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Statement Under Oath of Derrick Kiblinger

Date: June 9, 2010

Case:

Printed On: June 15, 2010

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STATEMENT UNDER OATH

OF

DERRICK KIBLINGER

taken pursuant to Notice by Danielle Ohm, a
Court Reporter and Notary Public in and for the
State of West Virginia, at The National Mine
Health & Safety Academy, 1301 Airport Road,
Room C-137, Beaver, West Virginia, on
Wednesday, June 9, 2010, beginning at 2:10 p.m.

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EXHIBIT PAGE

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DESCRIPTION

IDENTIFIED

One

Map

97*

*Exhibit not attached

P R O C E E D I N G S

ATTORNEY HAMPTON:

My name is Polly Anna Hampton. Today is June 9th, 2010. I am with the Office of the Solicitor, U.S. Department of Labor. With me is Mr. Erik Sherer, an accident investigator with the Mine Safety and Health Administration, MSHA, an agency of the United States Department of Labor. Also present are several people from the State of West Virginia. I ask that they state their appearance for the record.

MR. FARLEY:

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

MR. O'BRIEN:

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

MR. MCGINLEY:

Patrick McGinley, with the Governor's independent investigation team.

ATTORNEY HAMPTON:

There are also several members of the investigation team also present in the room today. Mr. Sherer will begin conducting the questioning once we get through our preliminary matters.

1 All members of the Mine Safety and Health
2 Accident Investigation Team and all members of the
3 State of West Virginia Accident Investigation Team
4 participating in the investigation of the Upper Big
5 Branch Mine explosion shall keep confidential all
6 information that is gathered from each witness who
7 voluntarily provides a statement until the witness
8 statements are officially released. MSHA and the
9 State of West Virginia shall keep this information
10 confidential so that other ongoing enforcement
11 activities are not prejudiced or jeopardized by a
12 premature release of information. This
13 confidentiality requirement shall not preclude
14 investigation team members from sharing information
15 with each other or with other law enforcement
16 officials. Your participation in this interview
17 constitutes your agreement to keep this information
18 confidential.

19 Government investigators and specialists
20 have been assigned to investigate the conditions,
21 events and circumstances surrounding the fatalities
22 that occurred at the Upper Big Branch Mine-South on
23 April 5th, 2010. The investigation is being conducted
24 by MSHA under Section 103(a) of the Federal Mine
25 Safety and Health Act and the West Virginia Office of

1 Miners' Health, Safety and Training. We appreciate
2 your assistance in this investigation.

3 You may have your personal attorney

4 present during the taking of this statement or another
5 personal representative, if MSHA has permitted it, and
6 may consult with your attorney or the representative
7 at any time. Your statement is completely voluntary.

8 You may refuse to answer any question and you may
9 terminate your interview at any time or request a

10 break at any time. Since this is not an adversarial
11 proceeding, formal Cross Examination will not be
12 permitted; however, your personal legal representative
13 may ask clarifying questions, if appropriate.

14 Your identity and the content of this

15 conversation will be made public at the conclusion of
16 the interview process and may be included in the
17 public report of the accident unless you request that
18 your identity remain confidential or your information
19 would otherwise jeopardize a potential criminal

20 investigation. If you request us to keep your
21 identity confidential, we will do so to the extent

22 permitted by law. That means that if a Judge orders
23 us to reveal your name or for other law

24 enforcement purposes, we may do so. Also there may be
25 a need to use the information you provide to us or

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

4 Do you understand or do you have any
5 questions?

6 MR. KIBLINGER:

7 No. I understand.

8 ATTORNEY HAMPTON:

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

19 A court reporter will record your
20 interview. Please speak loudly and clearly. If you
21 do not understand a question, please ask whoever the
22 questioner is to rephrase it. Please answer each
23 question as fully as you can, including any
24 information you have learned from someone else. I
25 would like to thank you in advance for your appearance

1 here. We appreciate your assistance in this
2 investigation. Your cooperation is critical in making
3 the nation's mines safer.

4 After we have finished asking questions,
5 you will have an opportunity to make a statement and
6 provide us with any other information that you believe
7 to be important. If at any time after the interview
8 you recall any additional information that you believe
9 might be useful, please contact or have your
10 representative contact, as the case may be, Norman
11 Page at the telephone number or e-mail address
12 provided to you in the letter.

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

22 I see that you have a personal
23 representative with you here today, so I have some
24 questions about that. First of all, could you please
25 state your full name and address for the record.

1 MR. KIBLINGER:

2 Derrick Kiblinger, (b)(7)(C) .

3 ATTORNEY HAMPTON:

4 And do you have a personal legal
5 representative here today?

6 MR. KIBLINGER:

7 Yes.

8 ATTORNEY HAMPTON:

9 Will your personal legal representative
10 please identify herself?

11 MS. FERNALD:

12 Cindy Fernald.

13 ATTORNEY HAMPTON:

14 Do you voluntarily choose to have this
15 individual as your personal legal representative?

16 MR. KIBLINGER:

17 Yes.

18 ATTORNEY HAMPTON:

19 Did you feel like you had a choice in
20 this matter?

21 MR. KIBLINGER:

22 Yes.

23 ATTORNEY HAMPTON:

24 Do you consent now to having this
25 individual as your personal representative?

1 MR. KIBLINGER:

2 Yes.

3 ATTORNEY HAMPTON:

4 Do you understand that Massey Energy, its
5 affiliates or its officers or directors or attorneys
6 may not represent or direct you in this matter?

7 MR. KIBLINGER:

8 Yes.

9 ATTORNEY HAMPTON:

10 Are you legally representing the witness
11 in this matter?

12 MS. FERNALD:

13 Yes.

14 ATTORNEY HAMPTON:

15 Do you understand that you may not
16 communicate with Massey Energy, its affiliates or its
17 officers or directors or attorneys concerning the
18 substance of this representation?

19 MS. FERNALD:

20 Yes.

21 ATTORNEY HAMPTON:

22 Are you being paid by a third party to
23 provide such representation?

24 MS. FERNALD:

25 No.

1 ATTORNEY HAMPTON:

2 Having heard these representations, do

3 you still want this person as your personal legal

4 representative today?

5 MR. KIBLINGER:

6 Yes.

7 ATTORNEY HAMPTON:

8 And I don't believe I asked it. What is

9 your name?

10 MS. FERNALD:

11 Cindy Fernald.

12 ATTORNEY HAMPTON:

13 And what is your address?

14 MS. FERNALD:

15 105 Broncroft Place, in Daniels, West

16 Virginia.

17 ATTORNEY HAMPTON:

18 Could you please swear in the witness.

19 -----

20 DERRICK KIBLINGER, HAVING FIRST BEEN DULY SWORN,

21 TESTIFIED AS FOLLOWS:

22 -----

23 ATTORNEY HAMPTON:

24 Mr. Sherer?

25 MR. FARLEY:

1 Derrick, before we begin, on behalf of
2 the Office of Miners' Health, Safety and Training, I
3 want also to advise you that the West Virginia Mine
4 Health and Safety regulations protect you against
5 discrimination. And should you suffer such
6 discrimination at the hands of your employer, I'll
7 just give you a memo with some contact information,
8 should you need to file a claim.

9 A. Okay.

10 MR. FARLEY:

11 And your attorney also has my business
12 card.

13 MR. MCGINLEY:

14 For the independent investigation team,
15 and I'm sure joined by State and Federal investigators
16 here, want to emphasize we've got --- as you know,
17 we've got 29 dead men, widows, children. They want to
18 know what happened here. So what we're trying to get
19 to is the truth. So your cooperation and truthfulness
20 in this interview would go a long way helping us do
21 that. We appreciate you participating.

22 EXAMINATION

23 BY MR. SHERER:

24 Q. Mr. Kiblinger, I want to express our appreciation
25 for you taking the time to come down here and talk to

1 us. Did you previously give us your address and
2 telephone number?

3 A. Yes.

4 Q. Okay. I thought so. Are you appearing here today
5 voluntarily?

6 A. Yes.

7 Q. Have you spoken with anyone associated with Massey
8 Energy concerning the accident?

9 A. Yes.

10 Q. Could you explain when that happened?

11 A. The accident or the conversation?

12 Q. The conversation.

13 A. I'm not sure of the date, ---

14 Q. Sure.

15 A. --- but two weeks ago.

16 Q. Okay.

17 A. It was attorneys representing Massey Energy, the
18 company.

19 Q. Where did you speak with these attorneys at?

20 A. At the mines. At Upper Big Branch.

21 Q. At Upper Big Branch. Roughly, how long did that
22 conversation last?

23 A. An hour to an hour-and-a-half.

24 Q. Did they give you any instructions concerning any
25 interview like this one?

1 A. I don't think so. I think the only thing
2 discussed was that I had the right not to involve
3 myself in an interview such as this.

4 Q. Sure. Okay. Thank you. Did they ask you to
5 report back to them on any matter?

6 A. No, I don't believe so.

7 Q. Okay. Thank you. How many years of mining
8 experience do you have?

9 A. Roughly seven. I worked summers in college, and
10 then I started with Performance in 2004. It was 2004
11 or 2005 I started at Performance, and I've been there
12 ever since. So roughly seven, five, somewhere in
13 there.

14 Q. Okay. Sure. And it's all been at the Upper Big
15 Branch Mine?

16 A. No. I worked in Pennsylvania, at the Bailey Mine,
17 in college.

18 Q. Okay.

19 A. And I also worked at Buckhannon Mine, next to
20 Grundy, Virginia.

21 Q. And both of those are Consol, aren't they?

22 A. Yes.

23 Q. Since you've been with Performance, how long have
24 you been at Upper Big Branch?

25 A. I've been employed by Performance, but I was at

1 Upper Big Branch, then I was at Logan's Fort, and now
2 I'm back at Upper Big Branch.

3 Q. Was that associated with the movement of the
4 longwall up to Logan's Fort ---

5 A. Yes.

6 Q. --- and back?

7 A. Yes.

8 Q. I understand that you're an electrician?

9 A. Yes.

10 Q. How long have you been a certified electrician,
11 just roughly?

12 A. Four years. Around four years.

13 Q. When you got your electrical certification, were
14 you employed with Performance?

15 A. Yes.

16 Q. Did you sign any sort of agreement with
17 Performance concerning that electrical certification?

18 A. I signed --- I don't recall, but I signed --- yes,
19 I did sign a contract. I think it was by going --- by
20 them putting me through electrical school, I agreed to
21 work there for three years.

22 Q. Okay. Sure. And you work directly for
23 Performance? You're not a contractor?

24 A. No. I work for Performance.

25 Q. Okay. Could you please describe your duties at

1 Upper Big Branch?

2 A. I was in --- I've had a lot throughout the last
3 few years, but for the last --- since October, I've
4 been putting in the tracking and communication system.

5 Q. Okay. Interesting. And you say you started in
6 October on that?

7 A. Uh-huh (yes).

8 Q. Had you completed that system prior to the
9 explosion or was it still in the process?

10 A. It's still in the process.

11 Q. Roughly how much of the system was in, just a
12 rough percentage?

13 A. Well, there's two sides to it. There's a
14 communication aspect and then the tracking.
15 Communication was in. The communication system was
16 completed. The tracking was really far behind. A
17 percentage, maybe 20 percent of it would have been
18 done.

