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Transcript of the Testimony of Richard Kline

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STATEMENT UNDER OATH
OF
RICHARD KLINE

taken pursuant to Notice by Brett Steele, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Room C-123, Beaver, West Virginia, on Wednesday, May 19, 2010, beginning at 8:02 a.m.

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P R O C E E D I N G S

ATTORNEY WILSON:

Good morning. Today is May 19, 2010. We are here to interview Richard Kline as part of the investigation into the Upper Big Branch Mine explosion. My name is Bob Wilson. I am with the Office of the Solicitor, United States Department of Labor. With me is Tim Watkins, an accident investigator with the Mine Safety and Health Administration. Also present are officials with the State of West Virginia. I ask that they state their appearance for the record, starting with Davitt McAteer.

ATTORNEY MCATEER:

Davitt McAteer, from the independent investigative team.

MR. FARLEY:

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

MR. O'BRIEN:

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

ATTORNEY WILSON:

There are also several other members of

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

20 Government investigators and specialists

21 have been assigned to investigate the conditions,
22 events and circumstances surrounding the fatalities
23 that occurred at the Upper Big Branch Mine-South on
24 April 5th, 2010. The investigation is being conducted
25 by MSHA pursuant to Section 103(a) of the Federal Mine

1 and Safety and Health Act and by the West Virginia
2 Office of Miners Health, Safety and Training.

3 We appreciate your assistance in this investigation.

4 After the investigation is complete, MSHA

5 will issue a public report detailing the nature and

6 causes of the fatalities in the hope that greater

7 awareness about the causes of accidents can reduce

8 their occurrence in the future. Information obtained

9 through witness interviews is frequently included

10 within those reports. You should know that if you

11 request confidentiality, confidentiality will only be

12 granted on a case-by-case basis and your statement may

13 be used in other enforcement proceedings. You may

14 have a representative present during the taking of

15 this statement and you may consult with your

16 representative at any time. Now, do you have a

17 representative with you?

18 MR. KLINE:

19 I do not.

20 ATTORNEY WILSON:

21 You may refuse to answer any question and

22 you may request a break at any time. If you do not

23 understand a question, please ask that the question be

24 rephrased. This is not an adversarial proceeding,

25 formal Cross Examination will not be permitted,

1 however, follow-up and clarifying questions may be
2 asked as appropriate. The court reporter will record
3 the interview, so please speak loudly and clearly.
4 Please answer each question as fully as you can
5 including information that you may have learned from
6 someone else.

7 Again, I would like to thank you in
8 advance for your appearance here this morning. We
9 appreciate your assistance in the investigation.
10 Your cooperation is critical to making the nations
11 mines safer.

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

20 -----
21 RICHARD KLINE, HAVING FIRST BEEN DULY SWORN, TESTIFIED
22 AS FOLLOWS:

23 -----

24 ATTORNEY WILSON:

25 All right. At this time I'll turn it

1 over to Tim Watkins to start the questioning.

2 EXAMINATION

3 BY MR. WATKINS:

4 Q. Good morning, Rich.

5 A. Good morning, Tim.

6 Q. Thanks for coming in this morning and trying to
7 help us out a little bit; okay? I got some background
8 questions to ask you.

9 A. Okay.

10 Q. The first one is, could you please state your full
11 name and spell your last name, please?

12 A. Richard James Kline, K-L-I-N-E.

13 Q. Okay. And Rich, what is your address and phone
14 number?

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

16 (b) (7)(C)

17 Q. And are you appearing here today voluntarily?

18 A. I am voluntarily here.

19 Q. Okay. Could you tell me, how long have you worked
20 for MSHA?

21 A. Over 35 years, in various organizations before
22 MSHA, of course.

23 Q. Okay. What's your current duty station?

24 A. Mount Hope, West Virginia.

25 Q. And how long have you been at that location?

1 A. About 15 years now.

2 Q. Okay. And what is your present position?

3 A. Assistant district manager, technical programs.

4 Q. And how long have you been in that position?

5 A. Fifteen (15) years.

6 Q. Ever since you've been there?

7 A. Yeah.

8 Q. Okay. And your --- the district manager that you
9 work for now is ---

10 A. Bob Hardman.

11 Q. --- Bob Hardman? And you mentioned that you
12 worked a good number of years with MSHA with various
13 organizations with the government?

14 A. Right.

15 Q. Could you tell us a little bit about your
16 experience and your mining history?

17 A. College, student trainee with then Bureau of
18 Mines, Pittsburgh.

19 Q. Okay.

20 A. After college, went to work with the Bureau of
21 Mines in Bruceton. I was there, then in Forbes
22 Avenue, Pittsburgh. Arlington in the early '70s and
23 then out to Denver in the '70s or early '80s. I then
24 went to Foster-Miller in Waltham, Massachusetts.
25 Worked for Foster-Miller for about two years or so and

1 then left Foster-Miller, went to Island Creek Coal
2 Company in Lexington, Kentucky. I was with Island
3 Creek for about 11 years. Left Island Creek, went
4 back to Denver in the Bureau of Mines and I was there
5 about four years, and then went --- come back to Mount
6 Hope then, in that position in '95.

7 Q. You spent a lot of time at various locations. Do
8 you have any specialized training or certifications?
9 Mine foreman papers, anything like that?

