

1 WEST VIRGINIA MINE SAFETY AND HEALTH ADMINISTRATION

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4 IN THE MATTER OF:

5

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

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13 The interview of HOMER EUGENE WALLACE,  
14 taken upon oral examination, before Karen Kay  
15 Skeen, Registered Professional Reporter and Notary  
16 Public in and for the State of West Virginia,  
17 Friday, October 29, 2010, at 9:10 a.m., at the Mine  
18 Academy, 1301 Airport Road, Beaver, West Virginia.

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**Erik Sherer**

**GOVERNOR'S INDEPENDENT INVESTIGATION PANEL**  
**(b) (7)(C)**

1 **APPEARANCES (continued)**

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15  
16 **ALSO PRESENT:**

17  
18 **J.C. Maggard, MSHA**  
19 **Bill Kelly, MSHA**  
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**HOMER EUGENE WALLACE**

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1 people in the room. I'd ask that they  
2 identify themselves in the back.

3 MR. MAGGARD: I'm J.C. Maggard  
4 with the UBB Accident Investigation Team  
5 with MSHA.

6 MR. KELLY: And I'm Bill Kelly,  
7 MSHA tech support.

8 MR. KOERBER: Sir, we have a  
9 court reporter here today that will be  
10 transcribing all of the information that  
11 is gathered, all the testimony that's  
12 gathered here today. So you need to  
13 answer "yes," "no," and not shake your  
14 head. Please speak loud enough for the  
15 court reporter to hear you. Please wait  
16 for the interviewer to finish the question  
17 before you begin to answer, and I'd ask  
18 the interviewers to wait until you finish  
19 the answer before they ask a question.

20 MR. WALLACE: Yes, sir.

21 MR. KOERBER: Sir, you can take a  
22 break at any time and for any reason; just  
23 ask for a break, and we'll give you a  
24 break.

1                   We request that you not discuss  
2 your testimony with anyone outside of here  
3 after you leave, other than with your  
4 attorney. And the reason for that is we  
5 want to protect the integrity of the  
6 investigation.

7                   We have an attorney present here  
8 that I believe is with the coal company.  
9 I'd ask that she identify herself at this  
10 time and the firm she's with and who she  
11 represents.

12                   MS. DEEM: My name is Pamela  
13 Deem, and the firm is Allen, Guthrie &  
14 Thomas, and we represent the company.

15                   MR. KOERBER: Okay. Would you  
16 swear in the witness, please.

17 HOMER EUGENE WALLACE, WITNESS, SWORN

18                   MR. KOERBER: Sir, would you  
19 state your full name for the record and  
20 spell your last name.

21                   THE WITNESS: It's Homer Eugene  
22 Wallace, W-a-l-l-a-c-e.

23                   MR. KOERBER: Are you currently  
24 employed as of today?

1 THE WITNESS: No, sir.

2 MR. KOERBER: Were you employed  
3 on April 5th, 2010?

4 THE WITNESS: No, sir.

5 MR. KOERBER: On April 5th, 2010,  
6 did you have any connection whatsoever  
7 with any Massey Energy subsidiary or  
8 any -- or Massey Energy itself?

9 THE WITNESS: No, sir.

10 MR. KOERBER: Okay. With that in  
11 mind, it's been the procedures of this  
12 panel that even though, I believe --  
13 Mr. Wallace, when was your last day of  
14 employment with UBB?

15 THE WITNESS: July 30th of  
16 2008 -- or 2009. I'm sorry.

17 MR. KOERBER: 2009? And when you  
18 departed, what was your job title?

19 THE WITNESS: Superintendent.

20 MR. KOERBER: It's been the  
21 procedure of this panel that former  
22 employees, regardless of their rank within  
23 the company, does not entitle a  
24 Performance Coal Company lawyer to be

1 present. So at this point in time, I  
2 would ask Ms. Deem to please excuse  
3 herself, although if she would like to  
4 make any objection for the record, she  
5 certainly has the floor as we speak.

6 MS. DEEM: Thank you. I would  
7 like to make an objection for the record,  
8 please.

9 Because Mr. Wallace is a former  
10 superintendent, he was an agent of the  
11 company as defined by the Mining Health  
12 Safety Act. And the company's position is  
13 that we have the right to be at these  
14 proceedings, unless the panel agrees that  
15 he cannot bind the company. And with  
16 that --

17 MR. KOERBER: My response to that  
18 is this: As a former employee, there's no  
19 ethical problem with us proceeding. The  
20 issue becomes an evidentiary issue. And  
21 certainly with making that objection, you  
22 have preserved the record for any further  
23 violations that may result from  
24 Mr. Wallace's testimony here today. And I

1           thank you Ms. Deem very much.

2                       Can we go off the record real  
3 quick?

4                       (Discussion off the record.)

5           MR. KOERBER:   Can we go back on  
6 the record, please.

7           MR. KOERBER:   Mr. Wallace, would  
8 you please state your address and  
9 telephone number.

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

11           (b) (7)(C)    --

12           THE REPORTER:   I'm sorry.   What  
13 is it?

14           THE WITNESS:   (b) (7)(C)   .

15           (b) (7)(C)                       .

16           MR. KOERBER:   And your telephone  
17 number?

18           THE WITNESS:   (b) (7)(C)   .

19           MR. KOERBER:   And, sir, do you  
20 have an attorney with you here today?

21           THE WITNESS:   Yes, I do.

22           MR. KOERBER:   And, sir, would you  
23 identify yourself and your firm.

24           MR. WARNER:   Brian Warner of the

1 law firm of Shuman, McCuskey & Slicer.

