

1 **WEST VIRGINIA MINE SAFETY AND HEALTH**
2 **ADMINISTRATION**

3
4
5 **IN THE MATTER OF:**

6 **THE INVESTIGATION OF THE**
7 **APRIL 5, 2010 MINE EXPLOSION**
8 **AT UPPER BIG BRANCH MINE.**

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15 The interview of LARRY D. BROWN, taken upon
16 oral examination, before Jenny Marmol, Court
17 Reporter and Notary Public in and for the State of
18 West Virginia, Friday, February 11th, 2011, at the
19 Mine Academy, 1301 Airport Road, Beaver, West
20 Virginia.

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1 MR. KOERBER: My name is Barry Koerber.
2 I'm the Assistant Attorney General.

3 I'm assigned to the West Virginia Office
4 of Miners' Health, Safety and Training. I am also
5 a member of the Office of Miners' Health, Safety
6 and Training's UBB Accident Investigation Team.

7 Today is Friday, February the 11th, 2011.

8 I am going to ask, beginning at our left,
9 beginning at my left, for us to go around this side
10 of the -- the front side of the table for the
11 people in the accident investigation teams to
12 identify themselves and who they're with.

13 MR. O'BRIEN: John O'Brien with the West
14 Virginia Office of Miners' Health, Safety and
15 Training.

16 MR. PAGE: Norman Page from MSHA.

17 MR. CRIPPS: Dean Cripps with MSHA.

18 MS. HAMPTON: Polly Hampton, Solicitor's
19 Office, U.S. Department of Labor.

20 MR. BECK: Jim Beck with the Governor's
21 Independent Team.

22 MR. KOERBER: Mr. Brown, we also have a
23 court reporter here today. She is with the court
24 reporter firm known as Johnny Jackson &

1 Associates. It's located in Charleston, West
2 Virginia. I'm sure Mr. McCuskey knows where it's
3 located at.

4 For her benefit, please say "yes" and "no"
5 and not "uh-huh," "uh-uh."

6 Please allow the question to be asked
7 before you begin to answer, and I will ask that the
8 interviewers allow you to finish your question
9 before they begin the next question so we don't
10 have people talking over each other.

11 In the event there is a need to describe
12 something on the map, we'll either have you mark
13 something with a marker, or we will have you
14 specifically identify what you're talking about.

15 Because although it's easy for us to see
16 where you point to, as far as I was here and then
17 went there, it's not easy when you read the
18 transcript.

19 One other thing I want to mention about
20 the court reporter is she is going to be
21 transcribing everything that's said here today.
22 She is working under a three-day turnaround, as far
23 as taking what is said here today and typing it
24 onto paper.

1 Three business days from today puts us
2 through Wednesday -- puts us through Wednesday. So
3 come Thursday morning of next week, the transcript
4 will be ready for review.

5 If you desire to review your transcript,
6 either by yourself or with your attorney, you may
7 do so come next Thursday, or a reasonable period
8 thereafter, by calling Johnny Jackson & Associates
9 and scheduling a time that's convenient for all;
10 and then you'll be able to go to Johnny Jackson's
11 court reporter firm in Charleston, they'll put you
12 in a conference room, either you or you and your
13 attorney, and you'll have the opportunity to review
14 your transcript.

15 You'll be given an errata sheet, which is
16 a separate piece of paper, that you'll be able to
17 make any corrections that you find -- if you find
18 errors in the transcript, you'll be able to make
19 corrections on that errata sheet.

20 You will not be allowed to take the
21 transcript with you. You will have to do your
22 review at Johnny Jackson & Associates. And I'll
23 give you this business card here momentarily.

24 I also want to let you know that if for

1 any reason whatsoever you want to take a break, if
2 you want to talk to your attorney, or you just want
3 to take a break for whatever reason, just let us
4 know and we'll take a break.

5 I would request that you not discuss your
6 interview with other people, other than your
7 attorney, after you leave here today just to
8 protect the integrity of the investigation
9 process.

10 Polly may have something that she would
11 like to add at this point in time and I am going to
12 allow her to proceed.

13 MS. HAMPTON. Yes. Before we went on the
14 record, I handed you a letter on behalf of MSHA's
15 Accident Investigation Team.

16 Did you get a chance to review that
17 letter?

18 THE WITNESS: Yes, I did.

19 MS. HAMPTON: And did you have any
20 questions for me before we go forward?

21 THE WITNESS: No.

22 MS. HAMPTON: In that letter is contact
23 information for Norman Page, who is sitting here in
24 the interview. If you leave here today and you

1 think of other information that you think is
2 relevant to the investigation, anything else that
3 you think we need to know, feel free to contact him
4 or have your attorney contact us with that
5 information.

6 THE WITNESS: Okay.

7 MR. KOERBER: Will the court reporter
8 administer the oath now, please.

9 LARRY D. BROWN, DEPONENT, SWORN

10 MR. KOERBER: Sir, would you please state
11 your full name for the record and spell your last.

12 THE WITNESS: Larry Dean Brown, B-r-o-w-n.

13 MR. KOERBER: And would you please state
14 your address and telephone number?

15 THE WITNESS: (b) (7)(C)

16 (b) (7)(C)

17 (b) (7)(C)

18 MR. KOERBER: And do you have an attorney
19 with you here today?

20 THE WITNESS: Yes, I do.

21 MR. KOERBER: And would the attorney
22 please identify himself and his firm.

23 MR. MCCUSKEY: Yes. John McCuskey -- John
24 F. McCuskey, since there is a John B. here, too.

1 John F. McCuskey, the law firm of Shuman,
2 McCuskey & Slicer in Charleston, West Virginia, and
3 I am counsel for Larry Brown.

4 MR. KOERBER: I see we have some other
5 people at the table, and at this point in time I
6 would ask that that individual identify himself,
7 his firm, and the client he represents.

8 MR. AKERS: My name is Robert Akers. I'm
9 with Allen, Guthrie & Thomas in Charleston, West
10 Virginia, and I'm here on behalf of Massey Energy
11 and Performance Coal Company.