19 Q. What was the brand or the type of the
20 communication system?

21 A. Pyott-Boone was the --- Pyott-Boone and Minecom
22 mine --- system.

23 Q. What type of system is that? There's several
24 different types.

25 A. It uses a leaky feeder cable. It's a UO check

1 system. Pretty much the leaky feeders run all the way
2 through the mines in the prime area and secondary
3 escapeway, more or less like an antenna, ---

4 Q. Sure.

5 A. --- all the way through the mines. Radios
6 communicate off of the leaky feeder and tracking
7 communicates with the leaky feeder as well.

8 Q. Okay. Do you know where those systems terminated?
9 Were they at the Ellis Portal or the UBB Portal?

10 A. They terminated 'em several different --- they
11 terminated at the Ellis Portal and they terminated at
12 --- you know, at the end of a section at the longwall.
13 Anywhere it was the end of a branch, they terminated.

14 Q. Okay. We understand that some of the systems
15 terminated at the Ellis Portal, which lost power at
16 the time of the explosion. Would it be fair to say
17 that that cut off part of the entire mine?

18 A. At the time of the explosion?

19 Q. Yeah.

20 A. Yeah.

21 Q. Which part of the mine was dependent on the Ellis
22 branch portal and those systems associated with it?

23 A. I don't understand. I don't know ---.

24 Q. Just looking at the general mine layout, ---

25 A. Uh-huh (yes).

1 Q. --- it looks like there's a big older mine down to
2 the south.

3 a. Yeah.

4 Q. And the most active area of the mine seems to be
5 at the north.

6 A. Uh-huh (yes).

7 Q. Some of the northern area seems to have --- most
8 of those workers seem to have gone out of the Ellis
9 Portal, and the southern workers went through the old
10 UBB Portal.

11 A. Uh-huh (yes).

12 Q. Would it be fair to say ---?

13 MR. MCGINLEY:

14 Pardon me. Just for the record, if you'd
15 say yes, that will reflect your answer for the
16 transcript.

17 A. I'm sorry.

18 MR. MCGINLEY:

19 You were saying uh-huh, so ---.

20 A. Oh, I'm sorry. Okay.

21 BY MR. SHERER:

22 Q. Would it be fair to say that the northern portion
23 of the mine, and I'll point to the map as the area
24 above the sealed areas, was this area dependent on the
25 Ellis Portal for communications?

1 A. The base of the communication was at the UBB

2 Portal, ---

3 Q. Okay.

4 A. --- but everything went from the UBB Portal in.

5 As far as going to the Ellis Portal, there was nothing

6 there, ---

7 Q. Okay.

8 A. --- no kind of ---.

9 Q. Okay.

10 A. So it was just terminated at the end.

11 Q. Oh, okay.

12 ATTORNEY HAMPTON:

13 So the record is clear, can you clarify

14 which map you are discussing right now?

15 MR. SHERER:

16 Yes. This is the 1 to 500 scale map

17 that's currently on the board.

18 BY MR. SHERER:

19 Q. Would it help to put a copy of this map on the

20 table?

21 A. If you feel like it.

22 Q. Let me see if I can find where ---. I'm going to

23 have to pass on that. We can use this map and we can

24 mark on this map.

25 A. Okay.

1 Q. So as I understand it, the communication system
2 wasn't dependent on power at the Ellis Portal?

3 A. No.

4 Q. Okay. Do you know why we lost communications at
5 the northern part of the mine at the time of the
6 explosion?

7 A. Radio communication or mine phone communication?

8 Q. Both, if you could explain.

9 A. I would guess that the radio, the leaky feeder
10 communication, there was a lot --- the system runs
11 under battery backup.

12 Q. Uh-huh (yes).

13 A. Every amplifier has a battery backup with it.

14 Q. Uh-huh (yes).

15 A. We had plugged up all the batteries. But due to
16 the fact that we were constantly working on it,
17 sometimes the power would be on a particular area we
18 were working, sometimes we would take it off. If you
19 take the power off, that battery continues to run,
20 runs it completely dead. You have to buy a new
21 battery. So we had --- not all the batteries were
22 unplugged. Or I'm sorry, not all the batteries were
23 plugged up.

24 Q. Okay.

25 A. Then we were going, as we were working, plugging

1 'em up, because we were to the point where power was
2 on all the time. I don't know for sure that we got
3 all the batteries plugged back up.

4 Q. Okay.

5 A. That's just a --- I could be wrong on that, but
6 that's what I feel like.

7 Q. Okay. So you're speculating that the explosion
8 may have damaged one of the battery-powered amplifiers
9 that was unplugged?

10 A. No. I'm saying the explosion knocked the power in
11 the mines, ---

12 Q. Okay.

13 A. --- and the battery backup system that should have
14 took over in that instance. Probably all the
15 batteries weren't hooked up. And if there's one
16 battery backup that is unhooked and this amplifier is
17 not working, everything inby that is not working.

18 Q. Okay.

19 A. So you could have one battery, you know, one
20 unplugged and the rest of it's not going to work.

21 Q. Thank you. Thank you. That was very helpful.

22 A. And as far as the mine phone communication, you
23 know, the line could have got blown in two, could have
24 got shorted together, anything.

25 Q. Sure. Going back to your very first day at Upper

1 Big Branch, do you recall what you did when you first
2 went to work there?

3 A. I have no idea.

4 Q. I appreciate that.

5 A. Do you have any Federal or State mining
6 certifications?

7 A. Yeah. Yeah.

8 Q. What do you have?

9 A. I have electrical certification and assistant mine
10 foreman certification and a shot firer certification.

11 Q. Okay. Thank you. You say you work on the
12 tracking and communication system --- or you've been
13 primarily working on the tracking and communication
14 system. Did you work a particular shift or did you
15 just work as you had to get the job done?

16 A. I had a starting time, not so much as a quitting
17 time. But typically we would try to work 8:00 to
18 5:00.

19 Q. Okay. And did you primarily go in on the Ellis
20 Portal or the UBB?

21 A. The UBB.

22 Q. Okay. I imagine you went throughout most of the
23 mine as part of this tracking and communication work.
24 Do you recall going through equipment doors?

25 A. Oh, yeah.

1 Q. Were there a lot of them at this mine?

2 A. Yes.

3 Q. Did you ever notice any damage to the equipment
4 doors?

5 A. Yes.

6 Q. Was there leakage associated with that damage?

7 A. I mean, I never took an air reading, but I'm sure
8 there had to have been.

9 Q. Did you ever come up on an equipment door that was
10 open?

11 A. Yes.

12 Q. Any specifics? I mean, was it common to do that?

13 A. Not --- no, not common I wouldn't say, but it has
14 happened.

15 Q. Are you aware of where mantrips are going in and
16 out of the mine, and there's several of 'em, do you
17 ever hear of the first one opening the doors up and
18 the last mantrip closing them?

19 A. Yeah. I think there was even a violation or an
20 order or something wrote because of that, that a crew
21 had went in and opened the door and left it and the
22 next crew that came through, there was a mine
23 inspector on it and ---.

24 Q. Sure. It's a pain to open and close those doors.

25 At the other mines you worked at, did they have a

1 similar setup with the equipment doors?

2 A. I don't remember going through --- the only doors
3 I remember going through at other mines were right at
4 the section, maybe one set on each section.

5 Q. Uh-huh (yes). What did those mines use instead of
6 doors, do you recall?

7 A. I'm sure they had to use overcasts. Either
8 overcasts or undercasts.

9 Q. Sure. As an electrician, who did you report to?

10 A. I'm an electrician, so more or less anybody that
11 has the title chief electrician is my supervisor.

12 Q. Okay. And did you report to more than one chief
13 electrician?

14 A. Oh, yeah. Yes.

15 Q. Are there several?

16 A. Yes.

17 Q. Who are those individuals?

18 A. There's --- Paul Thompson, I think, is the
19 maintenance coordinator. He's the --- I guess the
20 chief of chiefs. He's the main electrician. Virgil
21 Bowman is a chief electrician. Dave Taraczkozy is a
22 chief electrician. I remember those because they were
23 on dayshift. There's --- you know, each shift ---
24 each section even had a chief, so ---.

25 Q. Would you know who the chief chief electrician

1 reported to?

2 A. No, I don't know.

3 Q. Okay. Thank you. You had an opportunity to
4 travel throughout the mine. Do you recall any floor
5 hooving in any part of the mine?

6 A. I have seen it in that mines, but I don't --- I
7 can't give you any specifics.

8 Q. Okay.

9 A. But I have seen it.

10 Q. Okay. Do you recall any methane outbursts or
11 methane inundations anywhere in the mine?

12 A. Yes.

13 Q. Can you describe that, please?

14 A. Before I started working on the tracking system, I
15 was a section electrician, and the section I was on
16 was the section driving for Bandytown fan.

17 Q. Okay. And that particular area is on this map in
18 front of you. Can you describe where you saw the
19 methane --- or are you aware of the methane inundation
20 on this map?

21 A. We came from another panel ---

22 Q. Uh-huh (yes).

23 A. --- to here (indicating) to drive what's now the
24 tailgate, and I think we probably picked it up at
25 about roughly 70 Break on the tailgate.

1 Q. Okay.

2 A. Somewhere in this right here.

3 ATTORNEY HAMPTON:

4 If I could just interrupt. I'm going to
5 hand you an orange marker, if it would assist you in
6 explaining the areas that you're talking about in the
7 mine. And can you clarify which map you're looking at
8 right now?

9 MR. SHERER:

10 Yes. This is a 1 to 200 scale map of the
11 northern portion of the Upper Big Branch Mine,
12 including the last mined longwall panel, One North
13 panel.

14 ATTORNEY HAMPTON:

15 So please use that marker to mark on the
16 map the areas that you're discussing right now.

17 A. Okay. As I said, we were mining in another part
18 of the mines. Then we had got moved to this tailgate,
19 somewhere maybe in right around here, 70 Break. And
20 that could be --- you know, that could be anywhere up
21 through here. I just remember we started somewhere
22 through here.

23 ATTORNEY HAMPTON:

24 Okay. And the witness has just drawn in
25 orange a small, about one-inch, mark where he was just

1 discussing.

2 BY MR. SHERER:

3 Q. Would you mind labeling that mark whatever you
4 think is descriptive, start of floor hooving?

5 A. That's not really where I wanted to go with that.
6 This is where we started.

7 Q. Excuse me.

8 ATTORNEY HAMPTON:

9 Could you mark it with the work start?

10 A. Okay.

11 WITNESS COMPLIES

12 BY MR. SHERER:

13 Q. Okay. And will you please continue your
14 description?

15 A. We drove from here and drove the angle over and
16 then up to the Bandytown --- what would be the fan
17 belt.

18 ATTORNEY HAMPTON:

19 When you say things like here or up, it
20 doesn't come across necessarily on the record. So
21 again, it you could maybe use a green marker to show
22 the route.

23 MR. MCGINLEY:

24 Maybe with arrows in the direction you're
25 working.

1 A. We were mining this way, towards --- I don't know
2 how to describe it.

3 BY MR. SHERER:

4 Q. The one that's just marked a green arrow on the
5 map. And as I understand it, that arrow shows the
6 direction you were mining?