2 MR. KOERBER: And is Mr. Wallace  
3 your client today?

4 MR. WARNER: Yes, sir.

5 MR. KOERBER: Mr. Wallace, are  
6 you appearing here today as the result of  
7 receiving a subpoena?

8 THE WITNESS: Yes, sir.

9 MR. KOERBER: Would this be a  
10 copy of that subpoena?

11 THE WITNESS: Yes, sir, it is.

12 MR. KOERBER: I believe it to be  
13 a copy as well.

14 THE WITNESS: Yes.

15 MR. KOERBER: But certainly  
16 you're entitled to look at it all you  
17 wish.

18 MR. KOERBER: I'd like this to be  
19 marked as Wallace Exhibit 1, please.

20 (Wallace Exhibit No. 1 marked for  
21 identification.)

22 MR. KOERBER: I believe  
23 Mr. Baxter would like to identify a  
24 document that he gave you earlier.

1 MR. BAXTER: Yes. Mr. Wallace,  
2 shortly before the interview, I handed you  
3 a letter that explains about the  
4 interview.

5 THE WITNESS: Yes.

6 MR. BAXTER: Do you have any  
7 questions about that?

8 THE WITNESS: No, sir.

9 MR. BAXTER: It does say at the  
10 bottom of the letter if you have any  
11 additional information or evidence you'd  
12 like to share later, you or your attorney  
13 can contact MSHA. The contact person is  
14 Norman Page, and his phone number and  
15 email are there on the letter.

16 THE WITNESS: Yes, sir.

17 MR. KOERBER: Sir, also I'd like  
18 to provide to you some contact information  
19 as well. West Virginia Code 22A-1-22,  
20 which you can discuss with your attorney  
21 after the interview, prohibits coal miners  
22 from being discriminated against for  
23 participating in interviews such as this.

24 The West Virginia Board of

1 Appeals is the administrative tribunal  
2 charged with hearing discrimination  
3 cases. If you feel that you have been  
4 discriminated against for participating in  
5 this interview, you certainly have the  
6 right to file a claim with the Board of  
7 Appeals, and this is the Board of Appeals  
8 contact information.

9 I would caution you, though, that  
10 from whatever day the discriminatory event  
11 occurs, you only have 30 days from that  
12 day to file your claim.

13 Also, I have a business card from  
14 Mr. Terry Farley, our lead interviewer. I  
15 have the business card for Mr. Bill  
16 Tucker, our lead underground  
17 investigator. Should you find any need to  
18 provide any additional information or if  
19 you have anything else that you would like  
20 to share with the investigation team,  
21 please feel free to contact them.

22 I believe I had mentioned earlier  
23 that the court reporter will be operating  
24 under a three-day turnaround on the

1 transcripts. If you would like to read  
2 your transcript to see whether or not  
3 there are any mistakes in it, come next  
4 Thursday, which will be about the 4th day  
5 of November, you can call Johnny Jackson &  
6 Associates. That's the firm that she's  
7 with, and I have their business card as  
8 well. The firm is located in Charleston.  
9 And they'll have a conference room where  
10 you can go and sit down with you or you  
11 and your attorney and read the transcript,  
12 make any corrections that you deem  
13 necessary on an errate sheet, and then  
14 provide that back to the court reporter.  
15 You will not be allowed to take a copy of  
16 the transcript with you though. And with  
17 that in mind, I'd like to give you these  
18 items.

19 And I would ask Mr. Farley to  
20 begin the interview.

21 EXAMINATION

22 BY MR. FARLEY:

23 Q. Mr. Wallace, good morning. Thank you for  
24 coming. I think Mr. Koerber may have already

1 answered -- you've already answered a couple of my  
2 questions that Mr. Koerber has asked here.

3 You indicated that you left your  
4 employment at the Performance Coal Upper Big Branch  
5 Mine around the end of July in 2009; is that  
6 correct?

7 A. That's correct.

8 Q. What was the reason for your departure?  
9 Were you retiring?

10 A. Retirement, yes. It was scheduled  
11 retirement, actually scheduled in February, but I  
12 stayed on a few months longer to help them get the  
13 longwall set up.

14 Q. Is your retirement going well?

15 A. Yes, sir.

16 Q. Good. Prior to your retirement in July of  
17 2009, who did you report to? Who was your  
18 supervisor?

19 A. I had Chris Blanchard was the president.  
20 I would call him daily. And -- mainly him.

21 Q. Okay. Do you recall when Mr. Blanchard  
22 became president and, in doing so, became your  
23 supervisor?

24 A. I do not remember when he became president

1 at Marfork. I was at Elk Run, and I came over in  
2 September of 2008.

3 Q. All right. I'm probably neglecting a  
4 couple of things. I probably should get a little  
5 background information.

6 Prior to your retirement, how long did you  
7 work in the coal mining industry?

8 A. 38 years.

9 Q. 38 years. How long did you work with  
10 Massey Energy or some of its subsidiaries?

11 A. 17 years.

12 Q. 17 years. Would that have been the last  
13 17 years of your career?

14 A. Yes, sir.

15 Q. Okay. Which Massey companies did you work  
16 with, if you don't mind telling me?

17 A. Elk Run Coal Company, Performance Coal  
18 Company, and I worked about six months at  
19 Independence.

20 Q. Okay. Now, when did you eventually make  
21 your way to the Upper Big Branch Mine?

22 A. I came to Upper Big Branch when it first  
23 opened up in it was August of '96 and worked there  
24 until around 2003 and then went to Elk Run.

1 Q. When did you return from Elk Run to UBB?

2 A. September of 2008.

3 Q. Okay. Now, was your position  
4 superintendent when you returned to UBB in  
5 September of 2008?

6 A. Yes.

7 Q. Who was your general mine foreman at UBB  
8 when you returned?

9 A. Gary May.

10 Q. Did you have responsibility for the entire  
11 mine or just a portion of it?

12 A. The entire mine.

13 Q. All right. You indicated that you'd  
14 originally planned to retire in February of 2009  
15 but you stayed until July to help them with the  
16 longwall setup. Can you tell me when you first  
17 learned that the longwall was going to return to  
18 UBB?

