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**Transcript of the Testimony of **Danny Acord****

**Date:** September 9, 2010

**Case:**

**Printed On:** September 14, 2010

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Phone: 814-536-8908

Fax: 814-536-4968

Email: [schedule@sargents.com](mailto:schedule@sargents.com)

Internet: [www.sargents.com](http://www.sargents.com)

CONFIDENTIAL STATEMENT UNDER OATH  
OF  
DANNY ACORD

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 9, 2010, beginning at 1:00 p.m.

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25

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

BARRY KOERBER, ESQUIRE  
West Virginia Office of Miners' Health,  
Safety and Training  
1615 Washington Street East  
Charleston, WV 25311

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

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

2

3   TERRY FARLEY

4   West Virginia Office of Miners' Health,

5   Safety and Training

6   1615 Washington Street East

7   Charleston, WV 25311

8

9   ERIK SHERER

10   Mine Safety and Health Administration

11   1100 Wilson Boulevard

12   Arlington, VA 22209-3939

13

14   PATRICK C. MCGINLEY

15   West Virginia Independent Investigation

16   West Virginia University College of Law

17   P.O. Box 6130

18   Morgantown, WV 26506-6130

19

20   DAVID J. HARDY, ESQUIRE

21   Allen, Guthrie & Thomas, PLLC

22   500 Lee Street, East

23   Suite 800

24   Charleston, WV 25301

25           COUNSEL FOR PERFORMANCE COAL

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

2

3   CHRISTOPHER J. SEARS, ESQUIRE  
4   Shuman, McCuskey & Slicer, PLLC  
5   1411 Virginia Street East  
6   Suite 200 (25301)  
7   P.O. Box 3953  
8   Charleston, WV 25339

9           COUNSEL FOR DANNY ACORD

10

11   TIMOTHY R. WATKINS  
12   ADM/Assistant Lead Accident Investigator  
13   U.S. Department of Labor  
14   Mine Safety and Health Administration  
15   Coal Mine Safety and Health, District 6  
16   1301 Airport Road  
17   Beaver, WV 25813

18

19   J. DAVITT MCATEER, ESQUIRE  
20   West Virginia Independent Investigation  
21   132 West German Street  
22   P.O. Box 1050  
23   Shepherdstown, WV 25443

24

25

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

2

3     DAVID STEFFEY

4     National Mine Safety and Health Academy

5     1301 Airport Road

6     Room C-137

7     Beaver, WV 25813-9426

8

9     THOMAS MORLEY

10    Mine Safety and Health Administration

11    765 Technology Drive

12    Triadelphia, WV 26059

13

14    RICHARD T. STOLTZ

15    Mine Safety and Health Administration

16    Pittsburgh Safety and Health Technology Center

17    Ventilation Division

18    Cochrans Mill Road

19    P.O. Box 18233

20    Pittsburgh, PA 15236

21

22    NORMAN G. PAGE

23    Miner Safety Health Administration

24    100 Fae Ramsey Lane

25    Pikeville, KY 41501

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CLOSING STATEMENT

By Attorney Hampton

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CERTIFICATE

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EXHIBIT PAGE

PAGE

NUMBER	DESCRIPTION	IDENTIFIED
One	Subpoena	11*
Two	Return Receipt Card	12*

\* Exhibit not attached

P R O C E E D I N G S

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ATTORNEY HAMPTON:

My name is Pollyanna Hampton. Today is September 9th, 2010 and I am with the Office of the Solicitor, U.S. Department of Labor. With me here is Erik Sherer. He is an accident investigator with the Mine Safety and Health Administration, MSHA, which is an agency of the United States Department of Labor. And also present here are several people from the State of West Virginia, and I ask that they now 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 KOERBER:

Barry Koerber, Assistant Attorney General assigned to represent the West Virginia Office of Miners' Health, Safety and Training.

MR. MCGINLEY:

I'm Pat McGinley. I'm with the Governor's special investigation team, independent

1 investigation team.

2 ATTORNEY KOERBER:

3 Would you swear in the witness please?

4 -----

5 DANNY ACORD, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
6 AS FOLLOWS:

7 -----

8 ATTORNEY KOERBER:

9 Sir, would you please state your full

10 name for the record and spell your last name?

11 A. Danny Lee Acord, II. Last name is A-C-O-R-D.

12 ATTORNEY KOERBER:

13 And would you please state your address

14 and telephone number?

15 A. Address is (b) (7)(C)

16 (b) (7)(C) Telephone number's (b) (7)(C)

17 ATTORNEY KOERBER:

18 And Mr. Acord, do you have an attorney

19 appearing here with you today?

20 A. Yes, sir.

21 ATTORNEY KOERBER:

22 And who is that attorney?

23 A. Chris Sears.

24 ATTORNEY KOERBER:

25 Okay. Mr. Sears, would you identify

1           yourself and your firm for the record?

2   ATTORNEY SEARS:

3   Christopher Sears with the law firm of

4           Shuman, McCuskey & Slicer.

5   ATTORNEY KOERBER:

6   And Mr. Sears, is Mr. Acord your client?

7   ATTORNEY SEARS:

8   Yes.

9   ATTORNEY KOERBER:

10   Okay. And I see we have another attorney

11           in the room. I would ask that he state his name, firm

12           and client on the record.

13   ATTORNEY HARDY:

14   Yes, sir. David J. Hardy, Allen Guthrie

15           and Thomas. My Client is Performance Coal.

16   ATTORNEY KOERBER:

17   Mr. Acord, are you appearing here today

18           as a result of receiving a subpoena?

19           A. Yes.

20   ATTORNEY KOERBER:

21   This is a copy of that subpoena. Feel

22           free to take a look at that, but I'd like that marked

23           as Exhibit One.

24           (Exhibit D. Acord One marked for

25           identification.)

1 ATTORNEY KOERBER:

2 Does that look like the one you got?

3 A. Yes.

4 ATTORNEY KOERBER:

5 Okay. And this is a copy of the return

6 receipt card, signed by a (b) (7)(C) on 9/2/10, and

7 I'd like that to be marked as Exhibit Two.

8 (Exhibit D. Acord Two marked for

9 identification.)

10 ATTORNEY KOERBER:

11 Mr. Acord, the statute that authorizes

12 the Director to subpoena witnesses to interviews such

13 as this requires the Director to offer to each witness

14 subpoenaed a \$40 per day witness fee plus roundtrip

15 mileage at the rate of 15 cents a mile, so long as you

16 drove in your personal vehicle, plus reimbursement for

17 any tolls that you may have passed on the way here and

18 on the way back. In order to receive that money,

19 there's two forms that need to be filled out, one of

20 which is an IRS Form W-9, which requires you to give

21 me your Social Security number, because it's my

22 understanding the witness fee is considered income,

23 and you will receive a 1099 Miscellaneous at some

24 later date.

25 If you'd like to receive that money, I

1 have forms that you can fill out at the end of the  
2 hearing. If you choose not to fill out the forms,  
3 then of course you can't get the money. What would  
4 your decision be?

5 A. I'll decline.

6 ATTORNEY KOERBER:

7 Thank you.

8 ATTORNEY HAMPTON:

9 Okay. All members of the Mine Safety and  
10 Health Accident Investigation Team and all members of  
11 the State of West Virginia Accident Investigation Team  
12 participating in the investigation of the Upper Big  
13 Branch Mine explosion shall keep confidential all  
14 information that is gathered from each witness who  
15 provides a statement until the witness statements are  
16 officially released. MSHA and the State of West  
17 Virginia shall keep this information confidential so  
18 that other ongoing enforcement activities are not  
19 jeopardized or prejudiced by a premature release of  
20 information. This confidentiality requirement shall  
21 not preclude investigation team members from sharing  
22 information with each other or with other law  
23 enforcement officials. The team members'  
24 participation in this interview constitutes their  
25 agreement to keep this information confidential.

1 Government investigators and specialists  
2 have been assigned to investigate the causes,  
3 conditions, events and circumstances surrounding the  
4 fatalities that occurred at the Upper Big Branch Mine-  
5 South on April 5th, 2010. The investigation is being  
6 conducted by MSHA under Section 103(a) of the Federal  
7 Mine Safety and Health Act and the West Virginia  
8 Office of Miners' Health, Safety and Training. We  
9 appreciate your assistance in this investigation.

10 You may have a personal attorney present  
11 during the taking of this statement or another  
12 personal representative if MSHA has permitted it, and  
13 you may consult with this person at any point. Since  
14 this is not an adversarial proceeding, formal Cross  
15 Examination will not be permitted. However, your  
16 personal legal representative may ask clarifying  
17 questions as appropriate.

18 Your identity and the content of this  
19 conversation will be made public at the conclusion of  
20 the interview process and may be included in the  
21 public report of the accident, unless you request that  
22 your identity remain confidential or your information  
23 would otherwise jeopardize a potential criminal  
24 investigation. If you do request us to keep your  
25 identity confidential, we can only do so to the extent

1 permitted by the law.

2 That means that if a judge orders us to  
3 reveal your name or if another law requires us to  
4 reveal your name or if there's another need to reveal  
5 your name for any other law enforcement purpose, we  
6 may do so. Also, this is a statement coming only from  
7 the Federal side, and the State has their own FOIA  
8 concerns and their own rules regarding what they can  
9 hold in confidentiality and what they cannot.

10 Also, there may be a need to use the  
11 information you provide to us or other information we  
12 may ask you to provide in the future about  
13 investigations into or other hearings about the  
14 explosion. Do you understand?

15 A. Yes.

16 ATTORNEY HAMPTON:

17 Do you have any questions about that?

18 A. No, ma'am.

19 ATTORNEY HAMPTON:

20 After the investigation is complete, MSHA  
21 will issue a public report detailing the nature and  
22 causes of the fatalities in the hope that the greater  
23 awareness about the causes of accidents can reduce  
24 their occurrence in the future. Information obtained  
25 through witness interviews is frequently included in

1       these reports.  Since we are going to be interviewing  
2       other individuals, we do request that you not discuss  
3       your testimony with any other person other than with a  
4       personal attorney.

5   As you can see, we have a court reporter  
6       here.  She is recording your interview, so please do  
7       speak loudly and clearly, and if you don't understand  
8       a question, please ask that person to rephrase it.  
9       Please answer each question as fully as you can,  
10       including providing any information you might have  
11       learned from somebody else.

12   We'd like to thank you in advance for  
13       your appearance here.  We do appreciate your  
14       assistance in this investigation.  Your cooperation is  
15       critical in making the nation's mines safer.

16   After we have finished asking questions,  
17       you'll then have an opportunity to make a statement  
18       and provide us with any other information that you  
19       believe to be important.  If at any time after the  
20       interview you recall additional information that you  
21       believe might be useful, please contact us or have  
22       your attorney contact us at the information provided  
23       to you in the letter that I handed you before we  
24       started the interview.  Norman Page is the team leader  
25       for the Federal Accident Investigation Team, and he

1       can be contacted through that information.  
2    Any statements given by miner witnesses  
3       to MSHA are considered to be an exercise of statutory  
4       rights and protected activity under Section 105(c) of  
5       the Mine Act.  If you believe any discharge,  
6       discrimination, other --- or other adverse action is  
7       taken against you as a result of your cooperation with  
8       this investigation, you may contact MSHA and file a  
9       complaint under Section 105(c) of the Act.  Okay.