12 MR. KOERBER: There is one person sitting
13 in the back. I would ask that he identify himself
14 and who he is with.

15 MR. John B. MCCUSKEY: J. B. McCuskey,
16 Shuman, McCuskey & Slicer, here with Mr. Brown.

17 MR. KOERBER: Mr. Brown, are you appearing
18 here today as a result of receiving a subpoena?

19 THE WITNESS: Say that again, please.

20 MR. KOERBER: Are you appearing here today
21 as a result of receiving a subpoena?

22 THE WITNESS: Yes, sir.

23 MR. KOERBER: Okay. Sir, this is a copy
24 of that subpoena that I'm going to have marked as

1 Brown's Exhibit No. 1. Okay?

2 THE WITNESS: Uh-huh.

3 (Exhibit No. 1 marked for
4 identification.)

5 MR. KOERBER: And, sir, you may or may not
6 have seen this document. This is an Acceptance of
7 Service, signed by Mr. John McCuskey, your
8 attorney, because he is the person that accepted
9 service of the subpoena on your behalf, showing
10 that he did so on February 4th, 2011.

11 THE WITNESS: Yes.

12 MR. KOERBER: I'm going to ask that this
13 be marked as Brown's Exhibit No. 2.

14 THE WITNESS: Okay.

15 (Exhibit No. 2 marked for
16 identification.)

17 MR. KOERBER: Mr. Brown, I'm not only
18 going to give you the Johnny Jackson business card
19 that I mentioned earlier, I'm also going to give
20 you Mr. Bill Tucker's business card as well.

21 Mr. Tucker is the lead investigator for
22 the UBB accident for the Office of Miners' Health,
23 Safety and Training.

24 In the event something would occur to you

1 after this interview is over that you think would
2 be helpful to the investigation team, feel free to
3 contact Mr. Tucker.

4 Also, I am going to give you a memorandum
5 containing the address to the West Virginia Board
6 of Appeals.

7 The West Virginia Board of Appeals is the
8 administrative body that's charged with hearing,
9 among other things, discrimination cases involving
10 coal miners.

11 West Virginia Code 22A-1-22 protects coal
12 miners from being discriminated against for
13 participating in interviews such as this.

14 In the event you find that you have been
15 discriminated against for participating in this
16 interview, this is the body where you would lodge
17 your complaint. Mr. McCuskey could help you with
18 that.

19 I would caution you that under that
20 statute, you only have 30 days from the day of the
21 alleged discriminatory action to file your
22 complaint with the Board.

23 At this time, I'm going to give you these
24 three items. And with that, I'm going to ask

1 Mr. O'Brien to begin the interview.

2 EXAMINATION

3 BY MR. O'BRIEN:

4 Q. Mr. Brown, on behalf of the Office of
5 Miners' Health, Safety and Training, I would like
6 to thank you for coming in and helping us on this
7 investigation.

8 First of all, would you state what your
9 job title was on April 5th, 2010?

10 A. I was a longwall foreman on the midnight
11 shift at UBB.

12 Q. And what was your last shift worked prior
13 to or on April 5th?

14 A. I worked the midnight shift on April 5th.

15 Q. What were your duties as a longwall
16 foreman, briefly?

17 A. On the midnight shift, I handled the outby
18 stuff, such as moving belt structure, monorail
19 track, pretty much prepping to run coal.

20 Q. And you just stated a minute ago that last
21 shift was midnight shift April 5th.

22 A. Yeah.

23 Q. What time did you report to work?

24 A. I show up about 10:30.

1 Q. That would have been on the 4th?

2 A. Yeah.

3 Q. Evening of the 4th?

4 A. Right.

5 Q. April 4th, 2010?

6 A. Yeah.

7 Q. Okay. Did you regularly countersign the
8 longwall pre-shift fire boss reports?

9 A. Yes.

10 MR. O'BRIEN: At this time, what I would
11 like to do is enter this, copy of this pre-shift
12 examination report from 4/4/2010 from the evening
13 shift, pre-shift for the midnight shift as -- I
14 would like to make it Exhibit 3, and I have copies
15 for everyone, also.

16 (Exhibit No. 3 marked for
17 identification.)

18 Q. All right. First of all, do you recognize
19 the handwriting on this pre-shift examiner's
20 report?

21 A. Yes.

22 Q. Whose is it?

23 A. That's mine.

24 Q. That is yours?

1 A. Uh-huh.

2 Q. Okay. At the bottom there are two
3 signatures. There is one, John Skaggs is the
4 pre-shift examiner. Do you know Mr. Skaggs?

5 A. Just of, yes.

6 Q. Okay. And the other side, is that your
7 signature?

8 A. That is mine, yeah.

9 Q. Okay. Thank you.

10 Now, you said this report that the
11 handwriting is your handwriting, correct?

12 A. Yes, yes.

13 Q. The question I have, on the report at the
14 very top, it says, Was this report brought or
15 phoned to the outside. It was checked no, and by
16 whom, brought out.

17 A. Uh-huh.

18 Q. Did you receive that report that night?

19 A. Yes. Mr. Skaggs brought it out and I was
20 in the office so I filled the book out for him.

21 Q. He brought it out and you filled the book
22 out for him?

23 A. Yes.

24 Q. When did you countersign the pre-shift,

1 this pre-shift examiner's report?

2 A. Before I went underground that morning.

3 Q. Okay. Do you know when Mr. Skaggs signed
4 it?

5 A. When we were done with it.

6 Q. So you both signed it approximately the
7 same time?

8 A. Yes.

9 Q. Now, let me ask a question. If Mr. Skaggs
10 would say that when he brought this pre-shift
11 examination out that all was on the report was the
12 intake reading of 53,285, all that appeared on the
13 report was the intake reading --

14 MR. KOERBER: When he signed it.

15 Q. When he signed it, when he signed this
16 report, all that was on there was the intake
17 reading, would you dispute this?

18 A. Yes. I just wrote down what he gave me.

19 Q. Was this a normal area of -- did
20 Mr. Skaggs normally pre-shift the longwall?

21 A. No.

22 Q. Had he ever pre-shifted the longwall, to
23 your knowledge, before?

24 A. That, I don't know.

1 Q. Who normally would pre-shift the longwall
2 for your shift?

3 A. Whoever was on the face. Whoever the
4 production guy was.

5 Q. On the -- okay. This was on a Sunday
6 evening?

7 A. Yeah.

8 Q. There was no production shift that day, I
9 don't believe, on a Saturday?

10 A. No.

11 Q. Okay. So normally you would have a
12 production crew there on a Sunday?

13 A. Yeah. Yes.

14 Q. Going back to completing the document or
15 the pre-shift examiner's report, if both you and
16 Mr. Skaggs were out there at the same time, why
17 didn't he fill out the report?

