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**Transcript of the Testimony of Albert Clark**

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**Case:**

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STATEMENT UNDER OATH  
OF  
ALBERT "BENNY" CLARK

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Tuesday, May 11, 2010, beginning at 1:00 p.m.

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

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ATTORNEY WILSON:

Mr. Clark, my name is Bob Wilson with the Office of the Solicitor, United States Department of Labor. With me is Tim Watkins, the accident investigator with the Mine Safety and Health Administrative. There are also several persons present here at the table with the State of West Virginia, and I would ask that they state their names for the record.

ATTORNEY MCATEER:

I'm Davitt McAteer, the Governor's independent investigator.

MR. FARLEY:

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

MR. O'BRIEN:

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

MR. BECK:

Jim Beck. I work for Davitt McAteer.

ATTORNEY WILSON:

Today is May 11, 2010, and we're here to ask Albert Clark some questions. Mr. Watkins, for

1 MSHA, will be conducting the questioning, and then Mr.  
2 Farley for the State of West Virginia, and then Mr.  
3 McAteer. There are several other members of the  
4 investigation team present in the room.

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

23 Mr. Clark, government investigators and  
24 specialists have been assigned to investigate the  
25 conditions, events and circumstances surrounding the



1 fatalities that occurred at the Upper Big Branch  
2 Mine-South on April 5th, 2010. The investigation is  
3 being conducted by MSHA, pursuant to Section 103(a) of  
4 the Federal Mine Safety and Health Act and by the West  
5 Virginia Office of Miners' Health, Safety and  
6 Training. We appreciate your appearance here today to  
7 contribute to this investigation.

8 After the investigation is complete, MSHA  
9 will issue a public report detailing the nature and  
10 causes of the fatalities in the hope that greater  
11 awareness of the causes of the fatalities will help  
12 reduce the occurrence of similar accidents in the  
13 future. Information obtained through witness  
14 interviews is frequently included in the reports. You  
15 should know that if you request confidentiality,  
16 confidentiality will only be granted on a case-by-case  
17 basis. Your statement may also be used in other  
18 enforcement proceedings. You may have a personal  
19 representative present during the taking of the  
20 statement, and you may consult with the representative  
21 at any time. Do you have a representative with you?

22 MR. CLARK:

23 No, I don't.

24 ATTORNEY WILSON:

25 A court reporter will record your

1 interview. Please speak loudly and clearly. If you  
2 do not understand a question asked, please ask that  
3 the question be rephrased. Please answer each  
4 question as fully as you can, including any  
5 information that you may have learned from someone  
6 else. If at any point you need to take a break,  
7 please let me know and we can do that. Again, I would  
8 like to thank you for your appearance in this matter.  
9 We appreciate your assistance in the investigation.  
10 Your cooperation is critical in making the nation's  
11 mines safer.

12 After we have finished asking questions,  
13 you will have the opportunity to make a statement and  
14 provide us with any additional information that you  
15 think may be important. If at any time after the  
16 interview you recall additional information that you  
17 think may be useful, please contact Norman Page at the  
18 telephone number in the letter that was provided to  
19 you. At this time I would ask that the court reporter  
20 swear in the witness.

21 -----  
22 ALBERT "BENNY" CLARK, HAVING FIRST BEEN DULY SWORN,  
23 TESTIFIED AS FOLLOWS:

24 -----  
25 ATTORNEY WILSON:

1 And for the record, please state your  
2 name.

3 A. Albert B. Clark.

4 ATTORNEY WILSON:

5 And you go by Benny; is that correct?

6 A. Go by Benny, yes.

7 ATTORNEY WILSON:

8 I'm going to pass it to Tim Watkins to  
9 ask questions.

10 EXAMINATION

11 BY ATTORNEY WATKINS:

12 Q. Good afternoon, Benny.

13 A. Good afternoon.

14 Q. I appreciate you coming in, taking time with us  
15 today. Just a couple housekeeping items. Of course,  
16 you see the map on the right of UBB. We also have a  
17 larger-scale map on the back that you can reference as  
18 you feel necessary.

19 A. Okay.

20 Q. Again, just for the record, could you please state  
21 your full name and spell your last name, please?

22 A. Albert B. Clark, C-L-A-R-K.

23 Q. Okay. Benny, what is your address and your home  
24 telephone number?

25 A. (b) (7)(C)

1 (b) (7)(C) .

2 Q. Okay. And are you appearing here today  
3 voluntarily?

4 A. Yes.

5 Q. Okay. Benny, how long have you worked for MSHA?

6 A. It will be 18 --- it will be 19 years come  
7 November. About roughly 18 and a half.

8 Q. Okay. And what is your current duty station?

9 A. Mount Hope.

10 Q. Mount Hope. And how long have you been at that  
11 location?

12 A. Ten years. Ten years. About 11 years. Eleven  
13 (11) years.

14 Q. And what is your current position?

15 A. Ventilation specialist.

16 Q. And how long have you been a ventilation  
17 specialist?

18 A. A couple years.

19 Q. Okay. And your current supervisor?

20 A. Joe Mackowiak.

21 Q. Okay. Could you just give us a little bit of mine  
22 history and background, when you started in the mining  
23 industry and so on?

24 A. Okay. Sure. I started in the mining industry in  
25 '73 as an engineer/surveyor. Worked in that position

1 for probably three years, two or three years. Then I  
2 moved on into the mining industry as a general inside  
3 roof bolter, equipment operator, then went to become a  
4 foreman. And I bossed for about ten --- about 12  
5 years, and then I had my own engineering company,  
6 where I do permits and so forth for companies back in  
7 the '70s. In between stretches I went together ---  
8 had my own coal mines, worked with several guys, went  
9 together and we did some mining. And then I came to  
10 work at MSHA. And I took a break from the mining  
11 industry for four years and went to work for the Corps  
12 of Engineers and then got an offer to come to work  
13 with MSHA, where I really --- back in the mining  
14 industry in November of '92, and been with them ever  
15 since. So CMI up to a couple years ago.

16 Q. CMI, which office were you out of?

17 A. I started out at --- I started out at the Madison  
18 office, the Uneda office, and was there from '92 to  
19 May of '99, and transferred to Mount Hope.

20 Q. Do you have any specialized training or  
21 certificates, mine foreman papers or anything ---?

22 A. Oh, yes. I had mine foreman's, fire boss papers,  
23 shop foreman. I hold every card, with the exception  
24 of an electrician card.

25 Q. You mentioned your current position. You're a

1 ventilation specialist; correct?

2 A. Correct.

3 Q. What's your area of responsibility being a  
4 ventilation specialist?

5 A. It is to review ventilation revisions that come in  
6 the office and any other revision concerning mine  
7 openings, exploration plans, annual maps. And if  
8 there's a mine that's got an issue with ventilation,  
9 we try to --- I try to go to them and check them out.

10 Q. How many people --- other than yourself, how many  
11 specialists, ventilation specialists, are in the  
12 district office?

13 A. Six. There's six.

14 Q. How is that set up? Do you have one in each field  
15 office or are they all located in the district office?

16 A. They're all --- they're all in the district  
17 office. I mean, we're --- at Mount Hope everybody is  
18 in the district. There's not one in the field office.

19 Q. Okay.

20 A. There was one I think at Mount Carbon --- not  
21 Mount Carbon but Pineville, and that's only one. They  
22 were in all the offices, and they pulled them back  
23 sometime or another. I forget when it was.

24 Q. So when the company submits a plan, it comes ---?

25 A. It comes straight to us, yes.

1 Q. Now, do you have specific mines that you look at  
2 that are assigned to you or how ---?

3 A. No. No. Just whichever one comes in first, we  
4 try to pick that up and look at as it comes in.

5 Q. Okay. I understand. And each district is a  
6 little bit different, so that's why I'm trying to get  
7 a feel for how you guys ---.

8 A. Yeah. Yeah.

9 Q. Okay. So when was the last time that you were  
10 actually in Upper Big Branch Mine?

11 A. I believe it was March the 9th.

12 Q. March 9th?

13 A. Yes.

14 Q. Okay. What type of inspection were you  
15 conducting? What was your reason for being there?

16 A. Well, they were having some ventilation issues,  
17 and Joe asked us to go down, check the ventilation out  
18 and do some work on the E01.