10   MR. FARLEY:

11   Mr. Acord, on behalf of the Office of  
12       Miners' Health, Safety and Training, I'd like to  
13       inform you that the West Virginia Mine Safety  
14       Regulations, specifically West Virginia Code, Chapter  
15       22A, Article 1, Section 22, provides protection to  
16       miners for --- against potential discrimination for  
17       participating in these type interviews.  I'd like to  
18       pass along some contact information for the West  
19       Virginia Board of Appeals.

20   The Board is charged with hearing  
21       complaints from miners concerning discrimination.  
22       Should you have any problems, you should contact the  
23       board immediately.  I would caution you that should  
24       you file a --- need to file a claim, you need to do so  
25       within 30 days of whenever the event occurs.  Thank

1           you.

2       MR. SHERER:

3       Okay.

4           EXAMINATION

5       BY MR. SHERER:

6       Q. Thank you for coming down here this afternoon, Mr.  
7       Acord. Your input is critical to help this  
8       investigation. We're doing this for two primary  
9       purposes. First is that the family and the friends  
10      and the coworkers of the victims deserve some answers.  
11      The second reason we're doing it is to try to prevent  
12      this type of explosion from ever occurring again. So  
13      any information you share with us is greatly  
14      appreciated. Roughly, how many years of mining  
15      experience do you have?

16      A. Zero years of mining experience.

17      Q. Okay. When did you start working with the Massey  
18      organization?

19      A. July 19th of 2005.

20      Q. 2005. What was your position prior to the  
21      explosion?

22      A. AutoCAD technician.

23      Q. AutoCAD technician. What organization did you  
24      work for?

25      A. Oh, we called ourselves Route 3 Engineering.

1 Q. Okay. Did you ever have an occasion to go  
2 underground at Upper Big Branch?

3 A. Yes, sir.

4 Q. Okay. When was the last time you did that prior  
5 to the explosion?

6 A. That's several years ago. I can't recall the  
7 date.

8 Q. Okay. So it's been quite a while?

9 A. Yes.

10 Q. Okay. Was that the only position you've had at  
11 Route 3 Engineering?

12 A. Yes.

13 Q. What's your educational background?

14 A I have a two-year Associate's Degree in drafting  
15 and design from West Virginia Tech. I have a  
16 Bachelor's in mining engineering from Bluefield State.

17 Q. Okay. Who was your supervisor?

18 A. I would say Matthew Walker.

19 Q. Matthew Walker; okay. Did you have anybody that  
20 reported to you?

21 A. No, sir.

22 Q. Okay. Were you hourly or salary?

23 A. Salary with the option of overtime.

24 Q. Okay. You ever heard that described as salary,  
25 non-exempt?

1 A. I've heard it described that, but I've always  
2 considered myself hourly.

3 Q. Okay. That's reasonable. As an AutoCAD  
4 technician, what was your typical duties?

5 A. Any corrections from the mines, any mark-ups that  
6 came from mine management, whatever was really  
7 requested.

8 Q. Okay. And you primarily work on the maps?

9 A. Yes.

10 Q. Okay. Did you work on any other plans?

11 A. No, maps only.

12 Q. Okay. Who directed you to prepare those maps?

13 A. Either mine management or a mine engineer.

14 Q. Okay. Who specifically did you work with?

15 A. A list of people.

16 Q. Who was on that list, please?

17 A. Well, I know anybody above me in seniority.

18 Q. Okay. Who's above you in seniority?

19 A. Oh, what exactly ---? I mean, I don't understand  
20 what you're asking.

21 Q. I'm just asking who did you work with at the mine?  
22 Who did you interface with?

23 A. Anybody, superintendents, mine foremen, company  
24 presidents, mining engineers.

25 Q. Okay. And who were some of those people?

1 A. I mean they've changed. Chris Blanchard, Jason  
2 Whitehead, various superintendents. I can't really  
3 recall their names.

4 Q. Okay. Would Wayne Persinger ---?

5 A. Yes.

6 Q. Is he one of the people you've interfaced with?

7 A. Towards the end he was relocated back to my area.

8 Q. Okay. What about Jamie Ferguson?

9 A. I had limited interaction with him.

10 Q. Okay. Did you work with Everett Hager any?

11 A. Limited reaction (sic) with him.

12 Q. Okay. How about Gary May?

13 A. Little to none.

14 Q. Okay. Rick Foster?

15 A. Little to none.

16 Q. Who was the engineers you worked with?

17 A. Eric Lilly.

18 Q. Okay.

19 A. Heath Lilly or Matt Walker.

20 Q. Okay. Thank you. Did you ever meet with anybody  
21 from MSHA's District 4?

22 A. No, sir.

23 Q. Okay. Are you a professional engineer or  
24 professional land surveyor?

25 A. No, sir.

1 Q. Are you in engineering training or land surveying  
2 training?

3 A. No, sir.

4 Q. Okay. Do you have any Federal or State mining  
5 certificates?

6 A. No, sir.

7 Q. Okay. What was the management structure at Route  
8 3?

9 A. I really don't know how you would describe it.

10 Q. Who was the most senior person?

11 A. Matt Walker.

12 Q. Matt Walker. What was his title?

13 A. Mine engineer.

14 Q. Mine engineer. Who worked for him?

15 A. Various people in the office, surveyors, CAD  
16 technicians.

17 Q. Okay. Who was Raymond Brainard?

18 A. He was one of the P.E. engineers we had at the  
19 office.

20 Q. Okay. Did he work for Mr. Walker?

21 A. No, sir.

22 Q. Who did he work for?

23 A. I'm not for sure who his boss was, but he worked  
24 in the tax department division.

25 Q. Okay. Who was Paul McCombs?

1 A. He was the chief engineer of permitting.

2 Q. Chief engineer of permitting. Did he work for Mr.  
3 Walker?

4 A. No, sir.

5 Q. So who was over Mr. Brainard, Mr. McCombs and Mr.  
6 Walker?

7 A. I don't know who their supervisor would be.

8 Q. Okay. What training have you received from Route  
9 3 since you've been employed there?

10 A. My initial --- Massey initial --- the MIT  
11 training. It's Massey's in-house training for new  
12 hires.

13 Q. Okay. When did you receive that?

14 A. Probably five years ago.

15 Q. Okay. Have you received anything since then?

16 A. My annual retraining.

17 Q. Annual retraining. Is that an eight-hour class?

18 A. Okay. When was the last time you did any SCSR  
19 training?

20 A. Annual retraining.

21 Q. Annual retraining. When was the last time you  
22 were underground?

23 A. I can't recall the date. It's been several years.

24 Q. Okay. Are you responsible for the mapping of any  
25 other mines than UBB?

1 A. Yes, sir.

2 Q. What mines were those?

3 A. Any mines operating Marfork, Elk Run or  
4 Performance Coal.

5 Q. How many mines would that include, roughly?

6 A. About 17 to 20.

7 Q. So that's a lot of mines. Did anybody else ---?

8 ATTORNEY SEARS:

9 I'm sorry. Was that a question? I  
10 didn't hear a response.

11 MR. SHERER:

12 I didn't ask for a response. That was a  
13 comment.

14 ATTORNEY SEARS:

15 Okay. All right. I just --- I'm not  
16 watching, so I don't know ---

17 MR. SHERER:

18 Okay.

19 ATTORNEY SEARS:

20 --- if he responded or not.

21 MR. SHERER:

22 Okay. Sure, sure.

23 BY MR. SHERER:

24 Q. Did anybody else prepare maps for those 17 mines  
25 or so?

1 A. Yes, sir.

2 Q. Okay. Do you have any other areas of  
3 responsibility?

4 A. No, sir.

5 Q. Okay. And you did the mine posting?

6 A. I don't understand what you're asking.

7 Q. Did you update the maps as the mining developed?

8 A. No, sir.

9 Q. Who did that?

10 A. It would be one of the survey coordinators in the  
11 office.

12 Q. Okay. What exactly did you do as far as the mine  
13 maps?

14 A. Any changes that were sent down from mine  
15 management, we would send them a map, they would mark  
16 it up, we would update our maps.

17 Q. Okay. So and did you work with the surveyors to  
18 add new developments to the maps?

19 A. No, sir.

20 Q. So you got all the information from mine  
21 management?

22 A. Yes, sir.

23 Q. Who in mine management?

24 A. Various people, superintendents, mine foreman,  
25 company president.

1 Q. Okay. And these were primarily hand markings on  
2 the maps that you sent them?

3 A. Yes, sir.

4 Q. Okay. Did that include the location of the mine  
5 entries?

6 A. Yes, sir.

7 Q. And you did that from the hand markups?

8 A. The location of the mine entries would've been  
9 obtained by the surveyors.

10 Q. Okay.

11 A. And the information would've been entered by the  
12 survey coordinators.

13 Q. Okay. So what information did you put on the maps  
14 that was not put on by the survey coordinators?

15 A. Any ventilation controls.

16 Q. Okay.

17 A. That sort of thing.

18 Q. Did you ever go underground to verify the location  
19 of those ventilation controls?

20 A. No, sir.

21 Q. Who was responsible for verifying the location and  
22 type of ventilation controls?

23 A. No, I'm not for sure. It wasn't my  
24 responsibility.

25 Q. Okay. Did you ever receive a map back that you

1 prepared, asking for corrections or changes to the  
2 ventilation control locations or types?

3 A. Yes, sir.

4 Q. Was that common?

5 A. Yes, sir.

6 Q. Okay. Thank you. Who did you receive those maps  
7 back from?

8 A. Various people, mine management, company  
9 president, superintendents.

10 Q. Okay. And would that include the list that we  
11 discussed earlier?

12 A. It may.

13 Q. It may. Okay. Did Chris Blanchard ever send you  
14 a map back?

15 A. No, sir.

16 Q. Okay. Did Jason Whitehead ever send you a map  
17 back?

18 A. No, sir.

19 Q. Everett Hager?

20 A. Not that I can recall.

21 Q. Wayne Persinger?

22 A. Not that I can recall.

23 Q. Gary May?

24 A. Possible.

25 Q. Okay. Eric Lilly?

1 A. Yes, sir.

2 Q. Thank you. Who was responsible for exploration  
3 and geologic evaluation at UBB?

4 A. I wouldn't know.

5 Q. Okay. Who were the surveyors associated with UBB?

6 A. We had a long list of surveyors.

7 Q. Okay. For example?

8 A. Oh, we experienced a high number of turnover, Tad  
9 Bailey, Will Justice.

10 Q. Okay. Do you recall who was the surveyor you  
11 worked with in the month or so preceding the  
12 explosion?

13 A. They changed every day. You'd have to speak with  
14 the survey coordinator.

15 Q. And who was the survey coordinator?

16 A. Keith Trent.

17 Q. Okay. Now, how do you spell his last name?

18 A. T-R-E-N-T.

19 Q. Okay. Thank you. Who reviewed the maps that you  
20 produced?

21 A. A mine engineer and then the certifying engineer.

22 Q. Who was the certifying engineer?

23 A. Either Ray Brainard or Paul McCombs.

24 Q. Okay.

25 MR. MCGINLEY:

1 I'm sorry, Ray ---

2 A. Brainard.

3 MR. MCGINLEY:

4 --- Brainard? Okay.

