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**Transcript of the Testimony of Jermey Burghduff**

**Date:** September 2, 2010

**Case:**

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STATEMENT UNDER OATH  
OF  
JERMEY BURGHDUFF

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 and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Thursday, September 2, 2010, beginning at 1:13 p.m.

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## P R O C E E D I N G S

1  
2 -----  
3 ATTORNEY BABINGTON:

4 My name is Matt Babington. Today is  
5 September 2nd, 2010. I'm with the Office of the  
6 Solicitor, U.S. Department of Labor. With me is Erik  
7 Sherer, an accident investigator with the Mine Safety  
8 and Health Administration, MSHA, an agency of the U.S.  
9 Department of Labor. Also present are several people  
10 from the State of West Virginia. I ask that they  
11 state their appearance for the record.

12 MR. FARLEY:

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

15 MR. O'BRIEN:

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

18 ATTORNEY KOERBER:

19 And I'm Barry Koerber, an Assistant  
20 Attorney General assigned to represent the West  
21 Virginia Office of Miners' Health, Safety and  
22 Training.

23 MS. MONFORTON:

24 I'm Celeste Monforton. I'm with the  
25 Governor's independent team.

1 ATTORNEY KOERBER:

2 Would you swear in the witness?

3 -----

4 JERMEY BURGHDUFF, HAVING FIRST BEEN DULY SWORN,

5 TESTIFIED AS FOLLOWS:

6 -----

7 ATTORNEY KOERBER:

8 Sir, would you please state your full

9 name for the record and spell your last name?

10 A. My full name is Jermey Lynn Burghduff. Spelling  
11 is B-U-R-G-H-D-U-F-F.

12 ATTORNEY KOERBER:

13 And would you please state your address

14 and your telephone number?

15 A. My address is (b)(7)(C)

. And my phone

17 number is (b)(7)(C)

18 ATTORNEY KOERBER:

19 And sir, do you have an attorney or

20 personal representative appearing here with you today?

21 A. Yes.

22 ATTORNEY KOERBER:

23 And is it an attorney?

24 A. Yes.

25 ATTORNEY KOERBER:

1 And would you ---

2 A. Yes?

3 ATTORNEY KOERBER:

4 --- point him out?

5 A. John, here.

6 ATTORNEY KOERBER:

7 John, would you please state your name

8 and firm, your name and your firm name for the record?

9 ATTORNEY MCCUSKEY

10 All right. John McCuskey, Shuman,

11 McCuskey & Slicer, Charleston, West Virginia,

12 appearing today for Jermey Burghduff, Burghduff

13 (changes pronunciation).

14 ATTORNEY KOERBER:

15 And Mr. McCuskey, Mr. Burghduff is your

16 client; correct?

17 ATTORNEY MCCUSKEY:

18 He is my client, that's correct.

19 ATTORNEY KOERBER:

20 This is a copy of your subpoena that I'd

21 like to have marked as Exhibit One, showing that you

22 were subpoenaed here today.

23 (Exhibit J. Burghduff One marked for

24 identification.)

25 ATTORNEY KOERBER:

1 And this is a copy of the return, showing  
2 service on the 23rd day of August at 1:51 p.m., which  
3 also has attached to it another copy of your subpoena.  
4 I'd like that marked as Exhibit Two.  
5 (Exhibit J. Burghduff marked for  
6 identification.)

7 ATTORNEY KOERBER:

8 I also see that there's another attorney  
9 present in the room. I would ask that he at this time  
10 state his name and his firm name and who he  
11 represents.

12 ATTORNEY PENCE:

13 Chris Pence, Allen Guthrie & Thomas on  
14 behalf of Performance Coal Company.

15 ATTORNEY MCCUSKEY:

16 Would this be an appropriate time to  
17 identify the other people that are ---

18 ATTORNEY KOERBER:

19 Yeah.

20 ATTORNEY MCCUSKEY:

21 --- present at the hearing?

22 ATTORNEY BABINGTON:

23 Sure. We also have several members from  
24 the State of West Virginia and MSHA in the room.  
25 There's Tom Morley, Steve Connell, Rich Stoltz, David

1 Steffey from MSHA and Bill Tucker from West Virginia  
2 Office of Miners' Health, Safety and Training.

3 ATTORNEY MCCUSKEY:

4 Thank you.

5 ATTORNEY KOERBER:

6 Sir, the statute that authorizes the

7 Director to subpoena witnesses also requires the

8 Director to offer each witness a \$40 a day witness fee

9 plus roundtrip mileage at the rate of 15 cents a mile,

10 so long as you drove in your personal vehicle, and

11 reimbursement for any tolls that you might've passed

12 along the way. In order to receive that money, I have

13 two forms that must be filled out. Would you like to

14 stay after the interview and fill those forms out, or

15 would you prefer to decline?

16 A. I decline.

17 ATTORNEY BABINGTON:

18 Erik Sherer will be conducting initial

19 questioning for the interview today. All members of

20 the Mine Safety and Health Accident Investigation Team

21 and all members of the State of West Virginia Accident

22 Investigation Team participating in the investigation

23 of the Upper Big Branch Mine explosion shall keep

24 confidential all information that is gathered from

25 each witness who provides a statement until the

1 witness statements are officially released. MSHA and  
2 the State of West Virginia shall keep this information  
3 confidential so that other ongoing enforcement  
4 activities are not prejudiced or jeopardized by a  
5 premature release of information. This  
6 confidentiality requirement shall not preclude  
7 investigation team members from sharing information  
8 with each other or with other law enforcement  
9 officials. Team members' participation in this  
10 interview constitutes their agreement to keep this  
11 information confidential.

12 Government investigators and specialists

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

21 You may have your personal attorney

22 present during the taking of this statement or another  
23 personal representative if MSHA has permitted it, and  
24 you may consult with your attorney or representative  
25 at any time. Since this is not an adversarial

1 proceeding, formal Cross Examination will not be  
2 permitted. However, your representative may ask  
3 clarifying questions as appropriate.

4 Your identity and the content of this  
5 conversation will be made public at the conclusion of  
6 the interview process and may be included in the  
7 public report of the accident, unless you request that  
8 your identity remain confidential or your information  
9 would otherwise jeopardize a potential criminal  
10 investigation. If you request us to keep your  
11 identity confidential, we will do so to the extent  
12 permitted by law.

13 That means that if a judge orders us to  
14 reveal your name or if another law requires us to  
15 reveal your name or if we need to reveal your name for  
16 other law enforcement purposes, we may do so. Also,  
17 there may be a need to use the information you provide  
18 to us or other information we may ask you to provide  
19 in the future in other investigations into and  
20 hearings about the explosion. Do you understand?

21 A. Yes.

22 ATTORNEY BABINGTON:

23 Do you have any questions?

24 A. No.

25 ATTORNEY BABINGTON:

1 After the investigation is complete, MSHA  
2 will issue a public report detailing the nature and  
3 cause of the fatalities in the hope that greater  
4 awareness about the causes of accidents can reduce  
5 their occurrence in the future. Information obtained  
6 through witness interviews is frequently included in  
7 these reports. Since we will be interviewing other  
8 individuals, we request that you not discuss your  
9 testimony with any person aside from a personal  
10 representative or counsel.

11 A court reporter will record your  
12 interview. Please speak loudly and clearly. If you  
13 do not understand a question asked, please ask the  
14 interviewer to rephrase it. Please answer each  
15 question as fully as you can, including any  
16 information you've learned from someone else.

17 I'd like to thank you in advance for your  
18 appearance here. We appreciate your assistance in  
19 this investigation. Your cooperation is critical in  
20 making the nation's mines safer.

21 After we've finished asking questions,  
22 you'll have an opportunity to make a statement and  
23 provide us with any other information that you believe  
24 to be important. If at any time after the interview  
25 you recall any additional information that you believe

1       might be useful, please contact any of us or Norman  
2       Page at the contact information provided to you.  
3       Finally, any statements given by miner  
4       witnesses to MSHA are considered to be an exercise of  
5       statutory rights and protected activity under Section  
6       105(c) of the Mine Act.  If you believe any discharge,  
7       discrimination or other adverse action is taken  
8       against you as a result of your cooperation with this  
9       investigation, you're encouraged to immediately  
10      contact MSHA and file a complaint under Section 105(c)  
11      of the Act.  Terry?

12   MR. FARLEY:

13   Mr. Burghduff, on behalf of the Office of  
14   Miners' Health, Safety and Training, I wish to inform  
15   you that the West Virginia State Mine Health and  
16   Safety Regulations also provide protection against  
17   discrimination, specifically West Virginia Code,  
18   Chapter 22A, Article 1, Section 22.  And I'd like to  
19   pass along contact information for the West Virginia  
20   Board of Appeals.

21   The Board is charged with hearing  
22   complaints from miners regarding discrimination, and  
23   should you suffer any problems as a result of this ---  
24   participating in these interviews, please don't  
25   hesitate to contact the board immediately.  And I

1 would caution you that should you need to file a  
2 claim, you need to do so within 30 days of when the  
3 event occurs. Thank you.

4 ATTORNEY BABINGTON:

5 Erik?

6 EXAMINATION

7 BY MR. SHERER:

8 Q. The first thing I want to do is thank you for  
9 coming down here this afternoon, Mr. Burghduff. We  
10 are still investigating this explosion. We've  
11 interviewed over 200 people so far. We've done a  
12 extensive physical investigation of the mine, and  
13 we're still trying to put together a lot of the  
14 pieces. And we would appreciate any way that you  
15 could help us. We're doing that for a couple reasons.  
16 The first one is the families and victims and friends  
17 of the 29 miners deserve some closure. The second  
18 reason is we want to prevent this type of explosion in  
19 the future. Roughly, how many years of mining  
20 experience do you have?

21 A. Roughly around six years.

22 Q. Six years. Has that all been with the Massey  
23 organization?

24 A. No.

25 Q. When did you start working for the Massey

1 organization?

2 A. Massey was about around February 6th or 7th of  
3 '06.

4 Q. Okay. And did you start at Upper Big Branch at  
5 that point in time?

6 A. No, I started at a different mines for Marfork  
7 Coal.

8 Q. Okay. When did you first start working at Upper  
9 Big Branch, just roughly?

10 A. I don't know. I do not know.

11 Q. Okay. Was it in 2009?

12 A. No.

13 Q. Think it was prior to that?

14 A. Yes.

15 Q. Okay. So sometime in 2008?

16 A. No.

17 Q. Okay. Have you been at Upper Big Branch for at  
18 least a year?

19 A. Yes.

20 Q. Okay. That's good enough. What was your position  
21 at Upper Big Branch prior to the explosion?

22 A. Outby foreman.

23 Q. Outby foreman. What sort of State or Federal  
24 certificates do you have, mining certificates?

25 A. Assistant mine foreman card.

1 Q. Okay. Do you have any other certificates?

2 A. My black hat certificate card.

3 Q. Okay. So what did an outby foreman do at Upper  
4 Big Branch?

5 A. Well, there were different jobs that each outby  
6 foreman had.

7 Q. Okay. What did you do?

8 A. I was taking care of pumps behind the wall.

9 Q. Okay. Now, we understand there was quite a bit of  
10 water behind the longwall. Is that what you were  
11 working on?