19 Q. Okay. When you say us, was there more --- who was  
20 with you? Who accompanied you?

21 A. Well, Clyde Gray, Keith Sigmon and I think Mike  
22 Haines was down there.

23 Q. You say Joe asked you to go down and check it out.  
24 What did he ask you to do?

25 A. Well, he just said, you know, check the

1 ventilation out, just check ---.

2 Q. Okay.

3 A. And we split up and each one of us took a section,  
4 area.

5 Q. Which area did you go to?

6 A. I went to the --- I started at the airlock doors  
7 in the intake.

8 Q. Okay. Is this on this map here?

9 A. Let me get my bearings.

10 Q. May not have enough outby. I don't know.

11 A. I think it's on out this way.

12 Q. Okay.

13 A. I think it's on out here, because they went into  
14 the intake. The airlock door --- had a set of airlock  
15 doors, went into the intake, and then they went on  
16 back into the track entry. Then I got out at the  
17 airlock doors ---

18 Q. Okay.

19 A. --- in the intake and traveled the intake up to  
20 the tailgate section, ---

21 Q. Okay.

22 A. --- which was ---.

23 (Exhibit Benny Clark One marked for  
24 identification.)

25 BY MR. WATKINS:



1 Q. This map has already been marked as Exhibit One,  
2 Benny Clark, so if you don't care, just mark how you  
3 traveled to get in there, what you did and all that  
4 stuff.

5 A. Well, let me back up here. See, right --- this  
6 is --- they were starting this section at the time I  
7 was up there. None of this had been driven. Okay.

8 Q. When you're talking none of this, you're talking  
9 about 040?

10 A. I'm talking about 040 had not been driven yet.

11 Q. Okay.

12 A. And what is the return at this present time was  
13 the intake.

14 Q. Okay.

15 A. And then once they installed their overcast, they  
16 reversed the air and made it return. I come up this  
17 way, across here, across the undercast and traveled  
18 this intake up to the section.

19 Q. If you don't care, can you just take maybe the  
20 yellow one and just mark the direction that you  
21 traveled that day when you came in that day?

22 A. Okay. Right here they are. This is it right  
23 here. Here's the airlock doors. I got out right  
24 here.

25 Q. Okay.

1 A. And out here ---.

2 ATTORNEY WILSON:

3 Why don't you over here write airlock

4 doors and put an arrow pointing to the airlock doors.

5 A. Okay. Okay.

6 ATTORNEY MCATEER:

7 And put your name on it so we can

8 distinguish from Keith to you.

9 A. Okay.

10 WITNESS COMPLIES

11 MR. FARLEY:

12 I think that's in the area of what they

13 call 78; isn't it?

14 A. I believe it is in that area. And I traveled over

15 and just followed the intake up. And I really don't

16 recall if I crossed this overcast or this overcast,

17 you know.

18 BY MR. WATKINS:

19 Q. Just as long as you're close.

20 A. Yeah.

21 Q. All right. Just ---.

22 A. Crossed here.

23 Q. Okay.

24 A. It's one of these two places. I don't recall.

25 Q. Okay.

1 A. Yeah, but right there. That was the intake at  
2 that time, up to here. And they had just started  
3 along in there somewhere, give or take a little bit.  
4 As far as their entry, I can't --- I don't remember if  
5 they were starting to turn them or not, but they was  
6 in there enough to --- yeah. No, this one is up to  
7 here because I think I took an air reading right  
8 there.

9 ATTORNEY WILSON:

10 Okay. Now, Benny, when you're testifying  
11 here and you say, I took an air reading here, that's  
12 not going to show up on the record. So we've got a  
13 magnifying glass. Perhaps you could make reference to  
14 spad numbers ---

15 A. Okay.

16 ATTORNEY WILSON:

17 --- just so we know what you're talking  
18 about.

19 A. Okay. And I believe I took a spad --- air reading  
20 at 24710 in the last open break.

21 ATTORNEY WILSON:

22 And that's the spad number you read?

23 A. Yeah. It's the spad number, yes. And that's  
24 where I left the section.

25 BY MR. WATKINS:

1 Q. This air reading you just referred to, Benny, ---  
2 I've got your notes here.

3 A. I figured you would.

4 Q. Okay. Which one are you ---?

5 A. Okay.

6 Q. Which location --- which one are you referring to  
7 as far as --- which reading is that?

8 A. I took a lot of readings that day.

9 Q. Yeah. I'm trying to get the right ones in the  
10 right place.

11 A. Okay. Intake split, last open break. Yeah, last  
12 open break. This one right here, 20400.

13 Q. Okay. And you took that ---?

14 A. I believe I took it right here.

15 ATTORNEY WILSON:

16 And again, can you describe ---?

17 A. At spad --- the spad number?

18 ATTORNEY WILSON:

19 What you just read off.

20 ATTORNEY MCATEER:

21 24710.

22 A. That's at spad 244710 --- or 1-0 rather.

23 BY MR. WATKINS:

24 Q. If you could put last open break or something on  
25 there so we know.

1 WITNESS COMPLIES

2 BY MR. WATKINS:

3 Q. There you go. Okay.

4 ATTORNEY WILSON:

5 So you wrote LOB?

6 A. Right.

7 BY MR. WATKINS:

8 Q. That goes back to the one at the bottom; right?

9 A. Yeah.

10 Q. Let me back up just a second there. You said Joe  
11 sent you guys down to check out the ventilation  
12 system. Did he --- was there something he was  
13 concerned about or why he sent you down there?

14 A. A couple days before that one of the inspectors  
15 had issued a violation on low air when they had  
16 difficulty getting the --- and they came in and told  
17 us to just go down, check the air out and work on the  
18 EO1. That was it.

19 Q. Okay. You mentioned low air. Do you know where  
20 it was at?

21 A. I do not remember where that's at, Tim.

22 Q. Okay. Do you remember which inspector it was that  
23 found it?

24 A. I think it was Keith Stone, I believe. Yeah,  
25 because he --- I think he was down there at the time.

1 Q. Okay. So after you made it to the section, the  
2 040 section, and you took your last open break  
3 reading, do you remember where you went to after that  
4 or did you spend all day on the section?

5 A. I spent all --- the rest of the day, which it was  
6 --- it took me a while to get up there, but the rest  
7 of the day I worked on E01, checked the information  
8 and their equipment and stuff like that.

9 Q. About what time did you get to the mine?

10 A. Oh, gosh.

11 Q. Do you remember back?

12 A. Yeah, I remember back --- usually I usually get to  
13 the mines around 7:30, 8:00, but I don't recall. It  
14 should be on my coversheet. Eight o'clock.

15 Q. Let's see. Did you have an air reading --- did  
16 you have a time on the air reading?

17 A. Yeah. It should be on there.

18 Q. Okay. And what time is on that one?

19 A. 10:30.

20 Q. Okay. So it took you about two and a half hours,  
21 I guess, from the time you got there to ---

22 A. Right. Yes.

23 Q. --- take the air reading? Okay. Was anyone from  
24 the company traveling with you that day?

25 A. Yes. Berman --- what's his name? Berman Cornett.

1 He's a safety inspector with them.

2 Q. Okay. Anyone else traveling with you, miners'  
3 reps or anybody?

4 A. No. No. Uh-uh (no). Let's see. Me and Clyde  
5 and the guy that was traveling with him, the other  
6 safety guy, was on the same mantrip. That's where we  
7 split, right here at the airlock doors.

8 Q. You say you spent most of the --- rest of the day  
9 just on this ---

10 A. Yes.

11 Q. --- on that one section?

12 A. Yeah.

13 Q. Were there any citations or anything issued that  
14 day?

15 A. I wrote nine that day there.

16 Q. Okay. Do you remember, by any chance, what they  
17 were?

18 A. I remember I wrote, I think a cable on the miner  
19 cable. It's all in there. I think I wrote dates,  
20 times, initials. Well, I can be more precise with it.  
21 Okay. Well, I wrote one in the intake on the way up.  
22 They didn't have stairways on their intake. They just  
23 put their overcasts in. They hadn't put their ladder  
24 --- steps in yet.