10 A. I do not have ---

11 Q. Okay.

12 A. --- any foreman's papers. I am a professional
13 engineer. I've been one for a long time. I have a BS
14 in Mining Engineering and a Master's in Safety.

15 Q. Okay. Your present job you mentioned that you was
16 the ADM over technical. What are your
17 responsibilities for that job?

18 A. Wow. Generalized or generally is, of course, to
19 plan review process. I have six groups that work for
20 me, the ventilation, roof control, electrical,
21 impoundments, health, because we have the health plans
22 split in District 4, they're separate from the
23 ventilation, and the lab. So we review the plans, we
24 evaluate 'em, make a recommendation to the district
25 manager.

1 On top of that, I'm the accident coordinator, so
2 all accidents ---. And that includes roof falls and
3 all the stuff that's happening come through me. I
4 also oversee the FOIA and education, training
5 functions of the district and other generalized things
6 from there, I guess.

7 Q. Pretty big workload. How many employees do you
8 supervise, can you tell me, offhand?

9 A. I think there's about 45 in my group right now.

10 Q. Okay. Let's talk ---. Well, how many mines are
11 in the district?

12 A. Last count I think the underground was about 150
13 some and about the like number of surface.

14 Q. Okay.

15 A. I don't know exactly. I mean, it'd have to be
16 looked up, but that's about where it is.

17 Q. Is there a large number of plans that come
18 through, across your desk, I guess?

19 A. Thousands a year. We have --- I don't know what
20 Joe Mack has said --- Mackowiak has said, but there's
21 about a thousand in ventilation or about 500 from all
22 the other groups, something like that. Now that's all
23 the plans now.

24 Q. Yeah, I know. I understand.

25 A. And that includes alternate drilling plans and

1 shaft sinking. There's a myriad of different things
2 that happen, ---

3 Q. Okay.

4 A. --- that they submit. Revisions are the biggest
5 thing, ventilation revisions. There's just hundreds
6 of those.

7 Q. Okay. Why do you think there's so many revisions
8 to the ventilation plan?

9 A. Well, I don't think we have the engineers in these
10 mines that we used to have. We're not engineering
11 mines. They're trying to use duct tape to fix things
12 instead of engineering. They're not taking the time
13 to look ahead at what they have.

14 Q. Do you know if the engineers, do they ever perform
15 any type of, you know, analysis ahead of time or any
16 type of program, any simulations or anything like
17 that?

18 A. Yeah, some of 'em do.

19 Q. Some of them do?

20 A. They're using mostly know contract people outside
21 to do that, people like Gary Hartzog here in Beckley.
22 They'll run PQ survey and then try to implement that
23 and make that work and engineer the mine. Yes, they
24 do.

25 Q. Do you know, is Massey one of the ones that does

1 that?

2 A. They have, but I don't know --- I don't even know
3 if UBB was done.

4 Q. Okay.

5 A. I don't know. I don't know.

6 Q. Okay.

7 A. I don't know.

8 Q. That was my next question, do you know if they
9 done one at UBB?

10 A. With all the problem at this mine --- problems and
11 revisions this mine had and has, I doubt it, but I
12 don't know.

13 Q. Okay. The district itself, have you guys
14 performed any PQ surveys or anything at this mine?

15 A. No.

16 Q. PQ, I mean pressure query surveys.

17 A. No, we do not.

18 Q. Okay.

19 A. Have not.

20 Q. Okay. Let's talk about the plan approval process
21 a little bit. Do you have a standard operating
22 procedure that you follow as far as the submittal of
23 the plan?

24 A. Each of the groups and most --- each of the plans
25 have an SOP for the process and the district. Now on

1 top of SOPs, we also have what I call criteria but we
2 call 'em templates. And we'll give the operator a
3 template to look at. Like ground controls a big one.

4 Q. Uh-huh (yes).

5 A. You might have a face up for an underground mine.
6 Well, there's not a whole lot to a ground control plan
7 for that versus a large surface mine will have trucks
8 and shovels and everything.

9 Q. Uh-huh (yes).

10 A. So there's more things to put in a ground control
11 plan. Most of the groups have those kind of templates
12 that can be given to the operator. And it gets them
13 started if they're a brand new operator.

14 Q. Okay. Do you have one for the ventilation plan as
15 well?

16 A. I don't believe as such we have a template in
17 ventilation. Mackowiak would know, but I don't think
18 we do.

19 Q. Okay. What about the approval process? I mean,
20 what steps do you go through once a company brings in
21 the plan, submits it, you know, for review?

22 A. Administrative side or technical?

23 Q. The administrative --- I mean the technical side.

24 A. Technical side?

25 Q. Yeah.

1 A. So I won't talk about, you know, logging in and
2 all that stuff. Those plans are assigned when they
3 come in to a specialist in the group. I think there's
4 five specialists in ventilation now to handle all
5 those thousands of plans. That specialist --- and we
6 try to have the specialist concentrate in a certain
7 area and it may be seals, it could be a mine or a mine
8 group of mines, that way they have familiarity with
9 the large complex mine. They'll review that and find
10 things that are contrary to or not following
11 regulations and policy. Those will be marked.