7 A. Yes.

8 Q. And did you mine out the rest of the tailgate?

9 A. Yes.

10 Q. Did you mine the crossover up to the headgate
11 side, the one that goes straight north?

12 A. Yes.

13 Q. Okay.

14 MR. MCGINLEY:

15 Can you just put green arrows in the
16 direction ---?

17 A. I'm not sure if we mined the crossover, but we did
18 mine the angle.

19 ATTORNEY HAMPTON:

20 Could you maybe draw green arrows
21 connecting these areas?

22 WITNESS COMPLIES

23 BY MR. SHERER:

24 Q. And once you mined the diagonal, you then mined
25 further out?

1 A. Yes.

2 Q. So you developed all the way out from the
3 Bandytown fan?

4 A. Yes.

5 Q. Did you do all of the bottom mining around where
6 the Bandytown fan is now?

7 A. The bottom? The gray in the bottom?

8 Q. Yeah.

9 A. No. No, I didn't. Once we --- once we had mined
10 up as far as was needed to mine past the Bandytown
11 fan, we came back, our crew, and mined --- what do you
12 want me to call that?

13 MR. FARLEY:

14 Are you talking about the crossover on
15 the outby --- outby the mouth of the longwall panel
16 existing at the time of the explosion?

17 A. Yes.

18 ATTORNEY HAMPTON:

19 I'm handing you a blue marker now. If
20 you mark on the map where this is.

21 MR. FARLEY:

22 Which connects to --- from the tailgate
23 to the headgate entries on the mouth of the longwall.

24 MR. SHERER:

25 Thank you.

1 BY MR. SHERER:

2 Q. So you mined this area. Let's go back to the
3 floor hooving. Roughly where did you notice floor
4 hooving?

5 A. I can't --- I can't remember exactly where that
6 was.

7 Q. Was it before you reached the diagonal? Do you
8 recall?

9 A. I don't --- I don't recall. It was never enough
10 bottom hooving for me to think --- it was just
11 noticeable. It wasn't a ---.

12 Q. Okay. Sure. So there was some bottom hooving you
13 recall. You can't recall exactly where. Do you
14 recall if there was any methane released during that
15 hooving? Anybody talking about their detectors going
16 off, anything like that?

17 A. No. For the most part, the hooving was more of an
18 inconvenience.

19 Q. Sure.

20 A. It wasn't, you know, ---.

21 Q. Sure. Did the miner ever have to go back and
22 clean up some of the hooving or can you clean that up
23 with a scoop?

24 A. I don't remember if hooving --- it definitely
25 wouldn't go right with the miner, him clean it up. I

1 think by the time it started hooving, we were past
2 it, ---

3 Q. Okay.

4 A. --- and I don't think it --- I think it would be,
5 you know, if you would walk out by the face several
6 breaks, you would notice, hey, the bottom is hooving
7 back there.

8 Q. Okay. How about the roof and ribs? Did you
9 notice any problems with those as you were driving
10 these entries?

11 A. The top wasn't really good. I mean, it was loose.

12 Q. Uh-huh (yes).

13 A. It wasn't real solid, but not anything out of the
14 ordinary at a regular coal mine, you know.

15 Q. Okay. Sure. Do you recall the methane levels as
16 you mined through this area? Did the miner gas off?

17 A. The miner never did gas off. The only time that I
18 seen any methane that sticks out in my mind was once
19 we got within 30 breaks --- within 30 breaks of the
20 fan hole.

21 Q. Okay. Was that possibly associated with just low
22 airflow out there?

23 A. Yes.

24 Q. Did you have problems keeping enough air on the
25 miner?

1 A. I can't --- I'm not for sure about that. I was
2 the electrician, so ---.

3 Q. Okay. As far as the methane monitor on the miner,
4 did you maintain that?

5 A. No. As far as?

6 Q. Calibrating it or repairing it.

7 A. No. No.

8 Q. Have you heard or are you aware of any attempt to
9 modify the methane monitor system so that it wouldn't
10 detect the actual methane concentrations?

11 A. I've never heard of that at this mines or seen it
12 done for production. I think --- I'm not sure of my
13 memory here, but I think I seen it done for
14 maintenance, to back a miner out. The methane monitor
15 override didn't work, to back it out to work on it.
16 But for production, no, I never did.

17 Q. Okay. And how would that be done to back it out?
18 Could that be done remotely or ---?

19 A. The miner has a feature called the methane monitor
20 override, using the remote box for that reason. If it
21 goes down in a cut, override the methane monitor and
22 back it out so that you can work on it under supported
23 top.

24 Q. Okay. When you're doing that override, is it
25 possible to run the drum on the miner?

1 A. I don't think so. I'm not for sure.

2 Q. Okay. Thank you. You mentioned about 20 percent
3 of the tracking system was in place at the time of the
4 explosion. Was that in any particular part of the
5 mine?

6 A. It was kind of scattered from the UBB Portal to
7 the --- what's called the Mother Drive on the
8 longwall.

9 Q. Okay. And where is the Mother Drive located at,
10 please?

11 A. It's located at 101 Break, at the mouth of the
12 longwall.

13 Q. Have we got another color? Let's use the pink
14 marker. Can you mark that with a pink marker, please?

15 ATTORNEY HAMPTON:

16 Maybe label it.

17 BY MR. SHERER:

18 Q. Mother Drive.

19 A. Mother Drive, okay. That's been a common term for
20 that belt drive.

21 WITNESS COMPLIES

22 BY MR. SHERER:

23 Q. Okay. And was the tracking system primarily along
24 the track end at that point? How did that work?

25 A. It was --- the track was the secondary escapeway.

1 The intake was the primary escapeway. The primary
2 escapeway, I don't think --- which is the intake, I
3 don't think had very many tag readers working, I don't
4 think. The track, the secondary had, --- they were
5 kind of scattered. Like I said, they were ---.

6 Q. So they weren't continuous up to that point?

7 A. No.

8 Q. Okay. So basically you were just starting to get
9 a system in place?

10 A. Yes.

11 Q. Did all of the miners have the tags, do you know?

12 A. As far as I know, I started off trying to make
13 sure everybody had one, and it just got --- there were
14 so many people, eventually I just said, hey, you need
15 one, come to me.

16 Q. Sure. I don't know if you're familiar with the
17 recovery effort, but one of the biggest problems that
18 we had was finding the last four miners. Do you think
19 it would be possible to design some sort of device
20 that the mine rescue people could use to locate and
21 read those tags?

22 A. The tags that the individuals were wearing?

23 Q. Yeah.

24 A. I don't know. That would be hard to do, I think.

25 Q. That's just been a suggestion.

1 A. That would be hard to do. I don't know. I really
2 don't know about that.

3 Q. I appreciate that. Did you ever do any welding as
4 an electrician?

5 A. Yes.

6 Q. Could you give us a rough idea how you did that,
7 any precautions that you ---?

8 A. Well, you've got to have rock dust, a water ---
9 you got to have a water source available readily,
10 right beside of your fire extinguishers, take a gas
11 check.

12 Q. Uh-huh (yes). How often did you take a gas check,
13 do you recall?

14 A. What I did was I just hung the detector on top ---

15 Q. Okay.

16 A. --- from a bolt plate.

17 Q. Okay. Did you ever get down against the floor of
18 the rib to take a gas check or did you stay back 12
19 inches?

20 A. Twelve (12) inches from what I was welding or ---?

21 Q. From ---.

22 A. From the rib and roof?

23 Q. From the roof, rib and floor.

24 A. For the most part just, you know, kind of do a
25 walk-around of the area, not right at the bottom,

1 but ---.

2 Q. Okay. Thank you. Have you ever been injured
3 while you were working for Performance Coal?

4 A. No.

5 Q. Are you aware of the S1 and P2 and M3 programs?

6 A. Yes.

7 Q. Are you aware of the S1 manual?

8 A. No.

9 Q. In your own words, do you recall what the S1
10 program was?

11 A. I know the S1 program is a set of guidelines,
12 rules, if you will, that Massey Energy has set forth
13 for each member to adhere by.

14 Q. Okay. What's the P2 program?

15 A. I don't know. I think it's production two, I
16 think.

17 Q. Okay.

18 A. I think S1, safety first, production and then
19 measurement is M3, I think, is the way it goes.

20 Q. Okay. Thank you. You mentioned members of Massey
21 Energy. Could you explain what a member is?

22 A. That's something they came up with in lieu of an
23 employee. They want everybody to be members.

24 Q. Do you recall when they came up with that?

25 A. It's been since I worked there, but I don't

1 remember when they came up with that.

2 Q. Did you notice any change in anything?

3 A. Well, no. There wasn't no difference.

4 Q. Okay. Thank you. Do you feel that there was a
5 balance between safe working conditions and the
6 production of coal at this mine?

7 A. I think --- no, I don't. I think it was
8 production. I mean, that's what they're there for, is
9 to mine coal, so ---.

10 Q. Okay. So did that lead to people taking shortcuts
11 to meet production?

12 A. I don't think necessarily the people --- you know,
13 the miners that were in there every day. I don't
14 think ---. You know, they weren't going to do
15 anything that they thought would hurt anybody else.

16 Q. Sure.

17 A. I just don't think they would have did that.

18 Q. Okay.

19 A. I never felt like a supervisor of mine was doing
20 something because we had to mine more coal, we had to
21 mine more coal. We're going to do it this way.

22 Q. Okay. Thank you. Are you aware of any
23 ventilation-related problems at this mine?

24 A. I'd say there's a gang of them, a whole bunch,
25 but ---.

1 Q. In particular, did you ever --- were you ever sent
2 home early or told not to report to the mine because
3 of ventilation-related problems?

4 A. We were sent home maybe three months prior to the
5 explosion because of the fan that went off.

6 Q. Okay.

7 A. And I don't recall being sent home due to just
8 ventilation problems, no.

9 Q. Okay. Did you work the day of the explosion,
10 April the 5th?

11 A. Yes.

12 Q. And you started at normal time, eight o'clock?

13 A. Uh-huh (yes).

14 Q. When did you work prior to the explosion? What
15 was the shift immediately preceding that that you
16 worked? Do you recall?

17 A. Was that a long weekend before?

18 Q. We've been told that there was --- Friday was off
19 for Good Friday.

20 A. I had missed a --- it was either Thursday or
21 Wednesday. I had missed the day before a weekend. I
22 don't remember if it was that weekend or the weekend
23 before.

24 Q. Okay. Are you aware of any ventilation-related
25 problem right before the weekend?

1 A. No.

2 Q. Okay. Did you ever hear of any air reversals at
3 this mine?

4 A. What would you call an air reversal?

5 Q. Let's say you expect the air to be going outby on
6 the belt and it's coming inby. On the tailgate, the
7 air is supposed to go back to the --- back into the
8 longwall and it's coming back.

9 A. I remember this area right here, from the mouth of
10 the longwall, the intake, before this change had been
11 made, this intake came up across right here and split
12 right here.

13 Q. Could you please mark that?

14 ATTORNEY HAMPTON:

15 I've just handed you a yellow
16 highlighter. You are now marking the area you just
17 described and you're labeling it as ---.

18 A. Old split.

19 BY MR. SHERER:

20 Q. Old split, okay.

21 A. It used to split here and come up through here.

22 Q. Okay.

23 A. And that was the intake for Number One section
24 when they were driving across.

25 ATTORNEY HAMPTON:

1 And the witness just marked in yellow
2 continuing from the area marked as old split. And
3 could you draw arrows?

4 A. To the line or which way it's going?

5 ATTORNEY HAMPTON:

6 Yeah, the way it's going.

7 BY MR. SHERER:

8 Q. Which way it's going.

9 WITNESS COMPLIES

10 A. When this change was made for the intake --- when
11 I'm saying intake, I'm talking about the primary
12 escapeway. For the primary escapeway to come here and
13 go this way, we had to go move our line. We already
14 had our line ran up here.