12 A. Yes.

13 Q. As a outby foreman, did you have a crew of people  
14 that worked for you?

15 A. Yes.

16 Q. Who was in that crew prior to the explosion?

17 A. I had two gentlemen that was with me that day.

18 Q. Who were those, please?

19 A. David Farley and Jason Stanley, ---

20 Q. Okay.

21 A. --- contractors.

22 Q. Contractors. Do you recall which contractor they  
23 worked for?

24 A. I think one of them worked for David Stanley, and  
25 I don't know about the other one.

1 Q. Okay. Were they both black hats?

2 A. One was a black hat, one was a red hat.

3 Q. Okay. Who was the red hat, please?

4 A. Red hat was Jason Stanley.

5 Q. Okay. Now, we understand there was quite a bit of  
6 turnover in people within a couple of months of the  
7 explosion. Had that crew been the same guys working  
8 on that crew during that period of time or had that  
9 changed within a couple months of the explosion?

10 A. Can you rephrase that question?

11 Q. Yes. Had those two gentleman working for you ---  
12 had you had any other people working for you a couple  
13 months prior to the explosion?

14 A. Yes.

15 Q. Who was that, please?

16 A. One was Mike Williams, contractor. And there was  
17 a couple other contractors, but I don't know their  
18 names.

19 Q. Okay. Did they get laid off?

20 A. Yes. Actually, the other ones did, and Mike  
21 Williams was laid off about two weeks prior to this  
22 incident.

23 Q. Okay. Now, did you have authority to direct the  
24 work of those people?

25 A. Yes.

1 Q. Could you hire or fire people?

2 A. No.

3 Q. Okay. Could you requisition supplies?

4 A. What do you mean by requisition?

5 Q. Say you needed a pallet of blocks or a pallet of  
6 rock dust. Could you order that?

7 A. I couldn't order it, no.

8 Q. Could you get it delivered to where you needed it  
9 in the mine?

10 A. No.

11 Q. Okay. How did you get supplies?

12 A. I had to take them back there.

13 Q. Okay. Could you go to the warehouse or wherever  
14 the supplies were at and ask for those supplies?

15 A. No, I didn't have to ask.

16 Q. How did you get supplies?

17 A. I just basically walked back there and grabbed  
18 what I needed.

19 Q. Okay.

20 A. Loaded it up.

21 Q. That'll work. But you couldn't order supplies  
22 from a distributor or anything like that?

23 A. No.

24 Q. Okay. Who did you report to?

25 A. Wayne Persinger, Everett Hager and the mine

1 foreman at that time. I don't know his name.

2 Q. Mr. Foster?

3 A. No. Terry Moore.

4 Q. Terry Moore, okay. Thank you. So you went back  
5 and you worked on pumps, I think you said. Was there  
6 anything else you did?

7 A. I had to run return airways on the tailgate end.

8 Q. Weekly exams?

9 A. Yes.

10 Q. Okay. Did you also do pre-shift exams?

11 A. Yes.

12 Q. Okay. Did you have a methane detector?

13 A. At that time I did.

14 Q. Okay. Do you recall what brand that was?

15 A. Solaris.

16 Q. Solaris. Do you recall the last time it was  
17 calibrated prior to the explosion?

18 A. No, I do not.

19 Q. How did you calibrate that?

20 A. We had a machine up in the office.

21 Q. Okay. Did you bump test that detector?

22 A. At that time, just calibration.

23 Q. What I want to ask you to do, we've got some maps  
24 here, a series of two maps. One goes from the 78  
25 switch to about 95 Break on the tailgate, and the

1 other goes from the 95 Break on out to the Bandytown  
2 fan. If you would, I'd like you to take a marker and  
3 just start where you parked the mantrip and take me  
4 through what you did as far as your examinations and  
5 your pumping duties.

6 A. I mean you want me to ---?

7 Q. You can use one or you can use several.

8 A. No, I was wondering if you wanted me to draw out  
9 the whole route or ---.

10 Q. Well, where'd you normally park your mantrip?

11 A. I parked the mantrip right here (indicating).

12 Q. Okay. Let's just start there.

13 A. There on the track.

14 ATTORNEY BABINGTON:

15 Do you mind labeling ---? The witness is  
16 using an orange highlighter, for the record. Do you  
17 mind labeling that mark as mantrip?

18 A. Yeah.

19 WITNESS COMPLIES

20 A. And then usually once we got off the --- set  
21 around for a couple minutes, talking, like ---. Went  
22 through these --- there was a man door in this right  
23 here where this door was at.

24 BY MR. SHERER:

25 Q. Okay.

1 A. There was a stopping built there. There was a man  
2 door there and we'd go through that, walk down here a  
3 couple breaks.

4 Q. Just draw a line.

5 A. A couple breaks, and then we come over One entry.  
6 And we usually walk up this Number Three entry pretty  
7 much all the way back to 90 Break. Actually, no. We  
8 walked back to roughly around 60 ---.

9 Q. There's a break number there.

10 A. Yeah, we just walked right there. We walked right  
11 here to 66 Break and we cut back over into the track  
12 and we walked that track along the beltline down to 75  
13 Break.

14 Q. Uh-huh (yes).

15 A. And there was a couple of --- couple double doors  
16 that's not located on this map.

17 Q. Can I get you to take another color marker and  
18 mark where those doors are at, please?

19 A. Yeah.

20 ATTORNEY BABINGTON:

21 And here's a blue highlighter to mark the  
22 doors.

23 WITNESS COMPLIES

24 ATTORNEY PENCE:

25 Just put a D.

1 BY MR. SHERER:

2 Q. Yeah.

3 A. And we'd head over --- after that we'd cut over to  
4 Number One. And we walked Number One all the way down  
5 past ---. That's the end of the route there.

6 Q. Okay. Just mark an arrow right down at the very  
7 end of it ---

8 A. Yeah.

9 Q. --- if you would. And we'll get his map out of  
10 your way and you ---.

11 ATTORNEY BABINGTON:

12 One second, Erik. Just for the  
13 record, ---

14 MR. SHERER:

15 Yeah.

16 ATTORNEY BABINGTON:

17 --- the witness marked a mantrip with the  
18 orange highlighter at about the 29 Break on the  
19 Tailgate One North; is that correct?

20 A. Yes.

21 ATTORNEY BABINGTON:

22 Okay. And then with the orange arrows  
23 you marked your travel way down, I guess inby on  
24 Tailgate One. You also marked some blue doors around  
25 75 Break on that same tailgate; is that correct?

1 A. Yes.

2 BY MR. SHERER:

3 Q. Okay. Bet you haven't seen this (indicating)  
4 area in a while.

5 A. No.

6 Q. Okay. If you'd continue in your journey here for  
7 us.

8 A. I'll continue at 95 Break, like on the other map.

9 Q. Okay.

10 A. We continued down Number One entry until we got  
11 down here to this 45 that cuts over from tailgate to  
12 the headgate. And then we jumped over in Number Two  
13 entry, because it was pretty much the clearest and  
14 height-wise ---

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

16 A. --- was the best and stuff. And then we came over  
17 here to ---.

18 Q. This is the headgate?

19 A. Yeah, come over towards --- on that 45 and come  
20 over towards the headgate and go through the doors at  
21 92 Break. Which you got the track, the beltline, all  
22 there in Number Three entry.

23 Q. Uh-huh (yes).

24 A. And once that point, sit around, just discuss what  
25 --- about what we're going to do. And we come down

1 here and check the pumps.

2 Q. Okay. And you're pointing back around 90, 89  
3 Break or so?

4 A. Yeah, between 89, 87 Break is --- we got pumps  
5 sitting different locations right through there.

6 Q. And what type of pumps were those?

7 A. Air pumps. I mean, they're for pumping water, but  
8 they were supplied by air.

9 Q. Air powered pumps?

10 A. Yeah.

11 Q. Roughly how many pumps did you have in there?

12 A. We had seven three-inch pumps and two two-inch  
13 pumps in that area.

14 Q. Okay. Where was that water pumped to? Do you  
15 recall?

16 A. It was pumped down to --- or it was pumped on the  
17 track entry through hoses all the way down to 102 ---

18 Q. Okay.

19 A. --- 101, 102 Break, which dumped out onto the  
20 ground.

21 Q. Okay.

22 A. And that funneled over to Number Four entry and  
23 ran all the way down to 125 Break.

24 ATTORNEY BABINGTON:

25 And just to clarify, these pumps at 89

1 Break, those were on the longwall headgate?

2 A. Yes.

3 BY MR. SHERER:

4 Q. Can I ask you to take another marker and just  
5 roughly circle where those pumps were?

6 ATTORNEY BABINGTON:

7 Here's a green highlighter.

8 A. The pumps was right there. We had one right here,  
9 one on the beltline right here and I put a couple more  
10 right --- one right here.

11 BY MR. SHERER:

12 Q. Okay. And could you just mark pumps somewhere ---

13 A. Yeah.

14 Q. --- around there?

15 A. No problem.

16 Q. Thank you.

17 Q. Okay. So you went basically back around the  
18 longwall on the tailgate of the diagonal, and you went  
19 to a, what I'd call a sump between about 85, 90 Break,  
20 and you had some pumps that you had to maintain up  
21 there. Was there anyplace else you had to maintain  
22 pumps?

23 A. Yes.

24 Q. Where was that, please?

25 A. 100 Break.

1 Q. Okay.

2 A. There was pumps in Number Four entry, right here  
3 at 100 Break ---

4 Q. Uh-huh (yes).

5 A. --- actually between 100 and 101. There was four  
6 three-inch pumps in Number Four entry, and there was  
7 three pumps, three three-inch pumps over here in the  
8 track entry.