19 A. I can't remember a specific date. The  
20 longwall was at Logan's Fork at Elk Run, and that's  
21 where I was at.

22 Q. Right.

23 A. But I don't remember specifically a  
24 specific date.

1 Q. Okay. Well, we believe -- we understand  
2 that the longwall that was originally at UBB moved  
3 to Logan's Fork sometime mid to late summer of  
4 2006; is that fair? Is that accurate?

5 A. That's fair.

6 Q. Now, we understand that the startup of the  
7 UBB longwall after it returned was sometime early  
8 September of 2009. Of course, that would have been  
9 after your departure; correct?

10 A. Correct.

11 Q. Now, as best we can determine, the  
12 longwall returned to UBB sometime in the early part  
13 of 2009. Does that sound correct?

14 A. That's correct.

15 Q. But you don't recall specifically when?

16 A. Specific dates.

17 Q. All right. Well, you indicated that you  
18 had planned to retire in February of 2009 and that  
19 you stayed to help with the longwall setup?

20 A. Yes, sir.

21 Q. So I guess -- is it fair for us to  
22 conclude that if you were planning to retire in  
23 February of 2009, that you knew about the return of  
24 the longwall prior to that time since you delayed

1 your retirement?

2 A. Yes.

3 Q. All right. Is it possible you learned of  
4 the longwall return to UBB in 2008?

5 A. Yes, it would be in 2008. I learned  
6 about -- they asked me in July -- or it would be  
7 September of 2008 that the longwall would be coming  
8 over. And Rick Hodge, the superintendent, was off  
9 sick and had surgery, and I was one of the few that  
10 had any longwall knowledge.

11 Q. Okay.

12 A. And they wanted me to come over while he  
13 was off and help get the longwall set up.

14 Q. So they asked you to hang around and help  
15 out?

16 A. Right.

17 Q. Okay. I understand. When the longwall --  
18 after the decision was made to bring the longwall  
19 back from Logan's Fork to UBB, were you involved in  
20 any of the planning meetings or any planning  
21 whatsoever for that return?

22 A. The only meetings that I was involved in  
23 was after I had come over and, you know, they would  
24 update me on when the longwall was going to be done

1 at Logan's Fork and the estimated time that it  
2 would be coming in.

3 Q. Well, during the time that this process is  
4 going on of returning the longwall to the Upper Big  
5 Branch Mine, who was the person from Performance  
6 Coal that took the lead? Who was the person that  
7 sort of ram-rodged these proceedings?

8 A. Chris Blanchard.

9 Q. Who else would have been involved in the  
10 longwall process and the planning process at that  
11 time?

12 A. Well, Jamie Ferguson. He was, I think,  
13 vice president. And, you know, Gary May and a  
14 couple of other outby foremen who were going to  
15 help on the setup and installation of belts and  
16 stuff like that.

17 Q. Do you know the logic or the reasoning, or  
18 just, more specifically, why was a decision made to  
19 move the longwall from Logan's Fork back to UBB in  
20 2008? What was the reasoning for that, if you  
21 know?

22 A. I don't know.

23 Q. Was there some kind of problem with  
24 Logan's Fork that they couldn't mine there anymore

1 or --

2 A. I don't know.

3 Q. Okay. That's all right. Now, in the  
4 planning of the development for the longwall, the  
5 UBB longwall headgate and tailgate entries, do you  
6 know if any type of pillar stability analysis was  
7 done to determine proper pillar sizes by anybody at  
8 UBB?

9 A. I don't know. It was already under  
10 development when I came over.

11 MR. FARLEY: All right.

12 Mr. Sherer.

13 EXAMINATION

14 BY MR. SHERER:

15 Q. Again, let me thank you for coming down  
16 here, Mr. Wallace. We've interviewed over 250  
17 people involved with the various functions at UBB  
18 so far. A vast majority have commented that they  
19 really enjoyed working at the mine, that they  
20 thought it was a good mine when yourself and  
21 Wendell Wills were there.

22 What I'd like to talk about is what you  
23 did when you were there. And instead of talking  
24 about what went wrong, I'd like to talk about what

1 went right --

2 A. Yes, sir.

3 Q. -- if you don't mind. When you were a  
4 superintendent at UBB, did you have any new hires?

5 A. Yes.

6 Q. What would you do when you hired somebody  
7 up there?

8 A. Well, they would go through their training  
9 and safety. And then when they came to the mines,  
10 normally I would personally go over the maps with  
11 them and explain how we were mining, explain the  
12 safety issues that we had at the mines, you know,  
13 if -- always cautioned them, you know, to check the  
14 roof and ribs and travel ways. And then they  
15 would -- we would have a foreman take them in, and  
16 they would go on and tour the mines.

17 Q. Okay. Thank you. Did you ever do any  
18 training?

19 A. Some, yes.

20 Q. Would you try to talk to the miners during  
21 their annual retraining?

22 A. Lots of times, I would actually teach some  
23 of the classes.

24 Q. Thank you. Now, UBB was a big mine, it

1 looks likes a fairly complicated mine?

2 A. Yes.

3 Q. What sort of support did you have? Did  
4 you have engineering support?

5 A. You mean roof supports or --

6 Q. No, engineering services --

7 A. Oh.

8 Q. -- that you could talk to about questions  
9 like ventilation or --

10 A. Yes, we had an engineering department.

11 Q. Were they there at the mine itself?

12 A. No. Their office was located on the  
13 property but not right at the mines.

14 Q. Is that the office that's now referred to  
15 as Route 3 Engineering?

16 A. Yes.

17 Q. Okay. Who did you work with at Route 3  
18 Engineering?

19 A. Over the years, several people, Keith  
20 Trent, Eric Lilly. And I can't remember, there was  
21 so many of them.