15 BY MR. SHERER:

16 Q. Communication?

17 A. Leaky feeder, yeah. We went to do something ---
18 anyways, we were working on moving our line around.
19 We hadn't hooked it all up yet, but we were right here
20 working.

21 ATTORNEY HAMPTON:

22 Can you explain --- instead of here, that
23 doesn't come across clearly on the record, could you
24 describe the place that you're pointing to on the map?

25 A. We were in the primary escapeway, at the --- in

1 between the double doors on the longwall and ---.

2 ATTORNEY HAMPTON:

3 And this is near the area marked old
4 split.

5 A. And we were noticing --- some --- somebody had
6 said, is this intake a return? And I said, well, it's
7 got to be an intake if we're putting our line in. And
8 he said, are you sure? And I clapped my hands
9 together, the dust was going outby when I did that.
10 So I said, it's supposed to be intake, but obviously
11 it's not.

12 BY MR. SHERER:

13 Q. That was a definite air reversal?

14 A. Yeah.

15 Q. Roughly when did that occur, do you recall?

16 A. I would say that was in --- I'd say it was
17 sometime in the month of February.

18 Q. February of 2010?

19 A. Yes, sir.

20 Q. Okay. Thank you. Did you hear anybody else in
21 the mine talk about problems with air reversals?

22 A. Not with air reversals. I don't --- that ---.

23 Q. Any other air-related problem, low air ---?

24 A. The guys that worked on One section, Headgate 22,
25 they always said there's no air, you know, just

1 talking --- you know how people talk in the bath house
2 and this and that, there's no air up there.

3 Q. So when they said no air, they meant the quantity
4 was too low?

5 A. Yes.

6 Q. Any other places in the mine that you had problems
7 with air quantities?

8 A. I don't think so, no.

9 Q. Thank you. Were you aware of any advance notice
10 of inspectors on the property?

11 A. Yes.

12 Q. Was that common?

13 A. Yes.

14 Q. Do you know how it worked? Who would report that
15 somebody was on the property?

16 A. I'm not sure. There's a radio upstairs in the
17 office at Upper Big Branch, and when an inspector came
18 through the guard shack, I'm assuming the security
19 guard, I don't know who else it would be, called and
20 said, be advised MSHA such and such inspector on the
21 property.

22 Q. Okay. And would someone relay that underground?

23 A. Yes. I don't think it was relayed at that point,
24 when they came through the guard shack, but it ---
25 once there was a general idea of where the inspector

1 was going, the people --- if they said the inspector
2 is going to Two section, they got ahold of Two section
3 and said there's an inspector coming.

4 Q. Okay. And do you think they did anything
5 different on the sections when they knew that an
6 inspector was coming?

7 A. Evidently. Why else would they call?

8 Q. Okay. When you were working on the development
9 section on the longwall tailgate, did you --- do you
10 recall any notice of an inspector was coming to that
11 section?

12 A. I'm sure. I don't recall a specific incident, but
13 I'm sure it took place.

14 Q. Okay. Are you aware of any ventilation --- major
15 ventilation changes that were made when miners were
16 underground?

17 A. I'm not aware of it. No, I'm not aware.

18 Q. Did you --- are you aware of any mining that took
19 place without ventilation curtains in place?

20 A. No.

21 Q. Do you know of any miners that have ever been
22 subjected to retaliation or threats for reporting
23 safety issues or other concerns?

24 A. I don't know of any of that firsthand. Some
25 hearsay, but not firsthand, no.

1 Q. Thank you. Let's switch gears and go to April the
2 5th, at the time of the explosion. Do you recall
3 where you were at, at the time of the explosion?

4 A. Yes, I do.

5 Q. Can you please describe where you were at and what
6 you remember or what you felt, what you saw?

7 A. I was outside working on a scoop in the shop.

8 Q. When you say outside, which portal?

9 A. I was in the shop of the UBB Portal. We were
10 changing a center section on a scoop. And Dave
11 Taraczkozy came by --- we didn't know anything had
12 happened. We were working on the scoop, and it
13 sounded like that somebody had turned an exhaust fan
14 on in the shop. There's big blower fans on the side.
15 I just thought, you know, somebody turned the fans on.
16 No big deal. And then Dave Taraczkozy walked by and
17 said, something's happened, something's going on. And
18 I said, what do you mean? I don't know what you mean.
19 And he said, look right there. And I could look
20 through the shop and see the north return on the UBB
21 side, the north portal return, and there was not smoke
22 but just air, all kinds of air blowing dust
23 everywhere, a lot of dust.

24 Q. Did you see any debris coming out of those
25 portals?

1 A. No.

2 Q. Any papers, anything like that?

3 A. I was --- I just barely could see enough to see
4 that it was stirring up a lot of dust.

5 Q. Stirring a lot of dust. Do you happen to recall
6 what time that was?

7 A. It was around 3:00.

8 Q. Okay. Do you remember anything about the fans
9 there at the UBB Portal? Did anything happen to
10 those?

11 A. I'm not sure if anything happened, but the noise
12 that I had heard that I thought was exhaust fans,
13 small exhaust fans in the shop, somebody said the fan
14 doors had shut on the fan at the North Portal.

15 Q. Okay.

16 A. I don't know if that's what happened. Something
17 happened because I heard that noise, and the fans
18 wasn't on, so ---.

19 Q. Are you aware of any reversal of the rotation on
20 those fans?

21 A. I wouldn't know ---

22 Q. Okay.

23 A. --- if that happened or not.

24 Q. What was the very first thought that went through
25 your mind when you saw that dust? What did you think

1 it was?

2 A. Thought a rock fall had happened.

3 Q. Were you surprised when you learned that it was an
4 explosion?

5 A. I never really learned that --- you know, we never
6 knew really what happened. It was later in the ---
7 obviously, you know, we figured it out, but yeah ---
8 to answer your question, yes, I was surprised.

9 Q. You say you never really learned that it was an
10 explosion. Did someone tell you what to do
11 immediately after you noticed that?

12 A. No. We kept on --- well, you know, obviously
13 something like that is going to kind of hinder you a
14 little bit, so we were, you know, what's going on,
15 this is kind of strange. And somebody come downstairs
16 for me --- somebody come downstairs to talk to me and
17 said Doughnut wants to talk to you upstairs.

18 Q. And Doughnut is?

19 A. Dave Taraczkozy.

20 Q. Okay.

21 A. And I went upstairs and he said, Derrick, look on
22 your computer and see if you can see where anybody's
23 at. Something's going on. I looked on the computer,
24 and it had just froze. You couldn't ---.

25 Q. And that was the tracking computer?

1 A. Uh-huh (yes). And the CO monitor computer.

2 Q. What did this --- was there any indication of
3 excessive CO on that ---?

4 A. There was --- the area of the CO map that was
5 between 42 Break in the north and 78 Break in the
6 north, the whole system had quit communicating except
7 for that area. I don't know why, but that area froze.
8 The last CO reading froze, and it was high CO, 100
9 parts per million, 160.

10 Q. Did that monitor --- do you recall if there was
11 any time on those readouts? Did it display any time?

12 A. I don't think --- there's a printout, I think,
13 that prints out automatically all the activity, but I
14 don't know that it saved.

15 Q. Okay. You say there was a certain portion of the
16 mine where high CO readings were reported. Is that
17 portion on the map here?

18 A. The end of it is.

19 Q. Could you mark that for us, please? We can use
20 one of the colors. Pick one.

21 A. Orange showed up good. That's red.

22 Q. Okay.

23 ATTORNEY HAMPTON:

24 For the record, he's now using a green
25 marker.

1 WITNESS COMPLIES

2 BY MR. SHERER:

3 Q. Okay. And just label that high CO.

4 WITNESS COMPLIES

5 BY MR. SHERER:

6 Q. Now, I understand that that actually continued off
7 this map some distance outby?

8 A. Yes, sir. It went eight more breaks outby off
9 this map.

10 Q. Okay. Thank you. What did you do after the
11 explosion? Did you participate in the mine rescue and
12 recovery?

13 A. No. The only participation I had was helping 'em
14 load mantrips as they were going in.

15 Q. Okay. Is there anything in particular that you
16 recommend that MSHA and the State look at as far as
17 trying to determine what caused this explosion?

18 A. I don't think there's anything that I can tell
19 them to do that they probably don't ---. I think ---
20 I think it would be wise on their part to have
21 somebody that worked at this mines with 'em, you know,
22 somebody they feel like --- I know they're
23 professionals and they know what they're doing, but
24 you know, this is our home. This is where we spend
25 all our time.

1 Q. Sure.

2 A. We know the ins and outs. I feel like somebody
3 who is very familiar with this mines, it would be to
4 their benefit to have them with 'em. And like I said,
5 I know they are professionals and they've done this
6 for a long time, but I feel like that would benefit
7 'em.

8 Q. Okay. Thank you. Anyone in particular you would
9 recommend?

10 A. (Indicates no.)

11 Q. Thank you.

12 A. No.

13 ATTORNEY HAMPTON:

14 Is that a no? Okay.

15 MR. SHERER:

16 At this point I'm going to turn it over
17 to Mr. Farley.

18 ATTORNEY HAMPTON:

19 Why don't we take a five-minute break.

20 SHORT BREAK TAKEN

21 EXAMINATION

22 BY MR. FARLEY:

23 Q. Derrick, again, I'm Terry Farley with the West
24 Virginia Office of Miners' Health, Safety and
25 training. Let me back up here to make sure I've

1 understood some things correctly. You were talking
2 about membership. Are you a member at Massey? Are
3 you classified as a member?

4 A. Yes. Yes.

5 Q. How long have you been a member?

6 A. Five years.

7 Q. Now, you indicated that you have worked some
8 summers at Performance or with Massey while you were
9 in college; ---

10 A. No.

11 Q. --- is that right?

12 A. No. I worked for Consol ---

13 Q. Oh, okay.

14 A. --- while I was in college.

15 Q. You were with Consol?

16 A. Yes.

17 Q. Where at Consol did you work?

18 A. I worked at Bailey Mine, west of Waynesburg.

19 Q. Where did you go to college?

20 A. West Virginia University.

21 Q. Okay. Did you get a degree?

22 A. No, sir.

23 Q. How long were you there?

24 A. I was there from 2002 until 2004. I came back to
25 Beckley and I gave it another go for a summer, and

1 then I came back.

2 Q. Any particular field you studied?

3 A. Mining engineering.

4 Q. Now, I also want to make sure I'm clear, you are
5 an hourly worker at UBB?

6 A. Yes.

7 Q. You are not a supervisor at UBB?

8 A. No, sir.

9 Q. Have you been a supervisor at UBB?

10 A. No, sir.

11 Q. Okay. Now, if I followed you correctly, you
12 started at Performance and then went to Logan's Fort.
13 Why did you transfer to Logan's Fort?

