.

3 Q. Okay.

4 A. The curtains, if they were fixed, would be tight.

5 Q. Sure, okay. Thank you. What do you know about
6 methane monitors?

7 A. I know that they monitor for methane content in
8 the air.

9 Q. Thank you. Was there a methane monitoring system
10 on this longwall?

11 A. There was two systems, ---

12 Q. Okay.

13 A. --- one affixed to the shearer and one affixed to
14 the tail drive.

15 Q. Okay. Where was that at? Was it actually in the
16 tail drive under the covers?

17 A. The tail drive was affixed immediately to the
18 right of the ACT control unit under --- it was affixed
19 to the shield of the tail drive.

20 Q. Okay.

21 A. Not sure how to explain it.

22 Q. Sure. I can kind of envision that. The unit ---
23 the methane monitor unit that was on the shearer,
24 where was that located?

25 A. It was located to the right of the switch panel

1 and to the left of the gear box of the shearer itself.

2 Q. Okay. You ever calibrate those units?

3 A. Yes.

4 Q. Okay. Did you use --- what percentage gas did you
5 use to calibrate it?

6 A. The manufacturer gave us bottles, 2.5 percent CH4.

7 Q. Okay. Did you have a zero air bottle?

8 A. Yes, sir.

9 Q. Okay. When you put the gas to it would it
10 normally read out 2.5 percent?

11 A. To my knowledge, yes, sir, always.

12 Q. Okay. Did you ever have to replace those sensors?

13 A. I've never replaced a sensor on this longwall.

14 Q. Okay. Where was the readout for those sensors at?

15 A. The readout for the shearer sensor was located in
16 behind the panel through a see-through panel on ---

17 Q. Sure.

18 A. --- the JANA panel, and the readout for the tail
19 sensor was at the headgate box.

20 Q. Okay. Are you aware of anybody ever restricting
21 those sensors, putting a bag over them or ---

22 A. No, sir.

23 Q. --- anything like that? Are you aware of anybody
24 ever bridging out a methane monitor?

25 A. No, sir.

1 Q. Are you aware ---?

2 ATTORNEY SEARS:

3 Wait until he finishes the question.

4 A. Yes, sir.

5 BY MR. SHERER:

6 Q. Are you aware of any way to defeat those methane
7 sensors?

8 A. Not that I can recall.

9 Q. Okay. Thank you.

10 ATTORNEY SEARS:

11 I just want to make sure you understood

12 the question. He's asking if you're aware of just
13 generally any way that they could be defeated.

14 A. Is there a way that a methane monitor sensor can
15 be defeated?

16 BY MR. SHERER:

17 Q. Yes.

18 A. A methane monitor sensor is an electrical circuit.
19 And electrical circuits can be manipulated.

20 Q. Okay.

21 A. I've personally never manipulated a methane
22 monitor circuit.

23 Q. Okay.

24 A. And I personally have not heard of any circuits on
25 our longwall that has ever been manipulated.

1 Q. Okay. Thank you. The electrical systems on the
2 longwall are very complex.

3 A. Yes, sir.

4 Q. That's from a miner ---

5 A. I'm sorry.

6 Q. --- perspective. And there seems to be a shift
7 toward computerization of these systems. Are you
8 familiar with the PLCs?

9 A. Yes, sir.

10 Q. What are those?

11 A. PLC is an actual --- it's a computer system. It's
12 a rack, ---

13 Q. Okay.

14 A. --- if you will, of cards to where a --- I think
15 the term they use is a ladder of commands has to ---.
16 It would be like a prerequisite.

17 Q. Okay.

18 A. Something has to --- a safety feature goes, an
19 airlock goes in for this process to begin. And once
20 this process begins, then another process begins.
21 It's a chain of events that has to occur.