18 A. Usually when I get there, I'll just go
19 ahead and write all of the -- like the locations
20 and all in the book, you know, just save a little
21 time. I don't write what they have to bring out or
22 anything, you know, just to go ahead and get the
23 book prepared to write it.

24 Q. As far as the hazardous conditions and

1 action taken, air readings and remarks and all, did
2 he give you those items to enter into the book?

3 A. Yes. Uh-huh.

4 Q. Okay. Who would normally assign the
5 pre-shift examiner to examine the longwall, prior
6 to you coming in, who would normally do that?

7 You say just whoever the production
8 foreman was?

9 A. Foreman production. Yes, whoever the
10 production foreman was.

11 Q. Okay. Do you know if Mr. Skaggs had ever
12 been trained in fire bossing the longwall?

13 A. No, sir, I have no idea.

14 Q. If Mr. Skaggs said he called this report
15 out, would you dispute that?

16 A. The best of my knowledge, just what's on
17 the paper.

18 Q. If he said he called it out, he didn't
19 bring it out, that he called it out, would you
20 dispute that?

21 A. Yes.

22 Q. Do you know who Mr. Skaggs normally
23 reported to, who was his immediate supervisor?

24 A. No, sir.

1 Q. Did Mr. Skaggs ever tell you that he had
2 not gone down the face of the longwall --

3 A. No.

4 Q. -- that night?

5 A. (Witness shakes head.)

6 Q. Do you know if he told anyone that he had
7 not gone down the face?

8 A. No.

9 Q. Who was the -- was there a shift foreman
10 on the midnight shift that night?

11 A. I don't recall at this time.

12 Q. Was there a normal shift foreman on the
13 midnight shift?

14 A. Not on the Ellis side that I remember.

15 COURT REPORTER: Not on the what?

16 THE WITNESS: Ellis, E-l-l-i-s.

17 MR. MCCUSKEY: Side.

18 THE WITNESS: Side.

19 Q. Going back to the air measurements on this
20 pre-shift examiner's report, the air measurements
21 or air readings below the intake reading on this
22 sheet, were they given to you by Mr. Skaggs?

23 A. The best I recall, yes.

24 Q. Okay. Do you know what Mr. Skaggs' normal

1 fire boss duties entailed?

2 A. No.

3 Q. Where you normally fire boss, what areas?

4 A. No, sir.

5 Q. Again, you may not know this, but do you
6 know how long Mr. Skaggs had been a fire boss?

7 A. No.

8 Q. Was Mr. Skaggs a normal -- did he normally
9 work the midnight shift?

10 A. I don't know.

11 MR. O'BRIEN: Okay. That's all I have at
12 this time.

13 EXAMINATION

14 BY MR. CRIPPS:

15 Q. Who is your boss, Larry?

16 A. Jack Roles.

17 Q. Jack Roles?

18 A. Uh-huh.

19 Q. Do you ever see Jack underground?

20 A. I have, yes.

21 Q. Do you ever see him underground on a third
22 shift?

23 A. On occasions. Very rarely, but yes.

24 Q. Why would he be underground on a third

1 shift?

2 A. I really -- just normal activities of his
3 job. Making sure things were okay, I guess.

4 Q. Okay. Getting back to your job duties,
5 you mentioned part of your job duties, moving
6 power?

7 A. Uh-huh.

8 Q. Does that entail moving the mule train?

9 A. Yes.

10 Q. Okay. Also taking care of the monorail
11 along the belt line?

12 A. Correct.

13 Q. What about on the tailgate side of the
14 longwall, do you have any functions over there?

15 A. No.

16 Q. Okay. You never set timbers over in the
17 tailgate?

18 A. No.

19 Q. Who takes care of the setting timbers on
20 the tailgate side of the longwall?

21 A. That, I don't know. That's all done in a
22 plant before we get there.

23 Q. Do you know if the timbers were set all
24 the way to the mouth of the longwall at UBB?

1 A. As far as I know, but I really can't
2 speculate, but I think so.

3 Q. Okay. So do you ever go over into the
4 tailgate entry?

5 A. Yes.

6 Q. When would you do that?

7 A. We would -- the way the air was set up, we
8 would have to go to the stopping line rim, along
9 the tail entry, and we, on occasion, would have to
10 go one break out by the face and put a hole and
11 stop and you get a movement through into the other
12 entries. And every couple of days or so, I would
13 make sure that was done.

14 Q. Okay. Do you know what your roof control
15 plan requires as far as the timbers in the
16 tailgate?

17 A. In the tailgate, no, really I don't.

18 Q. You're not aware of what the roof control
19 plan requires?

20 A. No.

21 Q. Okay. But you say you are familiar with
22 the ventilation requirements there at the
23 tailgate?

24 A. On the face?

1 Q. Yes.

2 A. Yes. Well, I say yes, it's been a while.

3 Q. Prior to the explosion, you said you went
4 out to knock blocks out of the stopping in the
5 tailgate entry?

6 A. Well, I mean, at a point prior to the
7 exact date. I don't know when the last I done it
8 is.

9 Q. Okay. Let me -- if you don't mind, let's
10 look at this map here. You said you went out in
11 the tailgate entry to knock blocks out for the
12 ventilation.

13 Can you show me -- and I'll just show you
14 right now which -- I know you've been up here to
15 the shearer many times. I guess we should probably
16 clarify that on the record.

17 Have you been to the location of the
18 shearer at UBB since the explosion?

19 A. Oh, yes, many times.

20 Q. Looking at this map, does that appear
21 accurate to you, as far as the location of the
22 shearer in relation to the face?

23 A. As far as I recall, yes.

24 Q. And in location to the next outby

1 crosscut?

2 A. Pretty close.

3 Q. Okay. You say you would go out into the
4 tail entry and knock the -- I'm sorry. Repeat what
5 you told me.

6 A. There would be occasions we would have to
7 go and open a hole in one of these stoppings to
8 make the air move that way.