14 A. I was on the longwall, and the longwall had went
15 from UBB to Logan's Fort.

16 Q. Okay. Why did the longwall move from UBB to
17 Logan's Fort?

18 A. I guess they didn't have panels set up at
19 Performance and they could set up panels at Logan's
20 Fort.

21 Q. Okay. Do you recall the last panel you worked on
22 at UBB prior to the move to Logan's Fort?

23 A. Headgate 16.

24 Q. Okay. Do you recall an event on Headgate 16
25 involving a floor outburst or inundation of methane?

1 A. No, I do not recall that.

2 Q. Okay. Were you working on the longwall panel at
3 UBB in February of 2004?

4 A. No.

5 Q. Do you recall when you might have started working
6 on the UBB longwall in 2004?

7 A. I didn't work at Performance in 2004.

8 Q. Okay. When did you start there?

9 A. 2005.

10 Q. Okay. Excuse me. So you worked on the longwall
11 at Logan's Fort?

12 A. Yes.

13 Q. What did you do on the longwall there?

14 A. I was an electrician.

15 Q. Okay. And you returned with the longwall to UBB?

16 A. No. I returned before the longwall to UBB.

17 Q. Okay.

18 A. I didn't like Logan's Fort, so I asked to be
19 transferred back to UBB.

20 Q. Now, since your return to UBB, have you worked on
21 the longwall panel in operation at the time of this
22 explosion?

23 A. No.

24 Q. Most recently it seems that you've been involved
25 in the installation of the communication tracking

1 system. Is that true?

2 A. Yes.

3 Q. What individuals assist you with that, or do any
4 individuals assist you with that?

5 A. Yes. I had to start off with Scott Martin, as a
6 trainee electrician. He helped me for a month. Jeff
7 Richards was a trainee electrician, he helped me for
8 about a month. Maybe longer. Maybe two months. And
9 now Patrick Lentz is with me.

10 Q. So you had one person to help you at times; is
11 that accurate?

12 A. Yes.

13 Q. When did you begin the installation of the
14 communication tracking system at UBB?

15 A. October the 6th, 2009.

16 Q. October the 6th, 2009. Okay. And since October
17 6th, 2009, have you ever had more than one person help
18 you with that installation?

19 A. Yes. I had some people ---. Scott Martin was
20 helping me. He went to the hoot owl with another guy
21 for about two weeks, and they ran the leaky feeder
22 line on the hoot owl and we ran it on dayshift. That
23 was for about two weeks, I think. And the other time
24 that I had help was I had to work through Thanksgiving
25 vacation to get help --- to help run the line.

1 Q. Okay. Now, prior to October the 6th, 2009, is
2 that right, did Performance Coal, UBB, have one --- a
3 leak at the installation of the communication and
4 tracking system?

5 A. Do you want my opinion or do you want facts?

6 Q. I'd be happy with either.

7 A. No, they didn't hit a leak. They had put in about
8 25 breaks of cable and two amplifiers. No, to answer
9 your question.

10 Q. Okay. They've had two people working on it ever
11 since?

12 A. Yes.

13 Q. Until the time of the explosion?

14 A. Yes.

15 Q. Now, is that --- it's usually one guy on one
16 shift? Anybody else on another shift?

17 A. No. Like I said, for about a two-week period
18 there --- and I might be mistaken on that. It could
19 have been longer. It wasn't very long. We were
20 running cable on dayshift. They were running on the
21 hoot owl.

22 Q. Okay.

23 A. But at the most, that went on for a month, and
24 every other time it's just been me and somebody else.

25 Q. Do you recall any particular ongoing problems with

1 the communication or tracking installation, something
2 that plagued you throughout, anything in particular?

3 A. Several. I mean, it was always a problem. The
4 first --- the first problem that we really started
5 having was there's an adjustment. Each amplifier has
6 an adjustment.

7 Q. Uh-huh (yes).

8 A. Nobody told me how to adjust 'em. I didn't know
9 how to adjust 'em. And the system will alert until
10 you get it stretched out really far. When you get it
11 stretched out real far, that's when the tuning comes
12 into play.

13 Q. Uh-huh (yes).

14 A. We never did get it adjusted right until --- it
15 was adjusted right, but it took us --- I want to say
16 maybe a month prior to the explosion we just had got
17 adjusted right for the radios.

18 Q. Okay.

19 A. Now, the problem with that is you adjust it --- we
20 adjusted it right for the radios and the tracking
21 wouldn't work. There are two different frequencies,
22 and they had the frequencies set so far apart that
23 they wouldn't --- the amplifier wouldn't boost both of
24 'em back outside because they were so far apart. So
25 Pyott-Boone had to come in and change all the

1 frequency of everything and kind of get that a little
2 closer together so that we were able to get the
3 tracking and the communication adjusted so they would
4 work.

5 Q. Okay. All right. So in the days preceding the
6 explosion on April 5th of this year, I think you
7 indicated that you were 100 percent on the
8 communication and about 20 percent on the tracking.

9 A. Uh-huh (yes). Yes.

10 Q. Now, you said the backup batteries were not all
11 plugged up on the tracking?

12 A. Yes.

13 Q. Were things --- aside from the fact that the
14 batteries weren't plugged up, you know, at that stage
15 of development, do you feel like you ironed out the
16 problems so the system was at least function to the
17 extent it was installed?

18 A. That's shades of gray. Sometimes yes and
19 sometimes no. Sometimes it would work and sometimes
20 it wouldn't work at all. Sometimes it would have
21 people places they weren't even nowhere --- I'll give
22 you an example. When this happened, it showed Steve
23 Harrah at 86 Break, way back in the intake at 86
24 Break, and he was one of the men that was on the
25 mantrip that they first found. I don't have any

1 explanation about that. But there was some things
2 like that that just didn't --- didn't make sense.

3 Q. Okay. Just for clarification purposes here, I
4 think you were talking about an air reversal in the
5 One North Headgate entry sometime in February. Did
6 you mean 2010?

7 A. Yes, sir.

8 Q. All right. At the time of the explosion, you're
9 outside in UBB, in the shop, working on a scoop. And
10 Dave Taraczkozy, known to some people as Doughnut, ---

11 A. Uh-huh (yes). Yes.

12 Q. --- what's his position?

13 A. He's a chief electrician.

14 Q. A chief electrician or the?

15 A. A chief electrician.

16 Q. What was his particular area?

17 A. His area was the south side. Well, I'm sorry, not
18 the south side. It would have been Three and Four
19 section was his section.

20 Q. Okay. Now, you indicated that air was blowing out
21 the north portal return and stirring up dust around
22 Three portal. Now, the air that was stirring --- was
23 the air stirring up the dust or was dust coming out
24 the return? Or can you say?

25 A. I can't say. I can't say. You know, at the time

1 I just assumed that it was dust being stirred up
2 because why would dust be blowing out of the portal?
3 Looking back now, it could have been dust coming
4 actually out of the mine. There's a berm. The portal
5 comes out and there's a --- I couldn't see real well.
6 All I could see was dust flying. It could have very
7 well been coming out of the mine. It could have just
8 been strong air stirring up dust.

9 Q. Was there any type of backup power system on the
10 surface for the communication and tracking system?

11 A. For the communication or tracking?

12 Q. Yes, sir.

13 A. Yes. Yeah. It had a --- I'm not sure about the
14 details, but it did have a battery backup.

15 Q. Okay. During your shift on April 5th, did you
16 hear at any time that the longwall might have been out
17 of service, down, for any reason?

18 A. Not during my shift. I don't know if it was
19 during my shift or later on that night, as everything
20 kind of unfolded, somebody ---. At some point I heard
21 that the longwall had been down for a rainstorm hit
22 --- that came out.

23 Q. Uh-huh (yes).

24 A. I think --- what I had heard was they started back
25 up around 2:30. The longwall was down, I think, from

1 11:15 to 2:30, from 11:00 to 2:00, somewhere in there,
2 and then they started back up.

3 Q. Can you recall how you acquired that information?
4 Did anyone in particular ---?

5 A. There was so many of us sitting around talking,
6 you know, after that, I really don't --- I don't
7 remember where it came from.

8 Q. Okay.

9 MR. FARLEY:

10 I think that's all I have for the moment.

11 Mr. McGinley?

12 EXAMINATION

13 BY MR. MCGINLEY:

14 Q. I think Mr. Sherer had asked you about whether you
15 were aware of a methane outburst and you said yes. I
16 think you said that; is that correct?

17 A. He asked if I had ever seen methane. I don't know
18 if that's the way that he put it, but had I ever seen
19 methane in this mine, and I said yes.

20 Q. Okay. And your answer was that --- I think you
21 indicated there was one time, ---

22 A. Yes.

23 Q. --- or was it a period of time?

24 A. It was a period. I only physically saw it on a
25 detector one time.

1 Q. Okay. But was it reported to you that there were
2 --- you know, the people you were working with or
3 other shifts, that there was also methane at that
4 time?

5 A. Yes. I think it was kind of well known at the
6 time that ---

7 Q. And was it ---?

8 A. --- we were having problems with methane.

9 Q. Was it explosive levels?

10 A. Yes.

11 Q. And would you have expected that to have been
12 reported to management?

13 A. Yes, I would assume it would have been.

14 Q. You would expect that it would be in the pre-shift
15 reports?

16 A. It should be.

17 Q. You said that in hearing the guys on Headgate 22
18 talk in the bath house and other folks, they were
19 saying they didn't have enough air; is that right?

20 A. Yes.

21 Q. And that was over a fairly long period of time
22 that they were talking about that?

23 A. Yes. It was before --- they had sent everybody to
24 portal on the Ellis side. Well, not everybody, I'm
25 sorry, half the --- the men that were working on that

1 end of the mines. It was before they had went over
2 there. So that's then. I'm not really for sure when
3 that was.

4 Q. Can you give a guesstimate or give or take a
5 couple months?

6 A. Before the first of this year.

7 Q. Did you expect that if there wasn't enough air in
8 the working places there for an extended period, that
9 would be written in the pre-shift examination?

10 A. Yes.

11 Q. Would it surprise you if there wasn't any
12 indication in the pre-shift examinations about the gas
13 --- the methane presence that you knew about as well
14 as the lack of air on 22 Headgate?

15 A. No, it wouldn't surprise me.

16 Q. Do you think that there were problems like lack of
17 air and detection of explosive levels of methane that
18 were not reported?

19 A. Yes.

20 Q. Do you have any sense of why that might be?

21 A. I don't blame the foreman that found it. I don't
22 blame them. I would say that they did tell their
23 supervisor, and I would say their supervisor
24 instructed them, we don't need that, you know.

25 Q. In writing?

1 A. In writing, yeah. Yes.

2 Q. There were obviously ventilation problems, at
3 least in the last year, at Upper Big Branch; is that
4 correct?

5 A. Yes.

6 Q. So one would expect that there would be
7 documentation in the pre-shift reports of ventilation
8 problems, lack of air, either at the longwall or the
9 head or tailgate?

10 A. That gets back again to what I just said, you
11 know. I don't know that you'll find it in a pre-shift
12 because it probably was reported. I'm sure that, hey,
13 we don't have any air was reported. But whether it
14 was documented, I don't --- I don't know that you'd
15 find that.

16 Q. And if there were --- strike that.

17 Are you aware that there were any changes made in
18 the mine ventilation plan in the last year?

19 A. Yes.

20 Q. Was that ever explained to you?

21 A. No.

22 Q. And so the changes in the ventilation plan, what
23 did you --- what did you hear the fellows you were
24 working with talk about as far as why those changes
25 were made?