22 Q. Okay. Did this longwall use PLC's?

23 A. Yes, it did.

24 Q. Who programmed those PLC's? They come in the
25 manufacturer ---

1 A. To my knowledge, it comes from SMC, the
2 manufacturer of that system, but I do not know.

3 Q. Okay.

4 ATTORNEY SEARS:

5 You need to give verbal responses.

6 A. Yes, sir.

7 ATTORNEY SEARS:

8 It's hard to pick up gestures.

9 MR. SHERER:

10 Okay. Thank you.

11 BY MR. SHERER:

12 Q. Have you ever programmed the PLC's on this
13 longwall?

14 A. No.

15 Q. Okay. Do you know of anybody that has, aside from
16 the manufacturer?

17 A. No, sir.

18 Q. Okay. Thank you. If you had a problem with a PLC
19 unit, who would troubleshoot that?

20 A. SMC.

21 Q. SMC. And who is SMC?

22 A. They're a manufacturing company out of Huntington.

23 Q. Okay. Thank you. Were all of the controller
24 units PLC units from SMC?

25 A. I have no knowledge.

1 Q. Okay. Thank you. Where were you at when you
2 learned of the explosion?

3 A. Home.

4 Q. Okay. What's the first thing you thought of when
5 you heard about the explosion?

6 A. Shift change.

7 Q. Shift change. Do you have any idea what we should
8 be looking at to try to figure out what happened here,
9 any hints, guidance?

10 A. No, sir.

11 MR. SHERER:

12 Okay. Thank you. That's all the
13 questions I've got.

14 ATTORNEY BABINGTON:

15 It's been about an hour, Terry. You want
16 to take a quick break or are you good to go?

17 MR. FARLEY:

18 If you guys ---?

19 ATTORNEY SEARS:

20 Let's take a break.

21 MR. FARLEY:

22 Okay; sure.

23 ATTORNEY BABINGTON:

24 Off the record.

25 SHORT BREAK TAKEN

1 ATTORNEY BABINGTON:

2 Go back on the record.

3 EXAMINATION

4 BY MR. FARLEY:

5 Q. Mr. Neil, Erik asked you what your first thought
6 was when you learned of the UBB explosion and you
7 said, shift change. Why? What did that --- why was
8 that your first thought? What about that ---?

9 A. More people underground at one time.

10 Q. Okay. Now, when you say more people underground,
11 does that mean you had a concern for a larger number
12 of people potentially affected by the explosion or
13 that the larger number of people might somehow
14 contribute to the problem?

15 A. More friends underground.

16 Q. Okay. I got you. You said earlier that you have
17 seen the shearer since the explosion. When did you
18 see it?

19 A. Last Thursday.

20 Q. Okay. A week ago yesterday?

21 A. Yes, not yesterday, but ---.

22 Q. Okay. When you saw the shear, who did you travel
23 with?

24 A. Bob Wise, an MSHA inspector.

25 Q. An MSHA inspector, Bob Wise?

1 A. Yes, sir.

2 Q. Okay. Not the former governor?

3 A. Not the former governor.

4 Q. Okay, all right. Was anyone with Mr. Wise and
5 yourself when you ---

6 A. Yes.

7 Q. --- at the shear? Who else was with you?

8 A. Shannon Dickens, a Massey employee, Upper Big
9 Branch employee, ---

10 Q. Okay.

11 A. --- also a maintenance foreman.

12 Q. Okay.

13 A. There were several of us. The job we went to do
14 when we went up there was to set additional roof
15 support for the teams to go on the face.

16 Q. Okay.

17 A. So we had to set support. The shearer had cut out
18 on the tail. We set support around the tail and
19 ranging arm ---

20 Q. Okay.

21 A. --- where the top was exposed between the shield
22 tip and the shearer itself.

23 Q. Okay. I got you. You said earlier that you had
24 never replaced a sensor on this UBB longwall, meaning
25 a methane sensor, I take it. Do you know of anyone

1 else who would've replaced a sensor on this longwall?

2 A. Not on this longwall, no, sir.

3 Q. Okay. Okay. The last night you were working
4 prior to the explosion, would the methane monitor
5 sniffers have been operating during the cutting and
6 welding process that you were involved in?