25 Q. Okay. And the lifeline --- when they built the

1 overcast, the lifeline was running through the  
2 overcast --- through the stopping instead of over.  
3 Number Two entry was 22 feet --- cut and mined 22 feet  
4 wide. Cable on the Number One continuous miner was  
5 not insulated to the same degree as the outer jacket.  
6 The circuit breaker at the power center for the Number  
7 One shuttle car wasn't properly identified. The  
8 circuit breaker at the KVA box for the welder wasn't  
9 properly identified. Up-to-date dates, times and  
10 initials wasn't present at the scoop-charging station.  
11 Page 12 of the roof control plan wasn't being complied  
12 with. The opening was mined over 26 feet just inby  
13 the feeder.

14 Q. Okay. So really, as far as ventilation goes that  
15 day, you didn't find anything that day ---

16 A. No.

17 Q. --- as far as ventilation goes?

18 A. No issues with ventilation.

19 Q. Methane readings, oxygen readings, do you recall  
20 what you had on the section that day?

21 A. Oxygen was 20.8. The methane, the most I can  
22 recall was a .05.

23 Q. The gentleman from the company that was traveling  
24 with you, did he take any notes or any photographs or  
25 anything like that?



1 A. No. I don't recall him taking photographs, but he  
2 probably took notes. I can't vouch for that. I  
3 didn't see him all the time.

4 Q. So he traveled with you the whole time you came  
5 up?

6 A. Yeah. Pretty much he was with me the whole time.

7 Q. He was present when you wrote those citations?

8 A. Yeah. He was in the area, yes.

9 Q. Okay. Did you have any conversations with him  
10 about those citations? How did he take it?

11 A. How did he take it?

12 Q. Yeah. How did he take it?

13 A. He had a good talking with the people on the  
14 section, ---

15 Q. Okay.

16 A. --- and he took them real well. And most of this,  
17 you know, they were just moving the section up and  
18 was just getting started, and a lot of that was just  
19 poor planning on their part starting out.

20 Q. What about just the overall condition of the mine  
21 as you came in as far as rock dust and, you know, roof  
22 and rib conditions, that type of thing? What did you  
23 see?

24 A. Beginning from the drift ---

25 Q. Yeah, might as well.

1 A. --- to the airlock doors was white, well rock  
2 dusted, good airflow, and I don't think I had any  
3 methane. I can't recall, but ---.

4 Q. There's your notes. You're welcome to look  
5 through them.

6 WITNESS REVIEWS NOTES

7 A. Yeah. The condition was good. Airflow was good.  
8 Rock dust was put on well. And then when we got to  
9 the intake and walked up to the section, as you can  
10 see, I took quite a few air readings going to the  
11 section. The intake split at 78 break.

12 BY MR. WATKINS:

13 Q. Yeah. I was going to ask you to mark those when  
14 we got to them, when you get a chance there, ---

15 A. Okay.

16 Q. --- so we know exactly where you took them at that  
17 way.

18 A. Okay.

19 WITNESS COMPLIES

20 A. I believe this is the proper, right location here.

21 BY MR. WATKINS:

22 Q. If you could, just tell us what you wrote on there  
23 so we ---.

24 A. Okay. At spad 19659, crossing in front of the  
25 doors I had a reading of 73,130 cfm.

1 ATTORNEY MCATEER:

2 Why don't you initial that?

3 A. Okay. I sure will.

4 WITNESS COMPLIES

5 A. Okay. And spad 19663 had 72,000 cfm. Okay. Then  
6 we came on up, up the intake. The intake was well  
7 rock dusted, had plenty of airflow. There was no  
8 methane. Then come up to 70 --- okay, yeah, no  
9 methane. Then we came on up, crossed one at here, and  
10 I took an air reading at that time. The ventilation  
11 intake come up this way and split both ways.

12 BY MR. WATKINS:

13 Q. So both those readings you just wrote down a  
14 63,000 and a 29,000 you have taken at One, Two ---  
15 Four and Five entries?

16 A. In the Four and Five entry, yes.

17 Q. So combining both of them together, that would be  
18 the total intake coming up?

19 A. Yes, for both of these sections.

20 Q. Okay. And both of these sections referring to ---  
21 040, is that One?

22 A. 040 is the tailgate I was on, yes.

23 Q. Okay. I think in your notes you mentioned  
24 Sections One and Two?

25 A. One and two, with that split off here, and you had

1 an intake split going up here also.

2 Q. So the one going up goes to --- was that one  
3 section or two section? You're talking straight  
4 ahead?

5 A. Right. Yes.

6 Q. Which one?

7 A. I'm calling this one one and that one is two.

8 Q. so you're calling 040 One?

9 A. Yes.

10 Q. Okay.

11 A. And I believe 7,800 cfm that was going to Two  
12 Section up here. There was 7,800 cfm going to the Two  
13 Section off of this little split right here.

14 Q. Okay.

15 A. And then I believe the power center was right  
16 along in here. There was 28,600 cfm.

17 Q. Okay. Do you have a spad number or crosscut  
18 number or something close to that?

19 A. In the vicinity of spad 23795.

20 Q. Okay. When you were making this air reading, were  
21 you carrying a map or anything with you? Did you have  
22 a map?

23 A. No. No, I didn't have a map with me. No.

24 Q. Okay. You just took it from your notes and stuff?

25 A. Yes.

1 Q. We talked about the conditions coming up through.

2 Was there any conditions as far as water?

3 A. No.

4 Q. Any accumulation of water?

5 A. No.

6 Q. Or anything like that you can recall?

7 A. No, sir.

8 Q. So how far at this crossover, if you will, this  
9 area here, did you come up?

10 A. I didn't come up. I just stayed right in this  
11 area right here.

12 Q. Okay. Just far enough to get that reading?

13 A. Far enough to get this and check the equipment on  
14 the section there, that was it.

15 Q. Were they using a belt at the face or anything on  
16 that section when ---?

17 A. I don't ---.

18 ATTORNEY WILSON:

19 Let him finish.

20 BY MR. WATKINS:

21 Q. Were they using a belt at the face on that  
22 section, Benny?

23 A. No, I don't believe so. No, not to my knowledge.

24 Q. Okay. Before you --- I apologize for jumping  
25 around on you a little bit, but before you went under,

1 did you have a chance to look at the pre-shift books  
2 or the weekly books?

3 A. I looked --- yes. I looked at the weekly books  
4 and the fan books and the --- the weekly book, I  
5 didn't look at the --- the weekly book for this  
6 section was over at the other portal ---

7 Q. Okay.

8 A. --- because there was a portal at the main mine.

9 Q. Okay.

10 A. But we looked at all the other records out there,  
11 airway books and such.

12 Q. Pre-shift book?

13 A. I didn't look at the pre-shift book on this one,  
14 no. It was at another mine. We looked at the one up  
15 here.

16 Q. Okay.

17 A. But I don't remember anything about it.

18 Q. When you was on that section that day, were they  
19 running coal normally? I mean, was anything stopping?  
20 Were they running coal?

21 A. Yes, they were running coal. Yes.

22 Q. Okay. Did you have a chance to observe the mining  
23 cycle?

24 A. I observed them loading a buggy or two, yes. I  
25 don't remember exactly where or what, but I did.

1 Q. Okay. Was there a methane spotter on the miner?

2 Did you check on the miner?

3 A. Yes.

4 Q. Did you observe it when they was cutting coal?

5 A. Yes. And I even checked it ---

6 Q. Okay.

7 A. --- and when I did permissibility on the miner,  
8 and it was fine.

9 Q. Okay. Do you remember what it was reading as they  
10 were cutting coal?

11 A. No, I don't.

12 Q. Okay. I know in the pre-shift book on the section  
13 that day, Benny, I may need you to help me out here a  
14 little bit.