9 Q. Okay.

10 A. Right.

11 Q. Okay. And could you mark those green circles,  
12 pumps, also, please?

13 WITNESS COMPLIES

14 BY MR. SHERER:

15 Q. Okay. Were there any more pumps you had to  
16 maintain?

17 A. Yes.

18 Q. Where were those?

19 A. There was another one right down here at 115  
20 Break.

21 Q. Okay.

22 A. No, no, wrong. 118 there was a pump in Number  
23 Four entry.

24 Q. Okay. And were there any more pumps?

25 A. Yes.

1 Q. Could you mark those also, please?

2 A. In 122 Break we had pumps in Number Four ---

3 Q. Okay.

4 A. --- Four entry, like, two three-inch pumps in  
5 Number Four entry of 122 Break. That was like I said.

6 It was three-inch pumps. And on the track entry at  
7 122 we had two two-inch pumps ---

8 Q. Okay.

9 A. --- at that location, too.

10 Q. That's a lot of pumps to maintain.

11 A. Then we had more pumps at --- we had a two-inch  
12 pumps at 125 Break in Number Four entry. And we had  
13 one three-inch pump on the track entry at 125 Break.  
14 And then about 127 Break in Number Two entry we had  
15 some more pumps.

16 Q. Okay.

17 A. We had, like, about two right down through there.

18 Q. Okay.

19 A. And then about --- at 127 Break in Number One  
20 entry we had some more two-inch pumps. Then turbine  
21 pump.

22 Q. Now, we understand there was a channel dug near  
23 that turbine pump to ---

24 A. Yes.

25 Q. --- basically direct the water to it.

1 A. Yes.

2 Q. We also understand that somebody said they built a  
3 bridge and took in there. Do you know where that  
4 bridge was located?

5 A. I know where it's at, but I don't know exact ---  
6 don't know a break number right now.

7 Q. That's okay. Was it near that turbine pump?

8 A. It was a couple of --- about a break and a --- two  
9 breaks back from the turbine pump.

10 Q. Okay.

11 A. And it was in Number Two entry.

12 Q. Okay. Did it go over that channel that was done?

13 A. Yes.

14 Q. Okay.

15 A. And there was also another bridge built on the  
16 track entry a couple breaks back form the turbine  
17 pump.

18 Q. Okay. Now, you said you also did a weekly exam of  
19 this area.

20 A. Yes.

21 Q. Where did you take any air readings during that  
22 weekly exam?

23 A. The regulators.

24 Q. Uh-huh (yes).

25 A. These two regulators here. Number Four entry we

1       took air --- I took air readings. Bandytown fan,  
2       there was three separate entries I had to take air  
3       readings. One was behind the fan. The other one was  
4       in the Number One entry and the other one was over in  
5       Number Two entry.

6       Q. Okay. Now, can I get you to take another marker  
7       and mark exactly where you took your air readings?

8       ATTORNEY BABINGTON:

9       We'll use the blue highlighter for this  
10       one.

11       BY MR. SHERER:

12       Q. Just ---.

13       ATTORNEY MCCUSKEY:

14       Do you want an X or an A or ---?

15       BY MR. SHERER:

16       Q. A circle, an X, whatever is easiest for you.

17       WITNESS COMPLIES

18       BY MR. SHERER:

19       Q. Okay.

20       A. And then I had to take air readings at this  
21       regulator, this one, this one. And we had to take air  
22       readings ---.

23       Q. Okay. Can you mark those down near the fan?

24       WITNESS COMPLIES

25       A. Air readings here, here and here.

1 ATTORNEY BABINGTON:

2 And for the record, witness marked two

3 regulators and another area in the entry, and those

4 are on the 88, 89 Breaks on the longwall headgate.

5 Also, marked three regulators on the three different

6 --- it looks like entries from --- on the crossover

7 between the longwall and --- the longwall headgate and

8 tailgate just inby the setup entries.

9 A. Uh-huh (yes).

10 ATTORNEY BABINGTON:

11 And then another three areas just outby

12 Bandytown fan.

13 BY MR. SHERER:

14 Q. Okay. That's a long area. You guys must've

15 walked, what, two or three miles?

16 A. Every day, five.

17 Q. That's a long way to go. Now, how would you

18 normally do it? You're walking in with your crew.

19 Where would you do the pre-shifts in?

20 A. I'd keep my men in behind me as I was walking in.

21 Q. Okay.

22 A. And then I'd pre-shift as I went up.

23 Q. Okay. Where were the date boards located?

24 A. I had one at 30 Break.

25 Q. Okay. And can I get you to take a marker?

1 A. It's not ---.

2 Q. It's on the other map?

3 A. It's on the other map.

4 Q. Okay.

5 A. I don't remember every ---

6 Q. Well, ---

7 A. --- where every date-up board was.

8 Q. --- just get as close as you can.

9 ATTORNEY BABINGTON:

10 I don't think we've used the green  
11 highlighter on this map yet.

12 MR. SHERER:

13 Actually, we used green for the pumps,  
14 but ---.

15 ATTORNEY BABINGTON:

16 Oh. Want to use the blue one, then?

17 MR. SHERER:

18 We used the blue one for the ---

19 A. Door?

20 MR. SHERER:

21 --- door, yeah.

22 ATTORNEY BABINGTON:

23 All we have left after that is a yellow.

24 MR. SHERER:

25 Do we have pink?

1 ATTORNEY BABINGTON:

2 The pink one's gone.

3 MR. MONFORTON:

4 Just make a box. Use a different symbol.

5 ATTORNEY KOERBER:

6 Here's pink.

7 ATTORNEY BABINGTON:

8 Oh, there it is.

9 MR. SHERER:

10 Okay.

11 ATTORNEY BABINGTON:

12 Okay. We'll use the pink one for the  
13 date boards.

14 MR. SHERER:

15 I've also got a red one.

16 OFF RECORD DISCUSSION

17 BY MR. SHERER:

18 Q. Okay. Now we've got red and orange. Yes. Could  
19 you take the pink marker and mark the date boards?

20 A. One was on the track entry at 30 Break.

21 Q. Uh-huh (yes).

22 A. I had another one right around between, I think,  
23 15 and 20 Break. Another one was right on the track  
24 between 50 and 55. Then I dated up at --- there was  
25 no date board, but dated up on cardboard. They didn't

1 have a date board back there at Seven Break.

2 Q. Okay.

3 A. Then my next date-up board was --- actually we had  
4 one. I moved it to 77 Break in the Number Two entry.

5 Q. Okay.

6 A. Oh, the Number One entry, my bad.

7 ATTORNEY MCCUSKEY:

8 You say it was the Number One?

9 A. Yeah, it was the Number One entry.

10 ATTORNEY MCCUSKEY:

11 Yeah.

12 BY MR. SHERER:

13 Q. Okay. And you want to go on to the next map?

14 A. I had another one right around 85 Break. Not a  
15 date-up board. I dated up on a Kennedy panel that I  
16 set there to --- so I could date up on.

17 Q. Okay.

18 A. I had another one at 100 Break.

19 Q. Uh-huh (yes).

20 A. And then I had another one at 116 and that was on  
21 the track belt entry.

22 Q. Okay.

23 A. Right here (indicating). Now, I did date up on  
24 ribs, rollers, whatever I could find around the pumps,  
25 just wherever I could find in the pumps.

1 Q. Okay, sure.

2 A. And then dated up again at about 115 Break. I  
3 dated up on rollers and stuff, because I had --- since  
4 I checked that pump, I always dated up toward the  
5 pumps.

6 Q. Okay.

7 A. Back here, the next place I date, I had two date  
8 boards. There was a date board here and another one  
9 here ---

10 Q. Okay.

11 A. --- that I dated up on.

12 Q. Okay. Good.

13 ATTORNEY BABINGTON:

14 Just for the record, those last two date  
15 boards are right outby, just outby Bandytown fan.

16 MR. SHERER:

17 Actually, they're just inby the Bandytown  
18 fan.

19 ATTORNEY BABINGTON:

20 Is that right?

21 MR. SHERER:

22 Yeah.

23 ATTORNEY BABINGTON:

24 All right. Thank you, Erik.

25 BY MR. SHERER:

1 Q. Okay. On April the 5th, the day of the explosion,  
2 did you notice anything unusual ---

3 A. No.

4 Q. --- back here? Did you normally call out your  
5 readings?

6 A. No.

7 Q. Did you carry out your readings?

8 A. Yes.

9 Q. Do you have --- I notice they're not in the  
10 examination book. Do you have a copy of those  
11 readings that you carried out with you?

12 A. No, I don't.

13 Q. What happened to it?

14 A. Didn't put it in the book that day.

15 Q. Okay. Did you have --- how were you going to put  
16 it in the book? Did you write it down in a notebook  
17 or anything?

18 A. Yeah, I always write it down on a piece of paper.

19 Q. Okay. Do you still have possession of that piece  
20 of paper?

21 A. No, I don't. No.

22 Q. What'd you do with it?

23 A. Pretty much, probably thrown it away.

24 Q. You threw away the readings on the day of an  
25 explosion?

1 A. I wasn't ---.

2 Q. Okay. Again, do you recall if anything was  
3 unusual as far as airflow?

4 A. No, there was nothing unusual that I noticed.

5 Q. Okay. Do you recall if it was hotter than normal  
6 when you walked back through there?

7 A. No.

8 Q. Do you recall going through the doors and it  
9 seeming to be hotter than normal?

10 A. No.

11 Q. Okay. What did your crew do there that day on  
12 April the 5th?

13 A. They pretty much stayed around these pumps right  
14 here at 87.

15 Q. Okay. Do you recall if the water was at about the  
16 same level that it typically was at or was it higher  
17 or lower?

18 A. It was up that day.

19 Q. Okay. Do you why it was up that day?

20 A. I had a couple pumps down and I was told that One  
21 section and Two section was pumping back behind the  
22 wall.