7 A. Yes.

8 Q. Okay. Is it possible that the cutting and welding
9 smoke could affect the methane sniffers?

10 A. I have no knowledge.

11 Q. Okay. Would you know when the two methane
12 monitors on this longwall at the tail and on the
13 shearer were last calibrated?

14 A. Fortunately, I do. Both the shearer and the tail
15 methane monitors were both calibrated during the
16 previous month by our other maintenance foreman, who
17 is Shannon Dickens, and also an MSHA inspector.

18 Q. Okay. Did you witness this calibration?

19 A. No, sir.

20 Q. Okay. Now, how are you aware of it, then?

21 A. It was recorded in our permissibility books.

22 Q. Okay.

23 A. And also it was knowledge when we had our lap
24 night. It was discussed.

25 Q. Okay. And when was your last lap night?

1 A. I'm not sure ---

2 Q. Okay.

3 A. --- as far as our schedule is when that would've
4 fell.

5 Q. Okay. All right. On your last shift at UBB, what
6 safety procedures did you practice before, during and
7 after the cutting procedure using the tanks and
8 torches?

9 ATTORNEY SEARS:

10 You understand the question?

11 A. Yes. Common practice is we always --- Mr. Hale
12 always had his Solaris. We always took our readings.
13 We always took our readings. There was always a fire
14 extinguisher, rock dust at the area, normally under
15 the head drive in bags. And so we had that there.
16 I'm trying to recall that particular night to make
17 sure --- that is common practice. That particular
18 night, I'm not sure of the exact order of sequence.

19 BY MR. FARLEY:

20 Q. Okay. Now, you indicated that Mr. Hale had his
21 Solaris. What was the actual methane CH₄ reading on
22 the detector?

23 A. Zero.

24 Q. Never got above zero?

25 A. Never.

1 Q. Okay.

2 A. To my knowledge.

3 Q. All right. Are you involved in the transportation
4 of the oxygen acetylene cylinders in and out of the
5 mine?

6 A. No, sir.

7 Q. Okay. Who ordinarily does that or who ordinarily
8 would have done that?

9 A. It would normally --- to my knowledge, we just
10 asked for it. You know, we let them know when we're
11 running low and then we ask for more oxygen, more
12 acetylene. The actual brining in, I'm not really
13 sure.

14 Q. Okay. Do you know if the cylinders would be
15 logged in and out of the mine?

16 A. No idea.

17 Q. Okay. Now, prior to the --- I'm not clear on when
18 you actually started to work at UBB. And I'm clear
19 that you started working with Massey in 1997 and spent
20 a year and a half at Newtown and six months in another
21 business. When did you actually start at UBB?

22 A. The actual date I'm unsure of, but I can tell you
23 an event.

24 Q. Okay.

25 A. I was working at Aracoma when our processing plant

1 burnt.

2 Q. The first time?

3 A. The first time. I believe that was in August,
4 late August ---

5 Q. Okay.

6 A. --- of 2009. And that is the day that I
7 transferred.

8 Q. Okay. Did you have previous longwall experience
9 before you came to UBB?

10 A. Yes, sir.

11 Q. Where did you acquire that experience?

12 A. In 1999 I spent approximately five to six months
13 at the Eagle Energy Mine for Massey, the longwall.
14 '99 through --- the other years prior would be at the
15 Justice Number One Mine, which is now the Revolution
16 Mine. A few years.

17 Q. Okay. Now, you indicated you worked a year and a
18 half at Newtown Energy. Am I correct that Newtown
19 Energy Mine's in the same Eagle seam as the UBB Mine?

20 A. I know that the Kanawha Eagle Mine that I worked
21 in at Eagle Energy was the Eagle seam.

22 Q. Okay. All right. Did they have a longwall at the
23 Kanawha Eagle Mine?

24 A. No, sir.

25 Q. Okay. Do you know if the Newtown Kanawha Eagle

1 Mine ever experienced any methane floor outbursts at
2 any time?

3 A. No idea. No, sir.

4 Q. Okay. You described the longwall ventilation at
5 UBB prior to the explosion on your last shift there as
6 excellent.