15 A. Okay.

16 Q. This is on the 9th, Tailgate 22 --- 23 ---  
17 Tailgate 22, on Tailgate 22. It says they were down  
18 on the evening shift from making an air change. Do  
19 you have any idea what that was about?

20 A. Don't have a clue.

21 Q. Were you aware of any ventilation supplements or  
22 revisions they had submitted to the district at that  
23 time ---

24 A. No.

25 Q. --- that you were up there?

1 A. No.

2 Q. Is there anything that you did after that or  
3 anything that day?

4 A. No. All we did, once I finished up, I met Clyde  
5 back down at the mantrip. I walked --- they had a set  
6 of double doors.

7 Q. You'll have to mark that.

8 A. I believe we come down --- I believe they had a  
9 set of double doors right here, I think is where it's  
10 at. Here's the intake.

11 Q. What's the spad?

12 A. Spad 22757, where they --- the men come across and  
13 then got to the track entry over to here. Yeah, I  
14 think. I came over here, walked down the track entry,  
15 if I'm not mistaken. Yeah, I just walked down the  
16 track entry and met Clyde --- met Clyde in this area  
17 somewhere, I don't know where it was at, and we got on  
18 the mantrip and went outside.

19 Q. Okay. In addition to you and Clyde, who else was  
20 underground that day as part of this inspection?

21 A. Keith Sigmon and I believe Mike Haines.

22 Q. Did you guys get together after this to maybe  
23 compare notes or anything like that on what you found  
24 that day?

25 A. No, we didn't. No, just me and Clyde on our way



1 out.

2 Q. Okay. What about back at the office? When you  
3 guys got back to the office, did you guys get together  
4 and discuss what you found?

5 A. No. No, I didn't talk to nobody but Clyde that I  
6 was with. I didn't ask what they did over here.

7 Q. Did you have a discussion with Joe when you got  
8 back about what you encountered that day?

9 A. I pretty much told him what I just told you.

10 Q. Okay.

11 A. Yes.

12 Q. What about --- that was the last time that you was  
13 at the mine; correct, I mean, this day you ---?

14 A. That was the last time I was there, yes.

15 Q. What about prior inspections?

16 A. Well, I was there back in November, I believe. I  
17 don't have the exact date, but I was there a couple  
18 times in December, during the last --- the first  
19 quarter.

20 Q. Okay. Do you remember what areas you went to at  
21 that time?

22 A. I was --- okay.

23 Q. I don't have your notes to help you out on this  
24 one. You're on your own.

25 A. I was --- came up to the longwall, the longwall

1 was in this vicinity right in here, and traveled back  
2 in the bleeders.

3 Q. Do you remember how far you went back in the  
4 bleeders?

5 A. I went all the way back to the fan.

6 Q. Do you remember which way you traveled to get  
7 there?

8 A. At that --- I traveled this --- the tailgate  
9 side ---

10 Q. The tailgate side?

11 A. --- and went up ---.

12 Q. Over across ---?

13 A. Yes.

14 Q. Diagonal and went up?

15 A. Yes.

16 Q. What was your purpose for going to that area at  
17 that time?

18 A. At that time I was filling in as field supervisor  
19 and I was --- had the inspector down there, and I went  
20 down just to follow him and assist him in maybe doing  
21 a field activity review. I can't recall.

22 Q. Which inspector was it that you were traveling  
23 with?

24 A. Kevin Lyall.

25 Q. Kevin Lyall, okay. Did anyone from the company

1 travel with you?

2 A. Yes. I'm thinking it was Everett Hager.

3 Q. Do you remember what you found when you covered  
4 that area, what you ---?

5 A. No, I don't. No. We traveled all the way back  
6 --- they had water in this area right here.

7 Q. This area right here, you're referring to the  
8 headgate side?

9 A. On the headgate side. They had issued a citation  
10 for not being able to travel this area through here.

11 Q. Do you remember who issued that?

12 A. I think it was Keith --- or Kevin. I believe it  
13 was Kevin Lyall.

14 Q. Okay. Kevin issued a citation on the headgate  
15 for ---?

16 A. I believe. Okay. And see, the return, once you  
17 come off of the --- when they were driving up here,  
18 come down along the Number Three entry, all the way  
19 back. That was the travel for the return at one time.

20 Q. At one time?

21 A. Yes.

22 Q. Okay. Know when that changed?

23 A. Well, when the longwall started falling, it  
24 started shifting weight on them, crushing their  
25 stoppings out, and then on top of that caused a large

1 amount of water to come in from the top somewhere, and  
2 that blocked them, so they had to --- they wasn't able  
3 to travel it anymore.

4 Q. Okay. You don't know --- remember exactly where  
5 the water was at about where ---?

6 A. No, I don't.

7 Q. Just somewhere in there?

8 A. It was back in this entry here. 100 break there's  
9 water at several locations. I can't --- you know, I  
10 don't remember, no. There was just a lot of water at  
11 that time.

12 Q. Do you remember before or after the set-up entry,  
13 if they were blocking before or after that?

14 A. No. No, they weren't running when we went down  
15 there. Now, at that time, when we were down there, we  
16 traveled back through here. Everything was fine. The  
17 second time we went back down there is when we tried  
18 to get down this entry here when they had the water.

19 Q. Do you remember when the second time was you went?

20 A. No, I don't. It was in November. It was during  
21 that period.

22 Q. Were you by yourself or ---?

23 A. No. I was with, I think, Link and Lyall --- or  
24 Link and Kevin Lyall, Link South, Kevin Lyall and Dana  
25 Hosch was with me. He had to travel that day, so he

1       went out with me.  And that's all --- and I believe  
2       that was it.

3       Q.  Okay.  About how far out was the wall whenever you  
4       guys were in there?  I know you got the timelines on  
5       the wall and stuff like that.  It may help you out a  
6       little bit.

7       A.  Let's see.  I was thinking more it was in this  
8       area here.

9       Q.  Okay.  This area here, you're referring  
10      approximately 65 break.

11     A.  The 65 break.  It just feels like to me that's  
12     where it was at.

13     Q.  Okay.  You mentioned you had a lot of water coming  
14     in that prevented travel in this area.  Where was the  
15     water coming from?

16     A.  They think it was coming from the old 141 mines.

17     Q.  When you say they, are you referring to the  
18     company, or who are you referring to when you say  
19     they?

20     A.  I'm referring to the company, and I think that the  
21     company said that's where it was coming from, was from  
22     the 141 mines.

23     Q.  Is that the mine that's right above this one  
24     or ---?

25     A.  I believe it is, yes.  And --- yeah, that's it.

1 Q. Do you know if the company submitted any plans or  
2 anything as far as maybe checking the water in the old  
3 mine above them or mine under it or whatever?

4 A. Well, no. The only thing I know, I believe they  
5 had a plan in to drill into that area to pump the  
6 water from the Castle seam, the upper seam, the Logan  
7 Fork Mine. But I don't know if they ever did it or it  
8 went through or what.

9 Q. When you say pump it, are you talking about  
10 pumping it to the surface or ---?

11 A. Yeah, pump it out, yes.

12 Q. I believe in one of the supplements I looked at  
13 they actually --- the district actually approved a  
14 revision or a supplement that moved an evaluation  
15 point somewhere in this headgate entry. Do you know  
16 anything about where it was at and where it moved to?

17 A. No. I remember something about it, but I don't  
18 know. I can't --- I don't remember exactly where it  
19 was moved from.

20 Q. Do you remember issuing any citations or anything  
21 when you were there on those two visits as far as  
22 there being ventilation?

23 A. No. No, I didn't issue any. The only violation  
24 that was issued was in this area here and it was  
25 already there.

1 Q. Because of not traveling ---?

2 A. For not being able to travel because of the roof.

3 Q. Not being able to travel?

4 A. Yes.

5 Q. Okay. Do you know how that was resolved, how it  
6 was terminated, that citation?

7 A. Well, first, they had pumped the water down and  
8 was able to travel so far, a little bit further, then  
9 I think there was another violation issued from that  
10 point on up. But then they put a revision in to  
11 redirect the return air course ---

12 Q. Okay.

13 A. --- down across outby the longwall over into the  
14 Number One and Two entry in order to travel all the  
15 way to the fan.