1 A. I didn't --- I didn't ask. I'll be honest with
2 you, I didn't ask. I wasn't told. I didn't ---.

3 Q. Did you --- when you were working any time, did
4 you feel that there were times when there wasn't
5 enough air?

6 A. Yes. When I was on the section, yes.

7 Q. Yeah. You mentioned that earlier. And that was
8 up in the One North?

9 A. Yes. As far as working outby, what I've been
10 doing, I don't remember thinking that.

11 Q. So you think they were --- management was changing
12 --- making sort of temporary changes, putting up
13 curtains, taking in and putting out stoppings fairly
14 frequently to try to get air to different places?

15 A. Yes.

16 Q. Do you think they --- do you have any sense that
17 they preferred to have the air at the longwall rather
18 than the other sections?

19 A. I don't know that that was their intention, but I
20 do know --- I don't know. That's why I've heard.
21 This is the most air we've ever had on a longwall face
22 is what was said.

23 Q. And then there were people who were working on the
24 development sections and other places where they were
25 saying they didn't have enough air?

1 A. Yes.

2 Q. Do you know --- the contract that you signed when
3 you --- when Massey said they would put you through
4 electrician training, do you know if that's called an
5 enhancement contract?

6 A. I don't remember the name of it. I think the one
7 that I signed was called a Three, Three and Three. It
8 was three years, \$3, which represented \$3 more on the
9 hour than the average ---.

10 Q. The base pay?

11 A. Yeah. No, the average electrician at another coal
12 mines. I don't remember the other three. All I
13 remember is the three years and the \$3. I don't
14 remember what the other three --- oh, after three
15 years, you got a bonus. That's what it was. If you
16 stayed with --- you did fulfill your contract, you got
17 a bonus.

18 Q. And what if, for example, you decided that there
19 was another mine run by another company that you'd
20 rather work at for whatever reason and you hadn't
21 fulfilled your three years, what would happen under
22 your contract? Do you have any understanding?

23 A. I don't remember exactly. Oh, it was I was to pay
24 back all --- they had a figure. I don't remember the
25 figure, however much it had cost them to put me

1 through training and the \$3 an hour that I had
2 received for however long I had worked. I had to pay
3 that back.

4 Q. So if you worked under that contract for
5 two-and-a-half years and you decided that you
6 wanted --- for whatever reason, you wanted to move to
7 another company, you'd have to pay back all your
8 raises and any bonus?

9 A. I think so. I think that --- I know I would have
10 been required to pay back the training, what it had
11 cost for them to put me through training. I'm not for
12 sure about the \$3. I think that was part of it, but
13 I'm not for sure.

14 Q. And was there also a requirement that if you quit
15 or were terminated, that you couldn't go to work at
16 any other mine within a certain radius ---

17 A. Yes.

18 Q. --- of the mine site? Do you remember what ---?

19 A. Ninety (90) mile radius.

20 Q. So if you decided that you didn't want to work at
21 UBB, you wanted to work at some other mine after this
22 explosion, you'd have to pay back your training, maybe
23 all your \$3 raise, as well as find someplace else to
24 work 90 miles away?

25 A. Yes.

1 Q. How do you feel about that?

2 A. I think it's a big joke. I think that --- I think
3 they did it to say that it was a benefit for us, but I
4 think it's a shame that a company has to require their
5 members to sign contracts in order to keep them to
6 work for them.

7 Q. Do you think it made some people who signed those
8 contracts less likely to complain about safety issues?

9 A. Do I think the people that signed the contracts
10 are less likely to complain?

11 Q. The further they get into the three years, the
12 more they have to pay back.

13 A. That could be a way of seeing it.

14 Q. Did you ever hear anybody talk about that?

15 A. No. That's never been brought up.

16 Q. There's a report on Massey Energy's website. It's
17 called the Corporate Social Responsibility Report,
18 2009. And there they talk about --- they've got a
19 heading that says Safety First. And you were --- I
20 think Mr. Sherer asked you about S1 and P2. S1 meant
21 safety first?

22 A. Yes.

23 Q. And I think you --- when you answered that
24 question, you said there were certain things that the
25 company wanted --- wanted its members to adhere to; is

1 that right?

2 A. Yes.

3 Q. What were those things?

4 A. He asked me if I was familiar with the guidelines,
5 and I'm not.

6 Q. So ---?

7 A. Probably if you could ask --- that's kind of
8 broad. You know, there's so many safety things that
9 they enforce. If you could kind of direct me on that.
10 Safety glasses, I think the State requires that you
11 wear safety glasses, ---

12 Q. Well, that's ---.

13 A. --- when you're in mobile equipment. They say
14 wear them all the time. Anything the State or MSHA
15 has, they tried to go one more.

16 Q. Do you wear safety glasses all the time?

17 A. Well, no. If I was riding in a mantrip, I did, I
18 truly did. But nobody --- who's going to wear 'em all
19 the time? Nobody. I mean, it's just --- you're not
20 going to. You get hot and sweaty, it steams up.
21 You're going to take 'em off and hang 'em on the ribs
22 and keep on going.

23 Q. This Social Responsibility Report has another
24 heading that says, Listening to Our Members About
25 Safety Practices. It goes on to say, Massey

1 encourages active, empowers all Massey members at all
2 levels to be part of the developing, improving our
3 safety programs. Then it says, our extensive training
4 efforts and frequent operations and management
5 meetings create opportunities for the exchange of
6 information and new ideas. How often do you have
7 these operations and management meetings where there
8 was opportunities for exchange of information and new
9 ideas?

10 A. I don't ever remember going to one.

11 Q. Were you ever --- was anybody ever injured on a
12 shift where you were working, lost time?

13 A. I can't recall anybody ever being ---.

14 Q. Did you --- there was a press conference in April
15 after the explosion, I think at the Civic Center in
16 Charleston, and one of the Massey directors, Stan
17 Suboleski, made a statement. He said, UBB had a very
18 large number of what are called (d) orders, which are
19 the most serious types of violations, with 47 recorded
20 between the seven months of April through October
21 2009. Did anybody in management ever discuss that
22 large number of safety violations with you?

23 A. Yes.

24 Q. What did they say?

25 A. How much they cost. That was the gist of it.

1 Q. And in what context did they discuss that with
2 you?

3 A. I don't remember it being discussed. All the time
4 seeing papers, different violations, you know, on a
5 spreadsheet, this mines had so many (d) orders,
6 violations, and the cost, you know, and then had like
7 a total at the bottom.

8 Q. Was that on a board?

9 A. It was just --- I seen it laying on the
10 maintenance desk, the superintendent's desk, just ---
11 I mean ---.

12 Q. So they weren't showing that to people working
13 underground, or were they communicating, to your
14 knowledge, that?

15 A. The cost or the ---?

16 Q. The cost or the facts of the violation?

17 A. Yeah.

18 Q. So if Mr. Suboleski's statement was accurate of
19 the 47 serious safety violations, was it ever
20 explained what those involved, specifically?

21 A. No, I couldn't ---.

22 Q. Do you think ---?

23 A. It may have been brought up, you know, ---
24 somebody may have said, this is what happened. But as
25 far as a formal, hey, this is what happened, this is

1 why we got a violation or a (d) order, this is how
2 it's supposed to be done, no, no, that never ---.

3 Q. Do you think that would be helpful to ---

4 A. Absolutely.

5 Q. --- the people working in the mine if they knew
6 that these violations were occurring and the
7 specifics?

8 A. I think it helps people a lot, you know. I've
9 seen violations wrote before I didn't even know was a
10 violation. That's how I learned it was a violation,
11 seeing one wrote. Okay, I know not to do that
12 anymore.

13 Q. Do you know if there are any video cameras at UBB
14 on the site? Do you know?

15 A. There's one in the warehouse, but I think it
16 points in the shop. I think it points directly at the
17 breaker.

18 Q. Do you know of or should we be inquiring about the
19 possibility of any video cameras that might capture
20 some of the explosion event at the portal?

21 A. You may get something from Ellis. I'm not for
22 sure about other there. I know they've got cameras
23 over there, but I don't know which way they're pointed
24 or anything like that.

25 Q. Now, you said there was a circumstance when the

1 fan shut down and you were withdrawn?

2 A. Uh-huh (yes).

3 Q. Approximately when was that? Again, give or take
4 a few months. This year, 2009?

5 A. I'm saying it was in 2010. It could have been
6 anywhere. You know, that's --- from January 1st to
7 April --- not in April. It was between January and
8 March, I'd say. I don't --- the power knocked, the
9 fan went off, we came outside.

10 Q. What was the cause of that?

11 A. I don't ---.

12 Q. Nobody shared that with you?

13 A. I'm not for sure, no. The power to the whole ---
14 a lot of times the power will just knock through our
15 substation. It had knocked way up on the hill to
16 another substation.

17 Q. So did everybody underground come out?

18 A. As far as I know.

19 Q. And this was on the dayshift?

20 A. Yes.

21 Q. Speaking of shifts, you said you started about ---
22 did you say 7:30?

23 A. 8:00.

24 Q. 8:00. But you weren't clear on when you came out

25 --- you had quit. Was there a general time or did you

1 just stay if you're told to stay longer?

2 A. I wasn't ever told, work 12 hours, work 15 hours.

3 All I was told was this tracking system's got to be
4 in or the mines is going to get shut down. So how do
5 you take that, you know?

6 Q. But did that --- staying 12 or 15 hours, you make
7 extra money?

8 A. Yeah.

9 Q. But let me ask you this. When was it projected to
10 have the tracking system done? Did they tell you?
11 Did they give you a date?

12 A. Well, the tracking system was --- this was
13 something sent to the State by Performance. The
14 tracking system originally was supposed to have been
15 installed by --- it was either December 31st, 2008 or
16 January 1st, 2009.

17 Q. When did you start on it?

18 A. October 6th, 2009.

19 Q. And when was the first you learned about the ---
20 Massey's indication to the State that they were going
21 to put a tracking system in?

22 A. When was my first ---?

23 Q. Yeah, when did you first learn about the tracking
24 system?

25 A. From the day I started. I mean, I knew --- I

1 didn't realize that they were supposed to have had it
2 in already, but there was getting ready to be a big
3 push to get it in. I didn't know ---.

4 Q. So you just went to work, they said, okay, you're
5 going to do --- work on this communication and
6 tracking system. Did they do that cold? Did you just
7 come in one day and they said, okay, this is your
8 project?

9 A. Pretty much, yes. I think I went with some people
10 for one day, maybe two days, and they showed me ---
11 they handed me a map with an outline of where
12 everything was to be installed and said, here's your
13 map, put it in.

14 Q. And did they say, this has got to be in by X date?

15 A. Yes.

16 Q. What was the date?

17 A. The first of the year. It was either December
18 31st, 2009 or January 1st, 2010. I don't remember the
19 --- one or the other.

20 Q. Well, what did you think when they told you that?

21 A. I didn't know. I thought, no big deal. I got
22 four months. That ain't hardly nothing. I can get
23 that done.

24 Q. And then after what period of time do you realize
25 you weren't going to make that deadline?

1 A. About after a month.

2 Q. And who did you tell that to?

3 A. I don't remember going to anybody specifically and
4 saying, listen --- I don't remember. I know that I
5 had said it's not going to happen. There's no way
6 we're going to get all this in. And I don't remember
7 the particular incidents, but I told my bosses ---.

8 Q. Told Doughnut?

9 A. I feel sure that I did.

10 Q. The chief electricians you were telling?

11 A. Yes. They knew --- they knew where I was at with
12 it. I had to tell them.

13 Q. Were you worried about not ---?

14 A. Of course I was worried about it.

15 Q. And what did they say to you? Don't worry about
16 it or, you know, we'll do the best we can or --- do
17 you recall?