7 A. Yes, sir.

8 Q. Now, among the things that we know, you know, like
9 Erik talks, talked about some of the things we know,
10 we know that the pre-shift/on-shift examination book
11 for the UBB longwall in the month preceding the
12 explosion would indicate that the longwall --- the
13 quantity of air passing on the longwall face early in
14 March would've exceeded 100,000 cubic feet per minute.

15 A. Okay.

16 Q. Like, 115,000, roughly. And toward the mid to
17 latter part of the month, it reduced to --- the
18 entries reduced to a level of --- in the range of
19 55,000 to 60,000. Did you personally notice this
20 change and when it occurred?

21 A. No, sir.

22 Q. Okay. Did you get any sense that something had
23 changed at any time?

24 A. Not that I can recall. Like I had expressed
25 prior, there was always great air, excellent air on

1 the face.

2 Q. Okay. All right. As you traveled to the ---
3 excuse me. I'm pointing to some doors that are in the
4 vicinity of the mouth of the longwall, and the last
5 time you passed through those doors, what'd they look
6 like?

7 ATTORNEY SEARS:

8 I'm sorry. The last time as far as
9 before the accident?

10 BY MR. FARLEY:

11 Q. Yes, yes. Prior to the accident on April 5th,
12 what'd those doors look like?

13 A. To my memory, not out of the ordinary.

14 Q. Okay.

15 A. Pressure was correct against the doors to hold
16 them in the position that we found them. They were
17 shut and when we went through, the pressure of the air
18 ---

19 Q. Okay.

20 A. --- kept them shut. Is that your question?

21 Q. Yes. That'll count. Did it appear that the side
22 panel, the portion of the side panel on the door had
23 been left out to allow air to pass through so it might
24 function sort of like a regulator?

25 A. I don't recall if it did. I do not recall that.

1 Q. Okay.

2 ATTORNEY BABINGTON:

3 Would you circle those doors just because

4 they're in kind of a weird spot ---

5 MR. FARLEY:

6 Yeah.

7 ATTORNEY BABINGTON:

8 --- just to clarify. That'd be great.

9 So here's a pink highlighter. If you could circle
10 those doors. And Terry, these doors right here that
11 you're referring to?

12 MR. FARLEY:

13 Yes.

14 ATTORNEY SEARS:

15 Can you have ---

16 A. Can I let ---?

17 ATTORNEY SEARS:

18 --- Terry circle them?

19 A. That's what I was ---.

20 MR. FARLEY:

21 Yeah.

22 A. Can I let you ---?

23 MR. FARLEY:

24 Yeah.

25 ATTORNEY BABINGTON:

1 All right. Probably put your initials,
2 Terry. All right.

3 MR. FARLEY:

4 What's today's date?

5 ATTORNEY BABINGTON:

6 7/23. Thank you.

7 MR. FARLEY:

8 Sure thing.

9 BY MR. FARLEY:

10 Q. During the time you worked at the Upper Big Branch
11 Mine, did you ever work on the Headgate 22 section or
12 the Tailgate 22 section?

13 A. No, sir.

14 Q. Never been there?

15 A. Never been there, no, sir.

16 Q. Okay. Were you ever in the Eight North area of
17 the UBB Mine?

18 A. No, sir.

19 Q. Ever in the vicinity of the Glory Hole?

20 A. No, sir.

21 Q. You was pretty well limited to the longwall?

22 A. Yes, sir.

23 Q. Okay. You indicated you had a mine foreman/fire
24 boss certification. When did you get your mine
25 foreman/fire boss certification?

1 A. June of 2003.

2 MR. FARLEY:

3 Okay. I'm not sure you asked this.

4 BY MR. FARLEY:

5 Q. If I'm repeating this question, beg your pardon,
6 but prior to this interview have you been interviewed
7 by any representatives of Massey Energy, Performance
8 Coal or the Upper Big Branch Mine regarding the Upper
9 Big Branch explosion on April 5th?