16 Q. Okay. Do you remember when that was?

17 A. No, I don't.

18 Q. Were you involved with that --- any meetings they  
19 had with the company concerning the proposal?

20 A. No. No, I was not.

21 Q. Who normally submits the plans for the company  
22 when they bring them in?

23 A. Well, it's usually either --- for this mine, Eric  
24 Lilly issues all the plans, does all their planning,  
25 their engineer.

1 Q. They bring them in, you guys sit down with them,  
2 or how does that work?

3 A. Sometimes, not always, but usually they just bring  
4 them in, we stamp them in, then it's given a tracking  
5 number, and then we --- when we get to it, then we  
6 look at it.

7 Q. Do you remember sitting in on all the discussions  
8 and meetings with them when they bring the plans in?

9 A. I've sat down with them but not on this particular  
10 one here.

11 Q. Not on this longwall?

12 A. No, on other revisions in the past.

13 Q. Okay. So backing up to the day that you traveled  
14 on the tailgate side, did you come over into the  
15 headgate --- in the setup entries? Did you come over  
16 that way, across the back or ---?

17 A. No. No. No, I didn't. No, we come up this way.

18 Q. Okay.

19 A. Yeah, I'm pretty sure.

20 Q. So you didn't actually go back down to the  
21 headgate side to try to check to see how far you could  
22 get or check the conditions or anything like that?

23 A. No. I think Kevin Lyall may have been over there.

24 Q. Okay.

25 A. No, I didn't come back there. About somewhere in



1 this vicinity here is as far as I came, right there,  
2 where I went up and then I went on ---.

3 Q. This vicinity, you're talking about the connection  
4 where the diagram comes around ---?

5 A. The connection.

6 Q. Across that mine somewhere between 9:30 or ---?

7 A. Yes.

8 Q. Now, did you go on towards the Bandytown fan  
9 or ---?

10 A. Yeah, I went to the Bandytown fan.

11 Q. Okay. Do you remember any methane readings,  
12 oxygen readings or anything?

13 A. No, but it wasn't really anything real out of the  
14 ordinary, you know.

15 Q. Okay.

16 A. Like I said, it might have been .05. I mean, not  
17 that much, I don't remember, but not enough to be  
18 aware, you know. Had good air movement. Had  
19 excellent airflow back there.

20 Q. So you're not sure about this area, again,  
21 referring to the headgate side, as far as any airflow  
22 or what type of airflow they had coming up the  
23 headgate side?

24 A. They had good airflow there, too. But when me and  
25 Link South and a couple more, Dana and them, traveled

1 back as far as we could before we hit the water.

2 Q. Okay. Let's talk about that one a little bit  
3 then. When you came up with Link and Dana, how did  
4 you travel up to the headgate side?

5 A. We traveled up to where the --- just outby the  
6 stage loader, crossed, went through the doors. I  
7 don't remember ---.

8 Q. You traveled up the headgate side itself?

9 A. Right. We traveled up the headgate side by the  
10 mule train up and then came back down, found a door,  
11 crossed through the door, and we walked all the way  
12 down in this area. We walked a long ways, I don't  
13 remember how far, until we couldn't walk any more  
14 because of the water. Mike Hicks was with us that  
15 day, too. I forgot.

16 Q. Mike Hicks?

17 A. Yeah.

18 Q. When you encountered the water, was it to the  
19 roof? Was it knee deep or ---?

20 A. No. It was over our boots. We couldn't travel  
21 through it.

22 Q. You stopped at that point?

23 A. Right.

24 Q. Did you take an air reading or methane reading at  
25 that point?

1 A. Methane. I don't believe I got any. I can't  
2 recall.

3 Q. Okay.

4 A. But it was good airflow. Excellent airflow  
5 through there.

6 Q. Is there any other areas of this mine that you  
7 visited at any time other than the three occasions  
8 that we talked about?

9 A. Well, I've been in this mine since 1999.

10 Q. Okay.

11 A. And I've inspected the mines. And I was all up in  
12 here before they sealed this off.

13 Q. Okay. And what was the reason they sealed that  
14 off?

15 A. They just --- they worked --- they were basically  
16 worked out. They worked all the panels off, had  
17 changed their plans, and then they come back and  
18 changed their plans again.

19 Q. Did you see any difference in these older panels  
20 versus this panel as far as conditions go or, you  
21 know, methane-wise, ground conditions, anything?

22 A. The only difference I seen in it was where they  
23 --- I feel that they had only driven three entries  
24 here and it caused their longwall to crush out their  
25 stopping line here. That's the only abnormal

1 difference between that one and this one here.

2 Q. Is the cover more or less of the new panels than  
3 the old one or ---?

4 A. He told me, but I don't remember, Tim.

5 Q. Okay.

6 A. Because we was trying to figure out why all of a  
7 sudden he had an issue with the bottom there ---

8 Q. Okay.

9 A. --- causing the stoppings to crush. And out of  
10 all of these panels, that's the first time that had  
11 ever happened.

12 Q. And is this the first time that you remember that  
13 they went to the Three entry versus ---?

14 A. No, they had the Three entry before, but we were  
15 talking about --- where they were going to use this as  
16 a travelway. I would have thought that they would  
17 have driven more entries instead of just three.

18 Q. You mentioned some bad floors up in this area.  
19 Tell me ---.

20 A. The bottom was hooving on it.

21 Q. How bad was it?

22 A. It was bad enough to crush out the stoppings. It  
23 was crushing all the stoppings out. That's why they  
24 had to relocate their return, because they couldn't  
25 maintain the stopping line because the top was getting

1 bad.

2 Q. How much of it was --- how much of the floor was  
3 hooving up?

4 A. A couple feet. I don't recall. I just know it  
5 was coming up. And where this had rode over was  
6 riding out the stoppings on the top there.

7 Q. Okay. And the stoppings are over between --- in  
8 between Number Two and Number Three entries?

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

10 Q. Was there any methane associated with this break  
11 in the floor?

12 A. No. No, there was no methane. There wasn't any  
13 methane. I mean, I'm --- nothing that would alarm  
14 anything, anybody.

15 Q. Are you aware of any time when they did have a ---  
16 where the floor did break open a little bit and hoove  
17 up or whatever and they had a feeder, methane feeder  
18 or anything?

19 A. Back '05, '06, somewhere in that window, when they  
20 were on these panels.

21 Q. Okay. What do you know about that?

22 A. Just that they had a bad feeder, methane come in  
23 and we just went down and monitored it and they  
24 increased the air, and Joe went down. I never was  
25 underground. I was on the surface at that time, when

1 all this was going on.

2 Q. Do you remember who might have been underground at  
3 that time?

4 A. The night that I was in charge it was Tim, Tim  
5 Justice was underground.

6 Q. Is he company or ---?

7 A. He's --- he was an MSHA ventilation specialist.  
8 He's retired.

9 Q. Okay. Anything else you can remember about that,  
10 the condition from one --- this panel versus that  
11 panel?

12 A. No. The only difference was the bottom hooving on  
13 that one there and ---.

14 Q. When they had that feeder, do you remember how  
15 long they were down?

16 A. No. Two or three days. I don't know exactly.

17 MR. FARLEY:

18 Excuse me. Where was the feeder again?

19 A. I don't remember. It was in one of these panels,  
20 sir. I don't remember which one it was. I just know  
21 it was in that area they sealed off.

22 BY MR. WATKINS:

23 Q. You've got quite a bit of experience in this mine.  
24 When we looked at --- when we looked at the panels we  
25 noticed that some of the previous panels they stopped

1 mining, and then maybe looking on the other map you  
2 can see where they kind of stopped, skipped an area  
3 and started mining again. Do you know why ---

4 A. No.

5 Q. --- they would have done that?

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

7 Q. I also noticed that they had like a three-year lag  
8 in longwall production. They'd run it and three years  
9 later they started the other panel.

10 A. Well, they had once made the decision never to  
11 longwall. They were going to get out of the  
12 longwalling business, then all of a sudden they  
13 changed their mind. That may have been that break in  
14 between. The longwall --- this longwall had been  
15 moved over to Castle, Logan's Fork.