22 Q. Sure. Who was in charge of ventilation  
23 when you were a superintendent at UBB?

24 A. In charge at the mines?

1 Q. Yeah, as far as making ventilation  
2 changes, planning how to ventilate.

3 A. I was. I was.

4 Q. You were, okay. Did you work with the  
5 engineers from Route 3 Engineering --

6 A. Yes, I did.

7 Q. -- on ventilation issues? Are you aware  
8 of any ventilation surveys that were done at UBB?

9 A. Yes.

10 Q. When was the last one that you're aware of  
11 done, roughly? It doesn't have to be an exact  
12 date.

13 A. Probably early 2009.

14 Q. Was that in preparation for the longwall  
15 return?

16 A. Yes.

17 Q. Who was involved in that?

18 A. Myself. All my foremen were out that  
19 weekend. And I think Chris Blanchard was on site,  
20 but he didn't -- wasn't within the mines itself.

21 Q. Okay. What was the conclusion of that  
22 ventilation survey?

23 A. We took our -- all of our intake air  
24 readings, you know, every location and return air

1 readings. And we had plenty of intake, but we --  
2 it was my conclusion that we needed additional  
3 return.

4 Q. Okay. Was that prior to the Bandytown fan  
5 being hooked up?

6 A. Yes.

7 Q. Okay. Roughly how often would you meet  
8 with the engineers about ventilation?

9 A. Once or twice a month probably.

10 Q. Okay. Thank you. When you had to make  
11 ventilation changes at UBB, how did you do that?  
12 How did you schedule it, and how did you let people  
13 know that you were going to make a change?

14 A. Well, I would first talk to Mr. Blanchard  
15 and explain, you know, what kind of change we  
16 needed to make. And then we would go to  
17 engineering, go over the maps, and then they would  
18 submit for a change.

19 Q. Okay. When would you normally schedule  
20 those changes, over the weekend or --

21 A. Over the weekend.

22 Q. Thank you. Did you inform like the  
23 production foreman and such that you were going to  
24 be making those sort of changes?

1           A.    Yes.

2           Q.    Okay.  Let talk about rock dust a bit.

3                         THE REPORTER:  I'm sorry.  Talk  
4                         about what?

5                         MR.  SHERER:  Rock dust.

6           Q.    Did you have anybody that worked solely on  
7           doing rock dusting?

8           A.    Yes, sir, we did.

9           Q.    How many people did you have working on  
10           that?

11           A.    We had a rock dusting crew on the owl  
12           shift, two men.

13           Q.    Okay.  Did they use a track duster?

14           A.    Yes.

15           Q.    Did you do any other bulk dusting besides  
16           that?

17           A.    Yes, sir, in sections.  We'd use the bulk  
18           dust to dust the entries and such.

19           Q.    Do you recall roughly how much rock dust  
20           you used per year?

21           A.    No, sir, I don't.

22           Q.    Okay.  That was a trick question.  Do you  
23           recall how many fire bosses you had?

24           A.    Not exactly, probably about eight or ten.

1 Q. Okay. Thank you. Do you think you got  
2 along okay with MSHA while you were a  
3 superintendent up there?

4 A. I felt I did. Yeah, we worked good  
5 together.

6 Q. Did you have any plans that you had to get  
7 approved in a very short period of time?

8 A. Yes, I'm sure I did.

9 Q. Was that a common occurrence or just an  
10 occasional --

11 A. On occasion.

12 Q. Thank you. If you had have a problem in  
13 the mine, do you think you could call up the  
14 district or people in the district and get their  
15 help?

16 A. Yes.

17 Q. Thank you. Do you recall any gas  
18 outbursts or inundations of methane at that mine?

19 A. In the years that -- yes.

20 Q. What did you do when that happened?

21 A. I was working -- Upper Big Branch or --  
22 yes, Upper Big Branch was divided up after the  
23 longwall left the south end of the mines and went  
24 to the north. I stayed on the south end, which was

1 called Hazy Portal, and I ran it, and Wendell Wills  
2 ran the north side.

3 And they had a -- I think it was around  
4 2003, somewhere in that area, they had methane  
5 coming through a crack on the longwall. And I  
6 actually went over and went in with Wendell, and it  
7 sounded like a freight train when it first  
8 come. And they just had to let it bleed off, the  
9 mine was idle.

10 Q. Did you guys talk about that after the  
11 fact and try to come up with any strategy if that  
12 occurred in the future?

13 A. I didn't talk with anybody, because I was  
14 on the other side. I'm sure Wendell probably had  
15 discussions.

16 Q. Okay, sure. Did you ever work with Bill  
17 Ross when he was employed by MSHA?

18 A. Yes.

19 Q. Did you work with Mr. Ross after he went  
20 to work for Massey?

21 A. Yes, I worked with him a few times.

22 Q. Thank you. Do you know Everett Hager?

23 A. I know him, worked with him just a little,  
24 but not a whole -- not real well.

1 Q. Okay, sure. What about Mr. Whitehead?

2 A. Jason Whitehead worked as a section  
3 foreman for me at Logan's Fork for a while.

4 Q. And you mentioned Mr. Ferguson. How about  
5 Wayne Persinger, did you ever work with him?

6 A. Yes.

7 Q. What do you think of those gentlemen, just  
8 in general?

9 A. Well, what little time I knew each one of  
10 them, I had no problems with them. They seemed  
11 like good employees. Jason Whitehead was a good  
12 section boss. And from what I understand, he's  
13 moved up in the company.