12 Q. Uh-huh (yes).

13 A. If there are small things, a stopping out or
14 something, they may call the operator and try to get
15 that corrected immediately. If it's a whole ---
16 numerous things that are wrong, then those will be put
17 in a denial and that revision or plan will be denied
18 and sent back to the operator to fix. Sometimes the
19 operator will come in and be there and try to fix them
20 on the spot. That doesn't always happen because the
21 map has to be redone and it's not available in
22 district for that to be done.

23 Q. Okay. So after the specialist reviews it, ---

24 A. Okay, I'll ---.

25 Q. --- then where's it going?

1 A. It goes to the supervisor of the group in
2 ventilation, Joe Mackowiak. He reviews it and he
3 looks at it and makes sure what the specialist has
4 done is right and proper and complete. Then it comes
5 to me, I do the same thing. I make an overview of
6 their comments and/or the map or whatever. Sometimes
7 I'll find something, a stopping that they missed or a
8 ventilation they missed. I send it back for review
9 again.

10 If I look at it and it looks okay, it then goes up
11 to the ADMs over the inspection group, Selfe or Marrs.
12 They will look at it and give their overview, too.
13 They might know of an inspection activity that was
14 done at that mine that would change the reason for the
15 approval or revision or whatever. If they're okay
16 with it, it'll come back down and go to Hardman for
17 his signature. He also looks at them, he sometimes
18 finds things that are not agreeable to regulation and
19 policy.

20 Q. Uh-huh (yes).

21 A. And he'll buck it down and we'll talk about it and
22 send it back or whatever.

23 Q. Okay. Is there any coordination made with the
24 inspector at the inspector level?

25 A. Yeah. Part of that is that plan must go to the

1 field office, be looked at by the inspector at the
2 mine, or the supervisor. They have to look and make
3 sure they're in agreement with it before it goes ---
4 well, before it comes to me. That's done with the
5 specialist in the district.

6 Q. Do you have any --- you mentioned a denial letter.
7 Did you have any meetings with upper management of the
8 companies prior to the denial?

9 A. Yes. Many. Many, many, many.

10 Q. Do you remember having any meetings with
11 management at UBB?

12 A. Yes.

13 Q. Okay.

14 A. And I don't guarantee --- I know in March of '08
15 we had a big one. That was the one where the returns
16 off these miners, they were told in no uncertain terms
17 that they had to walk those returns the whole way to
18 the fan. That was March of '08.

19 Q. When you talk about the miners, what sections are
20 you referring to?

21 A. I'm not sure. At that time they had two
22 continuous miner sections starting and I believe it
23 was here and this one here probably (indicating).

24 Q. Here, you mean Headgate ---?

25 A. Headgate --- I'm sorry. Headgate 22 and Eight

1 North, probably.

2 Q. Okay.

3 A. At that meeting, at that time, they wanted to dump
4 the air into the longwall, the returns off those
5 sections, okay, not walk 'em.

6 Q. Okay.

7 A. And they were told, that's not according to
8 regulation.

9 Q. Do you remember who was in that meeting ---

10 A. No, I don't.

11 Q. --- from the company?

12 A. I didn't have it on my notes.

13 Q. Okay.

14 A. Now, that was just one. We've had --- we've had
15 dozens of meetings on this particular mine and I'm
16 sorry I don't have a record to that.

17 Q. Do you have the last one that you remember --- I
18 mean, was there a record of that or ---?

19 A. No. No, I don't. I'm sorry.

20 Q. That's okay.

21 A. And I did look to see if I had notes, you know. I
22 thought that would be a question asked here. I did
23 not have --- my diary did not show all that.

24 Q. Okay. You mentioned a little bit earlier the
25 denial letters and stuff.

1 A. Uh-huh (yes).

2 Q. In regards to UBB, do you remember how many denial
3 letters that you sent out ---?

4 A. No. I don't keep track of that. I don't even
5 keep track of revisions. That's a matter of record in
6 the file.

7 Q. Okay.

8 A. Denials are the same way. I do not keep track of
9 that personally.

10 Q. Okay. Has any of the inspectors or the specialist
11 --- has anyone brought any concerns to you about
12 UBB ---

13 A. Yes.

14 Q. --- prior to the accident?

15 A. Yes, we talked about most of those revisions
16 because --- well, in my own way --- to get belt air
17 off the face, okay, the miners they did pretty quickly
18 and they set up a plan. I don't know what their
19 engineering was. They had trouble getting belt air
20 off this longwall. They could not justify it
21 according to the new rule.

22 Q. Okay.

23 A. So they had a series of revisions trying to get
24 the belt air off there. And I think Joe's gone over
25 those with you. But we talked about that, giving them

1 the first revision to let them start and then as they
2 progressed with other ventilation changes and changes
3 to the ventilation in the mine, they finally got that
4 belt air off that longwall.

5 Q. Okay. So at the time of the accident, belt air
6 was not being used on the longwall?

7 A. According to our records, belt air was not used.

8 Q. Okay.

9 A. I was not at the mine.

10 Q. Okay, I understand.

11 A. Okay.

12 Q. Who normally brings in the plans for UBB or for
13 the company?

14 A. Eric Lilly, Bill Ross. Sometimes the president,
15 Blanchard. It all depends on what they're after and
16 how quick they want it.