16 Q. I know you mentioned --- you mentioned a little  
17 bit about the old works above this mine had the water  
18 in it. Is there --- were you ever in the old mines  
19 that was above this?

20 A. Yes. That's Castle, Logan's Fork. It drove down  
21 and cut out on the other side of the mountain where  
22 131 Mines was. And that area through there was ---  
23 131 was all sealed. I think that's where they're  
24 referring to where the water may have been.

25 Q. Now, those mines above it, did they have longwalls

1 in them as well?

2 A. Yes. The longwall from here went up to that mine.  
3 They mined maybe two panels, I believe, maybe three,  
4 two and a half.

5 Q. Okay. Did they have similar conditions as this  
6 mine as far as the bottom hooving up and ---?

7 A. No, no, we didn't have no issues on the longwall  
8 with the bottom hooving or anything that I recall.

9 Q. Okay. Any seams below this mine, below UBB?

10 A. Let me see. I don't believe so.

11 Q. Okay. I don't believe there's any mine, but I  
12 think there is a ---.

13 A. There might be a seam, but I don't ---.

14 Q. An old seam, maybe 24 inches or so below it?

15 A. Yeah.

16 Q. Do you have any history of --- or does that ---  
17 you don't have, but does that seam have any history of  
18 methane?

19 A. Which one is that?

20 Q. The one below it.

21 A. I don't know anything about it.

22 Q. Don't know about that one?

23 A. Don't know anything about it.

24 Q. Okay. Are you aware of any complaints that were  
25 ever filed at this mine ---



1 A. No.

2 Q. --- hazard complaints?

3 A. No, not ---. No, I'm not.

4 Q. At any time during your inspection activity at the  
5 mine, had anyone ever approached you with any  
6 concerns, you know, as far as unsafe mining conditions  
7 or anything like that?

8 A. No, they did not.

9 Q. Okay. Let's go to the day of the accident.

10 A. Okay.

11 Q. How were you notified of that accident?

12 A. Joe Mackowiak called me around four o'clock, give  
13 or take a 15-minute window.

14 Q. Okay. Where were you at when he called you?

15 A. I was at home.

16 Q. You were at home?

17 A. I was at home.

18 Q. What did Joe tell you when he called?

19 A. He said, we've got an emergency. Come to the  
20 office.

21 Q. He didn't tell you where at or anything?

22 A. No. Uh-uh (no). Just come to the office.

23 Q. Okay. So what time did you get to the office?

24 A. Around --- I'm thinking about 4:00, 4:15,  
25 somewhere around in there.

1 Q. Okay. And what did you find out once you got to  
2 the office?

3 A. I just found out something had happened at the  
4 UBB, and that's all I knew. They had an explosion and  
5 that's all I knew, all he said. Everything was  
6 pretty --- you know, it wasn't clear at that time.

7 Q. So what --- why don't you take us through what you  
8 did once you --- you know, once you got to the office.  
9 We've got you to the office now. From that point on,  
10 would you just kind of walk me through the next little  
11 bit?

12 A. Sure enough. Then Joe asked me to get the UBB  
13 file out and put them all in order, all the revisions  
14 in order and separate the denials and just put it in  
15 order. Then they started running --- we started  
16 running maps and, you know, getting the plans  
17 together. And then probably --- then me and Joe drove  
18 to the mines. We got to the mines at --- I believe it  
19 was eight o'clock that evening, and we went to the ---  
20 didn't know which direction to go to, so we went down  
21 to the Ellis Portal first. And we met Gary Frampton  
22 down there, Frampton and Persinger, Wayne Persinger.  
23 Then I basically just looked at the mine map. We  
24 stayed there for a little bit. We found out all the,  
25 you know, activity that was taking place. Couldn't go

1 in on this side, so all of the mine rescue teams were  
2 moved to the main mine office. So we drove over to  
3 the main office, went upstairs, met with Link South,  
4 said we're here, and stood around a little bit. He  
5 came back to us and asked me and Clyde to go down to  
6 the engineering. We needed a larger map. The map  
7 that we had was a one inch equals 500. So I went down  
8 to engineering and got with Keith Lilly and had him  
9 run us off a map, one inch equals 300. And I was  
10 asked to send --- have them e-mail some stuff to Terry  
11 Bentley, the same maps that I was getting, e-mailed  
12 them to Raymond Browning back at the office and Terry  
13 Bentley in Arlington. And then once I got the maps  
14 all gathered up, I took them back to the office, back  
15 up to the mine office. I give Joe a copy of it. I  
16 think I give somebody in the --- the Blue Goose needed  
17 a copy from --- Tech Support needed a good map to ---  
18 they could see. And then we basically just monitored  
19 the rescue operations pretty much. And then somewhere  
20 around five o'clock that morning, Joe and I went over  
21 to the Bandy creek fan --- Bandytown fan, just to talk  
22 with the people over there that was taking the  
23 readings. Bob Hatfield was over at that time. And  
24 then Joe talked to him. Basically I was just driving.  
25 Joe was doing all the talking, okay, I was the driver,

1 what it boiled down to that night. That's all I was  
2 doing, I'm afraid, which that's not like me. I like  
3 to be right into it, but I wasn't at that time. I was  
4 just a driver, I'm afraid to say, and that's it.

5 Q. About what time did you get to the mine the first  
6 time when you left the office.

7 A. I think it was eight o'clock.

8 Q. About eight o'clock?

9 A. Eight o'clock, yes.

10 Q. And then you stayed on the Ellis Portal side  
11 for ---?

12 A. Maybe 30 minutes, 45 minutes.

13 Q. Was there anything going on at the Ellis Portal?

14 A. No, the power was --- when the explosion occurred,  
15 it knocked the power outside.

16 Q. Okay.

17 A. And there was no power. They were getting a  
18 generator to put in place. And we stayed there for  
19 just a little bit and then we went to the other  
20 portal.

21 Q. Was there any one person that seemed to be in  
22 charge at the Ellis Portal side?

23 A. Not really. I couldn't see, you know, who was  
24 running anything.

25 Q. Okay. Do you know if there was anybody --- rescue

1 teams or anybody underground at the time when you guys  
2 were at Ellis?

3 A. I didn't know. I don't know that. I don't  
4 know --- I didn't know what was going on when we first  
5 got there because, like I said, it was --- I didn't  
6 know who was in charge there at the Ellis Portal.  
7 They was pretty much dazed, to be honest about it.  
8 And then we went over to the other side. Joe went in  
9 and pretty much took --- like I said, I just drove him  
10 over there. I left and went to engineering.

11 Q. When you got over to the UBB side and you went  
12 into the office, did you go into the command center?

13 A. No. No, I did not.

14 Q. Okay. You don't know who was in charge for MSHA  
15 at the time when you got there; do you?

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

17 Q. Okay. did you have any other role after that  
18 initial ---?

19 A. No, I did not.

20 Q. So that was --- you left at what, was it five  
21 o'clock?

22 A. Well, 5:00 --- I think we left --- I left the mine  
23 at nine o'clock that morning, the 6th.

24 Q. The 6th?

25 A. And that's the last I had anything to do with it.

1 Q. Okay.

2 A. I was off Thursday and Friday. I already had  
3 scheduled time off.

4 Q. Are you good? Do you need a break or anything?  
5 Are you good?

6 A. I'm good.

7 MR. WATKINS:

8 I'll let Terry and these guys have some  
9 follow-up questions here. I'll take a little break.

10 EXAMINATION

11 BY MR. FARLEY:

12 Q. Concerning the water here in the headgate that you  
13 encountered, I think it was sometime back, last fall?

14 A. Yes.

15 Q. Okay. Now, you indicated first that you thought  
16 maybe the water was coming from the old 141 mine?

17 A. That's what they thought where it was coming from.

18 Q. What would the 141 mine --- whose mine would that  
19 have been; do you know?

20 A. 141 was the old Bethlehem Steel mine.

21 Q. Now, how far above that ---?

22 A. You know, I can't --- I don't know exactly how far  
23 it is.

24 Q. Okay. Let me just check some information I got  
25 from my engineer. Now, I'll show you some overlay

1 maps here. The area in blue is UBB.