10 A. Yes.

11 Q. When did that interview take place?

12 A. I'm not sure of a date.

13 Q. Within the last month?

14 A. No, sir, prior.

15 Q. Okay. Would that put it sometime in April or
16 sometime in May?

17 A. I do not recall.

18 Q. Okay. Who were the persons who interviewed you?

19 A. I do not recall their names.

20 Q. Did they identify themselves as attorneys
21 representing Performance Coal?

22 A. Yes.

23 Q. Okay. And was there one of them, two of them,
24 three of them?

25 A. Normally two. Yes, two.

1 Q. All right. Have you been interviewed more than
2 once by these attorneys?

3 A. Yes.

4 Q. Okay. And you don't recall when the second
5 interview with them took place?

6 A. Within a week after. And it was actually a wrong
7 schedule. They thought they had interviewed --- they
8 had not interviewed me, so I got called in again and
9 it was just, how you doing? I'm doing great. Sorry
10 for the aggravation. You heard anything? No. See
11 you later.

12 Q. Okay. Well, we've scheduled a couple people, ---

13 A. Yes, sir.

14 Q. --- so we understand. All right.

15 ATTORNEY SEARS:

16 Did you let them go as easily, though?

17 BY MR. FARLEY:

18 Q. When you were interviewed by the attorneys
19 regarding this accident, what sort of questions did
20 they ask us?

21 A. Could you be more specific?

22 Q. Did they ask you if you'd ever detected any
23 methane? Did they ask you if --- about methane
24 monitors? Did they ask you about ventilation?

25 A. The only thing they actually wanted to know was

1 what I did the night before and did I notice anything
2 odd? Process approximately was less than 30 minutes.

3 Q. Okay. May we assume that your answer to the other
4 questions about what you observed the night before
5 would be the same as you've told us?

6 A. Exact answers, yes, sir.

7 Q. Okay.

8 ATTORNEY SEARS:

9 Assuming that they asked the exact
10 questions?

11 A. Assuming that they asked the same questions, yes.

12 BY MR. FARLEY:

13 Q. Okay. I know I asked --- I asked about your mine
14 foreman/fire boss certification. At the UBB Mine,
15 have you ever --- did you perform any required
16 examinations such as pre-shift, on-shift or any weekly
17 exams?

18 A. No, sir.

19 Q. Okay. Did you do any electrical exams of
20 equipment, weekly ---

21 A. Yes, sir.

22 Q. --- exams? What'd you normally examine?

23 A. Our third shift maintenance exams included the
24 conveyor motors, which would be Number One and Number
25 Two stage loader motor, the crusher motor, Number One

1 and Number Two head drive motor, the tail drive motor,
2 the shearer and also the Mother Drive and the fire
3 suppression of the Mother Drive.

4 MR. FARLEY:

5 Okay. That's all I have for the moment.

6 RE-EXAMINATION

7 BY MR. SHERER:

8 Q. Okay. I had a few follow-up questions. These
9 doors that you discussed with Mr. Farley, do you
10 recall if any doors were added within the month or so
11 prior to the explosion?

12 A. Time frame, I am not sure of. However, the most
13 outby set of doors had been in place since I had
14 arrived at UBB.

15 Q. Okay, sure.

16 A. The most inby set of doors had been added after I
17 had arrived. The time frame I am not sure of. To use
18 the narrative that Mr. Farley --- it was after
19 Christmas.

20 Q. Okay, sure. Okay. Thank you. Do you recall if
21 there was any crews doing gluing of the roof or the
22 ribs or anything like that near the longwall preceding
23 the explosion?

24 A. In the month prior to the explosion, yes.

25 Q. And did you notice roughly where they were

1 working?