17 Q. Okay. Is there --- do they use a lot of pressure,
18 trying to get them pretty quick?

19 A. Yes. And here lately there was even more
20 pressure. And Bob finally went to Elizabeth
21 Chamberlin and told her, this won't --- won't be doing
22 it anymore.

23 Q. Who was providing the pressure, if you will?

24 A. Each of the engineers and sometimes the president.
25 They worked their way up. It's like any ---. The

1 engineer will call the specialist, do you have this
2 done? If he doesn't get a satisfactory answer, the
3 president may call me.

4 Q. The president would have been?

5 A. of Independence.

6 Q. Who's that?

7 A. Chris Blanchard.

8 Q. Chris Blanchard. How would Chris put pressure on
9 you? What would he say?

10 A. Well, we have a plan in for revision, I really
11 need it in a hurry. We'd like to make the changes
12 over the weekend. We need permission before we can
13 start. That's generally --- you know, nothing ---
14 what would you call ---. He wasn't mean or anything
15 like that, no. They're asking for a favor. They
16 usually come in very nicely and try to get a favor.

17 Q. Is that with most of the plans they submit or just
18 some of the special ones?

19 A. Not most.

20 Q. Not most.

21 A. A lot but not most. Now, we will look at genuine
22 emergencies in the district and put them ahead of
23 things. Things happen in the mines. Sections may
24 come up against rock and not be able to mine, have to
25 move a section. Not at UBB but I'm just saying in

1 general. And we will bring others to the head of the
2 class and ask the specialist to look at them first.
3 Mines that have been shut down by our inspectors,
4 they're under (b) orders or under 7A or whatever,
5 we'll look at those, too, first before we look at the
6 general revisions and plans that come in.

7 Q. Okay. In regards to orders, close orders, are you
8 aware of any close orders that was issued at UBB?

9 A. I'm not personally aware. I know they were issued
10 because like when Mackowiak and his team went over,
11 they issued orders at that point. So I knew about
12 that. Again, I don't keep track of 'em, Tim.

13 Q. Okay.

14 A. But usually that comes up, if you close a mine,
15 whatever the mine is, whoever it is, whatever operator
16 it is, those come to the head of the class. And we
17 all know about it because we'll alert the district
18 manager, at least, depending on how. And of course
19 now if we (b) order a mine, it goes to Arlington.

20 Q. Uh-huh (yes).

21 A. So those become known in the district to all of us
22 or to most of us.

23 Q. Did you have any meetings with the ventilation
24 group as far as a close order for air reversal on the
25 Tailgate at UBB?

1 A. Meetings?

2 Q. Yeah. Any discussions with them concerning that?

3 A. Discussion, yeah.

4 Q. Do you remember any ---

5 A. No.

6 Q. --- what the conversation was about?

7 A. No, I don't.

8 Q. What the outcome was or anything like that?

9 A. Air reversal on the tail?

10 Q. Yeah, or?

11 A. No, I don't remember a specific (b) order for
12 that.

13 Q. Okay. I mean any (a) orders or anything that was
14 issued as far as air being reversed?

15 A. The order issued was for return air coming out on
16 neutral somewhere. Let me think where that was ---
17 they had return to neutral ---. No, that wasn't this
18 mine, that wasn't this one, that was Justice.

19 No, I don't remember, Tim.

20 Q. Okay. What about any (a) orders for --- any type
21 of order for accumulation of water?

22 A. No. The water was over here in the head, and
23 I ---. Joe and his team, whoever it was, they wrote a
24 paper in here. Again, it's a matter of record, I'm
25 sorry, I don't keep track.

1 Q. That's okay. I guess you mentioned --- you
2 mentioned taking return air off the sections --- off
3 the miner sections ---.

4 A. Wait now, taking return air off?

5 Q. Well, you're going to route the return air not ---
6 you said they're going to route it through the
7 headgate?

8 A. Their design, operator's design, that's what they
9 wanted to do.

10 Q. That's what I meant. And then they was going to
11 take it through the headgate entry through the
12 longwall. Is that what they was going to do with it
13 or where was he going to route it to?

14 A. They were going to put it in the bleeders and
15 longwall, Tim. And I don't remember if it was the
16 headgate or tailgate. I guess it would be the
17 headgate. How do you get over here? I mean, you got
18 to come around to get over there.

19 Q. Okay. But that was ---.

20 A. But I guess --- I think they were going to dump it
21 right in here and up the head.

22 Q. Okay. But that plan was denied?

23 A. Denied.

24 Q. Okay. The evaluation points that you have along
25 the longwall, do you know where they're at, where you

1 guys required them ---?

2 A. They had the normal ones here at the head and
3 tail.

4 Q. Okay.

5 A. Now, this tail had to be walked up here, so you'd
6 have evaluation points up here somewhere. I believe
7 we had them over here, but, again, you have to pull
8 the map out and take a look. This is the headgate at
9 the back of the longwall, and this is the tailgate at
10 the back of the wall.

11 Q. Okay.

12 A. Now, remember there's a return over here, now
13 there should be.

14 Q. Over here in the tailgate?

15 A. Yeah.

16 Q. Okay.

17 A. And then you'd have one at the bottom of the shaft
18 back there.

19 Q. Okay.

20 A. Now, again, I don't have the plan in front of me,
21 so I'm going from memory.

22 Q. Okay.

23 A. And I don't remember where all the EPs are and all
24 these measurement points in all these mines, I don't.
25 And I did not in this one either.