2 A. Okay.

3 Q. Now, immediately above that, as I understand it,  
4 is the Castle Mine. Would that be correct, as far as  
5 you know?

6 A. Yes. Yes, the Castle Mine.

7 Q. Now, immediately above that and off to --- is old  
8 Castle Mine, Peerless Mine?

9 A. Peerless Mine, yes.

10 Q. And above there is ---

11 A. Black King.

12 Q. --- Black King?

13 A. Yes.

14 Q. Is that accurate, as far as you know?

15 A. Yes, as far as I know.

16 Q. Then we've got an abandoned mine in the Hernshaw  
17 Seam?

18 A. No, I'm not ---.

19 Q. Any idea what that is?

20 A. No.

21 Q. Okay. Then above that we get into the Winifred  
22 Seam all up to Black Knight II?

23 A. Uh-huh (yes).

24 Q. Now, the 141 mine which you're referring, any idea  
25 where that would have been located in relation to the

1 UBB Mine here? I guess my question is, is there  
2 another mine that overlays here that we don't have in  
3 our ---?

4 A. No. What I'm trying to focus on here is where the  
5 Castle Mine --- that's Bandytown yet.

6 Q. This water you're referring to I guess would have  
7 been somewhere along in here; right?

8 A. Yeah. Okay. This area here, they're sealed  
9 across here. Somewhere in this vicinity is the 131.

10 Q. The 131 or 141?

11 A. Oh, 141. I'm not sure on the name, but I know  
12 it's --- because they have some seals --- put some  
13 seals in somewhere in that vicinity there. I don't  
14 know if it's 141 or 131 or what the name of it is.

15 Q. Okay. I'm just, as much as anything, trying to  
16 check the accuracy of the information.

17 A. Right. Yes.

18 ATTORNEY MCATEER:

19 This is the Castle Mine marked Palitan  
20 active?

21 MR. FARLEY:

22 Yes, sir.

23 ATTORNEY MCATEER:

24 Okay.

25 MR. FARLEY:



1 That's immediately above ---.

2 ATTORNEY MCATEER:

3 Uh-huh (yes).

4 BY MR. FARLEY:

5 Q. When you were there on March 9th, you went to 22

6 T9000000000000000ailgate, which is around in here, ---

7 A. Yes.

8 Q. --- did you make it up north here towards ---?

9 A. No, I did not.

10 Q. You didn't?

11 A. No.

12 Q. There's a big roof fall here. You didn't make it  
13 up here?

14 A. No, I didn't. I was just right here and then came  
15 back out.

16 Q. Would any of your colleagues have been up there?

17 A. No, I don't believe so, because Clyde was up on  
18 this section up here. I don't know if he would have  
19 come down there. You'll have to talk to him on that,  
20 but ---.

21 Q. All right. Now, in your previous inspections at  
22 UBB, have you ever been up to --- on Eight North, the  
23 section up here to the north?

24 A. I don't recall.

25 Q. Okay.

1 A. I don't recall.

2 Q. Okay. Now, the methane feeder that you referred  
3 to sometime back in one of the sealed areas here to  
4 the south, were you actually in the mine when this  
5 occurred ---?

6 A. No.

7 Q. Did you investigate it or what was your source of  
8 information on it?

9 A. I was called out on the midnight --- that's when I  
10 was --- Ray Saunders was supervisor, I believe.

11 Q. Okay.

12 A. I was just called at home to come out on --- I  
13 believe it was midnight I came out on, that UBB was  
14 down and they had a feeder of some methane. And like  
15 I said, I went there. I took over for the other  
16 supervisor and just monitored what was going on. And  
17 then like I said, the ventilation specialist at that  
18 time from Logan, which was Timmy Justice, he went up  
19 on the section, ---

20 Q. Okay.

21 A. --- in that area.

22 Q. It was on the longwall panel?

23 A. It was on the longwall, yes.

24 Q. Was it along the longwall face?

25 A. I think it was back in behind the jacks somewhere.

1 I can't ---

2 Q. Okay.

3 A. --- quote anything on that.

4 Q. Do you know if it was --- how long ago? How far  
5 back?

6 A. Gosh. Well, I can't give you an exact date. I  
7 don't ---.

8 Q. Two years? Three years?

9 A. At least probably two to three years, four.

10 Q. Okay. Now, you indicated that when you went to  
11 the Mount Hope office after the explosion occurred  
12 that you were asked to sort through all of the UBB  
13 ventilation revisions and denials. Is that correct?

14 A. That's correct, yes.

15 Q. Now, this mine has been in operation for a good  
16 many years, but I want to start by picking a period of  
17 time. I don't want to get into many, many years,  
18 unless I start with a period of time. Let's say ---  
19 let's go back to September of 2009. Would you know  
20 how many ventilation revisions they have applied for  
21 and had approved?

22 A. No, I don't. We're always getting ventilation  
23 reviews from them.

24 Q. Okay. Can you estimate? Is it more than a dozen  
25 or ---?

1 A. I'd be afraid to put a number on it. I mean, ---

2 Q. Okay.

3 A. --- they do a lot. It's a big mine and they make  
4 a lot of changes.

5 Q. All right. And do you know how many denials there  
6 have been maybe in the same period of time?

7 A. I don't know, no. There have been several, but I  
8 don't know what they are.

9 Q. Would you know the numbers for this year only?

10 A. No. I don't know the numbers on them.

11 Q. Okay. I don't focus on that. I just review plans  
12 from all field offices.

13 Q. All right. Are you involved in the approval of  
14 applications to mine in the vicinity of gas wells?

15 A. Yes, I do that, too.

16 Q. I asked you about Eight North, where there's a gas  
17 well up here. Ever had any reports of anybody reading  
18 any methane in that vicinity?

19 A. No.

20 Q. Okay.

21 MR. FARLEY:

22 Okay. Mr. McAteer?

23 EXAMINATION

24 BY ATTORNEY MCATEER:

25 Q. Mr. Clark, thank you. How would you characterize

1 this ventilation system on a scale of one to ten, ten  
2 being good?

3 A. I thought it was good.

4 Q. Okay.

5 A. I thought it was well, yeah, good, very good.

6 Q. Were you in the --- there was a point when the  
7 Massey engineers were proposing to put a short panel  
8 in for ventilation purposes down by the Ellis Portal.  
9 Do you recall that?

10 A. Yes, I do. Yes.

11 Q. And they submitted plans to that effect?

12 A. Yes, they did.

13 Q. Do you recall what happened to those plans or ---?

14 A. Well, they submitted one plan to set a short  
15 longwall way.

16 Q. That's correct.

17 A. Then the next plan was to drive entries out to  
18 Ellis Portal to help their air on that panel. And I  
19 think we denied that one because of some ventilation  
20 issue --- controls that didn't match, and that's it.

21 Q. And were you involved in any meetings between the  
22 Massey engineers or Massey employees and Joe --- spell  
23 his last name for me.

24 A. Mackowiak.

25 Q. M-A ---?

1 A. M-A-C-K-O-W-I-A-K.

2 Q. Thank you. Joe Mackowiak?

3 A. Yes.

4 Q. And what was the gist of those or can you tell us  
5 why it was ---?

6 A. No. I wasn't in the meetings with him concerning  
7 UBB.

8 Q. Not in those meetings?

9 A. No, I was not.

10 Q. Okay. Now, on the 9th of March you went to the 22  
11 Tailgate section and took readings and samples?

12 A. Yes.

13 Q. Was there any production at that time?

14 A. They were mining, yes.

15 Q. How long were they mining?

16 A. They had just started that section. Hadn't  
17 been --- I don't know how long, but it's fair to say  
18 they just started. Like I said, wasn't in a break  
19 maybe.

20 Q. Okay. And how long did they mine while you were  
21 in the presence in them ---?

22 A. Well, they didn't mine too much because I checked  
23 their equipment and I had them set timbers and do some  
24 work where I had some violations issued to them that  
25 day.