14 Q. Sure. So in your opinion, they seemed  
15 like competent mine supervision?

16 A. Yes, sir.

17 Q. Okay. Have you spoken with any of those  
18 individuals since the explosion occurred?

19 A. No, sir, I haven't.

20 Q. Have you spoken with anybody about the  
21 explosion?

22 A. Just individuals that I've met out, you  
23 know, hourly employees. And then there was a  
24 couple -- I've talked with Andy Colson. He wasn't

1 there when the explosion happened, but he had  
2 worked there. And I talked briefly with Gary May  
3 one time.

4 Q. Okay. You're extremely experienced in the  
5 mining industry, and you have a good knowledge of  
6 the mine, at least while you were there. In your  
7 opinion, what caused the explosion?

8 A. I really couldn't comment on that. I've  
9 heard so much stuff in the media and then I -- I  
10 wouldn't make a comment.

11 Q. Okay. I respect that, Mr. Wallace. What  
12 do you think about the conditions at the mine now?  
13 Have you got any feeling if things changed after  
14 you left?

15 A. If they had changed after I left? Did the  
16 conditions change?

17 Q. Yeah.

18 A. I couldn't comment on that. I don't know.

19 Q. Okay. Sure. Are you familiar with the  
20 S1, P2 and M3 programs?

21 A. Yes, sir.

22 Q. Did you use those programs when you were a  
23 superintendent at the mine?

24 A. Yes.

1 Q. How did you use those?

2 A. Well, they were -- used them to train  
3 with. They were used -- sections of them were  
4 usually part of your safety meetings every week.  
5 And like new miners come in, you would try and go  
6 over sections of them as they progressed through  
7 their red hat training.

8 Q. Sure. Did you have -- we understand  
9 there's manuals for each one of those programs.  
10 Were those available to the miners?

11 A. Yes, and there were copies located in the  
12 office. I had an open door policy, and it was  
13 nothing unusual prior to a shift for you to come up  
14 to my office and there would be five or six miners  
15 in there discussing mining or safety or different  
16 issues, you know.

17 Q. Sure.

18 MR. SHERER: Okay. Thank you.

19 Those are all the questions I've got.

20 EXAMINATION

21 BY MR. McATEER:

22 Q. Mr. Wallace, I'm the next questioner. And  
23 I, too, want to comment on the interviews that you  
24 have a good reputation --

1           A.    Appreciate it.

2           Q.    -- among the fellows that worked with you.

3                    You said that in your testimony that you  
4 called Mr. Blanchard daily.  What would you call  
5 him about?

6           A.    I would give him updates on, you know,  
7 like installation of the belt lines and stuff for  
8 the longwall, the progression we'd make on  
9 production on each section, problems we'd had  
10 during the day, breakdowns and stuff like that.

11          Q.    And did you call anybody about the  
12 production levels at the mine?

13          A.    Just Mr. Blanchard.

14          Q.    But would you call and say, "We've made  
15 this many cuts" or "We've had this much tonnage  
16 produced" or --

17          A.    Do you mean during the day?

18          Q.    Yes.

19          A.    During a shift, we would call in, I think,  
20 twice a day during the shift.

21          Q.    Okay.  Now, in the development of the  
22 longwall, I'm interested in sort of what your  
23 function was and how you went about it, because you  
24 said you had experience with the longwall, with

1 longwalls before?

2 A. Yes. I had worked at Performance when the  
3 longwall first came there.

4 Q. Right.

5 A. And, initially, I had no experience, and  
6 probably over the years, you know, set several of  
7 them up. And I knew -- mostly my main part was  
8 making sure that they were developed straight,  
9 because you know if a longwall is not drove  
10 straight, you have lots of problems. And then  
11 installation of the mother drives, the trippers and  
12 the belt lines. Normally, the longwall coordinator  
13 would supervise the setup of the face area.

14 Q. Okay. And in the development of the  
15 headgate and tailgate for this particular one, who  
16 were the persons that you worked with on that?

17 A. Jack Rolls was the longwall coordinator.

18 Q. Right.

19 A. And the maintenance supervisor was Bobby  
20 Goss.

21 Q. Did you ever work with a Mr. Farrell, Mike  
22 Farrell?

23 A. Mike Farrell, yes. He took care of a lot  
24 of the installation on the mother drives and

1 trippers, and then I had another crew that would  
2 install the belt line.

3 Q. Do you recall whether he was a good worker  
4 or whether he had --

5 A. Yes, Mike was very knowledgeable. He was  
6 young, but he started in the mines right after I  
7 came to Upper Big Branch when they first decided to  
8 put the longwalls in. He was working as a  
9 contractor for -- I can't remember the name of the  
10 company. And he -- over the years, he got real  
11 knowledgeable, and he did a great job.

12 Q. And was he responsible for the development  
13 of the headgate, the longwall headgate; do you  
14 remember?

15 A. No.

16 Q. But he put the mother drive in?

17 A. The installation of the mother drive and  
18 the trippers.

19 Q. And at the time it was installed, did you  
20 feel comfortable with the installation, that it was  
21 --

22 A. Yes.

23 Q. -- operating and functioning?

24 A. Yes.

1 Q. And when you left the mine in July of '09,  
2 had there been any problems of developing a long --  
3 either the headgate or tailgate of the longwall?

4 A. Problems?

5 Q. In terms of taking pressure, taking  
6 weight, water?

7 A. No. I think we had -- I know we had one  
8 fall on the tailgate. It was approximately a  
9 couple of thousand feet from where they had  
10 started, and that was about all.

11 Q. But that was pretty early?

12 A. That was pretty early.

13 Q. Okay. Now, when you did this pillar  
14 stability analysis that you said was done and that  
15 you found that -- your suggestion was that -- I'm  
16 sorry -- the survey needed additional return, you  
17 concluded they needed additional return?

18 A. And at that stage of development, like  
19 Mr. Blanchard told me, that's why they were putting  
20 in the Bandy fan, and that would give us additional  
21 return in the mines.