1 Q. Okay. You might look at 'em after an event and
2 just see if there's any ---?

3 A. No, I didn't prepare myself that way.

4 Q. Do you ever recall having discussions with anyone,
5 whether it be CMIs or the specialists, concerning the
6 double doors in use at the mine?

7 A. Discussions were over why so many doors in this
8 mine, ---

9 Q. Okay.

10 A. --- more than specifically where double doors
11 were, like down here at Crosscut 78 or wherever that
12 is down in that area there. Because they had doors
13 all over the place in this mine. And it just seemed
14 unusual. Is it against regulations? No. Is it a
15 point of possible problems, yes. But that's the kind
16 of discussion, not --- there was not, these are
17 illegal or anything like that, or against regulations.

18 Q. Did you have any discussions with management at
19 UBB concerning the use of so many double doors?

20 A. No. I did not, no.

21 Q. Okay. Are you aware of any problems that occurred
22 at UBB because of the double doors might have been
23 left open and causing air reverse or ---?

24 A. I don't personally, and then the rumors talked
25 about problems with those doors leaving them open, but

1 it's rumor. And remembering what you --- Bob, you had
2 told me to start here now if I heard something. What
3 I heard was that it was practice for these guys to
4 come out and leave those doors open, waiting for their
5 buddies to come out.

6 ATTORNEY WILSON:

7 When you say these doors ---?

8 A. I don't know about it. I'm sorry?

9 ATTORNEY WILSON:

10 You said these doors. Was there a
11 specific set of doors?

12 A. Okay. When these guys come out these miner
13 sections here, the first group out, wherever these
14 doors are down here, there's two sets of doubles right
15 here. We heard --- I heard rumor mill that they leave
16 those doors open until that second mantrip came
17 through and closed them. And these doors are where
18 right where crosscut is up here.

19 ATTORNEY WILSON:

20 For the record, you're pointing to
21 Crosscut 80 between 83 and 84?

22 A. Right. And then five, six, seven, eight, nine and
23 eighty.

24 ATTORNEY WILSON:

25 Between 79 and 80.

1 A. Between 79 and 80. I don't know that personally.
2 You know, I wasn't there, so I don't know. Now, if
3 that happens and those doors are left open, you can
4 get a short there.

5 BY MR. WATKINS:

6 Q. Okay. How would the air short-circuit if you
7 don't close it, if you leave those doors open?

8 A. You have an intake coming across here, therefore,
9 the intake would go to neutral.

10 Q. Okay.

11 A. And that intake feeds ---? I didn't study it, but
12 it looks like it feeds to miner sections in the
13 longwall.

14 Q. Okay. Both sections ---?

15 A. That's not good. That's a critical point, then,
16 in the ventilation system.

17 Q. Absolutely. Okay. And if that door is open you
18 said it dumps to the neutral, to the belt entries, is
19 that what you said?

20 A. Yeah, that's what it looks like.

21 Q. Okay. And where is the belt dumped at --- exit
22 the mine at?

23 A. I don't know.

24 Q. Okay.

25 A. I think it's going out here but I --- it looks

1 like it's coming in there. It shows it coming in
2 there in the neutral. So it dumps over in these
3 neutrals, it's going up here.

4 Q. Which dumps up towards the ---?

5 A. The tailgate, on the longwall.

6 Q. Okay.

7 A. If I'm dumping it over here, and what I have ---
8 my headgate's the longwall, therefore, I'm ventilating
9 the longwall, let alone the miner sections.

10 Q. And the air in the tailgate is all pulled to the
11 Bandytown fan; is that correct?

12 A. Yeah, that's the only exhaust. We've got two blow
13 away back down there, but that's the only exhaust.

14 Q. Okay. Do you remember when the Bandytown fan was
15 put in?

16 A. No, I don't.

17 Q. Okay.

18 A. It's been a while. I don't know when.

19 Q. You mentioned those --- again, those doors at 78
20 being a critical set of doors, if you will. Was there
21 ever any discussion with my men about those, about
22 that being so critical?

23 A. I never had any. I don't remember us, that is,
24 us, District 4, having any. But that --- you know,
25 that can happen in my groups, in like ventilation,

1 with the engineers. But the formal meeting with
2 management of Upper Big Branch Mine, I don't remember
3 any.

4 Q. You don't recall any citations or orders being
5 issued for the doors being left open?

6 A. No. That's a matter of record, too. That can be
7 pulled off and looked at. I don't know of any.

8 Q. Okay. Looking at some of the maps, there's a good
9 number of seams that overly --- but how many minable
10 seams is over ---?

11 A. At least three.

12 Q. At least three.

13 A. And there's one burning up there, the Winifred's
14 burning, that's up pretty high.

15 Q. Okay.

16 A. But I think there's three over this one.

17 Q. Okay.

18 A. I think. They talk about it, I just don't
19 remember.

20 Q. Okay. What about any seams below this one? Do
21 you know, if there's any ---?

22 A. I don't know.

23 Q. Okay. From what I've seen, I don't believe
24 there's any seam that's been mined below this but I
25 believe there's a small seam, maybe 24, 30 inches

1 something like that that's below this?