5 OFF RECORD DISCUSSION

6 MR. FARLEY:

7 We have it as B-R-A-I-N-A-R-D. I don't  
8 know that it's right, but ---.

9 MR. SHERER:

10 Thank you.

11 BY MR. SHERER:

12 Q. Did you put mine projections on the maps?

13 A. Very rarely.

14 Q. Okay. When you did, who provided those mine  
15 projections?

16 A. That normally come down from mine management.

17 Q. Mine management. And that would be the president  
18 on down?

19 A. Yes.

20 Q. Okay. Did you ever have to change any of the  
21 projections?

22 A. Yes.

23 Q. Who decided that a change should be made?

24 A. Mine management.

25 Q. Okay. And that's the president on down?

1 A. Yes.

2 Q. Okay. Is there anybody excluded in that list?

3 A. Not that I would know of.

4 Q. Okay. Thank you. Did you do anything as far as  
5 determining where ventilation controls should be  
6 placed?

7 A. No, sir.

8 Q. Okay. Do you know who was in charge of  
9 ventilation at this mine?

10 A. I really wouldn't know.

11 Q. Okay. Did that bother you?

12 A. No, sir. It wasn't my job duty.

13 Q. Okay.

14 ATTORNEY SEARS:

15 I'm a little unclear. Did what bother  
16 him, that he didn't know who was in charge of the ---?

17 MR. SHERER:

18 In charge of ventilation since his ---

19 ATTORNEY SEARS:

20 Okay. Is that the way you understood the  
21 question being?

22 A. Yes.

23 ATOTRNEY SEARS:

24 Okay.

25 BY MR. SHERER:

1 Q. Did you work on specific ventilation plans and  
2 maps to be submitted to MSHA?

3 A. Yes.

4 Q. Did you work on a lot of those?

5 A. If the work needed to be done, yes.

6 Q. Okay. Did you work on more of those for Upper Big  
7 Branch than the other mines that you worked with?

8 A. No, sir.

9 Q. Okay. Did you put the air measurements on the  
10 ventilation maps?

11 A. Yes, sir.

12 Q. Where did those air measurements come from?

13 A. Mine management or engineers.

14 Q. How did you get those?

15 A. They were given to me.

16 Q. In what form, survey notes?

17 A. A mark-up on the map.

18 Q. Okay. Who was the last person to give you such  
19 quantities?

20 A. I can't recall.

21 Q. You can't recall. Do you recall the last time you  
22 made a ventilation map for UBB?

23 A. No, I can't recall.

24 Q. Okay. Are you aware of any ventilation surveys  
25 done at UBB?

1 A. Yes.

2 Q. When was the last one done, approximately?

3 A. I knew we had them done, but I don't remember the  
4 dates.

5 Q. Okay. Do you know who did those surveys?

6 A. No, sir.

7 Q. Okay. Were you aware of the numerous violations  
8 and orders related to ventilation problems and  
9 deficiencies at UBB?

10 A. No, sir.

11 Q. Okay. Had you heard of ventilation problems at  
12 UBB?

13 A. No, sir.

14 Q. Are you aware of a five-year plan at Upper Big  
15 Branch?

16 A. Yes, sir.

17 Q. Did you work on that plan?

18 A. Yes, sir.

19 Q. Do you know if the projections and the ventilation  
20 changes that you made were consistent with that five-  
21 year plan?

22 A. No, I can't recall.

23 Q. Okay. Did Route 3 engineers routinely travel in  
24 the area of UBB to evaluate the ventilation system?

25 A. You'd have to ask one of them.

1 Q. Okay. Did you help lay out this current longwall  
2 panel?

3 A. What do you mean by lay out?

4 Q. Did you do the mapping of this current longwall  
5 panel?

6 A. I may have. I can't recall.

7 Q. Okay. If you had have worked on this, would that  
8 include the pillar sizes? Who determined pillar  
9 sizes?

10 A. I wouldn't know.

11 Q. You wouldn't know. Did you determine pillar  
12 sizes?

13 A. No, sir.

14 Q. Did you have a standard that you used for pillar  
15 sizes?

16 A. I didn't determine pillar sizes. I wouldn't know.

17 Q. Well, if you did projections, you had to have some  
18 basis.

19 A. It was given to me by mine engineers and mine  
20 management.

21 MR. SHERER:

22 Okay. Okay. Thank you. That's all the  
23 questions I've got for right now.

24 EXAMINATION

25 BY MR. FARLEY:

1 Q. Mr. Acord, I'm going to try to maybe clarify a few  
2 things, so I may be jumping around, so just be patient  
3 with me. I think you indicated it'd been several  
4 years since you'd been underground at the UBB Mine.  
5 What other Massey mines have you visited underground,  
6 if any?

7 A. I really can't recall the names. My time  
8 underground is very limited.

9 Q. Okay. Do you recall the last time you were  
10 underground in any mine?

11 A. The last mine I was underground at was a non-  
12 Massey mine.

13 Q. Okay. Would that have been this year, last year?

14 A. I can't recall. It wouldn't have been this year,  
15 no.

16 Q. Okay. Do you visit or travel on any surface  
17 mines?

18 A. No, sir.

19 Q. Okay. Do you visit or travel the surface areas of  
20 any underground mines?

21 A. Could you clarify that?

22 Q. How often do you visit the surface area of any  
23 underground mine?

24 A. Right now every day.

25 Q. Okay. Where would that be?

1 A. UBB.

2 Q. Okay. Now, do you have an office facility there  
3 or something?

4 A. Yes.

5 Q. And have you recently moved to that location?

6 A. Yes.

7 Q. Why did you recently move to that location?

8 A. I volunteered for the investigation team.

9 Q. Okay. Are you part of the present underground  
10 investigation team?

11 A. I'm not part of the underground investigation  
12 team, no. I'm a CAD technician, producing maps.

13 Q. Okay. All right. Now, with the organization  
14 known as Route 3 Engineering, are you the only AutoCAD  
15 technician?

16 A. No, sir.

17 Q. Are there others?

18 A. Yes, sir.

19 Q. Who would they be?

20 A. Scott Tilley ---

21 Q. Scott Tilley.

22 A. --- Craig Dickens ---

23 Q. Craig Dickens.

24 A. --- and Alex Aliff.

25 Q. I'm sorry, Alex ---?

1 A. Alex Aliff.

2 Q. Alex Aliff; okay.

3 A. The last two names mentioned are new hires.

4 Q. New hires. When you say new hires, how recently  
5 were they hired?

6 A. Within the last year.

7 Q. Okay. Do you recall the last set of ventilation  
8 change maps made for the UBB Mine prior to April 5th  
9 of this year?

10 A. No, sir, I can't recall.

11 Q. Thank you. Okay. You indicated there was a long  
12 list of surveyors utilized by Route 3 Engineering.  
13 Are all of them contracted?

14 A. I wouldn't know.

15 Q. Okay. But Mr. Trent would be the survey  
16 coordinator?

17 A. Yes, sir.

18 Q. Okay. Would he know?

19 A. Yes, sir.

20 Q. Okay. Is it fair to say that you were not  
21 involved in the development of any ventilation plans  
22 for the UBB Mine?

23 A. Yes.

24 Q. Okay. Now, who from the Route 3 Engineering  
25 organization would have been involved, if anyone?

1 A. I'm not for sure. It wasn't one of my duties. I  
2 would assume one of the mine engineers.

3 Q. Okay. Meaning Mr. Walker or Mr. Brainard,  
4 possibly?

5 A. Yes.

6 Q. Okay. Do you know if Mr. Walker or Mr. Brainard  
7 had input with ventilation issues at the UBB Mine ---

8 A. It's not my area.

9 Q. --- or any mine, for that matter?

10 A. It's not my area.

11 Q. Okay. You indicated earlier that you were aware  
12 of a ventilation survey conducted at the UBB Mine, but  
13 I think you didn't recall when the survey was  
14 conducted or by whom.

15 A. Yes.

16 Q. Were those surveys performed by an in-house or an  
17 outside entity?

18 A. I wouldn't know.

19 Q. Who might know?

20 A. One of the mine engineers.

21 Q. Okay. Do you know what type of ventilation survey  
22 was performed?

23 A. No, sir.

24 Q. Okay. Do you know what parts of the mine were  
25 surveyed?

1 A. No, sir.

2 Q. Okay. And I guess it would be fair to say you  
3 wouldn't know what the results were?

4 A. No, sir.

5 Q. Okay. As part of your daily duties at Route 3  
6 Engineering, did you become aware of any ventilation  
7 problems at the UBB Mine?

8 A. No.

9 Q. Is it fair to say that Route 3 Engineering worked  
10 entirely at the behest of mine management, be it UBB  
11 or some other ---

12 A. Yes.

13 Q. --- Elk Run or Marfork mine?

14 A. Yes.

15 Q. Okay. Do you know if ---? Whenever there was a  
16 --- mine management was considering some type of a  
17 ventilation change or change in projections, anything  
18 that would involve engineering assistance, did they  
19 routinely contact Route 3 Engineering for input as to  
20 how it might best be done, or did they just simply  
21 call Route 3 Engineering and say, hey, this is what  
22 we're going to do?

23 A. I wouldn't know.

24 Q. All right. Do you know if any computer  
25 simulations were ever run on the ventilation system at

1 the UBB Mine?

2 A. I wouldn't know.

3 Q. Okay. Who might know that?

4 A. Engineers, I would say.

5 Q. Okay. Do you know if any ventilation --- any  
6 computer simulations were ever done on ventilation  
7 systems at any of the Massey mines?

8 A. I wouldn't know.

9 MR. FARLEY:

10 Okay. Okay. Next?

11 EXAMINATION

12 BY MR. MCGINLEY:

13 Q. You said, we call ourselves Route 3 engineers.

14 What do you mean, you call yourselves that? I mean is  
15 that the name of the company? What is it?

16 A. It's just what we collectively call ourselves.

17 Q. Who's we?

18 A. The engineering office.

19 Q. That would include whom?

20 A. Anybody employed in the engineering office. I  
21 mean ---.

22 Q. Is it a company?

23 A. No, I would not say it's a company.

24 Q. Do you have a letterhead that says Route 3  
25 Engineer?

1 A. Not that I know of.

2 Q. You said you think you went underground at UBB  
3 three years ago.

4 A. I went underground, but I don't know the date.

5 Q. I didn't ask you the date. You think you went  
6 underground three years ago ---

7 A. No.

8 Q. --- at UBB?

9 A. No.

10 Q. Do you think you've ever gone underground at UBB?

11 A. Yes.

12 Q. When would that have been, give or take a year or  
13 two?

14 A. Oh, I really wouldn't know.

15 Q. Was it this year?

16 A. No, sir.

17 Q. Was it last year?

18 A. No, sir.

19 Q. So it wasn't in the last two years?

20 A. No, sir.

21 Q. Was it three years ago?

22 A. It's possible.

23 Q. Four years ago?

24 A. Possible.

25 Q. You had limited experience, I think you said. You

1 used the word limited time underground. So you've  
2 only been underground at UBB once?

3 A. Yeah, once or twice. I can't recall the number of  
4 visits, but it was a small number of visits.

5 Q. And you've been underground at a non-Massey mine?

6 A. Yes, sir.

7 Q. Once?

8 A. A couple times.

9 Q. What mine was that?

10 A. That was the Pinnacle mine. I don't know the  
11 name. It was a educational visit to the college.

12 Q. When you were a student?

13 A. Yes.

14 Q. Had you been underground at any other Massey mines  
15 other than UBB?

16 A. Yes.

17 Q. Which ones?

18 A. I believe Horse Creek Eagle and maybe Shumate  
19 Powellton.

20 Q. Maybe?

21 A. Maybe. It's been several years ago.

22 Q. You remember the name of the mine that you went to  
23 when you were a student and you've only been  
24 underground a couple of times.

25 A. I remember the name of the mine because the

1 instructor was employed by the mine.