23 Q. Okay. Do you know if the diesel powered air  
24 compressor had operated all weekend or not?

25 A. No, I do not.

1 Q. Were they operating ---? Did you have air  
2 pressure when you got back to your pumps?

3 A. Yes.

4 Q. Who normally kept up with those compressors that  
5 we think were on the surface near the Bandytown fan?

6 A. Paul Thompson kept track of those generators and  
7 stuff.

8 Q. Okay. Would he normally tell you if there were  
9 some problems with those?

10 A. Yes.

11 Q. Do you recall if you saw him that Monday morning  
12 prior to going underground?

13 A. No. He wasn't there that morning.

14 Q. Did you see him once you got back out of the mine?

15 A. I don't know.

16 Q. Okay. Did anybody mention to you that they were  
17 probably down over the weekend?

18 A. No.

19 Q. Okay. Okay. So your two guys worked on the pumps  
20 at 85 to 90 Break. What did you do? Did you stay  
21 there?

22 A. No.

23 Q. What did you do, then?

24 A. I walked the other pumps, checked out the other  
25 pumps.

1 Q. Okay. Was everything operating correctly that  
2 day?

3 A. On standard, yes.

4 Q. Okay. And what do you mean by on standard?

5 A. We did have some pumps that were down, but those  
6 pumps wasn't really required to have to run.

7 Q. Okay. What normally gave you problems with the  
8 pumps?

9 A. Holes in the discharge, holes in the suction line  
10 or a pump just totally going down.

11 Q. Okay. Would they clog up or something?

12 A. Sometimes they would get rocks and debris in them.

13 Q. Okay. Did you make the air readings at the  
14 Bandytown fan that day?

15 A. No.

16 Q. Okay. When did you normally do that?

17 A. It'd vary on when and what I had for those days.

18 Q. Okay.

19 A. But I would get it done before the end of the  
20 week.

21 Q. Okay. So you did it every seven days, ---

22 A. Yes.

23 Q. --- roughly?

24 A. Yes.

25 Q. Okay. If you did it on a Wednesday in one week,

1 would you do it on a Thursday the next week?

2 A. It varied.

3 Q. Okay. The reason I ask that is it's got to be  
4 done at least every seven days. Weekly don't mean  
5 just sometime during the week. Okay. So you made  
6 your pumps. Did you go down to the Bandytown fan that  
7 day?

8 A. Yes.

9 Q. Did everything appear okay?

10 A. Yes.

11 Q. Okay. Tell us about the stoppings that you guys  
12 had been building back in this area. Do you recall  
13 those?

14 A. There was no stoppings back in --- back behind the  
15 wall that we was building.

16 Q. Okay.

17 A. But 85 Break, 80 Break.

18 Q. Okay. Could you describe what you did out there?

19 A. Just repair stoppings.

20 Q. Okay. Did you build any Kennedy stoppings?

21 A. One.

22 Q. Where was that at?

23 A. Right around the 83 Break.

24 Q. Okay.

25 ATTORNEY BABINGTON:

1 Just to clarify, you're referring to 80,

2 85 Break on the tailgate of the longwall?

3 A. Yes.

4 BY MR. SHERER:

5 Q. Okay. Had you noticed any doors that had been  
6 removed or replaced with stoppings or stoppings that  
7 had been built within a few weeks of the explosion?

8 A. Yes.

9 Q. Where was that at, please?

10 A. These two doors right here were removed.

11 Q. Okay. And you're pointing to the doors shown on  
12 the map between roughly 77 Break and 79 Break?

13 A. Yes.

14 Q. Why were those doors removed?

15 A. I was told to remove them.

16 Q. Okay.

17 ATTORNEY BABINGTON:

18 Sorry, again, but those two doors were on  
19 the headgate of the longwall?

20 A. Yes.

21 BY MR. SHERER:

22 Q. Okay. Who told you to remove those doors?

23 A. Everett Hager.

24 Q. Okay. Was there some particular reason to remove  
25 those doors?

1 A. I don't know.

2 Q. Okay. He just told you?

3 A. Yes.

4 Q. Okay. Was the water starting to build up back in  
5 that area?

6 A. There was water in that area.

7 Q. Okay. Let's talk about the water a bit. How deep  
8 did the water get where these pumps were that you had  
9 to access?

10 A. Can you rephrase that?

11 Q. Yeah. How deep was the water you had to wade  
12 through to get to the pumps?

13 A. That day or prior to that?

14 Q. That day.

15 A. That day you're looking at about 18 inches at the  
16 point where I measured.

17 Q. Okay. Now, what was the maximum depth that your  
18 people had to work in to get to those pumps that day?

19 A. That day?

20 Q. Uh-huh (yes).

21 A. Probably about six to ten inches.

22 Q. Okay. What's the maximum depth they ever had to  
23 work in?

24 A. Thirty-six (36) inches.

25 Q. Thirty-six (36) inches. Did they use their

1 regular boots or did they have waders?

2 A. Waders.

3 Q. How deep would it get on those waders?

4 A. About just a little over a couple inches above  
5 waist.

6 Q. Okay. Were those chest waders?

7 A. Yes.

8 Q. Did any of them ever flood the chest waders?

9 A. Not going in too deep, not going in to flood them,  
10 but there has been times we got water in the waders.

11 Q. Okay. And we understand that one of the gentlemen  
12 that got laid off had some sort of bad skin rash. Do  
13 you recall that?

14 A. Mike Williams.

15 Q. Mike Williams.

16 A. I pulled him from the crew.

17 Q. And why'd you pull him from the crew?

18 A. Because of his rash, his skin irritation he was  
19 having.

20 Q. Okay. Did you report that skin irritation?

21 A. Yes.

22 Q. Okay. So it should be in some of the 7000-1 Forms  
23 that we received.

24 A. I do not know.

25 Q. Okay. Thank you. Get my notes again. Okay. You

1 examined all your pumps and you examined the Bandytown  
2 fan. About what time were you down at the Bandytown  
3 fan, roughly?

4 A. Probably roughly around 11:30 to 12:30.

5 Q. Okay.

6 A. I mean it varied.

7 Q. Okay. So sometime around noon, roughly?

8 A. Yeah, somewhere around there.

9 Q. Okay. Did you notice anything unusual like the  
10 sound of the fan or ---?

11 A. No, there was nothing unusual, just --- I mean it  
12 was loud.

13 Q. Sure, uh-huh (yes). But it sounded about the way  
14 it ---

15 A. Yes.

16 Q. --- normally did? Did you notice any unusual  
17 smells down there?

18 A. No.

19 Q. Okay. Did you smell anything like kerosene ---

20 A. No.

21 Q. --- that day? Okay. Now, your weekly exams, your  
22 air quantities, we took those out of the weekly books.  
23 Do those seem about right?

24 A. That was at Bandytown fan?

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

1 A. Around there? Yes.

2 MR. SHERER:

3 Okay. Let's enter this as an exhibit.

4 Would you mind?

5 ATTORNEY BABINGTON:

6 Uh-huh (yes).

7 (Exhibit J. Burghduff Three marked for  
8 identification.)

9 MR. FARLEY:

10 May we also have copy of that, too,  
11 please?

12 MR. KOERBER:

13 Yes, sir.

14 SHORT BREAK TAKEN

15 BY MR. SHERER:

16 Q. Okay. Mr. Burghduff, all these pumps you  
17 mentioned were air pumps. Were there any electrical  
18 pumps back in this area?

19 A. Three of them but they were not --- they was not  
20 powered up.

21 Q. Okay. Was there power at any point back in this  
22 area?

23 A. No.

24 Q. Okay. Now, can I get you to take the orange  
25 marker and continue --- you left off at about 92 Break

1 --- and just outline the path that you took to the  
2 fan?

3 A. I walked down the belt track entry, which up here  
4 it would be Number Three entry.

5 Q. Uh-huh (yes).

6 A. And then at 122 Break I'd jump over into Number  
7 Two entry, because there was water on the track entry  
8 between 125 and 122, which is actually not indicated  
9 on this map.

10 Q. Uh-huh (yes).

11 A. And then I'd come around to 125 Break and cross  
12 over to back into the track entry and the belt entry  
13 so I could check the 125 pump. I'd come up to 128,  
14 just look for water up through there.

15 Q. Uh-huh (yes).

16 A. And I had to take --- two breaks up at 127 I had  
17 to take a depth reading at that bridge. And then once  
18 I did --- once I was done with that, come back, and  
19 then I'd come back over and go back up Number Two  
20 entry and then check whatever pumps were up in Number  
21 Two. And then I'd continue on into walking up towards  
22 the fan, checking the fan. And I would just walk  
23 around the fan. Did my date-ups. Nothing, like I  
24 said, nothing out of the ordinary on the fans that I  
25 noticed that day. I'd walk back down. I would walk

1 back down over here, about.

2 Q. Yeah.

3 A. That's about 129 Break.

4 Q. Uh-huh (yes).

5 A. I'd walk over there in Number One entry, walk down  
6 Number One entry, check some more pumps down through  
7 there. Ended up walking Number One entry all the way  
8 back down to --- all they way back down here to 90  
9 Break.

10 Q. Okay.

11 A. And then end up --- I walked back in over to 90  
12 Break.

13 Q. Okay.

14 A. And then we'd do a second check on these pumps  
15 here because they was always priority to make sure we  
16 check them a second time around.

17 Q. Okay.

18 A. And then usually by that time it was close to one  
19 o'clock ---

20 Q. Uh-huh (yes).

21 A. --- and we just came back out.

22 Q. Came back out the route you walked in?

23 A. Yeah.

24 Q. Okay. And that's about what you did on April the  
25 5th?

1 A. Yes.

2 Q. Okay. So you picked up your two guys at about one  
3 o'clock and headed out?

4 A. Yes.

5 Q. Okay. And you don't recall anything unusual?

6 A. No, I do not.

7 Q. Okay. How'd you feel that day?

8 A. I felt pretty good.

9 Q. Okay. How long did it take you to walk out of  
10 there?

11 A. Anywhere from about 45 minutes to an hour.

12 Q. Okay. About what time did you get back out to  
13 your mantrip, usually?

14 A. Usually it's between 1:45 and almost two o'clock.

15 Q. Okay. And do you recall about what time you got  
16 back out on April the 5th?

17 A. Outside?

18 Q. Back out to your mantrip?

19 A. Oh, back out --- it was right around, like I said,  
20 between about 1:45 and 2:00.

21 Q. Okay. And then did you head out of the mine?

22 A. No, we sat around for about 20, 30 minutes and ate  
23 lunch ---

24 Q. Okay.

25 A. --- talked a little bit.

1 Q. Okay. What'd you have for lunch that day? Do you  
2 recall?

3 A. I don't know.

4 Q. Okay. When you headed out, did you notice  
5 anything unusual?

6 A. There was only one thing that I noticed that was  
7 different.

8 Q. What was that?

9 A. Fifty-two (52) Break there was just a little roof  
10 fall. A rock fell out and some top fell out between  
11 bolts ---

12 Q. Okay.

13 A. --- at 52 Break, about in between the track entry  
14 and Number Two entry ---

15 Q. Okay.

16 A. --- or yeah, the track entry and Number ---.

17 Q. Okay.

18 A. It's hard to decipher the numbers.

19 Q. Sure. Did you notice any dust or fog or something  
20 somewhere around the 78 switch? Do you recall  
21 anything like that?