9 Q. Why would the air need to move this way?

10 A. Give you some air over into these entries.

11 Q. The air that's ventilating the face, what
12 direction or what should be its path off of the
13 face?

14 A. It should come off the face and head to
15 the gob.

16 Q. Okay. What provisions were made or did
17 you take to ensure that that did happen?

18 A. There was none I would have to do except,
19 like I say, we would open these just to flood this
20 area.

21 MS. HAMPTON: Let me interrupt. You're
22 pointing at different areas of the map and saying
23 "these" and "those." If you could try to use words
24 to describe the areas on the map you're

1 referencing, it makes it a lot easier when we're
2 reading the transcript later on and we know what
3 you're specifically pointing to.

4 A. So how was your question again?

5 Q. How would you assure that the air was
6 traveling to the gob?

7 A. You could just tell by feel if it was
8 traveling that way.

9 Q. Would you open the stopping up in the
10 crosscut, the first crosscut, outby the face?

11 A. Generally, if I had to do that, yes.

12 Q. Okay. So if that was the case, then the
13 air coming off the longwall would actually going
14 outby rather than into the gob; is that correct?

15 A. A little bit. When I would open the hole
16 up, it would help it to come that way.

17 Q. Okay. Would there also be air going into
18 the gob, which would be inby?

19 A. Yes.

20 Q. What measures were taken to assure the air
21 would go inby into the gob?

22 A. From what I known, it just done it. If it
23 didn't, something was wrong.

24 Q. What would be wrong if it didn't do that?

1 A. I don't know.

2 Q. Okay. So if the air that was in the gob
3 actually came outby to the first crosscut, would
4 you see that as a problem?

5 A. From the gob?

6 Q. Yes.

7 A. Yes.

8 Q. Okay. When you arrived at work every
9 evening, did you have a list of work that you was
10 going to do that evening?

11 A. Yes.

12 Q. How did you get that list?

13 A. It would just be on the desk waiting for
14 me.

15 Q. Who developed that list?

16 A. Jack Roles.

17 Q. And so Jack Roles would leave you a list
18 of work to do for that particular shift?

19 A. Yes.

20 Q. Was that pretty common?

21 A. Yes.

22 Q. So it's fair to say that when you went
23 underground every night you knew what jobs you had
24 to do?

1 A. Yes.

2 Q. Okay. As part of your job, did you do the
3 pre-shift exam on the longwall face?

4 A. Yes.

5 Q. What other areas did you pre-shift?

6 A. On occasions, but very rarely, I would get
7 the longwall belt.

8 Q. Okay. As part of your pre-shift on the
9 longwall face, what areas did that encompass?

10 A. From the mule train to the last open
11 break, and then curtain line there would have three
12 entries, I think, make sure the curtains were all
13 good, then across the face.

14 Q. Okay. And you did air readings across the
15 face?

16 A. Yes, took two.

17 Q. Okay. And you did air readings --

18 A. In the last open break.

19 Q. Okay. What about did you pre-shift on the
20 belt line any at all?

21 A. Once in a while, on occasion.

22 Q. As far as just the everyday pre-shift exam
23 for the oncoming shift of the face -- or the
24 section?

1 A. What is that now?

2 Q. The -- any part of the belt line, was that
3 part of the pre-shift exam of the section?

4 A. Not really. It was not part of it, but on
5 occasions I would get the belt line.

6 Q. Okay. If you did not do a pre-shift of
7 the belt, who did it?

8 A. The belt examiners on the midnight shift.

9 Q. Okay. But there was a pre-shift
10 performed --

11 A. Yes --

12 Q. -- on the belt?

13 A. Yes.

14 Q. Every shift?

15 A. Yes.

16 Q. Okay. When you did your last open
17 crosscut area -- let me correct that. When you
18 determined your total intake air reading for the
19 longwall, tell me how you did that.

20 A. In the last open break?

21 Q. Yes.

22 A. Just take an air reading. You measure
23 width and height of the entry and take your
24 anemometer readings and multiply it together and

1 get your reading.

2 Q. Okay. Did you also take an air reading on
3 the belt?

4 A. On the belt?

5 Q. On the belt line?

6 A. Yes, and we would combine them.

7 Q. Okay. Say that again, please.

8 A. And we would combine the reading from
9 there and the last open.

10 Q. So those two readings, you would add them
11 together?

12 A. Yes.

13 Q. And that would be your total --

14 A. Yes.

15 Q. -- intake?

16 A. Yes.

17 Q. And so by doing that, that's saying that
18 the belt air was then coming onto the face?

19 A. Yes.

20 Q. Was there any time where the belt air was
21 not coming onto the face that you recall?

22 A. Not that I recall.

23 Q. Okay. I reviewed your transcript from
24 before and I understand that the last shift that

1 you worked that you and your crew had moved the
2 monorail up.

3 A. Yes.

4 Q. Do you recall that?

5 A. Yes.

6 Q. Is that, in fact, true?

7 A. Yes.

8 Q. Okay. Was part of your job rock dusting?

9 A. No.

10 Q. Did you ever rock dust the face?

11 I'm sorry. Did you ever rock dust on the
12 belt line?

13 A. Not that I recall. May have had occasions
14 we had, but nothing for ...

15 Q. Do you recall anybody rock dusting on the
16 belt line?

17 A. Yes, yes.

18 Q. When would that be?

19 A. Just on -- at different times.

20 Q. Okay. How did you determine they was rock
21 dusting on the belt line?

22 A. We would get rock dust on us.

23 Q. You mean it would --

24 A. Come toward the face.

1 Q. Come toward the face?

2 A. (Witness nods.)

3 Q. Was that rock dust coming from the trickle
4 duster at the belt drive?

5 A. I don't know.

6 Q. Okay. You say on occasion that you do
7 pre-shift the belt?

8 A. Yes.

9 Q. Do you remember the last time you did
10 that?

11 A. Not right now, no.

12 Q. Would it be safe to say it was just a day
13 or two prior to the explosion?

14 A. I'm not real sure.

15 Q. Okay. If we found that in a book and your
16 initials were in a book --

17 A. Yes.

18 Q. -- then would you agree that you, in fact,
19 pre-shifted the belt?

20 A. Sure.

21 MR. CRIPPS: Okay. I'll tell you what,
22 I'm going to let -- Jim has got a question, then
23 I'll come back to you.

24

EXAMINATION

1
2 BY MR. BECK:

3 Q. Larry, how far is it from the mule train
4 to the last open crosscut?

5 A. Really, I can't remember at this time.
6 Probably no more than five or six breaks at most.

7 Q. That would be, what, 500 feet?

8 A. Yeah, thereabouts.

9 Q. Then the face is how wide?

10 A. A thousand foot.

11 Q. When you did the pre-shift exams, how long
12 would that typically take you?

13 A. A half hour, something like that.

14 Q. That includes the air readings and all?

15 A. Do what now?

16 Q. That includes your air readings?

17 A. Yeah.

18 Q. And in your travels throughout Upper Big
19 Branch, did you ever notice cracks in the floor at
20 any other places in the mine, tailgate area?