2 Q. And you got a two-year Associate degree from  
3 where?

4 A. West Virginia Tech.

5 Q. And you've got what kind of degree?

6 A. Mining engineering technology from Bluefield  
7 State.

8 Q. From which --- I'm sorry.

9 A. Bluefield State.

10 Q. Bluefield. When did you get that?

11 A. May of 2010.

12 Q. And when did you get your two-year Associate  
13 degree?

14 A. May of 2005.

15 Q. So you were hired by Massey after you got your  
16 Associate degree?

17 A. Yes.

18 Q. And you've been going to school at West Virginia  
19 Tech on and off since then?

20 A. In Bluefield State.

21 Q. I'm sorry, Bluefield State.

22 A. Yes.

23 Q. Take a couple courses this semester?

24 A. Yes.

25 Q. When you went underground at Pinnacle, which

1 course of study were you engaged in, Bluefield State  
2 or West Virginia Tech?

3 A. Bluefield State.

4 Q. So it's been the last couple years ---

5 A. Yes.

6 Q. --- when you went underground at Pinnacle?

7 A. Yes.

8 Q. Was it this year?

9 A. No, sir.

10 Q. Last year?

11 A. No, sir.

12 Q. Year before?

13 A. It's possible.

14 Q. The engineers you worked with, mining engineers  
15 you worked with were Heath Lilly, Eric Lilly and Matt  
16 Walker?

17 A. Yes.

18 Q. Do you talk to them every day?

19 A. Yes.

20 Q. Were they in the office the majority of the time,  
21 rather than being out of the office and in the mines?

22 A. I wouldn't know what their duties were.

23 Q. I didn't ask you that. I asked you if they were  
24 in ---. You were in the office; right? You weren't  
25 underground ---

1 A. Yes.

2 Q. --- agreed?

3 A. Yes.

4 Q. Okay. So you worked with these three engineers.  
5 My questions is were they in the office more than out  
6 of the office?

7 A. I'm not their keeper, sir. I really wouldn't  
8 know.

9 Q. I wasn't asking you that. Or that when you need  
10 to talk to Matt Walker or Eric Lilly or Heath Lilly,  
11 are they there or do you have to get them on the  
12 phone?

13 A. There would be times they would not be there.

14 Q. How often?

15 A. I wouldn't know.

16 Q. Let me get this right. There are two P.E.s in the  
17 office that put their stamp on your maps?

18 A. Yes.

19 Q. And that was Brainard and McCombs?

20 A. Yes.

21 Q. They worked there in the office with you?

22 A. Yes.

23 Q. Were they in the office more often than not?

24 A. I wouldn't know.

25 Q. Well, you know, if somebody's in the office one

1 day a week, you'd know that, wouldn't you?

2 A. Yeah.

3 Q. So are any of these, the three engineers or  
4 Brainard or McCombs in the office one day a week?

5 A. I don't pay attention to what they do. I do  
6 what ---.

7 Q. Well, you have to work with them, don't you?

8 A. I do what I'm told by them, and that's it.

9 Q. Do you ever have to ask them questions?

10 A. Yes.

11 Q. Frequently?

12 A. Occasionally, yes.

13 Q. Occasionally, once a day, once a month?

14 A. I'd say once a day, maybe.

15 Q. So if they're not there, you know it?

16 A. Yes.

17 Q. You said you went through the Massey MIT training?

18 A. I believe that's what they call it, yes.

19 Q. Okay. And that's their in-house training?

20 A. Yes.

21 Q. Does that have anything to do with the work you've  
22 been doing at Route 3 Engineering?

23 A. No, sir.

24 Q. Seventeen (17) to 20 mines, you worked on maps for  
25 that many mines?

1 A. Yes, I believe that's the number.

2 Q. Up until the two recent hires, did you only have  
3 two AutoCAD technicians?

4 A. No, we'd had people come and go.

5 Q. Well, how many would there be at a given time?  
6 You've got ---.

7 A. Three or four.

8 Q. You've got three or four and you've got four now?

9 A. Yes.

10 Q. And did each of those technicians have  
11 responsibility for a certain group of mines?

12 A. No, sir.

13 Q. So one day you might work on one or two mines; the  
14 next day, different mines? How did that work? How  
15 was the work parceled out to you?

16 A. Just whatever was asked of us. If somebody was  
17 working on a particular mine that one of the engineers  
18 would go to somebody else.

19 Q. So you never knew from day to day what you'd be  
20 working on?

21 A. No, sir.

22 Q. No, sir, you wouldn't know?

23 A. No, I would not know.

24 Q. You said there was a long list of surveyors at  
25 UBB?

1 A. There was a long list of surveyors in the office.

2 Q. And when you say list, you mean literally a  
3 physical piece of paper with a list of surveyors?

4 A. No, sir, I mean, like, collectively, people.

5 Q. So what, there's no list?

6 A. If there's a list, I know of no list.

7 Q. Okay. So what you meant to say was there have  
8 been many surveyors whose work you're familiar with at  
9 Route 3 Engineering; is that correct?

10 A. There are many surveyors I see in the office.

11 Q. They come into the office?

12 A. Yes.

13 Q. And what do they do there?

14 A. I don't know. I'm not the survey coordinator.

15 Q. You ever worked with a surveyor?

16 A. I prefer not to, no.

17 Q. But have you ever worked with a surveyor?

18 A. No.

19 Q. Who do they work with ---

20 A. I wouldn't ---.

21 Q. --- in your office?

22 A. The survey coordinator.

23 Q. That's the only person they work with?

24 A. And unless an engineer. I don't work with the  
25 surveyors.

1 Q. How big is your office?

2 A. Probably ten people, not counting the surveyors.

3 Q. How many rooms are in it?

4 A. I don't know.

5 Q. You all worked in one big room?

6 A. Yes.

7 Q. Well, that's the answer. There's one room.

8 A. Yes.

9 Q. So you know when they come in and they come out  
10 and who everybody's talking to, because you can look  
11 up and see them; right?

12 A. Well, we all have offices in one side --- one  
13 building.

14 Q. Okay.

15 A. But I don't know ---.

16 Q. Is it open?

17 A. No.

18 Q. Okay. Well, I misunderstood you, then. So  
19 there's not just one big room where you all have  
20 desks?

21 A. No.

22 Q. So you have your own office?

23 A. Yes.

24 Q. Are there any --- are there any surveyors or  
25 engineers or other CAD people that don't have their

1 own office and they share offices?

2 A. I share an office with somebody, but everybody has  
3 an office. The AutoCAD technicians and mine  
4 engineers, survey coordinators have offices.

5 Q. And for example, are the two Lillys and Mr. Walker  
6 all in the same office and immediate room?

7 A. We're all in the same building.

8 Q. Well, but my question was, are the engineers in  
9 one room?

10 A. No.

11 Q. They have their own individual offices?

12 A. Yes.

13 Q. Let me say individual rooms; is that right?

14 A. Yes.

15 Q. Do the surveyors all work in the same room?

16 A. I don't know. I'm not the survey coordinator.

17 Q. Well, but you work in this office and you worked  
18 there for what, five years?

19 A. Yes.

20 Q. And can you not see any other rooms ---

21 A. They come ---.

22 Q. --- from where you work?

23 A. They come and go. They don't work out of our  
24 office.

25 Q. I know, but ---?

1 A. They have a room they --- or building they change  
2 in, they shower in when their shift's done.

3 Q. But they do come into your office building?

4 A. Yes.

5 Q. Okay. And you see them in there?

6 A. Yes.

7 Q. And where do you see them?

8 A. With the survey coordinator.

9 Q. And where are they located when you see them?

10 A. In my office building.

11 Q. In what room in your office building?

12 A. In the survey coordinator's office.

13 Q. That's what I was trying to ask you.

14 A. Okay.

15 Q. How many people work in the surveyor coordinator's  
16 office or work out of it?

17 A. There's one, and he has, like, a helper.

18 Q. Who's the helper?

19 A. The name's Bull Snodgrass.

20 Q. What's the first name?

21 A. They call --- his name's Daniel. They call him  
22 Bull.

23 Q. So you did work on ventilation plans for the UBB  
24 Mine in the last year; is that correct?

25 A. No, sir, I did not work on ventilation plans.

1 Q. Did you work on maps that are part of ventilation  
2 plans?

3 A. Yes.

4 Q. Were there any other AutoCAD technicians that  
5 worked on the UBB maps that were part of ventilation  
6 plans?

7 A. I'm sure there was.

8 Q. Well, there are only a couple people that you're  
9 working with.

10 A. Yes.

11 Q. So who worked on them?

12 A. The other CAD technicians.

13 Q. All of them?

14 A. It's possible, yes.

15 Q. How do you know who worked on --- strike that.

16 Did you ever work with another AutoCAD technician  
17 on a particular map that was part of the ventilation  
18 plan?

19 A. I wouldn't know.

20 Q. Well, no one else would know but you if you worked  
21 on --- if you didn't work on any, you can say no.

22 A. Can you ask the question again?

23 Q. Yes. Let's say you're doing a ventilation --- a  
24 map for a ventilation plan to be submitted to MSHA.

25 You understand that part?

1 A. Yes.

2 Q. Okay. Did you ever work on one of those maps with  
3 another AutoCAD technician?

4 A. No, sir.

5 Q. Never?

6 A. Never.

7 Q. Is there any way to tell from computer software  
8 otherwise markings on the map that you worked on a  
9 particular ventilation map that's part of a  
10 ventilation plan?

11 A. No, sir.

12 Q. Describe what you do with the --- making a map, a  
13 ventilation map for a ventilation plan.

14 A. I'll take a markup and --- one with physical,  
15 handwritten corrections on it, and I would make those  
16 changes.

17 Q. And how do you change --- how do you make them?

18 We have a record here and there are going to be other  
19 people reading this record, so it would be good if you  
20 could explain in a very simple terms exactly how you  
21 do that. Do you use a computer?

22 A. I use a computer software to make the changes.

23 Q. Okay. So with regard to making changes in the  
24 ventilation plan map or making a new ventilation plan  
25 map, your work involves inserting information into the

1 computer and let the software do the work?

2 A. Yes.

3 Q. And would it be fair to say that what you're doing  
4 is analogous to someone who's given a list of numbers  
5 and they've got an adding machine and you just add up  
6 the list of numbers?

7 A. Yes.

8 Q. Is there any discretion you have at all in the  
9 work that you do in creating a ventilation map that's  
10 part of a ventilation plan?

11 A. No.

12 Q. And so you get ---? Do you have a map? Does it  
13 have numbers? Does it have drawings, for example,  
14 where stoppings will go, where entries are? You know,  
15 can you explain that?

16 A. Yes. It could be numbers or symbols. I mean, it  
17 just --- it depends on who, you know, who marked up  
18 the map, because everybody has their own means of  
19 marking up a map.

20 Q. So there area a number of people in various mines  
21 whose --- they do this in handwriting?

22 A. Yes.

23 Q. So you have to interpret handwriting and symbols?

24 A. Yes.

25 Q. And sometimes you have to ask whoever wrote on

1 those marked up maps --- do you have to ask them  
2 questions?

3 A. If I don't understand something, yes.

4 Q. And what happens to those marked up maps after you  
5 enter the data?

6 A. I provide them back to the mine engineer.

7 Q. So do you always get these marked up maps from one  
8 of the mine engineers that you worked with there at  
9 Route 3 Engineering?

10 A. Yes.

11 Q. So that would be three people?

12 A. Yes.

13 Q. Walker and the two Lillys?

14 A. Yes.

15 Q. Are the markups on those maps only done by them or  
16 by superintendents, foremen, mine president,  
17 management, upper management?