22 A. No.

23 Q. Okay. Did you recall any dust or fog on out to  
24 the Ellis switch?

25 A. Yes.

1 Q. Where was that at?

2 A. It was towards --- down Ellis Five belt.

3 Q. Ellis Five belt. Do you know what that dust or  
4 fog was?

5 A. It was dust from them cutting the overcast,  
6 cutting out for overcast and belt head.

7 Q. And that was just inby the Ellis Portal, wasn't  
8 it?

9 A. Yes.

10 Q. What time id you get out of the mine?

11 A. It was just a little bit after 3:00.

12 Q. Three o'clock. Where were you at when the  
13 explosion occurred?

14 A. Thirty (30) to 40 seconds just exiting the portal,  
15 getting ready to wash my boots off.

16 Q. Oh, jeez. And you guys went out the Ellis Portal?

17 A. Yes.

18 Q. What did the explosion --- what do you recall it  
19 looking like or feeling like there at the Ellis  
20 Portal?

21 A. Well, I didn't stand in front of it, but it  
22 basically just looked like a big dust storm coming out  
23 of the portal.

24 Q. Okay. Do you recall roughly how long that dust or  
25 wind came out of the portal?

1 A. No.

2 Q. Okay. Now, the two guys that worked for you, Mr.  
3 Stanley and Mr. Farley, did either one of those have a  
4 multigas detector?

5 A. No.

6 Q. And you left them alone for, it looks like at  
7 least a couple hours.

8 A. Yeah. Actually, yes, I did.

9 Q. Okay. Did you know that they were supposed to  
10 have a multigas detector?

11 A. Well, I was understanding bosses was the only ones  
12 to have them.

13 Q. Okay. Are you familiar with 75.140 --- 75.1714-  
14 2(8)?

15 A. No.

16 Q. It says ---.

17 ATTORNEY MCCUSKEY:

18 Of what, I might add?

19 BY MR. SHERER:

20 Q. Thirty (30) C.F.R. It's a regulation that came  
21 out with the Emergency Evacuation Rule in 2006. It  
22 basically requires crews or individuals to have a  
23 multigas detector. Even people that work along have  
24 to have one.

25 A. I was not aware of that.

1 Q. Okay. Thank you. You might not be able to quote  
2 me on that exact number, because it's been several  
3 years since I wrote that rule.

4 ATTORNEY MCCUSKEY:

5 Well, he said he wasn't aware of it,  
6 whatever it was.

7 MR. SHERER:

8 Okay, sure.

9 BY MR. SHERER:

10 Q. Did you consider the water itself to be a hazard?

11 A. No.

12 Q. Okay. Did somebody instruct you not to consider  
13 the water a hazard?

14 A. No.

15 Q. Okay. So you never put that in your examination  
16 books?

17 A. The water levels were recorded in my examination  
18 book ---

19 Q. Okay.

20 A. --- along with the air readings that I was taking  
21 around those pumps that day.

22 Q. Do you know if anybody ever used explosives back  
23 in this area behind the longwall?

24 A. Yes.

25 Q. Could you describe what that was, please?

1 A. I wasn't there when they did it. I just know that  
2 they did do it.

3 Q. Okay.

4 A. They blasted a trench at 100 to 101 Break.

5 Q. Okay. And I guess that was to encourage the water  
6 to drain?

7 A. Yes.

8 Q. How effective was that?

9 A. I never seen the water up high enough to see that.

10 Q. Oh, okay. Were any of the --- was the water ever  
11 roofed in any of the areas that you examined?

12 A. No.

13 Q. Okay. Was the water level higher on April the 5th  
14 than the level it usually was at?

15 A. Yes, it was up that day.

16 Q. About how far was it up?

17 A. Nine inches at this --- at 87 Break.

18 Q. Okay.

19 A. And it was up at 100 Break.

20 Q. Okay.

21 ATTORNEY BABINGTON:

22 Sorry. Just a quick clarification there.

23 You said it was up nine inches. That's nine inches  
24 more than it was on average or it was at nine inches?

25 A. It was nine inches up from the prior measurement.

1 ATTORNEY BABINGTON:

2 Thank you.

3 BY MR. SHERER:

4 Q. Now, where you took your air measurements --- you  
5 circled several regulators and some open entries, it  
6 looks like --- did you measure the cross sectional  
7 area each time you took your air measurement?

8 A. Now, on the regulators I measured from where the  
9 regulator --- the open end of the regulator. If it  
10 was just two foot by two foot, that's what I measured.  
11 And I took my air readings out of that.

12 Q. Okay.

13 A. Now, the whole entry I measured from one end, top  
14 to bottom and that's where I took my whole reading at.

15 Q. Okay. Did you take the measurements at the same  
16 point every time?

17 A. Yes.

18 Q. Did you measure the cross-sectional area every  
19 time or did you mark that down somewhere?

20 A. Up by the fan it was marked down back here  
21 (indicating), I measured.

22 Q. Okay. What sort of anemometer did you use?

23 A. I do not know the name of it.

24 Q. Was it a mechanical or electronic anemometer?

25 A. Mechanical.

1 Q. Okay. Do you know when that anemometer had last  
2 been calibrated?

3 A. No, I do not.

4 Q. Did it have a correction chart on the anemometer?

5 A. Yes.

6 Q. Did you use those corrections?

7 A. Yes.

8 Q. Okay. Where was the closest phone to where you  
9 guys were working back here?

10 A. There was one at 92 Break at the double doors here  
11 on the track belt entry, another one at 100 Break.

12 Q. Okay.

13 A. There was a phone down by the fan, Bandytown fan  
14 that --- two phones down there that went outside.

15 Q. Were those phones operational?

16 A. Yes.

17 Q. Okay. When was the last time you called out on  
18 those phones?

19 A. Usually they call out to tell them we're up there.

20 Q. Okay.

21 ATTORNEY BABINGTON:

22 And again, just to clarify, those breaks

23 you mentioned, those were all on the longwall  
24 headgate?

25 A. Yes.

1 BY MR. SHERER:

2 Q. Okay. And that should be in the dispatcher's  
3 records?

4 A. I don't know if ---. I don' think they recorded  
5 the time I got up here (indicating).

6 Q. Okay.

7 A. Now, I know they definitely recorded time. My  
8 mantrip stopped at this one, so I don't know if they  
9 recorded it.

10 Q. Okay. When you called out, who did you normally  
11 talk to?

12 A. It varied. There was different people.

13 Q. Okay.

14 A. Whoever's dispatching.

15 Q. Okay. But it was a dispatcher?

16 A. Yes.

17 Q. Okay.

18 MR. FARLEY:

19 Excuse me. Where was the phone, again?

20 A. One was at 92 Break and then another one we had at  
21 100 Break, and then we had two phones going out  
22 towards the Bandytown Portal --- the Bandytown fan.

23 BY MR. SHERER:

24 Q. Okay. Just in general, what were the conditions  
25 like from where the diagonal, or the 45, as you called

1       it --- what were the conditions like inby to the  
2       Bandytown fan?

3       A. You had little rock fall tops, some rib rolls,  
4       water, but nothing that ---. Sometimes spots that you  
5       had to correct, but nothing serious.

6       Q. Okay. So you think it was in pretty decent shape?

7       A. Fairly decent, yes.

8       MR. SHERER:

9       We're currently evaluating whether to try  
10       to put somebody down that fan shaft or not. Do you  
11       know we're blocked on the tailgate and the headgate to  
12       get inby the longwall? Okay. Thank you. That's all  
13       the questions I've got for right now.

14       EXAMINATION

15       BY MR. FARLEY:

16       Q. Jermey, again, thank you for coming today. Where  
17       are you employed now?

18       A. At UBB.

19       Q. Still there?

20       A. Yes.

21       Q. Okay. Ever since April 5th, all along?

22       A. No, they sent me to another mines for three weeks.

23       Q. Okay. And then you went back to UBB?

24       A. Yes.

25       Q. Okay. Now, obviously we know that you worked on

1 April 5th. I'm not sure we asked you what your last  
2 shift prior to April 5th was. When was that?

3 A. Thursday of --- that Thursday prior to that.

4 Q. Okay. You had three days off; is that right?

5 A. Yes, we had a three-day holiday.

6 Q. Okay. Now, your duties in dealing with the pumps  
7 and the water toward Bandytown, how long had that been  
8 your assignment? When did you actually begin that  
9 assignment?

10 A. I switched out with a gentleman about somewhere  
11 around January.

12 Q. January of 2010?

13 A. Yes.

14 Q. Okay. Now, who'd you switch out with?

15 A. I don't know his full name, which all I know is  
16 his nickname, Jaybird.

17 Q. Jaybird.

18 A. I don't know his full name.

19 MR. FARLEY:

20 Did we ever figure out who Jaybird is?

21 MS. MONFORTON:

22 Jason Thomas.

23 MR. FARLEY:

24 Okay. Thank you.

25 BY MR. FARLEY:

1 Q. Now, I know that Erik asked you if you noticed  
2 anything different about your work area on April 5th,  
3 and I think you indicated nothing had changed. Now,  
4 during the three months or so that you had worked in  
5 that area, how had it changed or what had changed  
6 significantly during that period of time?

7 A. You'd have some roof --- some top falling where it  
8 would either fall out between bolts or something like  
9 that that would warrant some jacks being set. Or  
10 bottom would hoove up.

11 Q. Okay. All right. Now, was anybody else  
12 responsible for the pumps and water problems inby the  
13 longwall?

14 A. Not at that time, not at that time. That day, no.

15 Q. Okay. All right. So nobody else on another  
16 shift?

17 A. Not that day, no.

18 Q. What about the week before? Who else might've  
19 been ---?

20 A. No, nobody.

21 Q. Okay. Are you aware of anybody else who might've  
22 examined the area toward the Bandytown fan in the week  
23 or two preceding the explosion other than yourself?

24 A. No, I do not know.

25 Q. Okay. Now, throughout your shift on April 5th,

1 whenever you passed by a phone, did you ever hear it  
2 --- did you ever hear any phone conversations during  
3 the day?

4 A. I mean occasionally you'll hear someone holler on  
5 it, but I didn't hear no conversations.

6 Q. Okay. Now, when you and Mr. Farley and Mr.  
7 Stanley left to go outside --- of course you went back  
8 to the mantrip and had lunch --- once you left that  
9 point and traveled to the portal, did you encounter  
10 anyone else?

11 A. Didn't encounter anybody until Ellis Five head ---

12 Q. Okay.

13 A. --- which was a couple crews that was parking  
14 their jeeps there.

15 Q. Okay. Who do you recall, if you recall?

16 A. That was Ralph Plumley and his crew.

17 Q. Okay.

18 A. I just happened to pick them up because they  
19 needed a ride outside, picked them up and brought them  
20 out.

21 Q. Any conversations with them about anything in  
22 particular?

23 A. No, not that I remember.

24 Q. Okay. I think you identified most of, if not all  
25 of your date boards that you could during --- in your

1 area of assignment. Was there also a date board,  
2 possibly around 102, here at --- back towards  
3 Bandytown?