2 A. I don't know. Don't know.

3 Q. Are you aware of any roof, ribs or floor adverse
4 conditions in this mine at UBB?

5 A. When they talked about the water in that headgate,
6 I believe the floor had some hooving in it, too, and
7 rib problems. So when we --- when I asked him,
8 because this was getting so bad, which would be a
9 tailgate for a new one, they had to do something about
10 that. They were not keeping it open, it was not
11 travelable, and therefore they had to drive a new set.

12 Q. Okay. Did they do anything to the old set, the
13 existing?

14 A. Not that I know of. I think it was too bad for
15 them to go and rehabilitate.

16 Q. Okay.

17 A. Thy would have had to take a miner, I'm thinking,
18 and driven up there again. And that's --- you can't
19 do that.

20 Q. Okay. Do you know how bad the floor was hooving?

21 A. I was never there, I don't know. Other guys were,
22 though.

23 Q. Did anybody ever talk to you about, you know, give
24 you an indication of how bad it was hooving or
25 anything?

1 A. We talked about it, Tim, and, I'm sorry, I don't
2 remember how bad, because they went up there so far.
3 And then they had to go to the top and come back down
4 to the water. Because they got up to the water and
5 wherever that was and those guys will tell you, they
6 were there. They could crawl it, they could get
7 through it, but I don't know how far it was hooved or
8 was it hooved two foot or three foot. Were the ribs
9 sloughed off X amount, I don't know.

10 Q. Uh-huh (yes). Do you know if there's ever any gas
11 associated with the hooving?

12 A. Not that I know of, no, not here. Don't have
13 floor outbursts here, that I know of.

14 Q. Okay. Are you --- I think somewhere around 2004,
15 maybe, there was a --- on one of the exist ---
16 previous panels ---

17 A. Uh-huh (yes).

18 Q. --- there was an outburst with --- I guess the
19 floor conditions hooved up and there was an
20 outburst, ---

21 A. Yeah.

22 Q. --- if you will, of gas --- an inundation of gas,
23 I guess.

24 A. I don't remember specifics of it.

25 Q. Okay. But you do recall that happening?

1 A. Yeah. Yeah, I do.

2 Q. Okay.

3 A. But it's not like we had in Virginia with the Deep
4 Mine, so I'm not sure of the mechanism there, as to
5 where that gas came from ---

6 Q. Okay.

7 A. --- because that would imply a seam below, and,
8 therefore, a floor cracking in the seam below. And I
9 don't know that.

10 Q. Yeah.

11 A. I don't recall.

12 Q. Okay. But the mine does submit overlays and
13 underlays of, you know, the seams and --- you know,
14 the seams and stuff like that?

15 A. Uh-huh (yes).

16 Q. Okay. You don't recall where that outburst
17 occurred at, which panel it was in or anything like
18 that?

19 A. No, sir.

20 Q. Okay. Do you remember anybody, any of the
21 inspectors or specialists going out and performing
22 any ---?

23 A. I'm sure they were there.

24 Q. Okay. You don't remember any of that --- how long
25 the mine was down?

1 A. No.

2 Q. Or how much gas was ---?

3 A. No, I don't.

4 Q. Do you recall if tech support was involved in
5 coming down and doing any studies at that time?

6 A. Don't remember. It depends on how bad it was. I
7 don't remember tech support coming, but they might
8 have. I don't remember.

9 Q. Do you remember the mine being down for that
10 occurrence?

11 A. No, I don't.

12 Q. Okay.

13 A. They would have if gases went up, but I don't
14 remember specifics.

15 Q. Okay. Going back to the headgate and the hooving,
16 was there any stoppings that was affected by the
17 hooving? Was stopping being crushed out?

18 A. I don't remember being told that.

19 Q. Okay.

20 A. That would seem logical, if the ribs and the
21 bottom, hooving, that the stoppings would go, too.

22 Q. Okay. With those conditions, was there any
23 studies dealing with the seams above, as far as roof
24 control, pillar stability or anything like that for
25 the ---?

1 A. I wish I could answer that for you, but I believe
2 we did look at that, yes. Because that's part of the
3 process in evaluating a roof control plan.

4 Q. Okay.

5 A. When you see things like this happening, let's say
6 it happens in a pad or after the plan is approved, you
7 then go back and look why.

8 Q. Right.

9 A. Now what's the interference with seams above or
10 cover or whatever caused that. Are these pillars not
11 proper for that?

12 Q. Okay.

13 A. Is the supplemental support not in there properly?
14 Well, yeah, something went wrong, but I don't remember
15 what we found out.

16 Q. Okay. So after that hooving occurred, you went
17 back in and reran the analysis or ---?

18 A. My guess is we did.

19 Q. Okay.

20 A. I don't remember doing it now. I just can't
21 remember all those details ---.

22 Q. Okay.

23 A. Ask Don Winston, he'll tell you whether he did or
24 not.

25 Q. And the other, I guess --- with that you mentioned

1 that they needed to drive another set of development
2 --- headgate and tailgate ---?

3 A. They decided to do that ---

4 Q. They decided to do that.

5 A. --- because the conditions here would not allow
6 this to be a tailgate for a new panel.

7 Q. Okay. Do you know if they made any --- any
8 changes to the submitted plan for the new headgate and
9 tailgate entries?