21 A. Throughout the mines anywhere you mean?

22 Q. Yeah.

23 A. Yeah.

24 Q. The cracks in the floor, is that commonly

1 called "bottom hooving"?

2 A. That's what I would call it, yes.

3 Q. A crack in the floor is not an uncommon
4 feature up at Big Branch?

5 A. Well, it happens, I guess, in any mines.

6 Q. And Jack Roles, that's who you reported
7 to; right?

8 A. Yes.

9 Q. Who did Jack report to?

10 A. I don't know.

11 MR. BECK: That's all I have right now.

12 EXAMINATION

13 BY MR. O'BRIEN:

14 Q. A couple three more.

15 That first night, you were coming -- you
16 came in and the mine had been idle for a few
17 shifts?

18 A. (Witness nods.)

19 Q. That first night, when did you first go
20 down the longwall face?

21 A. When I got on the face that night.

22 Q. At the beginning of the shift?

23 A. Uh-huh.

24 Q. Did you notice any of the shields -- had

1 any of the shields bled off, leaked off from the
2 roof?

3 A. I can't recall.

4 Q. Was that a -- would that be a normal
5 occurrence?

6 A. I guess on occasion.

7 Q. Occasion?

8 A. Uh-huh.

9 Q. Especially after an idle period?

10 A. For that long, yes.

11 Q. I'm going to ask a question. I may have
12 asked it before, and if I did, please bear with
13 me. Okay?

14 Do you know who would be responsible for
15 assigning the fire bossing of the areas of the coal
16 mine?

17 A. No, sir.

18 Q. And this is for clarification for me, I
19 was taking notes when, I think, the question was
20 asked.

21 The way you got your intake reading was
22 you took the last open crosscut and the belt and
23 added the two together?

24 A. Yes.

1 MR. O'BRIEN: Okay.

2 MR. KOERBER: You got any questions?

3 MR. CRIPPS: Yeah, I got a few more.

4 MR. KOERBER: I'm going to want to take a
5 break here whenever you want. If you want to ask
6 your questions, go ahead, but I'm going to take a
7 five-minute break here in the very near future.

8 MR. CRIPPS: Okay. I'll go ahead. I have
9 got a couple here.

10 EXAMINATION

11 BY MR. CRIPPS:

12 Q. Larry, we talked to some people that --
13 apparently this longwall had operated at UBB, and
14 then it left and went to another mine. Are you
15 familiar with that?

16 A. Yes.

17 Q. Was you working on the longwall at UBB
18 prior to it leaving?

19 A. Yes.

20 Q. Okay. When it left, where did the
21 longwall go to?

22 A. Logan's Fork.

23 Q. Did you go with it?

24 A. Yes.

1 Q. Okay. When was that?

2 A. Dates, I'm not sure.

3 Q. Do you know what year it was
4 approximately?

5 A. No, not really. I don't even know when we
6 came back. We came back in, what, in 9 -- around,
7 2006, maybe in that area.

8 Q. A couple years, is that fair to say?

9 A. Yes.

10 Q. When did you come back to UBB?

11 A. When we got ready to start running the
12 wall again.

13 Q. Okay. As I understand, the wall started
14 actually running around the 1st of September of
15 '09?

16 A. The best I remember, yeah.

17 Q. Okay. Did you come back sometime prior to
18 that?

19 A. Just a little bit. I stayed at Logan's
20 Fork and pulled the remainder of what was left out.

21 Q. Okay. So when you came back to UBB, what
22 jobs did you do when you got there?

23 A. My job I do now.

24 Q. Okay. So your first shift back at UBB you

1 went underground on third shift?

2 A. Yes.

3 Q. Do you recall was the longwall running at
4 that time?

5 A. No, we hadn't started running it.

6 Q. Okay. Approximately how long after you
7 went underground?

8 A. From memory, it would be hard to say.

9 Q. Okay. But to your recollection, your
10 first shift back was on midnight shift?

11 A. Oh, absolutely.

12 Q. And you went to the --

13 A. Yes.

14 Q. -- longwall back to your normal job?

15 A. Yes.

16 Q. When you was at Logan's Fork, was you
17 performing the same job?

18 A. Same job.

19 Q. Okay. Same equipment?

20 A. Same equipment?

21 Q. Yes.

22 A. Not that I know of. I assume we changed
23 everything out when we came back.

24 Q. Okay.

1 A. Shields were probably the same, but
2 everything else would have been different.

3 Q. Okay. A different pan line?

4 A. Yes.

5 Q. Different shearer?

6 A. Yes.

7 Q. What about your crew?

8 A. Crew stayed the same.

9 Q. Same people?

10 A. (Witness nods.)

11 Q. Did your crew come back with you at the
12 same time?

13 A. No, actually not. Some went -- they were
14 rebuilding our shields on the surface, best I
15 remember, and I stayed back at Logan's Fork pulling
16 some things.

17 MR. CRIPPS: Okay. That's all I've got
18 right now.

19 MR. KOERBER: Let's take a two-minute
20 break.

21 (Break.)

22 MR. KOERBER: Let's go back on the record.

23 MR. O'BRIEN: I have one more question.
24

EXAMINATION

1
2 BY MR. O'BRIEN:

3 Q. Did you ever have to pre-shift the
4 longwall for your shift?

5 A. In the past I have, yes.

6 Q. Why would you have to -- if so, why?

7 A. Such as holidays and things like that.

8 Q. And when would you do that, when would you
9 perform that pre-shift?

10 A. I try to get there and be there within
11 three hours to 11 o'clock.

12 Q. Okay. So you would actually do it, like,
13 the evening shift prior to the midnight?

14 A. Right.

15 MR. O'BRIEN: Thank you.

EXAMINATION

16
17 BY MR. CRIPPS:

18 Q. Larry, before you went underground on your
19 shift, on your midnight shift, did you normally
20 review the pre-shift books?