18 A. I'm not for sure who they'd be done by.

19 Q. But you know that they --- I think in answer to a  
20 previous question you were saying you were getting  
21 information from others other than the engineers; is  
22 that correct?

23 A. Yes.

24 Q. And you know the ---? You've been working with  
25 these engineers in your office for some time, so you

1 know their markings; right?

2 A. Yes.

3 Q. So you know the difference between when the  
4 engineers mark up a map and when somebody else marks  
5 up a map?

6 A. Yes.

7 Q. How often do you have a ventilation map that  
8 you're going to work on and you get a marked up map  
9 --- how often do the mark-ups come from someone other  
10 than the three engineers?

11 A. Often.

12 Q. Pardon?

13 A. Often. I mean, you know, you just --- you get  
14 them. I mean, there's no, you know --- there's no  
15 really way to ascribe a --- you know, put a, like, a  
16 time period to it.

17 Q. Sure. But is it fair to say more often than not  
18 the marked up maps have been marked up by somebody  
19 other than the three engineers, and this is more often  
20 than not?

21 A. Well, well, it's possible.

22 Q. Okay. Let me ask that question another way. It's  
23 possible it's more often than not that someone other  
24 than the three engineers will mark up the maps that  
25 you get. Does that happen 80 percent of the time?

1 A. I really wouldn't know.

2 Q. Does it happen the great majority of the time that  
3 the markups are not done by the engineers?

4 A. I get a markup. I really don't know.

5 Q. You know when you have to ask questions?

6 A. Yes.

7 Q. How often do you ask questions? I'm not looking  
8 to --- you know, looking for three times a week, eight  
9 times. I'm just --- your impression, because you've  
10 worked there ---. We're trying to figure out what  
11 happened with this explosion, and you're assistance  
12 --- I understand it's been --- and this is stressful.  
13 It's not easy to be here, but it'd be helpful if you  
14 could try to squeeze your recollection here and give  
15 us some assistance.

16 A. If I have a question, I'll ask it, but I, you  
17 know, I can't tell you I've got a question on every  
18 map and ---.

19 Q. I understand.

20 A. You know, I really don't know.

21 Q. You ever been criticized for --- either by  
22 engineers or anyone in management --- for any mistakes  
23 you've made on ventilation maps?

24 A. No, sir.

25 Q. Have you ever made any mistakes on ventilation

1 maps that are connected to the UBB ventilation plan?

2 A. No, sir.

3 Q. At least they've not been brought to your  
4 attention?

5 A. Yes, sir.

6 Q. You were asked quite a few questions about  
7 ventilation surveys after you indicated that you knew  
8 that a ventilation survey had been done at UBB. Do  
9 you recall that a little while ago?

10 A. Yes.

11 Q. And you were asked a series of questions about the  
12 ventilation surveys. I've got one that you haven't  
13 been asked yet. How do you know if there was a  
14 ventilation survey done at UBB?

15 A. I really don't know. I mean, I know that we had  
16 one done.

17 Q. How do you know that?

18 A. I just do.

19 Q. Well, did somebody tell you?

20 A. Yes.

21 Q. Who?

22 A. I mean, you know ---.

23 Q. You can --- you need to help us here. We got 29  
24 dead miners. If you can recall this, and if you  
25 can't, that's fine.

1 A. I really don't know. I know that we've had them  
2 done. I don't know who done them. I don't know when  
3 they were done and I just --- I mean you just know  
4 that it was done.

5 Q. Well, I didn't ask you who done them or when. I  
6 asked you who told you that?

7 A. Well, it's just common knowledge that it was done.  
8 For me, I knew that it was done. And you'd hear talk  
9 in the office and you would know that it was done.

10 Q. What's the talk in the office about the  
11 ventilation survey?

12 A. Well, just, you know, we've got one and we've got  
13 so-and-so scheduled today, or, we're performing a  
14 ventilation survey today, or ---. I mean you just ---  
15 you know that you have one.

16 Q. It's happened more than once?

17 A. Yes.

18 Q. A number of times; correct?

19 A. I don't know.

20 Q. That's your recollection? It's happened a number  
21 of times?

22 A. I know of one.

23 Q. You know of one time people talked about it?

24 A. I know of one ventilation survey that was done.

25 Q. And when was that?

1 A. I do not know when it was done.

2 Q. This year?

3 A. No, sir.

4 Q. Last year?

5 A. No, sir.

6 Q. Three years ago?

7 A. I don't know when it was done. It was not this  
8 year or last year.

9 Q. Well, if it's common knowledge in your office that  
10 a ventilation survey was done and you don't know when  
11 it was done, how's it become common knowledge?

12 A. Maybe I was --- maybe I was wrong when I used the  
13 word, common knowledge.

14 Q. Were you wrong? I mean if we ask the other people  
15 in the office, are they going to say, you know, we all  
16 know there was a air survey?

17 A. I mean I don't know. You'd have to ask those  
18 other people.

19 Q. Well, we will.

20 A. Okay.

21 Q. So why are people talking about an air survey  
22 being done? You've heard them talk about it?

23 A. No, sir, I've not heard them talk about it. The  
24 ventilation survey that was done that I know of was  
25 several years ago.

1 Q. Okay. That's helpful.

2 A. It's nothing recent.

3 Q. That's helpful. And is a copy of it --- was a  
4 copy of it once in your office?

5 A. I wouldn't know. That was several years ago.

6 Q. Well, I mean several years ago when this air  
7 survey that you know was done, was there a copy in  
8 your office?

9 A. No, not that I know of.

10 Q. Okay. Did the people that did the air survey, did  
11 they come to your office?

12 A. No, not that I know of.

13 Q. Is there any reason why anyone in your office  
14 would be interested in an air survey that's been done  
15 at UBB?

16 A. I'm not interested in an air survey.

17 Q. I know you're not.

18 A. You'd have to ask the others.

19 Q. You said you never heard of any ventilation  
20 problems at UBB or violations issued at UBB because of  
21 ventilation issues; is that correct?

22 A. I'm not concerned with issues of citations or  
23 violations with ventilation at UBB.

24 Q. I understand that, but that wasn't my question.

25 My question was, can you confirm that you have never

1 heard of any ventilation problems or ---?

2 A. If I heard of ---.

3 Q. Let me finish. Or MSHA-issued violations for  
4 ventilation problems?

5 A. If I've heard of any, I can't recall them, so  
6 they're of no significance to me.

7 Q. Well, was it of significance to you after the  
8 explosion?

9 A. No, sir. It's not my area.

10 Q. Did anyone in your office talk about ventilation  
11 problems at UBB after the explosion?

12 A. It was so hectic after the explosion, I don't  
13 recall a lot of what happened.

14 Q. After the explosion have you talked to anybody at  
15 Route 3 Engineering relating to ventilation  
16 problems ---

17 A. No, sir.

18 Q. --- at that mine?

19 A. I'd prefer not to know of any problems.

20 Q. Why is that?

21 A. I just, you know, need to know, and I feel I don't  
22 need to know.

23 Q. So when we ask other people in their office if  
24 they've talked to you about ventilation problems,  
25 they're going to say, never talked to Mr. Acord? Is

1 that what they're going to tell us?

2 A. I can't tell you what they're going to tell you.

3 Q. Well, they'll tell us that they haven't, because  
4 you're telling us now that it's not your problem,  
5 you're not interested, you never had a conversation  
6 with anybody after the ---?

7 ATTORNEY SEARS:

8 Do you recall the instruction about  
9 adversarial Cross Examination, Professor McGinley? Do  
10 you recall that instruction? In my judgment, you're  
11 engaging in adversarial Cross Examination. I want the  
12 record to show that. And your smirks and your smiles  
13 are not appreciated, for the record.

14 MR. MCGINLEY:

15 Well, I disagree with your  
16 characterization.

17 ATTORNEY SEARS:

18 The record will speak for itself.

19 MR. MCGINLEY:

20 That's fine. Would you read back the  
21 last question?

22 PREVIOUS QUESTION READ BACK

23 ATTORNEY SEARS:

24 Ms. Hampton, I'd ask that you read the  
25 instruction again about adversarial Cross Examination

1       which you read to every single witness in this case.

2       I assume that applies to the investigation team, as  
3       well.

4   MS. HAMPTON:

5   Well, the way the written --- the  
6       statement is written, that adversarial proceeding  
7       comment actually comes in a paragraph where we're  
8       discussing the attorney that the witness may bring  
9       with themselves.

10  ATTORNEY SEARS:

11  So it doesn't apply to the ---

12  MS. HAMPTON:

13  Well, ---

14  ATTORNEY SEARS:

15  --- investigation team?

16  MS. HAMPTON:

17  --- the actual statement is, since this  
18       is not an adversarial proceeding, formal Cross  
19       Examination will not be permitted.

20  ATTORNEY SEARS:

21  Well, in my judgment the professor has  
22       been engaging for the last 15 to 20 minutes in  
23       adversarial Cross Examination, in my prospective  
24       judgment, professor.

25  BY MR. MCGINLEY:

1 Q. Can you answer the question?

2 A. Do I have to answer it?

3 ATTORNEY SEARS:

4 What is the question?

5 MR. MCGINLEY:

6 I'll withdraw that question. I'll

7 withdraw.

8 ATTORNEY SEARS:

9 Can we take a moment? Is that okay?

10 MR. SHERER:

11 Do you want to take a break?

12 ATTORNEY SEARS:

13 Yeah, can we take a break?

14 SHORT BREAK TAKEN

15 ATTORNEY SEARS:

16 Before we get back into questioning, at

17 the beginning you had introduced everyone around the

18 table up here at the front, but there are people in

19 the gallery, so to speak. Can we identify who they

20 are, as well?

21 ATTORNEY HAMPTON:

22 Do you want everybody's name or ---?

23 ATTORNEY SEARS:

24 Yeah, I'd like to know who they are and

25 who they're with.

1 ATTORNEY HAMPTON:

2 Okay. Do you guys or ---?

3 ATTORNEY SEARS:

4 We could start from this (indicating)

5 side and go over, if you want.

6 ATTORNEY HAMPTON:

7 Do you want that on the record?

8 ATTORNEY SEARS:

9 If you don't want it on the record, I

10 mean ---. I mean, it doesn't ---

11 ATTORNEY HAMPTON:

12 No, ---

13 ATTORNEY SEARS:

14 --- matter to me.

15 ATTORNEY HAMPTON:

16 --- I'm just asking if that's your

17 intention ---

18 ATTORNEY SEARS:

19 That's fine, yeah.

20 ATTORNEY HAMPTON:

21 --- that you want on the record ---

22 ATTORNEY SEARS:

23 It can be on record.

24 ATTORNEY HAMPTON:

25 --- whoever's here? All right. Then

1 let's do that.

2 MR. WATKINS:

3 Tim Watkins with MSHA.

4 ATTORNEY MCATEER:

5 Davitt McAteer with the Governor's

6 independent investigative team.

7 MR. STEFFEY:

8 David Steffey with MSHA.

9 MR. MORLEY:

10 Thomas Morley with MSHA.

11 MR. STOLTZ:

12 Rick Stoltz with MSHA. What's your name?

13 ATTORNEY SEARS:

14 Mine was Chris Sears from --- with

15 Shuman, McCuskey & Slicer. I identified myself

16 earlier.