18 A. I really don't remember, you know.

19 Q. So did you work all this time on this system under
20 stress?

21 A. Yes.

22 Q. Did you think there was some chance you might lose
23 your job if you didn't get it done?

24 A. Yes.

25 Q. Did anybody ever suggest that you might lose your

1 job?

2 A. No.

3 Q. So when January 1st, 2010 came around and this
4 wasn't completed, was there a new deadline?

5 A. Yes, there was. I think it went to January the
6 31st after that. I think it was another month we were
7 given.

8 Q. Now, are we talking about the communication and
9 the personal tracking or ---?

10 A. This is the whole thing.

11 Q. So when they said January 31st, what did you
12 think?

13 A. We ain't going to make it. We couldn't get parts
14 from Pyott-Boone fast enough to get it in.

15 Q. And yet they weren't giving you any people to do
16 it; ---

17 A. No.

18 Q. --- is that right? How many people do you think
19 you would have needed to get it done by January 31st?

20 A. When I started in October, somebody should have
21 been working on every shift to even be close, to
22 even --- somebody should have been working on it every
23 shift that knows something about it.

24 Q. If management was serious about getting this done
25 by the deadline?

1 A. We ran every bit of that line, all of it. And if
2 you look at this mines, that's a lot. That's a whole
3 lot to run. And in the intake, every bit of it was
4 run by hand. You go hang up a thousand-foot stool and
5 grab it and take off.

6 Q. How many times did you work 12 or 15-hour shifts?

7 A. Too many to remember.

8 Q. The majority of the time?

9 A. I'd say the majority was the last --- you know,
10 since December. The majority was a 12-hour shift, I'd
11 say, on average. Some more. Some less.

12 Q. On April 5th, you were working in the shop on a
13 scoop ---

14 A. Uh-huh (yes).

15 Q. --- and somebody said, Doughnut wants to you, and
16 then you had the interchange with Doughnut about
17 checking out the computer, ---

18 A. Uh-huh (yes).

19 Q. --- and seeing where the men were or whatever.
20 What did you --- what were you supposed to be able to
21 see on the computer in terms of the location of people
22 in the mine?

23 A. If the system had been complete?

24 Q. Yes.

25 A. You should have been able to look anywhere there

1 was a split in the intake, the primary or the
2 secondary escapeway. There should have been three tag
3 readers, one on each side, to show which direction
4 they went. Every --- I think it was every 2,000 foot
5 there should have been a tag reader. There should
6 have been a tag reader at the tailpiece on each
7 section, at the tailpiece and at the end of the
8 lifeline in the primary. You should have been
9 able ---. Had this system been in place, you would
10 have known a lot quicker where these men were. You
11 would have known within 2,000 foot, probably a little
12 better, where they were.

13 Q. Can you explain again the importance of the
14 batteries being hooked up?

15 A. The batteries --- the system runs off of a power
16 supply. In the event the power is lost, it goes to
17 battery. The battery stays hooked up constantly, all
18 the time. It's not taken from the battery as long as
19 there's power on it. When the power goes off, the
20 batteries should take over and run the system. The
21 battery backup outside should run the --- what's
22 called the --- it's called a rack. It's like the base
23 for all of it. It would run that.

24 Q. So you said if even one of those wasn't connected,
25 nothing would work, ---

1 A. Yes.

2 Q. --- on the backup system?

3 A. Yes.

4 Q. And is that what happened?

5 A. I don't know. Really and truly, I don't know.

6 But I feel like that's what happened. I feel like one
7 of the batteries wasn't connected. And as I said, it
8 can be a thousand foot in the mine, 10,000 foot in the
9 mine. Wherever it is, from there in it's not going to
10 work.

11 Q. Of your own knowledge, did you know some batteries
12 weren't connected?

13 A. I know some were, yes.

14 Q. What was the projected date of the system? You
15 know, the last time you were there, you know, on April
16 5th, what was --- I mean, when were you told that you
17 had to have that system done?

18 A. I really --- I don't even remember. There was a
19 deadline, like we talked about, January 1st. It went
20 to the 31st. And then after that, I think it went to
21 March 1st. And March 1st, we never heard anything, so
22 that was ---.

23 Q. You thought maybe somebody had forgotten about it
24 and you had more time?

25 A. Yeah.

1 Q. You didn't believe these deadlines after a while
2 or you're still stressed about ---?

3 A. Still stressed, yeah. But like you said, I
4 thought, hey, maybe we got a little bit more time.

5 Q. With regard to the communications' part, you said
6 that was up and running?

7 A. Yes.

8 Q. How was it tested? I mean, was there periodic
9 testing?

10 A. More or less just, you know, listen by ear.
11 Somebody would say, hey, the radios don't work here,
12 they don't work there, you know.

13 Q. So the kinks hadn't been worked out?

14 A. No, not by no means.

15 Q. You said that you'd come across doors that were
16 open. You said it wasn't common, but it's happened.
17 What does that mean? Can you describe that?

18 A. It wasn't very --- I described a situation to him.
19 People went through, left the doors open. The next
20 crew come through ---. That happened. I remember the
21 doors just inby 78 Break in the north, they were ---
22 within the month before the explosion, they were
23 really --- sometimes they were tied together with a
24 rope hanger to keep 'em shut. You'd come up to and
25 one of 'em would be open, the other would be shut.

1 Q. Can you draw with an orange marker where those
2 doors existed?

3 MR. MCGINLEY:

4 Has this been marked as an exhibit?

5 ATTORNEY HAMPTON:

6 I'll do that at the end.

7 MR. MCGINLEY:

8 Okay.

9 BY MR. MCGINLEY:

10 Q. You're coloring in a --- okay, a solid block of
11 orange and you're going to write ---

12 A. Damaged doors.

13 Q. --- damaged doors. Tied together with a rope?

14 A. Yes, to keep 'em shut.

15 Q. And so to open them you have to untie the rope or
16 is it a loop?

17 A. I'm sorry. It's a loop with a hook on it.

18 Q. Okay.

19 A. You just kind of wrap it around and hook it.

20 Q. And sometimes those doors were open?

21 A. Yes.

22 Q. They're really banged up?

23 A. Yes.

24 Q. Did you ever get out and open and close them when
25 you were going through?

1 A. Yes.

2 Q. And did they --- did you ever hear --- did you
3 hear air or did you feel air even when you closed them
4 with ---?

5 A. The only thing as far as feeling air or getting an
6 idea of how much air could be lost or could be there,
7 typically, when you would go through the second door,
8 you shouldn't have any trouble shutting it. You
9 should just kind of give it a shove and it will pull
10 itself shut. These you really had to ---.

11 Q. You had to really put pressure on them?

12 A. Yes.

13 Q. Were there times when you'd do that and you'd walk
14 away and they'd open up again?

15 A. Yes.

16 Q. That was common?

17 A. Yeah. Hence the rope tied around it.

18 Q. So was that just the last month, like in March, or
19 did that go on earlier in the year, in 2010?

20 A. I just --- I just remember it around March.

21 Q. Was that just, in your mind, an inconvenience or
22 did you think, oh, there's some consequences with
23 regard to ventilation?

24 A. Obviously, you think both ways. I mean, you know,
25 you're thinking, well, that's not right. Something's

1 not right. But at that time, yeah, it's an
2 inconvenience.

3 Q. Sure. Water, are you aware of any water problems?

4 A. Yes. The same area we were talking about earlier,
5 behind the --- behind the actual longwall panel, there
6 was a lot of water in the area leading up to the
7 Bandytown fan.

8 Q. Was there --- at some point did management have a
9 sump put in at the Bandytown fan?

10 A. Yes.

11 Q. And before that sump was put in, what were the
12 conditions in terms of water?

13 A. A lot of it. A lot of water, sometimes knee deep,
14 sometimes waist deep. It just depends on where you
15 were at. Walking, in and out of the entries, I mean,
16 there was water everywhere.

17 Q. Did you wade through that water?

18 A. Yes.

19 Q. Did they give you waders?

20 A. No.

21 Q. Did they give some people waders?

22 A. I remember seeing waders. Now, whether people had
23 brought 'em on their own or they were given to them, I
24 don't know, but I did see some waders.

25 Q. Did you ever --- was the water ever at a level

1 above your waist?

2 A. Yes.

3 Q. How high did it go?

4 A. Just about right --- our mantrip had come off
5 track one time, and it just so happened it had come
6 off track --- the track had been raised up and was
7 sitting on crib blocks. And it just wrecked just
8 enough that we were stopped. And we got out to put it
9 back on track, and down in the hole we went, probably
10 waist deep.

11 Q. Did you ever have it higher than waist deep, neck
12 deep?

13 A. Not --- I don't remember. I just remember that
14 particular instance it being up to about my waist.

15 Q. And this would have been behind the active
16 longwall, ---

17 A. That was ---.

18 Q. --- One North?

19 A. Yes, while we were ---.

20 Q. Working on One North tailgate?

21 A. Yes. When we --- I think we had already drove up
22 towards the fan. We were done mining. So that's
23 about the time they were --- maybe there was a little
24 bit more mining left. I just remember we weren't
25 mining at the time. I don't remember why, but the

1 longwall hadn't started. But there was a lot of water
2 up there.

3 Q. Okay. Then you left there, so you don't know what
4 happened after the longwall started?

5 A. No.

6 Q. Did you hear anything about the water up there?

7 A. Just that there's a lot of it. Vacation ---
8 Thanksgiving vacation, the longwall was down either on
9 Massey's terms or MSHA's terms, whoever. They were
10 shut down because of the water behind the longwall.

11 Q. And that would have been Thanksgiving 2009?

12 A. Yes.

13 Q. Do you know anything about the water roofing out
14 in entries in the headgate or tailgate of One North?

15 A. I never went back up that way. I heard different
16 times water was roofed out, this and that, but ---
17 obviously, there was a water problem. There was
18 somebody designated to take care of the water behind
19 the longwall, so ---.

20 Q. How do you know that?

21 A. Common knowledge, I mean, around the mines that
22 there was somebody taking care of pumps and water
23 behind the longwall. There was a crew --- I think
24 three or four of them went in just like a --- that was
25 their job, taking care of the waters and the pumps.

1 Q. Go swimming?

2 A. I'm sure. I'm sure they did.

3 ATTORNEY HAMPTON:

4 Can we go off the record for one second?

5 SHORT BREAK TAKEN

6 ATTORNEY HAMPTON:

7 We've just taken a five-minute break, and

8 we are all back now.

9 BY MR. MCGINLEY:

10 Q. When you were in the shop working on a scoop on
11 the 5th of April 2010 and you said you saw dust
12 stirred up, did it have any color, did you notice?

13 A. That's what makes me think that it was dust just
14 being stirred up. It looked just like dirt, just ---
15 if you were watching a baseball game and a dust cloud
16 went flying by, that's what it looked like.

17 Q. Okay. Printouts for that computer, the tracking
18 system, you said there were printouts. Can you
19 explain that?

20 A. It's set up to every time there's --- I really
21 don't have it set up. It prints off all the
22 information, all the activity of the CO system. Once
23 it gets a full page of information, it prints it off.

24 Q. And over what period of time would it take to have
25 one page printed off? I mean, I'm looking for just a

1 vague estimate, if you have any sense ---?