10 A. I'd have to compare 'em. I don't know, Tim.

11 Q. Okay. I guess it would, you know, seem kind of
12 logical if you had a problem --- an existing problem,
13 then you set up something new you ---?

14 A. You have a gob, you have whatever is ovetop and
15 underneath. You have problems here, you better set
16 this up, so you don't have problems.

17 Q. That's fine.

18 A. I'd have to compare the plans to tell you --- to
19 answer that.

20 OFF RECORD DISCUSSION

21 MR. FARLEY:

22 Mr. McAteer, why don't you go ahead. I
23 need to think about this some more.

24 ATTORNEY MCATEER:

25 Okay.

1 EXAMINATION

2 BY ATTORNEY MCATEER:

3 Q. Richard, your degree from mining engineering,
4 where is that from?

5 A. My BS, Bachelors of Science is from Penn State.

6 Q. And the Master's?

7 A. Marshall.

8 Q. Those plans are submitted to you for approval?

9 A. I don't approve plans, Davitt.

10 Q. Okay.

11 A. They're submitted for us to evaluate and recommend
12 to the district manager.

13 Q. Okay. And the plans are submitted by whom?

14 A. Any agent of the operator, ---

15 Q. Okay.

16 A. --- or a contract agent of the operator.

17 Q. Okay. And is it their plan or your plan?

18 A. It's their plan, their design, their engineering.
19 We simply review it against regulation, policy and
20 tell them where they're missing or lacking or wrong.

21 Q. Make sure it meets the requirements of the policy
22 or the regulations?

23 A. Correct.

24 Q. And in your experience, do the plans typically
25 meet those requirements of the regulations?

1 A. No, sir, they don't.

2 Q. Okay.

3 A. I don't know what percentage do not. We get very
4 few, what's called a ventilation plan, for example, in
5 the first time that meet the regulations or policy.

6 Q. Okay.

7 A. And that can be a --- excuse me, but it can be a
8 combination of not meeting regulation of policy or
9 omissions on the map, okay?

10 Q. Okay.

11 A. They simply have not got stoppings and/or other
12 things in the right place.

13 Q. And what process is brought up at that point?

14 A. Excuse me?

15 Q. What processes is followed at that point, if you
16 find these omissions were errors in the submissions?

17 A. Depending upon how bad it is, we may call the
18 operator or agent or engineer and ask them to correct
19 what was wrong. If there are a multitude of problems
20 wrong, we would detail those problems on the map and
21 make notation of that and give them a denial letter.

22 Q. Okay. And are there occasions when the map and
23 the narrative are inconsistent on your plans --- in
24 the plans that are submitted?

25 A. I guess I'm going to answer yes to that, but I was

1 trying to think of an example. Sometimes there's
2 standard face sketches or ventilation layout for a
3 section, it might be a little different from the
4 narrative in the writing to the sketch itself and have
5 to be corrected that way. That's a rare case, when
6 the narrative won't match what they have on a map.

7 Q. You spoke a little bit, in your earlier testimony,
8 about the engineering, the quality of the engineering
9 for submissions of ventilation plans, particularly of
10 the Upper Big Branch Mine. Now, can you speak to that
11 as to what your feeling is with regard to the
12 engineering quality --- the quality of the engineering
13 that is behind the submissions?

14 A. In my background, when I was doing engineering
15 work at the mines, I was in the mine. I knew where my
16 stoppings, overcasts where, I knew how the faces where
17 ventilated. I had an overall plan for the mine.
18 We've had a changeover in the industry and we have a
19 lot of young engineers and young managers out there.
20 I don't believe they know their mines like we used to
21 know the mines back 30 years ago.

22 Q. Okay.

23 A. We're seeing changes, changeover in management,
24 changes in the engineers at the mine. All that has
25 led --- in my opinion, all that has led to poorer

1 quality, poorer quality in the submissions to MSHA.

2 And we go through a map and we find a stopping out, an
3 overcast not in, arrows going the wrong way, air going
4 the wrong way. I mean, it goes on and on and on.

5 That should not come in to a district MSHA office
6 that way. There should be better quality. It's
7 almost like they want us to find it, then they'll fix
8 it. Now that's in reverse, we're not their engineers.
9 We're simply checking against the regulations. That
10 takes a lot of time, in District 4, I don't know what
11 the other districts do, for us to find those, point
12 them out to the engineers and then to correct them.

13 Q. Would you have participated in any of the meetings
14 with the Upper Big Branch with regard to their
15 ventilation plan?

16 A. Yes.

17 Q. And you have recollection of a March '08 meeting?

18 A. Yes, I do.

19 Q. And do you have any recollection of any meetings
20 in '09?

21 A. No, I do not have any record. I tried to look at
22 that before I came here, to see, and I don't have
23 anything in my diary.

24 Q. It doesn't mean it didn't happen, just ---?

25 A. That's correct. Because a lot of meetings I'll

1 get called back into the ventilation department,
2 they'll have the engineer or operator there. We'll
3 talk about it and tell him what he has to do. And I
4 won't get that in my diary, that's the way it goes.