17 ATTORNEY SEARS:

18 Okay.

19 MR. PAGE:

20 My name's Norman Page from MSHA.

21 ATTORNEY SEARS:

22 Thank you.

23 ATTORNEY HAMPTON:

24 Okay. Continue.

25 BY MR. MCGINLEY:

1 Q. Sir, what was the AutoCAD program you use?

2 A. AutoCAD, Autodesk, I mean. AutoCAD's the program.

3 Q. Is there a version that you use?

4 A. We upgrade every so often. The version I'm using  
5 is 2008 with Carlson Survey CAD 2010.

6 Q. And that program is downloaded on your computer?

7 A. Yes.

8 Q. Is it a network computer?

9 A. The computer is networked, yes.

10 Q. So any engineer can get on and look at the work  
11 you've done?

12 A. Yes.

13 Q. So you can identify what maps that you've worked  
14 on; is that correct?

15 A. You can open up a map. If you can identify who  
16 done the map, I do not know that you can identify  
17 that.

18 Q. And how was each map identified as a computer  
19 file?

20 A. Well, the mine name, and if there was any --- if  
21 it was an annual map, it would have the date.

22 Q. And what about other ventilation maps? How would  
23 you identify them?

24 A. Just by the name and the date.

25 Q. If it was a map that was to be submitted as part

1 of the revision to a ventilation plan, how would that  
2 be identified?

3 A. It just --- it depends on how created the map. I  
4 would try to include ---. If it was a revision to ---  
5 for whatever, I would try to include it in the file  
6 name. For me it made it easier in finding the file  
7 when I need it.

8 Q. So you'd say revision or ---?

9 A. Something pertaining to that.

10 Q. Yeah. Okay. So you had three or four AutoCAD  
11 technicians working with 17 to 20 mines; is that  
12 correct?

13 A. Yes.

14 Q. So six to seven mines per technician?

15 A. Now, I can't do the math in my head, but ---.

16 Q. But you all worked on --- strike that.

17 Have you worked on maps for all of those mines?

18 A. I'm sure I have, yes.

19 Q. At one time or another?

20 A. Yes.

21 Q. I missed the last name of Alex, one of the new  
22 AutoCAD technicians. What's his name?

23 A. Aliff.

24 Q. A-I ---?

25 A. I don't know, A-L-I-F-F, I believe.

1 Q. You said that Mr. Dickens and Mr. Aliff came  
2 onboard in the last year?

3 A. I believe Craig come on around December. Alex has  
4 come on within the last month or two.

5 Q. So Alex is post April 5th?

6 A. Yes.

7 Q. Now, if you were given a marked up map and your  
8 responsibility is to insert those markups using the  
9 computer to create a map that reflects the changes on  
10 the marked up map --- correct?

11 A. Yes.

12 Q. Occasionally --- you don't know how many times,  
13 but there are markings that you can't read; correct?

14 A. Not necessarily markings I can't read, but just  
15 questions in general. I'm wanting to learn. I'm  
16 wanting to be an engineer. If I don't understand why  
17 a control's here, I'll ask the question.

18 Q. Okay. But are there some times when you can't  
19 read the writing or you don't recognize the symbol?

20 A. No, I wouldn't think.

21 Q. I thought you had said that earlier, so ---.

22 Okay. So you have questions, and those questions  
23 would be --- who would you ask those questions?

24 A. I would go to Matt Walker.

25 Q. Did you ever have questions for --- of that nature

1 for anyone other than the three engineers that you're  
2 working with in Route 3 Engineering?

3 A. I don't understand what you're asking.

4 Q. Well, I mean you said that the markups on the maps  
5 are done sometimes by people other than the three  
6 engineers; right?

7 A. Yes.

8 Q. You ever ask them questions?

9 A. No. I mean we'd go to one of the engineers.  
10 They're closer.

11 Q. But have you ever asked a question?

12 A. I can't recall if I have.

13 Q. So you haven't is what ---?

14 A. I can't recall. I don't know if I have or if I  
15 haven't. I just don't know.

16 Q. You testified that the markups on these  
17 ventilation maps that your responsibility is to  
18 translate into a new map, they come at times from  
19 management; ---

20 A. Yes.

21 Q. --- is that correct? How do you know that?

22 A. If they have to go through the office for some  
23 reason, if they have a map that they want to bring us,  
24 they'll go ahead and bring it with them.

25 Q. They give it to you?

1 A. They'll give it to somebody. They ---.

2 Q. Do they ever give it to you?

3 A. They have, yes.

4 Q. Who's given it to you from UBB?

5 A. From UBB? Nobody that I can recall.

6 Q. Who's given it to you from any mine?

7 A. The superintendents.

8 Q. Who?

9 A. I don't know. I mean they change so much. I  
10 really don't see how, you know, this relates to UBB.

11 Q. So do you remember the name of any person from  
12 management who has marked up a map and given it to  
13 you ---

14 A. I'd say ---.

15 Q. --- in the last five years?

16 A. I'd say to give you a name would --- let me see  
17 how to phrase this. I don't think it would be --- I  
18 don't think it would be right.

19 ATTORNEY SEARS:

20 Well ---.

21 OFF RECORD DISCUSSION

22 A. I just don't know who would've given me the map.

23 I mean --- you know. I just don't recall.

24 BY MR. MCGINLEY:

25 Q. What do you mean when you said you don't think it

1 would be right?

2 ATTORNEY SEARS:

3 Well, and if I can address that, I don't

4 believe ---.

5 MR. MCGINLEY:

6 Are you going to suggest an answer to the

7 witness?

8 ATTORNEY SEARS:

9 No, I'm not going to. I'm going to

10 clarify. I think he was raising what attorneys might

11 object to as to relevance, and I don't believe that he

12 is going to continue down that path as far as ---

13 MR. MCGINLEY:

14 Okay.

15 ATTORNEY SEARS:

16 --- that question, so ---

17 MR. MCGINLEY:

18 I appreciate ---.

19 ATTORNEY SEARS:

20 --- that's a non-issue ---

21 MR. MCGINLEY:

22 Okay.

23 ATTORNEY SEARS:

24 --- I would suggest, to ask that line of

25 questioning, because that's been resolved.

1 BY MR. MCGINLEY:

2 Q. So you understand that this is a fact finding  
3 procedure and we're trying to get information, and we  
4 can ask questions that are broader than UBB if it'll  
5 help us to understand what went on at UBB?

6 A. Yes.

7 Q. When you finish entering the information from  
8 marked up ventilation maps that are part of a  
9 ventilation plan, do you print the map?

10 A. Yes.

11 Q. You physically print it?

12 A. A printer prints it. I don't print it. It's  
13 plotted.

14 Q. Is there a printer in your office?

15 A. There's a plotter in the building.

16 Q. Okay. What's the difference between a plotter and  
17 a printer?

18 A. A printer's small, a plotter's big.

19 Q. A plotter is a big printer; is that fair?

20 A. It's a plotter. It's just --- I mean it's just  
21 what I know it by.

22 Q. Okay. So a plotter prints the maps that you  
23 create?

24 A. Yes.

25 Q. And where is that plotter located with regard to

1 your workplace where you're entering the data?

2 A. It's not in my office. I have to get up and walk  
3 out of my room.

4 Q. Okay. Where is it located?

5 A. It's on the other side of the building.

6 Q. How far do you have to go?

7 A. Thirty (30) feet.

8 Q. How many rooms do you have to go through?

9 A. I don't go through any rooms. I walk in the  
10 hallway.

11 Q. You walk in a hall 30 feet. There's a room. The  
12 plotter's there. The printed out map that you've  
13 created on the computer is there?

14 A. Yes.

15 Q. And what do you do with it?

16 A. I'll gather it, the markup. I'll give it to an  
17 engineer.

18 Q. And does there ever come a time when the engineer  
19 comes back to you with questions after you've printed  
20 the map on the plotter?

21 A. No.

22 Q. Never?

23 A. Not that I can recall.

24 Q. Well, you would recall if it was really a rare  
25 occurrence; right?

1 A. I work on so much that when I finish something, I  
2 move on to the next task.

3 Q. Did you ever see Mr. Brainard or Mr. McCombs  
4 actually put their stamp on a map?

5 A. Yes.

6 Q. And were have you seen that done?

7 A. In the engineering building.

8 Q. Have you ever seen them put their stamp on a map  
9 that you have created, using the AutoCAD system and  
10 printing it on the plotter?

11 A. Yes.

12 Q. How often have you seen that?

13 A. I don't know. I mean, it just --- you see it  
14 happening.

15 Q. Does it happen fairly soon after you've printed  
16 the map?

17 A. Yeah, for the most part.

18 Q. Within 15 minutes or so?

19 A. No, normally not that quick.

20 Q. Okay.

21 A. Sometime that day, the next morning, maybe.

22 Q. Does Eric Lilly have an office in your building?

23 A. He used to.

24 Q. And when did he stop having an office at that  
25 building?

1 A. I don't know the date.

2 Q. I'm not asking you for the date. I'm just trying  
3 to get some sense. I know you have a bad memory.

4 That's been established, or maybe not a bad memory.

5 You can't recall very much, so was --- did Mr. Lilly  
6 have an office at the beginning of 2010 in your  
7 building?

8 A. No, sir.

9 Q. Did he have an office in 2009 in your building?

10 A. Yes, sir.

11 Q. Approximately, give or take three or four months,  
12 when did he cease having an office in your building?

13 A. I'd say towards the end of last year.

14 Q. Thank you. That's helpful. Describe the layout  
15 of your building where you work.

16 A. Well, we have one big room on the left side of the  
17 building. It contains the plotter, couple map tables,  
18 paper trimmer.

19 Q. Couple what tables?

20 A. Map tables. The left-hand side of the building's  
21 just offices.

22 Q. And is there a hall that runs parallel to those  
23 offices?

24 A. Yes.

25 Q. So you go in --- all the offices are off the same

1 hallway?

2 A. Yes.

3 Q. How many offices are there, give or take?

4 A. Four or five on each side of the hall.

5 Q. And who do you work with in your office? Who else  
6 is working there with you?

7 A. It was Craig Dickens.

8 Q. Does Mr. Walker have an office in your building?

9 A. Yes.

10 Q. Does anyone else work in that office with him?

11 A. No, sir.

12 Q. Does Heath Lilly have an office in your building?

13 A. Yes, sir.

14 Q. Does anyone else work in that office with him?

15 A. No, sir.

16 Q. Does Mr. Brainard have an office in your building?

17 A. No, sir.

18 Q. Do you know where his office is located?

19 A. It's across the railroad tracks. There are two  
20 office buildings at Performance Coal. One building is  
21 the environmental building that houses, you know, the  
22 security. The other building's separated by a set of  
23 railroad tracks, is my office building.

24 Q. And where's Mr. Brainard?

25 A. He is on the building opposite of the railroad

1 tracks.

2 Q. Is that the environmental?

3 A. Yeah.

4 Q. Just for lack of a better word?

5 A. Yeah.

6 Q. And Mr. McCombs, does he have an office in your  
7 building?

8 A. No, sir.

9 Q. Does he have an office in the same building as Mr.  
10 Brainard?

11 A. Yes, sir.

12 Q. Did Mr. Walker or Mr. Brainard only come to your  
13 building to stamp or place their P.E. stamp on  
14 documents?

15 A. You know, I don't follow their duties.

16 Q. How often are Mr. Brainard and Mr. McCombs in your  
17 office?

18 A. Frequently.

19 Q. Every day?

20 A. Yeah.

21 Q. Where are the other AutoCAD technicians' offices  
22 in your building, the ones that don't work in your  
23 discreet office where your computer is?