22 Q. Right. Did you have occasion to put  
23 overcast in while you were superintendent?

24 A. Yes, we started two sections. One of them

1 was on what they call Plumley --

2 Q. Right.

3 A. -- and then they had one over on the south  
4 side, which we had to install overcast.

5 Q. What's your preference between overcast  
6 and doors?

7 A. Overcast.

8 Q. Did this mine have a lot of doors in it?

9 A. It had airlock doors as you went in the  
10 mines, and then it had a set of airlock doors just  
11 outby where they were developing the longwall.

12 Q. Okay. With regard to ventilation, you  
13 said -- you testified that you would speak with  
14 Mr. Blanchard regarding changes in ventilation.  
15 And who would make the contact vis-a-vis the  
16 ventilation changes?

17 A. Who would be --

18 Q. Who would call MSHA to get that?

19 A. The engineering department.

20 Q. Engineering. And who did you work with at  
21 the engineering department?

22 A. Eric Lilly.

23 Q. Okay. Had he gotten an office at the mine  
24 at that point?

1           A.    He had an office at the engineering  
2 department.

3           Q.    Okay.  But he wasn't at the mine itself?

4           A.    No, sir.

5           Q.    Do you know Eric's academic background,  
6 whether he was an engineer or what his degree was?  
7 Do you know?

8           A.    No, sir.

9           Q.    Did you ever have any concerns about the  
10 ventilation proposals -- I'm sorry.  Let me strike  
11 that.

12                   Was there ever any time that MSHA rejected  
13 your ventilation changes, proposed changes?

14           A.    They didn't reject them.  They would make  
15 some revisions to them.

16           Q.    Suggestions?

17           A.    Suggestions, yes.

18           Q.    So there wasn't anytime where you had a  
19 feeling that MSHA was demanding of you that you  
20 made decisions that put miners at risk?

21           A.    No.

22           Q.    Now, when this outburst occurred in 2003  
23 or 2004, did you go to both of those events or  
24 just --

1           A.    No.  I was transferred to Elk Run, and I  
2 heard about the one in 2004.

3           Q.    But you go to the one in 2003?

4           A.    Yes, sir, I did.

5           Q.    And you said you heard it, and you said it  
6 sounded like a freight train?

7           A.    You could hear it.  Once you got to the  
8 end of the track, you could hear it.

9           Q.    Okay.  How long did it last?

10          A.    I think it took -- I couldn't say  
11 positive, a couple of days.  I know they were  
12 down -- I was working at Hazy Portal.  I just come  
13 over and went in.

14          Q.    Sure.

15          A.    Wendell wanted me to come over and see if  
16 I had any suggestions.

17          Q.    Right.

18          A.    And all we could do was keep the  
19 ventilation up and then wait for it to bleed off.

20          Q.    Let her bleed, yeah.  Is that what your  
21 suggestion was?

22          A.    That was it.

23          Q.    Okay.  Have you been back to the mine, to  
24 UBB, since you left?

1           A.   No, sir, I haven't.

2           Q.   So you don't miss it too much?

3           A.   No, I don't miss it much.

4           Q.   The rock dusting that you testified about,  
5 you said you had a crew of how many persons?

6           A.   There was a crew of two on the owl shift,  
7 and that's all they done was dusted. They would  
8 take sections of the mines, like say the headgate  
9 entry --

10          Q.   Right.

11          A.   -- one night, they would work on dusting  
12 it. The belt line was in the same entry, and they  
13 would dust it.

14          Q.   Okay.

15          A.   And then, you know, just had a schedule  
16 set up for different sections of the mines.

17          Q.   And did you set that schedule up, or do  
18 you remember where that schedule was kept?

19          A.   They would come to me, and I would tell  
20 them where to rock dust.

21          Q.   Okay. And how did you remember to do it?

22          A.   Well, I had a clipboard set up. And every  
23 night after they dusted, they would leave me a form  
24 letting me know what they got dusted and if they

1 still needed to go back to that section the next  
2 night. And that way, I could do my planning for  
3 them.

4 Q. Sure. Do you remember who the rock  
5 dusters were?

6 A. Oh, God.

7 Q. I know. I have a hard time remembering.

8 A. I'm at that age where I can't remember. I  
9 know faces, but I can't remember names.

10 Q. Was there an African American kid?

11 A. Yes.

12 Q. Nate?

13 A. Yes, Nate.

14 Q. Anybody else you remember?

15 A. I think we had a couple of others that  
16 worked different times with him. I know -- I can't  
17 remember names.

18 Q. Sure. Were they red hats or --

19 A. On occasion, we might have had a red hat  
20 help him.

21 Q. Okay. Now, the equipment that they used,  
22 the rock duster, was that new?

23 A. We had two different track dusters. One  
24 had been rebuilt, and plus we had another one.

1 Q. What color?

2 A. I think one was orange and one was white.

3 Q. And did you have them rebuilt?

4 A. We had one rebuilt, yes.

5 Q. Okay. And do you know who rebuilt that or  
6 what year it was done?

7 A. Actually, we rebuilt it in our shop. I  
8 think Roger Cantley did most of the work on it. He  
9 ordered the parts from -- it might have been ALE,  
10 I'm not sure.

11 Q. Right. Do you remember when that was?

12 A. No, sir.

13 Q. Was it after you came back from --

14 A. Yes, it was the early part after I came  
15 back. Probably in 2008.

16 Q. That would have been 8 or 9?

17 A. Probably 8, after I first came back.

18 Q. Okay. Now, did you work with Mr. Dean --  
19 Dino?

20 A. Dino Jones?

21 Q. Yeah.

22 A. Dino was a great personal friend of mine.  
23 Me and him had worked years in the mines together,  
24 even before Massey.