1 Q. So if you were there two hours, which I can't  
2 remember, sorry, I had to step out for a moment, but  
3 you were there, say, two hours, and they might have  
4 mined 15 minutes, 10 minutes?

5 A. Maybe 30 minutes or so. I don't recall, because I  
6 started --- as soon as I checked all my air readings  
7 and checked all the faces, I started doing the 01  
8 work.

9 Q. Okay. Now, what happened when you all completed  
10 this inspection on March the 9th?

11 A. We traveled to the surface. I had a close-out,  
12 discussed the citations that I issued with mine  
13 management and came back to the office. I ran copies.  
14 I gave Joe a copy and I gave the inspector of that  
15 mines a copy of it, I believe, yes, because he had  
16 some he had to go back and terminate.

17 Q. And did any other inspector or ventilation  
18 specialist issue paper at that day?

19 A. Yes. Clyde issued a couple violations, but I  
20 don't know exactly what they were. And I think Keith  
21 Sigmon issued an order on the longwall tailgate.  
22 That's all I --- I don't know the details on that. I  
23 just --- that's just hearing.

24 Q. But would an order shut the longwall down or ---?

25 A. Yeah, they shut it down. Yeah.

1 Q. Do you know how long it stayed shut for?

2 A. A couple days. A couple days, I think. A day or  
3 two. I don't know exactly --- exactly when it is.

4 Q. Okay. Mr. Farley was asking you about, at the end  
5 there, the bleeder that was running to ---. My notes  
6 suggest you said that happened and you originally  
7 described it --- and what I'm trying to do is trying  
8 to figure out where we can get a report about it, in  
9 '95, '96. Is that wrong?

10 A. No, no. It would have been somewhere around 2002,  
11 '03, somewhere around in there.

12 Q. In that range?

13 A. Yeah.

14 Q. And would you know of any reports that were done  
15 on it?

16 A. No.

17 Q. Would that constitute a reportable ---?

18 A. Well, I'm sure it did, but I wouldn't know if  
19 anything ---.

20 Q. I'm just trying to remember whether that ---.

21 A. Yeah. Because, like I said, ---

22 Q. You would have to have a report.

23 A. --- I was just --- I don't know if there was or  
24 not, sir. I really don't. I mean, that was --- I was  
25 a CMI, but I was just filling in that day. That



1 wasn't even my mines.

2 Q. Okay. I was just trying to recall whether  
3 that --- that would have been a reportable incident.

4 A. Yes.

5 Q. That was my question.

6 ATTORNEY MCATEER:

7 That's all the questions I have.

8 ATTORNEY WILSON:

9 Okay. Why don't we take a five-minute  
10 break. We'll let the people confer, and then we'll go  
11 back on the record and finish up.

12 SHORT BREAK TAKEN

13 ATTORNEY WILSON:

14 We're back on. We're going to go ahead  
15 and put into the record as Clark Exhibit Two documents  
16 that Terry was referring to showing the overlays of  
17 the other seams.

18 MR. FARLEY:

19 Let me say that --- I don't want to  
20 absolutely guarantee their accuracy at this point.

21 ATTORNEY WILSON:

22 Okay. But there are seven pages to the  
23 exhibit.

24 (Clark Exhibit Two marked for  
25 identification.)

1 ATTORNEY WILSON:

2 Tim, did you have further questions?

3 MR. WATKINS:

4 Yes.

5 RE-EXAMINATION

6 BY MR. WATKINS:

7 Q. Benny, just one other area that I'd like to talk a  
8 little bit about, this Glory Hole area. On any other  
9 occasions did you ever visit that area?

10 A. Yes, previous inspections, before they had driven  
11 all of these panels off and everything.

12 Q. Okay. What can you tell me about that, about that  
13 area?

14 A. Well, it is no different than any other part of  
15 the coal mine. It had good air movement and never  
16 picked much methane up. It was --- really not much to  
17 say about it. I can't ---.

18 Q. When you visited it, was it in operation? Was it  
19 in use at the time?

20 A. It was in use at that time, yes.

21 Q. It went up to the seam to the right?

22 A. Yes, it went up to the Castle Seam.

23 Q. What type of ventilation do we have on the bottom  
24 of it; do you remember?

25 A. At that time, I believe it was a return. A return

1 swept around it. Yeah, it was all --- I believe all a  
2 return.

3 Q. Do you remember any methane readings associated  
4 with it?

5 A. Not alarming. No, I don't recall any methane to  
6 amount to anything.

7 Q. You don't ever remember any excessive amounts of  
8 methane being reported ---

9 A. No.

10 Q. --- in that area?

11 A. No, sir. No.

12 MR. WATKINS:

13 Terry?

14 MR. FARLEY:

15 I don't have any questions.

16 ATTORNEY MCATEER:

17 I just have a couple things, Benny. I'm  
18 sorry.

19 RE-EXAMINATION

20 BY ATTORNEY MCATEER:

21 Q. The area that was underwater or there was a lot of  
22 water out there, you said that was, I think you said,  
23 November/December timeframe?

24 A. Yes. Yes.

25 Q. Do you know if that had been cleaned up by March

1 when you were in there?

2 A. No, I don't. I know they had pumped water, been  
3 pumping water on it, and they rerouted the return at  
4 that time all the way around the backside, the  
5 tailgate side, and it made all this common going out,  
6 so ---.

7 Q. So if they had not rerouted the return, it might  
8 be still problematic?

9 A. It could be. I can't say. I can't say.

10 Q. And this is speculative, I'm sure, but a large  
11 amount of water came in from the top, at about the  
12 hundred break. Is that the mark that you --- I mean,  
13 that's where you think it --- or the talk is it came  
14 in?

15 A. That's what they were saying. That was their  
16 thought of where the water come from, ---

17 Q. Okay.

18 A. --- from up there. And it came in all at once on  
19 them. They shut the wall --- they were down at this  
20 time. They shut their own self down.

21 Q. Okay. How long were they down for; do you know?

22 A. Oh, gosh. They were down for three weeks, four  
23 weeks. I don't know exactly, but it was a good while.

24 Q. And last, did you know Bill Ross? Do you know  
25 Bill ---?

1 A. Yes. I know him real well, yes.

2 Q. And he's --- what's he do at Massey?

3 A. He handles their ventilation.

4 ATTORNEY MCATEER:

5 That's all the questions I have. Thank

6 you, sir.

7 MR. WATKINS:

8 Benny, is there anything else that you'd

9 like to add or mention or anything you'd like to  
10 clarify or go back on?

11 A. No, not really. I think I've answered all your  
12 questions to the best I --- to my knowledge.

13 MR. WATKINS:

14 We do appreciate it.

15 A. Okay. If you need anything else, just call me.

16 ATTORNEY WILSON:

17 Benny, on behalf of MSHA and the Office

18 of Miners' Health, Safety and Training, I want to  
19 thank you for appearing today and answering questions.

20 And while your cooperation is very important to the  
21 investigation as we work to determine the cause of the

22 accident we ask that you not discuss your testimony

23 here today with any other person. We will be

24 interviewing additional witnesses. After questioning

25 other witnesses, we may call you if we have any

1 follow-up questions that we feel we need to ask you.  
2 If at any time you have additional information  
3 regarding the accident that you would like to provide  
4 to us, please contact Normal Page at the phone number  
5 that was given to you in the letter. Again, I want to  
6 thank you for appearing today.

7 A. Okay. All right.

8

9

\* \* \* \* \*

10 STATEMENT UNDER OATH CONCLUDED AT 2:37 P.M.

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CERTIFICATE

I, Alison Salyards, a Notary Public in and  
for the State of West Virginia, do hereby certify:  
That the witness whose testimony appears in  
the foregoing deposition, was duly sworn by me on said  
date and that the transcribed deposition of said  
witness is a true record of the testimony given by  
said witness;  
That the proceeding is herein recorded fully  
and accurately;  
That I am neither attorney nor counsel for,  
nor related to any of the parties to the action in  
which these depositions were taken, and further that I  
am not a relative of any attorney or counsel employed  
by the parties hereto, or financially interested in  
this action.



*Alison Salyards*