21 A. Yes. On normal occasions, I was the one
22 that wrote it down when they would call it out.

23 Q. So you would actually receive the --

24 A. Uh-huh.

1 Q. -- pre-shift call and write it down?

2 A. Yes.

3 Q. So it's fair to say that you reviewed

4 pre-shift books --

5 A. Yeah.

6 Q. -- for the longwall?

7 A. Yeah.

8 Q. Okay. When you actually did the
9 examination, did you call it out or did you bring

10 it out?

11 A. Call it.

12 Q. Then when you got outside, would you

13 review --

14 A. Yes.

15 Q. -- the books?

16 A. Yes.

17 Q. How about when you did the pre-shift on
18 the belts, would you fill out the pre-shift exam in
19 the belt book?

20 A. I would fill it out or call it out.

21 Q. Call it out. Okay.

22 Did you normally review those pre-shift
23 records?

24 A. Yes.

1 Q. Okay. So let me ask you something here.
2 What I've got here is a copy of the pre-shift
3 examination of the belt conveyers. Does that look
4 familiar to you?

5 A. Yes.

6 Q. Okay. What is the date that's on that
7 record?

8 A. 4/5.

9 Q. Okay. Do you see on there where the
10 longwall belt was examined?

11 A. Yes.

12 Q. Okay. Whose initials are beside that?

13 A. Those are mine.

14 Q. Did you, in fact, do that examination?

15 A. I guess I did, yes.

16 Q. Okay. And so with what you said a while
17 ago, it's fair to say that when you would have
18 performed this examination, you would have looked
19 at the previous examinations for this belt?

20 A. The previous examinations?

21 Q. Yes, the pre-shift exams.

22 A. Not particularly like on this night, no.

23 Q. Okay.

24 A. Because the longwall belt was not normally

1 part of mine, you know what I'm saying?

2 Q. Uh-huh.

3 A. And occasionally, if I was ahead of my job
4 or something and knew where the fire boss was at, I
5 would say I would get the belt for them, so ...

6 Q. Okay. But the longwall belt was part of
7 your normal work area; is that correct?

8 A. Part of my normal work area?

9 Q. Yes.

10 A. No, just by the mule train, what belt was
11 up there.

12 Q. Is the monorail on the belt line?

13 A. Yes.

14 Q. How far -- I think Jim asked you, how far
15 is the mule train normally from the face?

16 A. It depends on what they ran after a power
17 move. At this time it seems like it was five or
18 six hundred feet, somewhere in there.

19 Q. Okay. On the nights that you moved power,
20 explain what's involved with that.

21 A. When we move power we have to -- from the
22 get-go? All of it?

23 Q. Concentrate on what happens over on the
24 monorail on the belt line?

1 A. Okay. Now, since the ventilation plan has
2 been changed, there is two stoppings that we have
3 to open up in order to shiv our monorail down.

4 So we make sure nobody is on the face,
5 everybody is outby those stoppings to help us pull
6 the monorail down.

7 When we get it down, then we have to put
8 those two stoppings back, once we get our tables
9 cables through them and everything and --

10 I don't know if I'm going into enough
11 detail for you or not, but we have to open those
12 stoppings up in order to get the cables back to the
13 mule train, the ones that come to the mule train
14 that follow the mule train down, and -- well, they
15 go -- actually go to the monitor and pull them in
16 back through.

17 We have open two stoppings up, and we make
18 sure everyone is outby those as we do that.

19 Q. If I may, when you say you pull the
20 monorail down --

21 A. Yes.

22 Q. -- are you actually extending cables and
23 water lines and the hydraulic lines that's hung
24 from the monorail, is that what you mean by that?

1 A. I wouldn't call it a standing -- they're
2 -- they just collapse up into a wall and we pull
3 them out, so, yeah, I guess, pull them out.

4 Q. Okay. So when you pull them out to their
5 full length, what would be the distance from the
6 mule train up to the face at that point?

7 A. Face is about 900 foot.

8 Q. So it could possibly be 900 feet from the
9 mule train or from the end of the monorail to the
10 face?

11 A. Yeah.

12 Q. So it's safe to say, or it's fair to say
13 that 900 feet of belt line there would be part of
14 your normal work area?

15 A. Yes.

16 Q. Okay. And so consequently, if there's any
17 hazardous conditions in that part of the belt line,
18 you and your people would be exposed to those
19 hazardous conditions?

20 A. Oh, yeah.

21 Q. So would you be interested to know that if
22 any hazardous conditions were found in that area on
23 that pre-shift exam?

24 A. Yeah.

1 Q. Okay. How do you determine if any
2 hazardous conditions were found in those areas?

3 A. It would just be what you see. I think
4 we're on the same page. It would just be what I
5 see as I observed through there.

6 Q. As you actually do your examination?

7 A. The belt line is not part of my
8 examination.

9 Q. But it is pre-shifted before you go in; is
10 that correct?

11 A. Yeah.

12 Q. So do you check the pre-shift exam records
13 for the section every day before you go in?

14 A. Yes.

15 Q. Okay. Why do you do that?

16 A. Just to make sure everything is where it
17 needs to be.

18 Q. Okay. So do you review the pre-shift exam
19 book for that section of the belt line before you
20 go in?

21 A. No. Not all the time, no.

22 Q. Okay. Do you ever review it?

23 A. If I know for sure I'm fire bossing that
24 area.

1 Q. Okay. So, then, it's possible that there
2 could be hazardous conditions listed in the
3 pre-shift book that you would not be aware of?

4 A. Yeah.

5 Q. So, then, it's fair to say that if those
6 hazardous conditions were listed in the book, you
7 and your crew would possibly be exposed to those
8 hazards?

9 A. I guess if it was a hazard, somebody would
10 let me know that it was there.

11 Q. Okay. If it's listed in the pre-shift
12 book, is that a way of letting you know?

13 A. I guess it would be if that was something
14 I reviewed.

15 Q. Do you think you should review that?

16 A. Not if it's part of my normal routine.

17 Q. Okay. If there is a hazard that's been
18 listed for, let's say, five consecutive shifts in
19 an area where you and your crew normally worked,
20 would that concern you?