1 Q. What did you think of him?

2 A. I loved him to death. He was like a  
3 brother.

4 Q. And did there ever come, to your  
5 knowledge, a difficulty with ventilation with  
6 Mr. Jones' crew?

7 A. If -- there was a couple of times while I  
8 was there that he called and told me that he was  
9 going to have to work on his air, that he was just  
10 getting by. And he would always have it took care  
11 of before I got there. I'd always -- anytime I was  
12 called about a ventilation problem, I would go to  
13 it myself.

14 Q. You would work on it yourself?

15 A. I would go --

16 Q. To see what --

17 A. -- to see what the problem was and give  
18 any assistance I could. But most of the time when  
19 Dino called me, he would find the problem. He was  
20 a very knowledgeable foreman, very knowledgeable.

21 Q. But was he working in your area, or was he  
22 working in Mr. Willis' area of the mine?

23 A. Well, the last time I was --

24 Q. Right. I'm sorry.

1           A.    From '09 -- or '08 to '09 --

2           Q.    '08 and '09, he was --

3           A.    -- Wendell had retired already.

4           Q.    Okay.  That's right.  So was Mr. Jones up  
5 in -- had Headgate 22 started?

6           A.    Headgate 22, yes.

7           Q.    It had been initiated or started, they  
8 were driving Headgate 22?

9           A.    Not when I was there.

10          Q.    Okay.  And did you -- did the company take  
11 any additional steps with regard to ventilation  
12 following the 2003 event or 2004 event, to your  
13 knowledge?  These are the infusions.

14          A.    Not to my knowledge.  Like I say, I wasn't  
15 working there, so I don't know what the --

16          Q.    Right, okay.  And do you know if  
17 Mr. Farrell is still working there?

18          A.    No.  I run into Mike Farrell.  He's  
19 working at Speed Mining, I believe.

20                   MR. McATEER:  Okay.  That's all  
21 the questions I have at the moment.  Thank  
22 you, Mr. Wallace.

23                   MR. SHERER:  I've got a few  
24 follow-up questions, Mr. Wallace.

## EXAMINATION

1  
2 BY MR. SHERER:

3 Q. Were you aware of an ignition that took  
4 place on the longwall at UBB in 1997?

5 A. Yes, sir.

6 Q. Was that the part of the mine that you  
7 were the superintendent for?

8 A. I was actually an outby foreman at that  
9 time.

10 Q. Oh, okay. Could you describe what you  
11 recall of that ignition?

12 A. All I can recall is I was working outby, I  
13 was working on some belt lines, training belt, and  
14 I thought we'd had a roof fall. And so I got on my  
15 ride and was going down the main line and run into  
16 Wendell, he was the mine foreman. And I asked him,  
17 I said, "Did you feel that?" And he said, "Yes."  
18 And then we got to a phone and called outside, and  
19 they informed us that there was an ignition.

20 Q. Did you go up to where the ignition took  
21 place at any time after that?

22 A. Very -- it was way later, you know, not  
23 within -- it was several days.

24 Q. Do you recall anything that seemed unusual

1 about that ignition or --

2 A. I really can't remember. I don't know.

3 Q. Okay. When you were the superintendent,  
4 what sort of interaction did you have with Massey  
5 Energy? Did you make daily reports?

6 A. Well, I made daily reports to the  
7 president, Chris Blanchard, and then when it was  
8 Elk Run, it was Craig Boggs.

9 Q. So Mr. Blanchard would have the  
10 interaction with Massey Energy?

11 A. You mean higher up?

12 Q. Yeah.

13 A. Yes. I mean, I had a free -- I mean, I  
14 was -- if I needed to talk to somebody higher up, I  
15 had that -- I could do that.

16 Q. But normally it went through  
17 Mr. Blanchard?

18 A. Yes.

19 Q. Did you have any interaction with  
20 Mr. Chris Atkins?

21 A. I know Chris, usually just meetings and  
22 stuff of that nature.

23 Q. Just on occasion?

24 A. On occasion.

1 MR. SHERER: Okay. Thank you.

2 That's all the questions I've got.

3 EXAMINATION

4 BY MR. McATEER:

5 Q. Just one final question, Mr. Wallace. Did  
6 you have occasion during the time you were a  
7 superintendent to check the pre-shift books at the  
8 Upper Big Branch mine?

9 A. Normally, I would go over the books.

10 Q. What would you look for there?

11 A. To see what kind of -- if there was any  
12 hazardous conditions listed, if they had been taken  
13 care of. And I, you know, talked with the foremen  
14 to see what the problems were, and if they needed  
15 help in taking care of anything. I'd make sure  
16 that, you know, if they needed supplies or stuff,  
17 whatever they needed.

18 Q. If the books that you would look over  
19 reflected a rather perfect workplace, if they said,  
20 "Okay, okay, okay, everything is okay" --

21 A. There's no such thing.

22 Q. What do you mean?

23 A. In my experience in mines, 38 years,  
24 there's always something that you're going to find

1 during a shift that you need to make a correction  
2 on. It's just --

3 Q. Right.

4 A. It's coal mining.

5 Q. So if you saw a book that reflected  
6 perfect air readings?

7 A. I would question it.

8 Q. And would you counsel the foremen about  
9 trying to be more accurate?

10 A. Yes, sir.

11 Q. Did you ever have to do that?

12 A. I've found variations from, say, the  
13 evening shift to the day shift on air readings, and  
14 I would question the foreman, "Why are your  
15 readings so much different from his?"

16 Q. Right.

17 A. And tell him, you know, "We need to make  
18 sure we've got accurate readings, because I need  
19 those to do any planning."