2 A. Well, the trouble with that is if the system would
3 malfunction for any reason, it would spit out a bunch
4 of sheets right then, you know, this address went
5 dead, came back, this one, for every one. So it
6 potentially could put out a lot. A normal day, it
7 shouldn't print out that much. I mean, there should
8 be no --- nothing to report, you know, no information
9 to give. Because as long as the system is working
10 properly, it doesn't print anything.

11 Q. Well, who was in charge, if you know, of
12 monitoring that system? Let me ask a little bit of a
13 follow-up there to give you context. You said there
14 was a computer in an office?

15 A. Yes.

16 Q. What office was that?

17 A. Upstairs in the dispatcher's office, I guess.

18 Q. Okay. And you looked at the computer because you
19 happened to be there in the shop and you were asked to
20 look at it; is that right?

21 A. Yes.

22 Q. But was it your job to maintain that computer,
23 make sure the printouts were ---?

24 A. No.

25 Q. Do you know whose job that was?

1 A. I think as far as --- I don't think anybody had
2 the job of maintaining that computer. I think Virgil
3 Bowman took care of all the printouts.

4 Q. Virgil Bowman is who?

5 A. He's a chief electrician, a chief electrician.

6 Q. And what's his responsibility?

7 A. The CO system, the outby belts and thing --- I'm
8 really --- he's more of an outby electrician.

9 Q. Do you know whether the printouts ever showed ---
10 strike that.

11 What were the printouts supposed to show in terms
12 of if there was CO detected?

13 A. Now, that I don't really know about. I never
14 really looked at 'em to get an idea of what they --- I
15 glanced at 'em. But the system should alarm. Any
16 time there's a high level of CO, it should alarm and
17 come up on the screen.

18 Q. Did it have a noise or ---?

19 A. Yeah. It would beep, beep outside. There was a
20 speaker outside that beeps any time ---.

21 Q. And did the speaker beep when it malfunctions?

22 A. Yeah.

23 Q. So was this a common thing to have this alarm go
24 off?

25 A. Yes. It was also the belts. The belts would

1 be --- if the belts went off. So ---.

2 Q. So because they would go off for malfunctions, as
3 well as supposedly going off if there was a problem,
4 say explosive levels of methane, you wouldn't know
5 which was which; is that right? Or was there a
6 different signal for malfunctions?

7 A. Sometimes it would be an inactive reading.

8 Sometimes it would be just for the malfunction. If
9 there was a reading of high CO, you could --- you
10 know, there was something there, you know. Usually
11 the dispatch would holler to anybody that was close
12 and say, this CO monitor is going off at such and
13 such, can you go check it out?

14 Q. Did you hear that happen on occasion?

15 A. Yeah. Yeah.

16 Q. Frequently?

17 A. Yeah.

18 Q. Did that necessarily mean it was high CO?

19 A. Not all the time.

20 Q. Some of the time?

21 A. Some of the time. I know that if they're next to
22 battery-charging stations, I guess the hydrogen
23 somehow can set 'em off.

24 Q. But was it your understanding that they were set
25 off by excess levels of CO?

1 A. They were sometimes, on occasions, yes.

2 Q. And that would be recorded on the printouts?

3 A. Again, I feel like it should be. I'm not for sure
4 that it printed out the actual level of CO or if it
5 just said that it had an alarm. So I'm not --- I'm
6 sure there's a way of --- if it says there was high CO
7 and it will have the time and day.

8 Q. On the 5th, did the audible alarm go off?

9 A. If it did, I wouldn't remember, if it beeped.

10 Q. I mean, did you --- I'm just trying to get you to
11 think back. And if you don't remember, that's fine.
12 Somebody called you and said Don wants to see you and
13 you went into another room. Do you recall, was there
14 a sound that it was making that would be associated
15 with the alarm?

16 A. I don't remember.

17 Q. That's fine.

18 A. The system, like I said, it quit communicating, so
19 it may have started beeping. And once it got
20 acknowledged, it quit.

21 Q. What did you think when you saw that reading?

22 A. I had no idea what to think. I really ---.

23 Q. Were you concerned?

24 A. Yes.

25 Q. Did you connect it with the dust that you saw

1 outside or ---?

2 A. No. No, I really didn't. I kept waiting on the
3 mantrip to come out. I thought for sure it would.

4 MR. MCGINLEY:

5 Okay. I think that's all I have right
6 now. Thanks a lot.

7 ATTORNEY HAMPTON:

8 Anybody have any follow-up?

9 MR. SHERER:

10 I have a few follow-ups.

11 RE-EXAMINATION

12 BY MR. SHERER:

13 Q. Are you now working for Massey Energy at any
14 place?

15 A. Yes.

16 Q. Where are you working?

17 A. Upper Big Branch Mine.

18 Q. What are you doing there?

19 A. I monitor the Bandytown fan.

20 Q. The Bandytown fan, is that fan powered by the
21 electrical grid or do you have diesel generators up
22 there?

23 A. The fan is powered by electricity. There is a
24 diesel generator there. The diesel --- I'm sorry.

25 It's not a diesel generator. It's a diesel

1 compressor. The diesel compressor pumps air into the
2 mines through these air pumps that we were talking
3 about behind the longwall, is why there's a compressor
4 there.

5 Q. Do you have any knowledge of any problem with that
6 diesel compressor prior to the explosion?

7 A. I have no --- I didn't even know where Bandytown
8 was prior to the explosion.

9 Q. Okay. Mr. McGinley was talking about situations
10 where there were problems with air and ventilation and
11 methane. And you mentioned that there were unofficial
12 ways to let management know of those problems rather
13 than put it in the pre-shift books or the on-shift
14 books. How did that work? Did people write it on a
15 whiteboard or ---?

16 A. I don't really know how it --- this is speculation
17 on my part. I would just say they pulled 'em to the
18 side and said, hey, this is what happened or this is
19 what we had, okay, I would assume. I never seen ---
20 you know, I never seen no air on One section wrote on
21 the board, you know. If I did, it would have been,
22 you know, just thought of as a joke, you know,
23 somebody ---.

24 Q. Sure. Did you notice that the section bosses and
25 such, did they carry any sort of notebooks with them?

1 A. Oh, yeah. They all had clipboards with a
2 calculator and notebook, whatever.

3 Q. Did you ever notice like an in-basket or someplace
4 in the office where they would put notes or anything
5 like that?

6 A. I don't think. No. No.

7 Q. Okay. Thank you. You mentioned that Don had
8 asked you to go take a look at the CO system. And you
9 also mentioned that it printed out when the screen was
10 full. Where was the printer in relationship to that
11 large-screen monitor?

12 A. It was upstairs.

13 Q. The monitor was upstairs or the printer was
14 upstairs?

15 A. There was a large-screen monitor downstairs.

16 Q. Okay.

17 A. There was a computer with a print beside it
18 upstairs. Those two computers were networked
19 together, so they were the same, you know.

20 Q. Do you know if there was any sort of permanent
21 record kept like on a hard disk or anything like that
22 of those CO readings?

23 A. I don't --- I'm not for sure about that, no.

24 Q. Okay. So you're looking at the CO monitoring
25 system. Was that called an atmospheric monitoring

1 system or was it just a CO system?

2 A. It was an AMS system.

3 Q. Full AMS system. Do you recall at any point in
4 time anyone starting to talk about fire explosions in
5 relationship to everything that was going on there?

6 A. The only time that I remember anything, Doughnut
7 had came into the room where the computer was and he
8 said, they blew the place up, didn't they? And that
9 was --- I had never thought explosion. It had never
10 --- I guess it just never clicked. I don't know. And
11 when he said that, that's when I started thinking, you
12 know, maybe that's what happened.

13 Q. Do you recall what time that was? Was it 5
14 minutes after, 13 minutes?

15 A. Not long. It wasn't long. Ten minutes.

16 Q. Okay. Do you know who the responsible person was
17 at the time of the explosion?

18 A. No, I don't. It's posted. It was posted, but I
19 don't remember. I would think that it would be Gary
20 May and Rick Foster.

21 Q. Okay. Were any --- those two individuals coming
22 by to look at the CO monitoring system?

23 A. No.

24 Q. Do you know where those two individuals were at
25 that point in time?

1 A. Back underground.

2 Q. Were they underground at the time of the explosion
3 or did they go back underground?

4 A. I don't think they were underground. If they were
5 underground, it was on the south side because --- now,
6 I can't --- I'm not for sure. They just said they
7 took off back underground. Somebody said they took
8 off back underground. So I just assumed they were
9 outside.

10 Q. You mentioned --- I asked you had you heard of any
11 ventilation changes being made while miners were
12 underground --- or asked you were you aware of any
13 ventilation changes being made while miners were
14 underground and you answered no. Have you heard any
15 rumors or anything about ventilation changes being
16 made while miners were underground?

17 A. The thing about a ventilation change or an air
18 change, however, that term was so --- thrown around so
19 loosely, it didn't --- I didn't hear of it, but it
20 wouldn't surprise me.

21 Q. Sure.

22 A. You know, it wasn't ---.

23 Q. Sure.

24 A. It was just threw around a lot, ventilation
25 change.

1 Q. Sure. Were you aware of the regulatory definition
2 of a major ventilation change?

3 A. I was after this.

4 MR. SHERER:

5 Thank you. That's all I have.

6 ATTORNEY HAMPTON:

7 Okay. A couple housekeeping things. We
8 have a map that has been drawn on and discussed
9 throughout this interview process, so let's mark that
10 as Exhibit Number One.

11 (Kiblinger Exhibit One marked for
12 identification.)

13 ATTORNEY HAMPTON:

14 And also, you told me off the record that
15 you would like to request a copy of this transcript at
16 the appropriate time, when those are made available.

17 A. Yes.

18 ATTORNEY HAMPTON:

19 Okay.

20 MR. MCGINLEY:

21 Did you mean to check for errors or just
22 at the time when it's released to everyone else?

23 MS. FERNALD:

24 Is there availability to read and sign
25 the deposition?

1 ATTORNEY HAMPTON:

2 Well, it's not a deposition. It's an
3 interview.

4 MR. MCGINLEY:

5 We have extended that to others.

6 ATTORNEY HAMPTON:

7 Have we? Okay. Then yes.

8 MS. FERNALD:

9 Then we'd like to review it and sign it.

10 ATTORNEY HAMPTON:

11 Okay. All right. On behalf of MSHA and
12 the Office of Miners' Health, Safety and Training, I
13 want to thank you for appearing and answering
14 questions today. Your cooperation is very important
15 to the investigation as we work to determine the cause
16 of the accident. We request that you not discuss your
17 testimony with any person, aside from your personal
18 representative.

19 After questioning other witnesses, we may
20 call you if we have any follow-up questions. If at
21 any time you have additional information regarding the
22 accident that you would like to provide to us, please
23 contact us at the contact information that was
24 previously provided to you.

25 If you wish, you may now go back over any

1 answer that you have given during this interview and
2 you may also make any statement that you would like to
3 make at this time. Is there anything additional that
4 you would like to say?

5 A. No.

6 ATTORNEY HAMPTON:

7 Okay. Again, I want to thank you for
8 your cooperation in this matter.

9 * * * * *

10 STATEMENT UNDER OATH CONCLUDED AT 4:25 P.M.

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CERTIFICATE

I, Danielle Ohm, 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.



Danielle Ohm