4 A. No.

5 Q. Okay. Date board? No, I mean right here, right  
6 there, 102.

7 A. No.

8 Q. Okay.

9 A. Like I stated earlier, I usually dated up on  
10 rollers if there was no date board ---

11 Q. Okay.

12 A. --- or some structure.

13 Q. Was there ever a date board in that area at 102?

14 A. Not the whole time I was there, no.

15 Q. Okay.

16 ATTORNEY BABINGTON:

17 Just to clarify, that's 102 on the  
18 longwall headgate?

19 MR. FARLEY:

20 Right; excuse me.

21 BY MR. FARLEY:

22 Q. Since April 5th, the two guys you were working  
23 with that day, Mr. Farley and Mr. Stanley, have you  
24 spoken with them since April the 5th?

25 A. No.

1 Q. Okay. When you arrived on April the 5th, did you  
2 learn or hear of any possible changes in the mine  
3 ventilation that might've occurred the day before or  
4 during the weekend prior to April 5th?

5 A. No.

6 Q. Okay. Now, since April 5th, other than this  
7 interview, have you been interviewed by any other  
8 individuals or organizations about the April 5th  
9 explosion?

10 A. Yes.

11 Q. Who were you interviewed by?

12 A. Two FBI agents one time, and then a MSHA  
13 investigator and the FBI, those two together another  
14 time.

15 Q. Okay. Anyone else?

16 A. That's it. Then Massey's lawyers.

17 Q. Okay. When did you talk to the Massey lawyers?

18 A. I don't know exact dates, but it was at --- when I  
19 was at Cook Mines.

20 Q. Okay. Would that have been within three weeks of  
21 the explosion?

22 A. No, actually it was further than that.

23 Q. Okay. When you said you were at Cook Mine?

24 A. Yeah, I was at Cook ---

25 Q. Yeah.

1 A. --- a different mine.

2 Q. Okay. All right. Now, during your interviews  
3 with these other individuals and organizations, did  
4 you provide any information to them that you haven't  
5 provided to us today that would be of value as far as  
6 our investigation's concerned?

7 A. Just some extra questions they had, I answered. I  
8 mean about maybe methane or --- other than that, it  
9 wasn't really much discussion. I mean two of the  
10 interviews was ---. Some of the interviews, actually,  
11 now that I'm thinking about it, I did have a couple  
12 other talks with an investigator with Massey down at  
13 the office and another one at the main office in  
14 Charleston, investigator.

15 Q. Investigator?

16 A. Yeah.

17 Q. Was this an attorney or some ---?

18 A. A gentleman that Massey hired to investigate.

19 Q. Okay. Any idea who that was?

20 A. I don't remember his name.

21 Q. Okay. Was it possibly Hendricks?

22 A. Yeah. He was just --- he was just asking about  
23 the water, about pumps, stuff like that.

24 Q. Okay. Now, the water here toward Bandytown that  
25 we've discussed today?

1 A. 100 Break in --- yeah, what we've discussed. Yes.

2 Q. Okay. Speaking of methane, during your January  
3 through April 5th assignment in this area from the  
4 tailgate all the way back to Bandytown fan, did you  
5 detect any methane at any time during that period?

6 A. Yes.

7 Q. Okay. How much and where?

8 A. 100 Break. It would vary from .05 to .30.

9 Q. All right. When you say 100 Break, you mean ---?

10 A. Number Four entry at 100 Break.

11 Q. Okay. And that's .05?

12 A. Yeah, .05 to .30, depending on the water level.

13 Q. Okay. Up to 3/10?

14 A. Yeah.

15 Q. Thirty (30) percent; all right.

16 A. All depending on the water level.

17 Q. Did your detector ever alarm at any time ---

18 A. No.

19 Q. --- as you passed through that area? Okay.

20 ATTORNEY BABINGTON:

21 And again, that was 100 Break on the  
22 longwall headgate?

23 A. Yes.

24 BY MR. FARLEY:

25 Q. The phones that you mentioned here in the headgate

1 entries, I think you indicated there was one at  
2 92; ---

3 A. Yes.

4 Q. --- is that right? Were those permissible phones?  
5 What kind of phones were they?

6 A. Mine phones. assuming they were permissible.  
7 They're the same phones that we use throughout the  
8 mines.

9 Q. Okay. Now, During your last shift on April 5th  
10 prior to the explosion, did you place your date and  
11 initials on all the date boards that were provided for  
12 that purpose as you encountered them?

13 A. No. The last date I dated up was right here  
14 (indicating). I didn't date up on any of that down  
15 there, because my men was not proceeding past that  
16 point.

17 Q. Okay. So you did not date --- put your date and  
18 initials inby the location where they were working?

19 A. Yes.

20 Q. Okay.

21 ATTORNEY BABINGTON:

22 And so that was the date board at 89  
23 Break on the longwall headgate?

24 A. No, that was on the rib, our structure right up  
25 through there.

1 ATTORNEY BABINGTON:

2 Okay. Right around ---?

3 A. That day it was on the rib.

4 ATTORNEY BABINGTON:

5 Right around 88 Break, then?

6 A. It was between 85, 88 Break.

7 ATTORNEY BABINGTON:

8 And you didn't date anywhere inby from

9 that location?

10 A. No. I mean I didn't have to pre-shift for those

11 two men since they wasn't going inby that.

12 MR. FARLEY:

13 Okay. All right.

14 EXAMINATION

15 BY MS. MONFORTON:

16 Q. Mr. Burghdoff, I just have a couple of follow-up

17 questions. When did you get your foreman's papers?

18 ATTORNEY MCCUSKEY:

19 He's got it in his wallet.

20 A. Yeah.

21 BY MS. MONFORTON:

22 Q. Okay.

23 A. I hope you don't mind.

24 Q. That'd be good. And can you tell me what the

25 training process you went through to obtain those

1 papers?

2 A. Massey gave us a week-long class for that before  
3 we took the test. The date was 10/10/2008.

4 Q. And I know we've asked a lot of questions here,  
5 and I just want to make sure that you have an  
6 opportunity to answer the questions accurately. On  
7 April 5th, do you have any recollection of telling  
8 anyone that you were not feeling well that day?

9 A. No.

10 Q. You indicated that when Michael Williams was on  
11 your crew, you were aware of the rash that he had  
12 developed and that you reported it. Do you know who  
13 you reported it to?

14 A. It was to Everett Hager.

15 Q. And did you associate his rash with the water that  
16 he was working in?

17 A. Yes.

18 Q. And so would you consider that water a hazard?

19 A. No. I mean as long as you took the precautions to  
20 put waders on or ---.

21 Q. And so when you and your crew came out after  
22 wearing those waders, were you dry?

23 A. Most of the time. Sometimes we had little  
24 pinholes or something like that that was --- we got in  
25 the waders.

1 Q. Okay.

2 A. Which you rub against rock, you create a hole.

3 Q. So would you say that the waders were an accurate  
4 form of personal protection equipment?

5 A. Yes.

6 Q. You indicated that on the headgate between 77 and  
7 79 there were some doors that you were told by Everett  
8 Hager to remove.

9 A. Yes.

10 Q. Do you remember when that was?

11 A. I believe it was a couple --- a week, maybe two  
12 weeks prior to this explosion.

13 Q. Okay. And you indicated that you have talked to a  
14 number of different investigators, both from the FBI,  
15 MSHA and Massey following that explosion. Again, do  
16 you remember speaking to anyone from your crew that  
17 you worked with on April 5th following that explosion?

18 A. Not my crew, no.

19 MS. MONFORTON:

20 No? Okay. All right. No other  
21 questions.

22 ATTORNEY BABINGTON:

23 We're going to take a short break. Then  
24 we'll come back, so five minutes.

25 SHORT BREAK TAKEN

1 ATTORNEY BABINGTON:

2 Erik?

3 RE-EXAMINATION

4 BY MR. SHERER:

5 Q. Okay. I got a few additional questions. Earlier  
6 you said that you took readings on the 5th, but you  
7 didn't put it in the book.

8 A. Yes.

9 Q. Okay. Where did you record the water levels that  
10 you took?

11 A. It was in the book.

12 Q. Okay.

13 A. Along with the methane readings that I took at  
14 around those --- each pump.

15 Q. Okay. Did you take all of the measurements or did  
16 any of your crew take the measurements?

17 A. Occasionally if I was pressed on time, I had them  
18 take measurements.

19 Q. Okay.

20 A. But most of the time I took them.

21 Q. Okay. Were they qualified to take measurements?

22 A. Pretty much, yes.

23 Q. Okay. Do you understand what the definition of  
24 qualified is?

25 A. Not 100 percent. I mean you all's classification

1 of qualified.

2 Q. Okay.

3 A. But I believe they --- to my knowledge, I believe  
4 they was capable of taking measurements.

5 Q. Okay. Now, these date boards you were talking  
6 about, one of them you mentioned was cardboard. What  
7 were most of them made out of?

8 A. Some were mining belt.

9 Q. Okay. Were they hung, like, from a bolt or nailed  
10 to ---?

11 A. Rope --- they was hung, rope hangers.

12 Q. Okay.

13 ATTORNEY MCCUSKEY:

14 Rope hangers.

15 BY MR. SHERER:

16 Q. So the last time you would've dated any of those  
17 would've been the week prior to April the 5th?

18 A. The ones inby 90, 92 Break, inby there, yes.

19 Q. Okay. Do you recall what day you dated those up  
20 the previous week?

21 A. It would've been on that Thursday prior to that.

22 Q. Okay. Now, you mentioned there was one Kennedy  
23 stopping inby the longwall. Were there any others  
24 that you recall?