20 Q. Was Mr. Blanchard knowledgeable about  
21 ventilation?

22 A. Yes, I would say he was.

23 Q. And the ventilation changes that -- you've  
24 testified that it's a large mine?

1           A.    Yes.

2           Q.    Was ventilation difficult?

3           A.    To a degree, yes.

4           Q.    What was the difficulty?

5           A.    Being so far in.  It's a long distance in  
6 there.

7           Q.    Right.

8           A.    And there was a lot of maintenance.  You  
9 had to -- as far as keeping up your stopping lines,  
10 making sure you constantly had crews going back and  
11 replastering, stopping.  I'd walk returns, and if I  
12 found any leakage, I'd have a map with me, and I'd  
13 mark anything I found that I thought we needed to  
14 --

15          Q.    Right.

16          A.    -- to, you know, plaster up or any kind of  
17 leakage.

18          Q.    Was there ever any problems with the doors  
19 being left open and problems with people going  
20 through and not shutting them?

21          A.    No.  We had a crew run into one and had to  
22 replace one of the doors.

23          Q.    Right.  I mean, with a large number of  
24 doors, human beings being what we are, would you

1 ever have any concerns about making sure they're  
2 shut every time and the whole thing?

3 A. No. It was -- especially the set of doors  
4 out by the setup area, that was where your main  
5 intake went across. Everyone knew that that could  
6 not be interrupted.

7 Q. Right. Was there ever a time when the  
8 doors were used, to your knowledge, to change the  
9 ventilation system by virtue of opening or closing  
10 the doors?

11 A. No, sir.

12 Q. And then what's the requirement on rock  
13 dust?

14 A. What do you mean, percentagewise?

15 Q. Yeah, or just --

16 A. I've been gone so long -- anyway, I  
17 think --

18 Q. Does 65 percent ring a bell?

19 A. Yeah, that --

20 Q. Okay. How do you tell what's there?

21 A. That's a good question. We just put down  
22 a lot of dust.

23 Q. Yeah.

24 A. That's the reason we constantly run the

1 bulk -- or they had a flinger duster that they  
2 mounted in the scoop, use your bulk dust, and each  
3 shift had a side of the section to take care of.

4 Q. Uh-huh. Did you have any trouble  
5 explaining to people about the rock dust and the  
6 need for it? Did you go over that with the  
7 training?

8 A. Yeah, that was in safety meetings, you  
9 know.

10 MR. McATEER: Okay. Thank you,  
11 Mr. Wallace. That's all the questions I  
12 have.

13 EXAMINATION

14 BY MR. SHERER:

15 Q. One last question, Mr. Wallace. Do you  
16 know how much Mr. Blanchard talked to Massey Energy  
17 when you were a superintendent? Did he make like  
18 daily calls or --

19 A. I don't know.

20 Q. Okay. Do you know how often he would meet  
21 with people at Massey Energy?

22 A. I couldn't tell you that either. I don't  
23 know.

24 MR. SHERER: Okay. Thank you.

1 MR. KOERBER: Mr. Wallace, we are  
2 approaching the end of the interviews. We  
3 may find a need at some point in time to  
4 recall certain people. So I just want you  
5 to be aware that that potential is out  
6 there.

7 THE WITNESS: That's no problem.

8 MR. KOERBER: Also, I want to  
9 give you the floor momentarily. If  
10 there's anything that you -- any  
11 information that you have that you thought  
12 the questions would bring out that you  
13 haven't had an opportunity to say, if you  
14 would like to say it now, you can. If you  
15 have any statement you'd like to make, if  
16 you have any comment you'd like to make,  
17 if you have anything you'd like to  
18 clarify, the floor is yours, sir.

19 THE WITNESS: Well, the only  
20 thing I have to say is that, you know, I  
21 worked for Massey for 17 years. And I  
22 feel that they have been given a bad -- a  
23 bum rap as far as safety. Because on my  
24 part, safety was number one. On the

1           company's part, any meeting I went to,  
2           quarterly meetings, meetings at the  
3           office, monthly meetings, weekly meetings,  
4           whatever, the first topic was safety. And  
5           we'd go over accident reports.

6                   And I just feel the company in  
7           the whole is getting a bad rap of not  
8           being a safe company.

9                   I mean, it's preached. You can't  
10          force safety on some people. You've just  
11          got some people out there, you could beat  
12          them with a stick and I don't think you  
13          could get them to understand. You know,  
14          the young generation, the work force is  
15          real young in coal mines right now. And  
16          it's all our faults because nobody tried  
17          to train anybody like they should have  
18          up -- you know, there was a period of time  
19          you didn't see trainings for years. And  
20          that's where the companies, all companies,  
21          failed, not training these younger people  
22          back and really keeping their work forces  
23          knowledgeable like they should. But  
24          that's all I have to say.

1 MR. KOERBER: Thank you, sir.  
2 Thank you for coming today. We very much  
3 appreciate it. And we will go off the  
4 record.

5 Do you have anything you want to  
6 add?

7 MR. WARNER: No. If we could  
8 just have the fellow up at the top  
9 identify himself.

10 MR. GODSEY: John Godsey from  
11 MSHA.

12 MR. KOERBER: Anything else?

13 MR. WARNER: Nothing from me.

14 MR. KOERBER: Okay. Let's go off  
15 the record.

16 (The interview of HOMER WALLACE  
17 was concluded at 10:10 a.m.)  
18  
19  
20  
21  
22  
23  
24

1 STATE OF WEST VIRGINIA, To-wit:

2 I, Karen Kay Skeen, a Notary Public and  
3 Registered Professional Reporter within and for the  
4 State aforesaid, duly commissioned and qualified,  
5 do hereby certify that the interview of HOMER  
6 EUGENE WALLACE, was duly taken by me and before me  
7 at the time and place specified herein.

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  
14 attorney or counsel for, nor related to or employed  
15 by, any 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 5th day of May 2012.

21 Given under my hand and seal this \_\_\_\_\_ day of  
22 November, 2010.

23 \_\_\_\_\_  
24 Karen Kay Skeen  
Registered Professional Reporter  
Notary Public