2 A. They had told us when we would see them, like, the
3 night before or the morning before ---

4 Q. Sure.

5 A. --- they told us that they were gluing the
6 pull-out area.

7 Q. Okay. Do you have any knowledge of why they were
8 doing that? Did you anticipate bad roof or ---?

9 A. Not to my knowledge.

10 Q. Okay.

11 A. I have no knowledge.

12 Q. Sure. Sure, uh-huh (yes). When you pull the
13 wall, how long --- first of all, do you put up mesh,
14 mesh on the roof over the shields?

15 A. I personally am not involved in ---.

16 Q. Oh, okay. Strike that.

17 A. Yes, sir.

18 Q. Are you familiar with pyrite?

19 A. Excuse me?

20 Q. Are you familiar with pyrite?

21 A. Pyrite.

22 Q. It's okay if ---.

23 A. I do not know that term.

24 Q. Sulfur balls?

25 A. No, sir.

1 Q. Okay. Thank you. When's the last time you did an
2 escapeway drill off this face?

3 A. I do not recall the date.

4 Q. Okay. Have you done one since Christmas?

5 A. Yes, sir.

6 Q. Okay. Which escapeway did you go out? Do you
7 recall?

8 A. I do not recall.

9 Q. Okay. When's the last time you did a SCSR
10 training drill?

11 A. We had annual retraining. Approximately, it was
12 either --- and again, I'm ---. If I'm not mistaken,
13 it was either the week prior or two weeks prior to the
14 accident.

15 Q. Okay. Did you use the little cartridge to
16 simulate the SCSR breathing?

17 A. Yes, sir.

18 Q. Okay. Do you think that's worthwhile to do?

19 A. Again, this is a speculation, an opinion.

20 Q. Sure. That's what I'm looking for.

21 A. I believe that it demonstrates both the
22 restriction and the heat that you will breathe if you
23 use your --- if you don your SCSR. So yes, it would
24 be worthwhile so I would not be concerned if I donned
25 my SCSR that I was --- maybe had one that was bad

1 or ---

2 Q. Okay.

3 A. --- there was something wrong with the equipment.

4 Q. Okay. Thank you. Did you do the smoke training
5 with the SCSRs?

6 A. I personally did not.

7 Q. Okay. Have you done that?

8 A. Yes, sir.

9 Q. Approximately when did you do that?

10 A. It was during that previous year.

11 MR. SHERER:

12 Okay. Thank you. That's all the
13 questions I've got.

14 RE-EXAMINATION

15 BY MR. FARLEY:

16 Q. One more. I know I'd asked when you acquired your
17 mine foreman/fire boss certificate. Have you attended
18 a mine foreman continuing education class?

19 A. Yes, sir.

20 Q. Okay. When did you do that?

21 A. Speculation. It would be 2009, approximately mid
22 year. It was at Logan County.

23 EXAMINATION

24 BY ATTORNEY BABINGTON:

25 Q. I just have two quick ones. Between the shift

1 before the explosion and last Thursday when you
2 traveled with the team to do roof support of the
3 longwall face, were you underground at any other time?

4 A. Yes, sir.

5 Q. Okay. Why were you underground and when were you
6 underground?

7 A. During that week part of a --- I think on the
8 board at UBB it's listed as a rehab crew. We had
9 transported two electrical boxes outside of the mines
10 from inside of the mines for examination.

11 Q. You said, during that week. Which week was that?

12 A. During --- well, I have a calendar. During the
13 week of the same Thursday that I went underground.
14 Two weeks ago.

15 Q. Okay. Were you involved at all in the rescue and
16 recovery operation?

17 A. No, sir, not underground. I was not, no, sir.

18 Q. But were you involved above ground with the rescue
19 and recovery?

20 A. I was at the mine site.

21 Q. Well, what were your duties? What was your role
22 during the rescue/recovery?

23 A. Myself and Larry Brown are pastors and we were
24 there with the rescue teams and the families.

25 Q. On the shift before the explosion --- I believe

1 the longwall belt's also been referred to as the
2 mother belt?