25 A. You had a couple up by Bandytown fan.

1 Q. Okay. This one you're referring to, can I get you  
2 to mark that on the map?

3 A. Orange fine?

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

5 WITNESS COMPLIES

6 A. Roughly right around 83 Break.

7 BY MR. SHERER:

8 Q. Okay. And can you mark Kennedy by it?

9 WITNESS COMPLIES

10 A. Probably spelling the wrong way.

11 MR. SHERER:

12 Okay. Thank you.

13 ATTORNEY BABINGTON:

14 And that's 83 Break, roughly, on the  
15 longwall tailgate?

16 A. Yes.

17 BY MR. SHERER:

18 Q. When you were coming back out, do you recall if  
19 the longwall was operating or not when you went past  
20 it?

21 A. I could not hear if it was or wasn't.

22 Q. Okay. Did you ever hear if it was operating when  
23 you went past it?

24 A. Occasionally you could hear it.

25 Q. Okay. So you just don't know on April the 5th?

1 A. I didn't hear anything.

2 Q. Okay. Did anybody ever go over their head in the  
3 water?

4 A. No.

5 Q. Okay.

6 A. Not on my shift, no.

7 Q. Okay. Did anybody on any other shift go over  
8 their head?

9 A. Not to my knowledge.

10 Q. Okay. This area around 87 Break or so, which  
11 direction was the air going in on April the 5th?

12 A. All three entries were going towards Bandytown  
13 fan.

14 Q. Okay. About how many total cubic feet a minute  
15 did you have in there?

16 A. Totaled out?

17 Q. Uh-huh (yes).

18 A. I do not know.

19 Q. Okay. Now, you took readings at two regulators  
20 and, it looks like an open entry. What would be a  
21 normal reading in each of those three points?

22 A. I'd have to look at the books to be able to tell  
23 you normal.

24 Q. Okay.

25 A. I don't have ---.

1 OFF RECORD DISCUSSION

2 A. I don't have the book to look, but now I do.

3 MR. SHERER:

4 Okay.

5 ATTORNEY BABINGTON:

6 All right. Just to clarify, we're

7 talking about 87 Break on the longwall headgate; is  
8 that correct?

9 A. Yes. You all wouldn't happen to have a prior map  
10 to this, would you?

11 BY MR. SHERER:

12 Q. We've got ---.

13 A. Because these, all these regulators were labeled a  
14 specific number, because that's what I had them wrote  
15 up as.

16 Q. Okay. As far as I know, this is the only  
17 identifiers that we've got on this map. They may be  
18 numbered on, like, a 1200 map or something, but we  
19 just don't know.

20 OFF RECORD DISCUSSION

21 A. Well, up there that reading's --- it has E.T. 3's.

22 ATTORNEY BABINGTON:

23 Erik, do you want to come back to this?

24 MR. SHERER:

25 Yeah, let's come back. We're going to

1 check and see if we may have a map that at least  
2 labels ---.

3 A. I mean roughly it was right around anywhere from  
4 30 --- I mean totaled out, probably, by indications of  
5 the thing, 50,000 to about 70,000 almost 80,000.

6 BY MR. SHERER:

7 Q. Coming up the headgate side of the longwall?

8 A. Yes.

9 Q. Okay. We're checking right now on whether we can  
10 get another copy of the map that may have those  
11 numbers on it.

12 A. Yeah. Like I said, each one of these is, like,  
13 labeled either T.G. or ---

14 Q. Okay. And ---

15 A. --- T.P.

16 Q. --- we'll come back to that at that point in time,  
17 then, if you don't mind.

18 A. No problem.

19 Q. Okay. Thank you. Now, you indicated that you  
20 parked your mantrip up --- I think it was about 28  
21 Break?

22 A. Yes.

23 Q. Did you ever take it further inby than that?

24 A. When the wall was way back here, right around 70  
25 Break, I brought it in further.

1 Q. Okay. Now, you said you were using a --- I think  
2 you said a Solaris methane detector on April the 5th.  
3 Do you know where that detector wound up?

4 A. As far as --- I handed it to, I believe, lawyers  
5 or investigators that were doing their test on those  
6 detectors.

7 Q. Okay. And those were MSHA investigators or Massey  
8 investigators?

9 A. Just a little bit of everyone. Lawyers were  
10 there, investigators were there, MSHA, State.

11 Q. Okay.

12 A. They was all there when they was testing those  
13 instruments.

14 Q. Okay. How deep of water would you consider a  
15 hazard if you had to go through it?

16 A. I mean he --- probably just a little over ---  
17 getting close to the top of the waders. Within about  
18 three or four inches from the top of the waders would  
19 be about chest deep.

20 Q. Okay. Who taught you to recognize hazards during  
21 examinations? Who trained you to do examinations?

22 A. Basically just, like --- pretty much learned from  
23 stuff that we've encountered and told about. It's  
24 been basically with Gary May, Everett. They've all  
25 said, okay. If you got --- it's been a little bit of

1 everybody.

2 Q. Uh-huh (yes).

3 A. Other bosses up there talk about they'd had a roof  
4 bolt that's loose, or I hear MSHA or investigators  
5 talk about it when they come up to look at our  
6 sections and stuff like that ---

7 Q. Okay.

8 A. --- about stuff they've wrote up, and that informs  
9 me that that needs to be a issue to make sure I look  
10 at in the future.

11 Q. So you didn't have any specific training on the  
12 examinations?

13 A. Just what we had in that 40-hour class and then  
14 that CD that they gave us to study from for roof,  
15 ventilation, stuff that is required to know to take  
16 the test.

17 Q. Okay. And that's your assistant mine foreman's  
18 test.

19 A. Yes.

20 Q. Was it primarily geared toward operating sections  
21 or was it ---?

22 A. Geared towards the overall mines. Ventilation,  
23 roof control, maps.

24 Q. Okay. Did anybody ever travel with you on your  
25 examinations?

1 A. When I first started bossing, I had Vice-President  
2 Jamie Ferguson that was right there.

3 Q. Okay.

4 A. And occasionally I had an inspector or two walk  
5 with me.

6 Q. Okay. Did Mr. Ferguson travel with you on one  
7 examination or several?

8 A. Several.

9 Q. Okay.

10 A. He was right there when I was up on Three section.

11 Q. What did he tell you to record as far as a hazard?  
12 What did he define a hazard as?

13 A. Improper bolt spacing, loose ribs, loose bolt  
14 plates. And you got top, maybe cracks in the top,  
15 stuff like that.

16 Q. Did he ever mention anything about methane?

17 A. He didn't mention it in general, but I mean from  
18 the classes and everything else that's --- I knew ---

19 Q. Okay.

20 A. --- from the beginning that had to be recorded.

21 Q. What level of methane would you record?

22 A. Any level.

23 Q. Okay.

24 A. I mean any level that required to --- I mean,  
25 like, the area when I was fire bossing, if I picked it

1 up, I recorded it in the book.

2 Q. Okay. So if you picked up three-tenths of a  
3 percent, you recorded it?

4 A. Back here (indicating), yes.

5 Q. Okay.

6 A. I recorded it.

7 Q. Okay. What if you --- that's okay. Thank you.

8 Now, you did your own pre-shift as pumper, it sounds  
9 like.

10 A. Yes.

11 Q. And you didn't date up?

12 A. Only pre-shift for my two men. I didn't pre-shift  
13 going up there just to check pumps. I pre-shifted if  
14 my men was going up that way. Before they would enter  
15 the area, I pre-shifted it.

16 Q. Okay. Do you realize that you have to pre-shift  
17 anyplace where the miners normally work or travel?

18 A. Yes.

19 Q. Are you a miner?

20 A. Yes.

21 Q. Pumpers are allowed to do their own pre-shifts,  
22 but they have to do pre-shifts. Did you do your own  
23 pre-shift?

24 A. Yes.

25 Q. Did you date up as you did your own pre-shift?

1 A. Yes.

2 Q. So you dated up --- and you said you didn't date  
3 up past 90 Break that day?

4 A. Yes.

5 Q. Did you date up past 90 Break or did you not date  
6 up past 90 Break?

7 A. As in --- you're talking about that day?

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

9 A. No, I did not.

10 Q. Okay. And why didn't you do it that day?

11 A. Like I said, my men wasn't going up in that area.

12 Q. Okay.

13 A. That's what I was understanding as --- that I  
14 dated up to --- for my men to be able to travel up  
15 through there.

16 Q. Okay. You're required to date up wherever you  
17 travel, too.

18 A. I did not know that.

19 MR. SHERER:

20 Okay. We're still waiting on a gentleman  
21 to come back with that map that may show the  
22 stoppings. Do you have ---?

23 RE-EXAMINATION

24 BY MR. FARLEY:

25 Q. Now, I think we had Mr. Farley and Mr. Stanley and

1       previously we had Mr. Williams, maybe someone else  
2       prior to that part of your regular crew back here with  
3       the water in the Bandytown fan area. This problem  
4       calls for some opinion on your part. Was that an  
5       unpopular assignment for the members of your crew?  
6       Would they have preferred to have worked someplace  
7       else in the mine?

8       A. Yes.

9       Q. Why?

10      A. Huh?

11      Q. Why?

12      A. Each one had his own reason. I mean I didn't ---.  
13      I mean, like, David Farley, he would've rather worked  
14      on the section.

15      Q. But ---.

16      A. I mean ---.

17      Q. I'm sorry. Go ahead.

18      A. They all do. They all prefer to work on the  
19      section.

20      Q. Did they make it clear to you that they would've  
21      preferred to have worked some other --- at some other  
22      location in the mine?

23      A. Occasionally that conversation did arise.

24      MR. FARLEY:

25      Okay. All right. Thank you.

1 RE-EXAMINATION

2 BY MS. MONFORTON:

3 Q. Just one more question. When you were working  
4 ---? When you would travel up the tailgate side with  
5 your crew --- and you indicated you would go up a  
6 particular entry ---

7 A. Yes.

8 Q. --- were the other entries impassable? Is that  
9 reason you'd travel there?

10 A. No. It was just --- I mean entries varied on  
11 different days. I mean ---but it was just basically  
12 the best, clearest entry with the less debris on the  
13 ground and less --- the least amount of heavy top or  
14 ribs problems.

15 Q. Right. You went on the best path.

16 A. Yes.

17 Q. Did you believe that there were other entries that  
18 could be traveled? For example, if the entry you were  
19 normally traveling got blocked, was there another way  
20 out?

21 A. Up to a certain point, yes.

22 Q. Okay. And can you indicate where that point is?

23 A. Eighty-five (85) Break.

24 Q. And what would happen at 85 Break?

25 A. You'd have to --- you was always funneled down

1 into Number One entry.

2 Q. So would it be true to say that in that particular  
3 area there was only one way in and one way out?

4 A. Yes.

5 Q. Okay. And how long did you have to travel, you  
6 and your crew have to travel when there was only one  
7 way in and one way out?