24 A. The other end of the hall.

25 Q. They all work in the same room?

1 A. No. There's only one individual in that room.

2 Q. Do each of them have their own computer, the other  
3 AutoCAD technicians?

4 A. Yes, everybody has their own machine, computer.

5 Q. So who else is in that building, has an office and  
6 works there, other --- there is Heath Lilly, Mr.

7 Matthew Walker?

8 A. Yes.

9 Q. Craig Dickens?

10 A. Yes.

11 Q. Scott Tilley?

12 A. Yes.

13 Q. Alex Aliff now?

14 A. Yes.

15 Q. Are there any other AutoCAD technicians working in  
16 that building this year, 2010?

17 A. No.

18 Q. Who else works in that building, other than the  
19 individuals I just named?

20 A. Daniel Snodgrass and Keith Trent.

21 Q. Daniel Snodgrass does what? What's his job?

22 A. He assists the survey coordinator, I believe.

23 Q. Okay. And the other person is the survey  
24 coordinator?

25 A. Yes.

1 OFF RECORD DISCUSSION

2 A. Trent.

3 BY MR. MCGINLEY:

4 Q. You were asked whether you worked on more vent  
5 plans for UBB than other mines, and you said, no, sir;  
6 that's correct?

7 A. Yes.

8 Q. You have no way of knowing or comparing the number  
9 of ventilation plans and revisions at UBB versus the  
10 other mines; is that correct?

11 A. No, no way of comparing them.

12 Q. When you would review marked up ventilation maps  
13 that were given to you to input into the computer,  
14 into the software and print out, some of those markups  
15 would be made by mine foremen?

16 A. Yes, it's possible.

17 Q. How do you know that?

18 A. I don't know.

19 Q. And why do you say it's possible?

20 A. It just is. I mean I get a markup map. I know  
21 the engineer's markups.

22 Q. Well, some of the markups could be Mr.  
23 Blankenship's; is that true?

24 A. I guess if he wanted to send me a markup map, I  
25 guess he could if he chose to.

1 Q. Do you talk to the engineers about the markups,  
2 the three engineers that you work with? Do you ever  
3 talk to them about the markups?

4 A. Yes, I'll ask them, you know, why they ---. And  
5 like I said, I want to learn, so I'll ask, why is it  
6 like that?

7 Q. And these three engineers you work with, are they  
8 forthcoming and try to explain to you, teach you?

9 A. Yes.

10 Q. So did they tell you at some point in the last  
11 year there was really some major ventilation change at  
12 UBB that you were working on?

13 A. If they did, I don't recall. I mean like I said,  
14 I handle so much day to day.

15 Q. So asking these engineers, asking these questions  
16 and trying to learn, you don't really retain that  
17 information or not?

18 ATTORNEY SEARS:

19 Answer it if you can.

20 BY MR. MCGINLEY:

21 Q. Yeah, if you can answer.

22 A. Ask it again.

23 Q. Well, you said that you like to ask questions,  
24 because you want to learn and you'd like to be a mine  
25 engineer; correct?

1 A. Yes.

2 Q. So you ask questions and you ask questions of the  
3 --- excuse me, of the three engineers?

4 A. Yes.

5 Q. But you don't really remember something like a  
6 major air change being discussed?

7 A. I don't recall. I mean, you know, the changes  
8 normally I'd ask is, you know, well, why is a stopping  
9 here? Why is a stopping there?

10 Q. Okay.

11 A. It's a small scale ---

12 Q. Okay.

13 A. --- questions.

14 Q. That's fine. So you really don't feel at this  
15 point with the background education you have --- you  
16 understand the big picture in terms of mine  
17 ventilation at UBB or the other mines that ---?

18 A. No.

19 Q. Was there any discussion in your office among any  
20 of those who work there or the people that came in  
21 about MSHA forcing changes in the UBB venation plan?

22 A. I'm sure there has been. I wouldn't want to  
23 speculate.

24 Q. I'm not asking you to speculate. Why are you sure  
25 there has been?

1 A. I mean, well, we just --- nobody likes the  
2 agencies.

3 Q. Why's that?

4 A. I just --- I don't see how this is relevant, that  
5 question, per se.

6 Q. Well, I thought we had an understanding. You  
7 understand that we can ask broad questions, because  
8 we're trying to understand the total picture here?

9 A. Yes.

10 Q. So can you answer my question?

11 A. Well, ask it again.

12 MR. MCGINLEY:

13 Can you read it, please?

14 PREVIOUS QUESTION READ BACK

15 A. I don't recall.

16 BY MR. MCGINLEY:

17 Q. Well, you said before --- you gave a different  
18 answer.

19 ATTORNEY SEARS:

20 He's answering the question.

21 MR. MCGINLEY:

22 I know, and I'm asking --- well, strike  
23 that.

24 BY MR. MCGINLEY:

25 Q. So the nature of the discussions about MSHA

1 forcing changes in ventilation plans at UBB were at  
2 least generally reflecting a negative view with regard  
3 to MSHA's actions?

4 ATTORNEY SEARS:

5 Well, just as a clarification, do you  
6 remember there being conversations?

7 A. I've had no conversations with anybody regarding  
8 any ventilation changes for MSHA or anything like  
9 that.

10 BY MR. MCGINLEY:

11 Q. No, but the previous question, you said there were  
12 such discussions in the office, so you've heard that;  
13 is that correct?

14 A. I've heard, you know --- you know, conversations.

15 Q. In the office?

16 A. In the office.

17 Q. And what was the nature generally of those  
18 discussions? I mean it would make sense that you were  
19 working on ventilation changes that MSHA has had  
20 something to do with, so what's the nature of --- just  
21 generally, the nature of the ---

22 ATTORNEY SEARS:

23 If you know.

24 BY MR. MCGINLEY:

25 Q. --- discussions that you have overheard?

1 A. I really wouldn't know.

2 Q. Except that they were negative? You did indicate  
3 that; correct?

4 A. Yes.

5 Q. So did you ever hear anybody say that MSHA was  
6 forcing changes that would put miners at UBB, their  
7 lives at risk?

8 A. Not that I can recall.

9 Q. You'd recall that, wouldn't you?

10 A. I would think, but ---.

11 Q. You work --- you said you work on so much, you  
12 handle so much day to day. How many hours a day do  
13 you work?

14 A. We're there for ten hours a day.

15 Q. How many days a week?

16 A. Five days a week.

17 Q. And you get paid for overtime?

18 A. Yes.

19 Q. And how much overtime do you log in a month, just  
20 generally? Do you get more than 50 hours a week?

21 A. It's really up to my discretion.

22 Q. Okay. So what's your discretion? What do you  
23 choose to work a week, more than 50?

24 A. If there's something I'm wanting to buy, I work a  
25 little over, but I get out of there when I can get out

1 of there.

2 Q. So how many --- typical workweek, how many hours?

3 A. Typical would be 50.

4 Q. How often do you work more than 50?

5 A. A couple of times a year.

6 Q. Okay. When do you come in? What time?

7 A. It varies. I've been slacking. I've been getting  
8 in about eight o'clock.

9 Q. Previously got in ---?

10 A. 8:00, 7:00-ish.

11 Q. Do you have a time clock?

12 A. Well, we do now, yes.

13 Q. When did you get that?

14 A. The last couple months.

15 Q. Have you ever been asked to make modifications on  
16 a ventilation plan map when you've dust done that map  
17 a day or a couple days before?

18 A. I don't recall.

19 Q. Would that be unusual if that happened?

20 A. I really wouldn't know.

21 Q. How many maps a day do you print out on the  
22 plotter?

23 A. It varies. There's been days where I've not  
24 printed out anything.

25 Q. Okay. What's the variation, from zero to what?

1 A. It'd be zero from a couple 100, depending on what  
2 project I'm working on.

3 Q. Okay. How long does it take to create one  
4 ventilation map for a ventilation plan?

5 ATTORNEY SEARS:

6 Do you mean to print it out or to ---?

7 MR. MCGINLEY:

8 No, no. Let me finish.

9 ATTORNEY SEARS:

10 Oh, I'm sorry. I thought you were  
11 finished.

12 MR. MCGINLEY:

13 That's okay.

14 BY MR. MCGINLEY:

15 Q. From the time you get the assignment, the marked  
16 up 'til the time you print it?

17 A. It varies. I mean, if I need to get up and go to  
18 the bathroom, I'll get up and go to the bathroom. If  
19 I want a Coke, I'll get up and get a Coke.

20 Q. So we're talking about 20 minutes?

21 A. Yeah, maybe an hour or two, depending on ---

22 Q. All right.

23 A. --- on the scale of things.

24 Q. So it could be 20 minutes to 2 hours ---

25 A. Yeah.

1 Q. --- depending on how much you have to input ---

2 A. Yes.

3 Q. --- and how many times you have to get a Coke and  
4 go to the bathroom?

5 A. I'm awful thirsty.

6 Q. You know any times when P.E. has refused to put  
7 his stamp on a mine map?

8 A. I really wouldn't know.

9 Q. So your answer's no?

10 A. No. My answer's I don't know. I do not know.

11 Q. Is that different than no?

12 A. My answer is I do not know.

13 Q. And my question is, is that different than no? Do  
14 you mean it could've happened but you don't remember?

15 A. I don't remember. I don't recall. I'm assuming  
16 no would be different than I don't know.

17 Q. Okay. You don't have any miner certifications.  
18 You've said that earlier; right?

19 A. Yes.

20 Q. Are you a member of any professional societies  
21 with regard to the work you do as an AutoCAD  
22 technician?

23 A. If there's a professional society, I don't know of  
24 it.

25 Q. Okay. Do you have any other kind of certification

1 relating to the work that you do?

2 A. There was a certification class in high school we  
3 had to complete, but other than that, no.

4 Q. What was the course?

5 A. That was a vocational course. The test we took  
6 was a certified drafter's test.

7 Q. So other than that you have no certification  
8 relating to the work you do, other than your Associate  
9 and your degree from Bluefield?

10 A. Yes.

11 Q. That's the only thing you have in terms of  
12 documentation of your expertise to do the work you're  
13 doing; is that correct?

14 A. Yes.

15 Q. You ever see Chris Adkins in your office?

16 A. No.

17 Q. Do you know what he looks like?

18 A. Yes.

19 Q. How do you know that?

20 A. I've seen him since the incident.

21 Q. At the mine?

22 A. Yes.

23 Q. Did Mr. Blanchard ever come into your office?

24 A. Yes.

25 Q. Did he ever come into your office and talk about

1 ventilation plans?

2 A. No, sir.

3 Q. Not with you or not with anyone in your office?

4 A. Well, not with me.

5 Q. And you don't know about anybody else in your  
6 office? You don't know whether he talked to them?

7 A. I can't speak for them. I wouldn't know.

8 Q. I'm not asking you whether you can speak for them.

9 A. I mean ---.

10 Q. Do you know whether he talked to anybody else in  
11 the office?

12 A. I've seen him in the office, talking to other  
13 people, but I don't know the nature of their  
14 discussions.

15 MR. MCGINLEY:

16 That's fine. Okay. That's all I have.

17 Thank you, sir.

18 RE-EXAMINATION

19 BY MR. SHERER:

20 Q. I've got some follow-ups, Mr. Acord. We've talked  
21 about Route 3 Engineering. How is that related to  
22 Upper Big Branch Coal?

23 A. It's one of the mines that we handle the  
24 engineering work for.

25 Q. Okay. Is Upper --- is Route 3 Engineering a

1 consulting engineering company?