3 A. Yes, it is.

4 Q. Okay. Did you travel along the mother belt during
5 that last shift?

6 A. No, sir.

7 ATTORNEY BABINGTON:

8 Erik, do you have anything else?

9 MR. SHERER:

10 No.

11 ATTORNEY BABINGTON:

12 Terry?

13 ATTORNEY SEARS:

14 Yeah, I have a question.

15 ATTORNEY BABINGTON:

16 Yes.

17 ATTORNEY SEARS:

18 Clarifying question.

19 EXAMINATION

20 BY ATTORNEY SEARS:

21 Q. Earlier you were asked whether you smelled methane
22 coming out of the floor, something along those lines,
23 and also something along the lines, did you hear
24 hissing? Did methane coming out of the floor cause
25 hissing or cause bubbles in the water? Did you ever

1 know of methane coming out of the floor on the
2 longwall?

3 A. No.

4 Q. Okay. Have you ever heard anyone say that methane
5 was coming out of the floor on the longwall?

6 A. No, sir.

7 ATTORNEY SEARS:

8 Okay. That's all I have. He would like
9 to maintain confidentiality to the fullest extent.

10 ATTORNEY BABINGTON:

11 To the extent provided by law. All
12 right. Yeah.

13 ATTORNEY SEARS:

14 And also to the extent that you would
15 permit it, he would like to have an opportunity to
16 read and sign the statement, the testimony.

17 ATTORNEY BABINGTON:

18 Right. And I believe we have a --- we'll
19 set a procedure once we have those transcripts in
20 order, preparing them for release, so ---.

21 A. I just need a copy of the transcript.

22 ATTORNEY SEARS:

23 Well, what you will do is they'll have a
24 procedure where you'll be able to --- before it's made
25 public you'll be able to read through it, and if you

1 think that anything was taken down incorrectly, you
2 can make those changes. Can't change your answers,
3 but you can --- if you think it was taken down
4 correctly, incorrectly, you can change the answers,
5 and then you'll have to sign it and send it back.

6 A. Yes, sir.

7 ATTORNEY SEARS:

8 Probably 30 days is civil procedure
9 standards, but I don't know what you guys will
10 require.

11 ATTORNEY BABINGTON:

12 Right. I don't think we have a date set
13 up for that, but before release, yes, we'll provide
14 you with an opportunity to review. And just to note
15 that we had a conversation about the confidentiality
16 grants prior to going on the record, and I believe
17 that all the parties understand what the ---
18 understand as much as possible what the timeline would
19 be for that.

20 Okay. I also want to note that we marked
21 one map, which we'll include with the --- as part of
22 the transcript. We note that the witness didn't mark
23 it; it was Terry Farley, to isolate certain doors we
24 were asking questions about. And that'll be marked
25 Chad Neil One.

1 (Chad Neil Exhibit One marked for
2 identification.)

3 ATTORNEY BABINGTON:

4 On behalf of MSHA and the Office of
5 Miner's Health, Safety and Training, I want to thank
6 you for appearing and answering questions today. Your
7 cooperation is very important in the investigation as
8 we work to determine the cause of the accident. We
9 request that you not discuss your testimony with any
10 person aside from a personal representative or
11 Counsel. After questioning other witnesses, we may
12 call you if we have any follow-up questions. If at
13 any time you have additional information regarding the
14 accident that you'd like to provide to us, please
15 contact us or have your representative contact us at
16 the contact information previously provided.

17 If you wish, you may now go back over any
18 answer you've given during this interview and you may
19 also make any statement that you'd like to make at
20 this time.

21 A. No, sir.

22 ATTORNEY BABINGTON:

23 All right. Thank you. And again, I want
24 to thank you for cooperation in this matter. Off the
25 record.

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EXAMINATION CONCLUDED AT 2:32 P.M.

* * * * *

1 STATE OF WEST VIRGINIA)

2)

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4 CERTIFICATE

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

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

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

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



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21
22 *Alicia R. Brant*
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