8 A. The whole time I was back there.

9 MS. MONFORTON:

10 Okay. Thank you.

11 RE-EXAMINATION

12 BY MR. SHERER:

13 Q. I got a few more questions if you don't mind. Did  
14 the mantrip ever go inby the longwall?

15 A. No.

16 Q. Okay.

17 A. I was told to keep it outby ---

18 Q. Okay.

19 A. --- the wall.

20 Q. I'm looking at your total fan readings for a  
21 period of approximately one month. The total  
22 variation was approximately 402 cubic feet a minute  
23 for a total air quantity of approximately 400,000  
24 cubic feet per minute. That's less than one-tenth of  
25 one percent variation, using some instruments that

1 actually have five to ten percent error factor. How  
2 did you get it that close?

3 A. It's just what I took. I mean we had --- like I  
4 said, we set ---. The Bandytown fan, we had a set  
5 area that was marked on the rib and took our  
6 measurements. That's what I was getting every time.

7 Q. Okay.

8 A. I mean I'd go up and down, rib to rib,

9 Q. Okay.

10 A. --- and then figure it up. I mean I had to figure  
11 it by hand, but I figured it all up.

12 Q. Okay. Are you aware that data that is not actual  
13 measurements can be detected using statistical  
14 techniques?

15 A. No, no.

16 Q. Okay.

17 A. I did not know that.

18 Q. It's actually quite simple. It's a technique  
19 that's used a lot in research.

20 ATTORNEY BABINGTON:

21 And for the record, Erik, you're basing  
22 these records off --- the measurements off of what  
23 we're going to mark as Exhibit Five?  
24 (Exhibit J. Burghduff Five marked for  
25 identification.)

1 MR. SHERER:

2 Yes.

3 ATTORNEY BABINGTON:

4 The weekly air readings?

5 MR. SHERER:

6 Uh-huh (yes), yes.

7 A. Which month are you basing that off of?

8 ATTORNEY BABINGTON:

9 I believe he's referring to the

10 highlighted ones.

11 MR. SHERER:

12 Yeah, 403/680, 403/605, 403/787, 403/385,

13 which incorporates the dates from February the 16th

14 through March the 10th.

15 ATTORNEY BABINGTON:

16 Terry, anything?

17 MR. FARLEY:

18 Not right now, no.

19 ATTORNEY BABINGTON:

20 Celeste? Okay. Do you mind if we take

21 another quick break? I think that map should almost

22 be ---.

23 ATTORNEY MCCUSKEY:

24 Okay. I mean he's already given what he

25 said were the approximates, anyway ---

1 MR. SHERER:

2 Okay.

3 ATTORNEY MCCUSKEY:

4 --- as I recall. And were you going to  
5 ask for the opportunity to clarify things, too,  
6 because there were a couple points I wanted to ask him  
7 to clarify when you're ready.

8 MR. SHERER:

9 Sure; we can ---.

10 ATTORNEY MCCUSKEY:

11 Can we do that when we come back?

12 MR. SHERER:

13 We can go ahead and do that right now if  
14 you want to.

15 ATTORNEY MCCUSKEY:

16 Okay.

17 MR. SHERER:

18 Yeah.

19 EXAMINATION

20 BY ATTORNEY MCCUSKEY:

21 Q. Yeah, Jermey, if you would, there was several  
22 questions asked to you about Mr. Williams and his skin  
23 conditions that caused you to remove him from the  
24 crew.

25 A. Yes.

1 Q. I understand from talking with you that you have a  
2 little further explanation that might help this ---

3 A. I mean ---.

4 Q. --- group understand ---

5 A. Yes.

6 Q. --- so explain that to them if you would.

7 A. I mean besides the water, he did have a --- he  
8 told me had, like, a skin condition which, including  
9 with the water, would give extra for average ---  
10 probably an average person that has a skin condition  
11 would actually irritate their skin. I mean, like, me  
12 and the other two gentlemen, I've never noticed any  
13 abnormal irritations with us, but he had the skin  
14 condition, which that water just advanced the ---.

15 MS. MONFORTON:

16 Right. And the way the regulations are  
17 written is that if the condition may be related to  
18 work, so that exposure may have been --- that  
19 condition that he developed may've been related to  
20 work, so that's something that had to be reported.

21 A. He had that ---.

22 ATTORNEY MCCUSKEY:

23 That's not what he's saying.

24 A. He had that ---.

25 MS. MONFORTON:

1 Oh, I'm sorry.

2 A. He had that skin condition prior to working in  
3 that water.

4 MS. MONFORTON:

5 Oh, that's your understanding, that he  
6 had the skin ---

7 A. Yes.

8 MS. MONFORTON:

9 --- condition before he worked in the  
10 water?

11 A. Yes.

12 MS. MONFORTON:

13 Okay, okay.

14 MR. FARLEY:

15 Did he tell you that he had issues with

16 (b) (7)(C) ?

17 A. Yes.

18 ATTORNEY MCCUSKEY:

19 Okay. I think that clears it up.

20 MS. MONFORTON:

21 Okay.

22 ATTORNEY MCCUSKEY:

23 And the second point I wanted to ask

24 Jermey to clarify, of course Erik wasn't there when

25 this explosion occurred, and neither was I and the

1 rest of us, but by the grace of God and it sounds like  
2 about five minutes, he isn't dead and 29 of his  
3 friends are. And Erik suggested that they --- that  
4 readings were --- air readings were not put in the  
5 book, intentionally destroyed, because even knowing  
6 there was an explosion. And I would like for Jermey,  
7 if he would, to give a little more of the context of  
8 the readings that are in the book, the readings that  
9 aren't in the book and what was happening between the  
10 time of what you later found out was an explosion and  
11 your readings in the books.

12 A. I mean like I stated, yeah, I didn't record my  
13 pre-shift in the books.

14 MR. SHERER:

15 Yeah, sure.

16 A. I did record all the pump measurements and methane  
17 readings that were in the book. And at that time I  
18 was ---. Once that happened --- I hate to say this.  
19 I mean I ain't going to hate to say it, because I do  
20 say it, is my main concern was getting out there and  
21 helping.

22 MR. SHERER:

23 Sure.

24 A. You can ask --- I don't know if they'd remember.

25 I wanted to go back under that mountain and help them.

1 MR. SHERER:

2 Sure.

3 A. So I mean I admit, I should've recorded those  
4 readings, but I got totally sidetracked. I was more  
5 concerned with ---.

6 MR. SHERER:

7 Sure.

8 A. But I did record the, like I said, the water  
9 readings and that if there was any methane around  
10 those pumps. And by the time I realized, okay, I  
11 forgot this one, it was one or two o'clock in the  
12 morning, two, there was no books there.

13 MR. SHERER:

14 Okay.

15 BY ATTORNEY MCCUSKEY:

16 Q. Explain what happened to the books to the extent  
17 you know.

18 A. Oh, I mean they packed them up and I mean took  
19 them.

20 RE-EXAMINATION

21 BY MR. SHERER:

22 Q. Okay. Did you discuss that with anybody at the  
23 mine?

24 A. No, you all --- you all are the first ones I  
25 discussed that with.

1 MR. SHERER:

2 Okay.

3 A. I was waiting for someone to ask me about that and  
4 that's when I was going to.

5 MR. SHERER:

6 Okay. Thank you.

7 ATTORNEY MCCUSKEY:

8 Okay. That's all I had by way of asking  
9 him for some explanation.

10 MR. SHERER:

11 Okay, sure. Well, it looks like our  
12 colleague that went after the maps didn't find them  
13 readily.

14 A. Okay.

15 MR. SHERER:

16 If it's okay with you guys, why don't we  
17 just bypass that? I think the approximate locations  
18 and such that you've told us is sufficient.

19 A. I mean once he --- once you all do get the map  
20 with the actual EPs or whatever they are labeled, you  
21 will be able to find it in the book ---

22 BY MR. SHERER:

23 Q. Okay

24 A. --- showing each air reading.

25 Q. Okay. So you labeled the EPs of ---?

1 A. Yes, I labeled them the way they were on the map.

2 Q. Okay. Such as T.G. One and L.W. Three?

3 A. Yeah, and I also labeled the entries that ---

4 Q. Okay.

5 A. --- they were in.

6 MR. SHERER:

7 Okay. That should be sufficient. Thank  
8 you, sir.

9 ATTORNEY MCCUSKEY:

10 Okay. Did you still want to take a break  
11 in between or ---

12 MR. SHERER:

13 No, no.

14 ATTORNEY MCCUSKEY:

15 --- we don't?

16 ATTORNEY BABINGTON:

17 Terry, are you good?

18 MR. FARLEY:

19 Yeah.

20 MS. MONFORTON:

21 Yeah, I'm good.

22 ATTORNEY BABINGTON:

23 Okay. All right. Well, we had a couple  
24 documents and a couple maps that we marked up, so  
25 Burghduff One will be a copy of the subpoena,

1       Burghduff Two will be a copy of the return of service  
2       on the subpoena. Burghduff Three will be the map of  
3       the longwall face at 100 scale. Burghduff Four will  
4       be the Bandytown fan map, again at the 100 scale, and  
5       Burghduff Five will be this weekly air readings chart.  
6       ((Exhibit J. Burghduff Four marked for  
7       identification.)

8       ATTORNEY BABINGTON:

9       On behalf of MSHA and the Office of  
10       Miners' Health, Safety and Training I want to thank  
11       you for appearing and answering questions today. Your  
12       cooperation is very important in the investigation as  
13       we work to determine the cause of the accident. We  
14       request that you not discuss your testimony with any  
15       person aside from a personal representative or  
16       counsel. After questioning other witnesses, we may  
17       call you if we have any follow-up questions.

18       If at any time you have additional  
19       information regarding the accident that you'd like to  
20       provide to us, please contact us at the contact  
21       information previously provided. If you wish, you may  
22       now go back over any answer you've given during this  
23       interview, and you may also make any statement that  
24       you'd like to make at this time.

25       A. I don't have any additional information.

1 ATTORNEY BABINGTON:

2 Okay. And the maps just showed up.

3 Erik, do ---?

4 MR. SHERER:

5 That's okay.

6 ATTORNEY BABINGTON:

7 Okay. So we'll bypass that. All right.

8 Well, thank you, and again, I want to thank you for  
9 your cooperation in this matter.

10 ATTORNEY MCUSKEY:

11 And may I make my request on ---

12 MS. MONFORTON:

13 Yes.

14 ATTORNEY MCCUSKEY:

15 --- behalf of Jermey for a copy of the  
16 transcript as soon as it's available?

17 MR. SHERER:

18 Sure.

19 ATTORNEY BABINGTON:

20 Yeah. Right. Okay. Duly noted.

21 ATTORNEY MCCUSKEY:

22 You do want that; right?

23 A. Yes.

24 ATTORNEY BABINGTON:

25 Okay. Thank you. Off the record.

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STATEMENT UNDER OATH CONCLUDED AT 3:12 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*