2 A. No, sir.

3 Q. Is it a wholly-owned subsidiary of Massey?

4 A. I wouldn't know the answer to that.

5 Q. Okay. Do you have a contractor ID?

6 A. Again, I wouldn't know.

7 Q. Okay. What's the name on your paycheck?

8 A. It comes from Massey Coal Services.

9 Q. Okay. Thank you. Now, you say you're primarily  
10 an AutoCAD technician?

11 A. Yes.

12 Q. Is AutoCAD a simple program to operate?

13 A. It's not rocket science.

14 Q. It's not rocket science. What does that mean?

15 A. You click a button to copy a --- you know. If you  
16 want to copy a circle, you click the button for copy  
17 and select the circle.

18 Q. Okay. How long did it take you to learn to use  
19 AutoCAD effectively?

20 A. It depends on the type of work you're doing. On  
21 my work, not long, because it's just --- it's simple  
22 commands.

23 Q. Okay. Are there a lot of commands?

24 A. Depending on the type of work, there can be a lot  
25 of commands.

1 Q. Do you use a lot of commands?

2 A. Yes.

3 Q. Okay. So is it relatively complex?

4 A. The portions of it are relatively complex.

5 Q. Okay. And do you recall all of those commands?

6 A. Yes.

7 Q. Okay. Thank you. Did anybody ever tell you to  
8 put entries greater than 20 foot wide on the map?

9 A. No.

10 Q. Have you ever put entries greater than 20 foot  
11 width on a UBB map?

12 A. Not that I can remember. I don't handle that  
13 portion of the work.

14 Q. Okay. How often were section prints printed off  
15 and taken to the mine for UBB?

16 A. I don't print off section prints.

17 Q. Okay. Who does that?

18 A. That'd be the survey coordinator.

19 Q. Okay. Has anyone ever gone over the P2 mapping  
20 standards with you?

21 A. Not that I can recall.

22 Q. Do you know what the P2 mapping standards are?

23 A. I know of it. I don't know the contents of the  
24 standards.

25 Q. Do you have a copy of the P2 mapping standards?

1 A. I don't believe.

2 Q. Okay. Do you think there is a copy in your  
3 office?

4 A. There may be.

5 Q. Okay. Thank you.

6 ATTORNEY SEARS:

7 And when you say, office, do you mean  
8 in --?

9 A. In my general building.

10 MR. SHERER:

11 In your building, yes, sir. I forgot  
12 about the office situation. Sorry.

13 BY MR. SHERER:

14 Q. Were you involved in any mid month or end of the  
15 month reporting?

16 A. At one time I was.

17 Q. When did you stop being involved with that?

18 A. Probably a year or so ago.

19 Q. Okay. When you were involved with that, did you  
20 keep up with the footage advanced or reporting  
21 accuracy?

22 A. We entered it into --- well, I entered it into an  
23 Excel sheet.

24 Q. Okay. Do you know what was done with that Excel  
25 sheet?

1 A. No. I brought it to the engineer once I was  
2 completed.

3 Q. Okay. Did you ever hear of any sort of bonuses or  
4 maybe anybody being affected by those footages of  
5 advance?

6 A. I don't get any bonuses, so it's never really been  
7 an issue to me.

8 Q. Okay. Do you think that the people doing the  
9 mining get bonuses?

10 A. I don't know.

11 Q. Okay. And you've answered a lot of questions  
12 with, that's not my area. What were your job  
13 responsibilities, or what are your job  
14 responsibilities?

15 A. Any markups, anything an engineer would need done.  
16 If he needed a --- you know, if he needed a copy of a  
17 plan made ---

18 Q. Okay.

19 A. --- and he didn't have time, I'd make copies of  
20 the plan.

21 Q. Okay.

22 A. At one point in time as soon as I got done work, I  
23 made a pot of coffee. I mean ---.

24 Q. Sure, uh-huh (yes). So did you make copies of  
25 plans fairly regularly?

1 A. No, not regularly.

2 Q. Okay.

3 A. I mean, if --- you know.

4 Q. Just on occasion?

5 A. Yeah, if they were busy and ---.

6 Q. Did you ever get any rush jobs you had to do?

7 A. Yes.

8 Q. What were they associated with, in general?

9 A. Like, various things, budget mapping. Forecast  
10 mapping was one of the bigger rush jobs we'd have to  
11 do.

12 Q. Okay. Did you ever get any rush jobs associated  
13 with MSHA plan filings?

14 A. Not that I can recall.

15 Q. Okay. Did you have meetings on your work?

16 A. No, not often.

17 Q. Okay. Did you collaborate with anybody in your  
18 work?

19 A. With the budget forecast mapping, yes.

20 Q. Okay. Who'd you collaborate with in the budget  
21 forecast mapping?

22 A. Either the mine engineer or the company president.

23 Q. Okay. Did you normally discuss the work that you  
24 were doing with anybody in your office?

25 A. Yeah.

1 Q. Okay. If you had a problem with the map, who  
2 would you go to?

3 A. My supervisor, one of the mine engineers.

4 Q. Okay. Are you a black hat or a red hat?

5 A. I don't even hold an 80-hour card.

6 Q. Okay.

7 A. I guess I'm neither.

8 Q. Okay. Is Bluefield State an ABT accredited  
9 program?

10 A. The mining program is not accredited.

11 Q. Did anybody else you work with graduate from  
12 there?

13 A. Yes.

14 Q. Who did?

15 A. Heath graduated from there, but it was not a --- I  
16 don't believe his degree was in mining.

17 Q. Okay. Do you know if Jason Whitehead graduated  
18 from there?

19 A. Yes.

20 Q. Okay. Thank you. Now, you say you primarily  
21 worked for Matt Walker. Was there different CAD techs  
22 that worked with different mining engineers?

23 A. No, it was just, you know, just a big smelting pot  
24 of CAD techs. We'd work for --- I'd work for you one  
25 day and we'd work for somebody else the next.

1 Q. Okay. And you know if Mr. Walker was a P.E.?

2 A. I do not believe he is.

3 Q. Okay. Who signed your timesheet?

4 A. I believe it was Paul McCombs.

5 Q. Okay. Did Route 3 Engineering have a chief  
6 engineer.

7 A. I don't believe, not towards the end, we didn't.

8 Q. Okay. But you did have at one point in time?

9 A. Yes.

10 Q. Who was that?

11 A. It would've been Mike Mall.

12 Q. Okay.

13 A. I believe after he would've left I would've  
14 considered our chief engineer to have been Paul  
15 McCombs.

16 Q. Okay. Thank you. Now, you talked about a  
17 different office on the other side of the track. Was  
18 that also part of Route 3 Engineering?

19 A. They were the environmental department. I don't  
20 know if they went by that.

21 Q. Okay. And you mentioned that you typically had  
22 three to four AutoCAD techs in Route 3 Engineering?

23 A. Yeah, that's about average.

24 Q. Do you know how many surveyors were associated  
25 with Route 3 Engineering?

1 A. I wouldn't know the number. That'd be a question  
2 for the survey coordinator.

3 Q. Okay. If you had to guess ---?

4 A. It could be as low as, you know, ten, I guess; as  
5 high as twenty, maybe.

6 Q. Okay. And did you have just the one survey  
7 coordinator?

8 A. Yes, we have just that one.

9 MR. SHERER:

10 Okay. Okay. That's all the questions  
11 I've got.

12 RE-EXAMINATION

13 BY MR. FARLEY:

14 Q. The AutoCAD information for the Upper Big Branch  
15 Mine that would've been in place prior to April 5th,  
16 is that information still available?

17 A. It should be, yes.

18 Q. And is it currently available at the Route 3  
19 Engineering office?

20 A. It should be, yes.

21 Q. Okay. Can you provide that information to this  
22 investigative body?

23 A. It'll have to go through Massey's legal counsel,  
24 I'm assuming, but ---.

25 MR. FARLEY:

1 Okay. We'll take that up with them.

2 Thank you.

3 MR. MCGINLEY:

4 I've got a couple.

5 RE-EXAMINATION

6 BY MR. MCGINLEY:

7 Q. Do you have anyone you're related to by family  
8 relationship or by marriage that worked at Massey?

9 A. No, not anymore.

10 Q. Did you once?

11 A. Yeah, many, many years ago.

12 Q. Who worked many, many years ago for Massey?

13 A. Uh-huh (yes).

14 Q. But not while you've been working there?

15 A. Not while I've been working there. No, I'm sorry,  
16 a cousin, but he didn't work there long.

17 Q. How do you know Jason Whitehead has a degree from  
18 Bluefield State?

19 A. A lot of the instructor held him in high regards.

20 Q. The instructors at Bluefield State?

21 A. Yes.

22 Q. And what courses would they teach?

23 A. The courses that they taught me were mining  
24 courses.

25 Q. What?

1 A. I mean, I don't know what he would've had them

2 for, ---

3 Q. I understand that.

4 A. --- but they were ---.

5 Q. What courses, mining courses did you have?

6 A. Roof control, mine ventilation, that sort of

7 thing.

8 Q. Do you know what kind of degree --- what his

9 degree is in, Jason Whitehead?

10 A. I'm really not for sure what it is.

11 Q. Is he a P.E.? Do you know?

12 A. I really don't know.

13 Q. Is he a mining engineer?

14 A. I really don't know.

15 Q. The three engineers you worked with, the two

16 Lillys and Mr. Walker ---

17 A. Yes.

18 Q. --- are they P.E.'s?

19 A. I do not think.

20 Q. None of them?

21 A. None of them.

22 MR. MCGINLEY:

23 That's all the questions.

24 RE-EXAMINATION

25 BY MR. SHERER:

1 Q. I got one question, Mr. Acord. Could you tell us  
2 how mine works are placed in the AutoCAD drawing in  
3 the mine map?

4 A. Well, do you mean --- define mine works.

5 Q. Mine works, places that have been mined.

6 A. I don't handle it, but I believe that the survey  
7 notes are given to the survey coordinator, and him and  
8 his assistant enter the survey notes into the mine  
9 map.

10 Q. Have you ever worked on that part of the process?

11 A. When I first started five years ago, but that's  
12 not an area that I handle.

13 MR. SHERER:

14 Okay. Thank you.

15 ATTORNEY SEARS:

16 Okay. He would like to maintain  
17 confidentiality as provided under State and Federal  
18 law and have the opportunity to review his testimony.

19 ATTORNEY HAMPTON:

20 Okay. On behalf of MSHA and the Office  
21 of Miners' Health, Safety and Training we'd like to  
22 thank you for appearing and answering questions today.  
23 Your cooperation is very important to the  
24 investigation as we work to determine the cause of the  
25 accident.

1 As we mentioned earlier, we do request  
2 that you not discuss your testimony with any person  
3 other than with a personal attorney. And if after  
4 questioning other witnesses, we might have some  
5 follow-up questions for you, so we might contact you.  
6 And if at any time you have additional  
7 information that you would like to tell the team,  
8 please don't hesitate to contact us through the  
9 information that was provided to you in the letter  
10 that I gave you before we started the interview. So  
11 now, at this point if you would like, you may go over  
12 any answer that you've given if you want to give  
13 further clarification, or if there's any statement  
14 that you would like to make, you may do so at this  
15 point.

16 A. I don't believe so.

17 MR. SHERER:

18 Okay.

19 ATTORNEY HAMPTON:

20 Okay. Thank you very much. Off the  
21 record.

22 \* \* \* \* \*

23 STATEMENT UNDER OATH CONCLUDED AT 3:07 P.M.

24 \* \* \* \* \*

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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*

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