21 A. I'm sure someone would have already spoke
22 up about it.

23 Q. So you would expect if a hazard is listed,
24 it would have been addressed?

1 A. It would have been addressed, yes.

2 Q. Let's say if that hazard was listed as the
3 belt needs dusted. What action would you expected
4 to have been taken?

5 A. Somebody would have dusted it.

6 Q. Okay. Would you have noticed if that belt
7 had been dusted?

8 A. Yeah.

9 Q. Okay. If those hazards had continued to
10 exist and had not been addressed, would you
11 continue to allow yourself and your men to work in
12 those hazards?

13 A. Not if it was a hazard, no.

14 Q. If -- for instance, if that pre-shift book
15 listed three percent methane in that area of the
16 belt line, would you allow your crew to work in
17 that area?

18 A. I don't think a fire boss would just list
19 it as three percent methane and put it in their
20 book. I think he would make sure it was addressed.

21 Q. How would he do that?

22 A. He would contact whoever his supervisor,
23 or he would do whatever he needed to do.

24 Q. Just if a hazard is listed in the

1 pre-shift book, then, it's normally not addressed?
2 It takes the examiner specifically mentioning to a
3 supervisor to get a hazardous condition corrected?

4 A. No, I'm sure whoever he reports to does,
5 but, like I say, that's not part of my normal
6 function. Just on occasions I would take care of
7 the belt line.

8 Q. Okay. So if upper management
9 countersigned a pre-shift examination book and seen
10 those hazards listed in the exam, would you expect
11 that that member of management would see that those
12 conditions are corrected?

13 A. Absolutely.

14 Q. Okay. How would you feel if those
15 conditions were, in fact, not corrected and allowed
16 to continue to exist?

17 A. To what extent.

18 Q. To an extent that a qualified examiner
19 considered it a hazard.

20 A. I don't think it would carry on like that.

21 Q. Okay. Do you consider float dust a
22 hazard?

23 A. To a certain degree, yes.

24 Q. What do you mean by that?

1 A. Well, I can't determine that just by
2 looks.

3 Q. Okay. If a qualified examiner listed
4 float dust as a hazard on a belt line, would you
5 accept that, in fact, as a hazardous condition?

6 A. I guess.

7 Q. So if you knew that float dust was listed
8 as a hazardous condition on the belt, would you, in
9 fact, allow your men or yourself to work in that
10 hazardous condition?

11 A. No.

12 Q. Okay. Do you feel like that occurred at
13 UBB prior to the explosion?

14 A. No.

15 Q. If the hazardous condition a belt needs
16 dusted was listed on the book for five consecutive
17 shifts and no corrective action had been taken,
18 would you still allow your men to work in that
19 hazard?

20 A. Not if it was a hazard.

21 Q. Okay. Do you feel you have a duty to see
22 that those hazards are corrected?

23 A. Oh, sure.

24 MR. CRIPPS: Okay. That's I have.

1 MR. KOERBER: Jim?

2 EXAMINATION

3 BY MR. BECK:

4 Q. Now, Larry, let me see if I understand
5 this right. You were a longwall foreman
6 responsible for the outby mule train area belt,
7 making sure it's ready to run?

8 A. Right. For the next shift coming in.

9 Q. Was there someone on the face that was
10 responsible for the face area?

11 A. I was responsible as far as the fire
12 bossing and such as that.

13 Q. No, no, I'm talking about just making sure
14 the wall is ready to run.

15 A. Yes, we had a maintenance chief up there.

16 Q. So you had a maintenance chief on the face
17 making sure the face was ready to run. You were
18 outby making sure everything else was running.

19 A. Correct.

20 Q. And at a longwall mine, would you agree
21 it's the big producer?

22 A. Absolutely.

23 Q. Lots of eyes are watching?

24 A. (Witness nods.)

1 Q. Did you ever have occasion where you
2 weren't ready to run and the day shift was ready to
3 start?

4 A. Ever, yes.

5 Q. I guess what I'm wanting to ask, when that
6 happened would you get a lot of calls from the
7 outside?

8 A. Probably about what I would consider
9 normal, you know.

10 Q. Wanting to know when you're going to be
11 ready?

12 A. How much longer, that kind of thing.
13 Normal stuff, yeah.

14 Q. Who would typically call?

15 A. To me, it would either be, like, Jack
16 Roles or our maintenance people, Danny Laverty
17 (phonetic) or those fellows.

18 Q. Okay. Were you ever assigned to work on
19 the longwall face?

20 A. Such as what?

21 Q. Instead of taking care of the outby, they
22 said, Larry, you're on the face now making sure
23 it's ready to run?

24 A. As far as the maintenance end of it?

1 Q. Anything on it.

2 A. No. We've had pumps and things on the
3 face that I would have to take care of, but that's
4 been a while back.

5 Q. Did you ever notice any state or federal
6 inspectors on the midnight shift in your area?

7 A. In my area, yeah.

8 Q. Who would travel with them?

9 A. Generally with our maintenance crew, the
10 chief electricians, all they -- if they come on the
11 hoot owl, it's pretty much to do permits building
12 things.

13 Q. Did you ever travel with any of them?

14 A. Have I ever?

15 Q. On your shift at UBB.

16 A. I guess in the past I may have, but none
17 that I recall at this time.

18 Q. But you weren't regularly assigned to
19 travel with them if they showed up?

20 A. No, sir. No.

21 MR. BECK: That's all I have.

22 MR. O'BRIEN: I have one more.
23
24

EXAMINATION

1
2 BY MR. O'BRIEN:

3 Q. Make sure I got this right. You did not
4 pre-shift for the longwall on the evening shift of
5 4/4?

6 A. No, sir.

7 Q. Or early on the -- your shift on 4/5? You
8 didn't pre-shift early --

9 A. I pre-shifted for the day shift.

10 Q. For your shift, though?

11 A. No, not mine.

12 MR. O'BRIEN: Okay. Thank you.

13 MR. KOERBER: Anybody else have any
14 questions?

15 MR. PAGE: Yeah, I got some.

EXAMINATION

16
17 BY MR. PAGE:

18 Q. You do pre-shift the longwall sometimes;
19 right?

20 A. Yes.

21 Q. What areas do you pre-shift?

22 A. From the mule train inby last open break
23 and across the face.

24 Q. Across the face?

1 A. Uh-huh.

2 Q. How much air is required to go across the
3 face?

4 A. I would say I recall, but I can't really
5 remember at this time what our plan called for.
6 It's been years.

7 Q. What's the velocity?

8 A. That's what I said, it's been a year. I
9 can't remember at this time.

10 Q. Did you know?

11 A. Did I? Of course, then I'm sure I did.

12 Q. So how much did you fire boss down in the
13 face and down on the tail?

14 A. How much did I? Every night I worked.

15 Q. All the way down?

16 A. Yes.

17 Q. Tail entry?

18 A. Not the tail entry.

19 Q. How far down the tail entry?

20 A. To the tailgate.

21 Q. Just to the tailgate?

22 A. Yeah.

23 Q. The intersection?

24 A. Yeah.

1 Q. Did you check which way the air went?

2 A. Yes.

3 Q. Which way did it go?

4 A. Inby.

5 Q. Did you know what was in the plant and
6 about what was required down in the rib support
7 down that entry?

8 A. I did at that time. At this time, I
9 don't.

10 Q. Did you ever go down there and the
11 tailgate had fallen in and all the air was going
12 outby?

13 A. Did I ever?

14 Q. Uh-huh, yeah, did you ever find it that
15 way?

16 A. I remember -- in past, I guess I've seen
17 it fell in. But as far as the air, I don't recall.

18 Q. If it had, what would you do? If the air
19 was not going inby at the tail, it was going outby,
20 what would you do?

21 A. I guess I would contact my supervisor to
22 see what we needed to do, go from there.

23 Q. You don't know what to do, you would have
24 to get him to tell you?

1 A. I'd have to get help, yeah.

2 Q. What if you was -- I know Dean mentioned
3 three percent methane. If you found it up around
4 the stage loader --

5 MR. MCCUSKEY: Up around the what?

6 MR. PAGE: Stage loader.

7 Q. Three percent, what would you do?

8 A. I would withdraw.

9 Q. And --

10 A. At least outby that until we figured out
11 what was going on.

12 Q. Okay. And you said that the guy on the
13 evening shift made the exams on the 4th?

14 A. Yeah.

15 Q. He brought them outside, is that what you
16 said?

17 A. Yeah.

18 Q. He didn't call them out?

19 A. No.

20 Q. You're sure?

21 A. Best I remember.

22 Q. What if I said he did.

23 A. I'd say I don't remember it that way.

24 Q. Okay. Did you write down all the numbers

1 down, or did he write the numbers down?

2 A. Best I remember, I wrote them.

3 Q. And he told you while he was sitting
4 there?

5 A. Do what now?

6 Q. He told you the numbers to write down
7 while you were sitting there?

8 A. Yes.

9 Q. You're sure?

10 A. Yes.

11 Q. Okay. Do you always call your report out
12 or do you take it out?

13 A. Generally call it out, because the
14 production guys are outside waiting.

15 Q. I understand. What would you consider --
16 if you was walking up that mother belt towards the
17 headgate and there was float dust on that belt,
18 what would be a hazard to you?

19 A. If it was dark.

20 Q. If it's dark it would be a hazard?

21 A. (Witness nods.)

22 Q. What would you do?

23 A. Report it and see that somebody went after
24 it, or tell my supervisor and it would be up to him

1 to see it.

2 Q. Would you continue to run coal if they was
3 running coal?

4 A. I don't run coal.

5 Q. I said if they were?

6 A. (Witness shakes head.)

7 Q. At what point in time would -- if you
8 found a belt and it was running, what point in time
9 would you close it?

10 A. If there was something that I thought was
11 an eminent danger, as far as a hazard.

12 Q. Have you ever closed anything and -- have
13 you ever personally shut down anything because of a
14 hazard?

15 A. As far as belt line or --

16 Q. Anything.

17 A. Yeah, equipment that I ran, yeah.

18 Q. Anybody ever tell you to go ahead and run
19 it?

20 A. No.

21 Q. Nobody?

22 A. No.

23 Q. What about if you didn't have enough air?

24 A. Wouldn't run it.

1 Q. Have you ever run across air -- where you
2 didn't have enough air going across the longwall?

3 A. Have I ever? I'm sure in the past I did.

4 Q. What did you do?

5 A. Make sure the curtains were tight.

6 MR. PAGE: Okay. That's all I got right
7 now.

8 MS. HAMPTON: One housekeeping thing. The
9 pre-shift exam of belt conveyers that Dean was
10 referencing, I'm going to mark that as Exhibit 4.

11 (Exhibit No. 4 marked for
12 identification.)

13 MR. KOERBER: Anybody have any other
14 questions?

15 MR. MCCUSKEY: If I may tender a request
16 by Mr. Brown to have a copy of his transcript and
17 from the August 23rd one, if we could.

18 MR. KOERBER: That would be Exhibit 5?

19 MS. HAMPTON: Exhibit 5, yes.

20 MR. KOERBER: Mr. Brown, at this time, if
21 there is anything you would like to clarify,
22 anything you would like to add, anything you would
23 like to state, any questions you would like to add
24 or ask, the floor is yours at this time.

1 THE WITNESS: No, I'm good.

2 MR. KOERBER: Okay. I would like to
3 collect all of the pre-shift forms that I passed
4 out to begin with, but for the one belonging to the
5 court reporter. Now we still have one for the
6 court reporter?

7 MS. HAMPTON: I have one, yes.

8 MR. KOERBER: Thank you. We're off the
9 record now.

10 (Deposition concluded.)

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1 STATE OF WEST VIRGINIA, To-wit:

2 I, Jenny Taylor, a Notary Public and Court
3 Reporter within and for the State aforesaid, duly
4 commissioned and do hereby certify that the
5 interview of LARRY D. BROWN was duly taken by me
6 and before me at the time and place specified in
7 the caption hereof.

8 I do further certify that said proceedings
9 were correctly taken by me in stenotype notes, that
10 the same were accurately transcribed out in full
11 and true record of the testimony given by said
12 witness.

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

20 My commission expires the 6th day of March
21 2019.

22 Given under my hand and seal this 13th day of
23 February 2011.

24 -----
Jenny Taylor
Notary Public