5 Q. In that case, I forget to keep the diary with me.

6 A. Well ---.

7 Q. You mentioned that you heard a rumor about the
8 double doors being left open at Crossgate 83 and 84.
9 You said that was just a rumor, though?

10 A. Yes, sir. I have no knowledge, none at all.

11 Q. Had you been in this mine recently?

12 A. A long time, not recently. It was quite a while
13 ago when I was over here. I was in this sealed-off
14 portion is where I was.

15 Q. And Tim had asked you about this floor outburst in
16 2002, you said ---

17 A. 2004.

18 Q. And you testified that you were not sure of the
19 mechanism because it was distinct from what we've seen
20 in Virginia?

21 A. Right.

22 Q. Can you ---?

23 A. In Virginia, we have the Deep Mines and the Pokie
24 Seam. We're down 2,000 foot.

25 Q. Right.

1 A. And what you have then is a floor heave ---

2 Q. Right.

3 A. --- from the other Pokie Seam and gas will come up
4 on the face of the longwall. I don't know here,
5 because we're not in the same conditions here and I'd
6 have to go back and review and study what the
7 mechanism was here, if it occurred in the floor, to
8 cause a crack in the floor, the floor to heave and the
9 gas to come out on the face in this mine here. I
10 don't know, so, I'm simply guessing.

11 Q. Uh-huh (yes). But to your knowledge, you don't
12 recollect that there was a report to that effect or a
13 report about that?

14 A. I'd have to go search the files.

15 Q. And the --- as an ordinary course of doing
16 business with regard to the ventilation plan
17 revisions, would Joe Mackowiak bring that to you or
18 how ---? You said that would be --- they would be
19 reviewed by the specialists and the supervisor then
20 would give it to you?

21 A. That's correct.

22 Q. Okay. And would you ordinarily approve/change
23 modify, reverse, the decision of the supervisor?

24 A. Most of the time what comes to me from Joe
25 Mackowiak, supervisor of the ventilation work group,

1 are good, technically correct, reviewed properly,
2 notations of denial, if it's that, or approval done
3 properly. Most of the time. There's not many --- not
4 many are found by myself other ADMs or the district
5 manager where we question it. A lot of times we don't
6 understand, we'll go back to get understanding of what
7 the ventilation means, because with so many mines you
8 can't keep on top of all the changes. I don't look at
9 that as being a problem or a, you know, something
10 wrong coming out of the ventilation group, just ---.
11 I have to understand what this guy, this operator,
12 wants to do for me to allow my overview, you know, to
13 allow the overview to go through ---

14 Q. Right.

15 A. --- for me to sign off on it.

16 Q. And you testified that there's --- you made some
17 reference to changes with or without approval. The
18 ventilation plans, revisions, and I think you were
19 talking about the call from a company official
20 that ---. Are you familiar with changes that occurred
21 without approval, either in this mine or in other
22 mines?

23 A. I know that occurs in mines. I'm not familiar
24 with any specific thing here. That's an operator
25 doing that.

1 Q. I understand.

2 A. They will make changes without the district having
3 approval. It could be a misunderstanding, they could
4 think they not need approval. And of course if they
5 do that and we find it, they get paper. They're
6 written up for it. That does occur.

7 ATTORNEY MCATEER:

8 Okay. That's all the questions I have
9 right now.

10 EXAMINATION

11 BY MR. FARLEY:

12 Q. I have a couple. Hello, Rich. This may call for
13 some opinions ---. Is it fair to say that the Massey
14 companies submit an inordinate number of ventilation
15 plan change requests as compared to other companies in
16 your district?

17 A. I don't know what inordinate means, Terry?

18 Q. A larger number in comparison to other companies?

19 A. I don't know how to honestly answer that. We have
20 other operators that also submit a lot of changes ---

21 Q. Okay.

22 A. --- for different reasons now, and it's hard to
23 compare. Pure numbers, I'd have to go again and pull
24 the numbers. They do submit a lot of revisions. And
25 as I talked about the quality of engineering in the

1 mines, that has part to do with that. They try
2 something, it doesn't work, they're back again trying
3 another revision. But that occurs in other operators,
4 too. I could probably stretch it and say the Massey
5 Group, since that's the largest group, largest
6 operator we have in District 4, probably does have
7 more revisions than other operators.

8 Q. Okay. All right. Now, the next question pertains
9 to plans in general, ventilation plans, roof control
10 plans, et cetera. Do you believe that MSHA and/or
11 State agencies should move in a direction where the
12 agencies themselves develop the plans as opposed to
13 the mine operator developing the plans?

14 A. Absolutely not. I would not even think about
15 that, no.

16 Q. Why?

17 A. I'm not going to engineer and be liable for a
18 mine.

19 Q. Okay.

20 A. I don't work for that mine.

21 Q. Okay.

22 A. The mine needs to do their own engineering, submit
23 their own plans.

24 Q. Okay. Do you believe that conditions from one
25 mine to the next are that unique?

1 A. Yes. Mine-by-mine basis is very important, yes,
2 sir.

3 Q. Okay.

4 A. And, Terry, engineering can be done, it's not one
5 way to do anything, either. There are many ways to do
6 a good plan, many designs for a good plan. It's up to
7 the operator to decide which way they want to go. I
8 don't care if it's the type of air courses they might
9 have in the headgate or how the bleeders are set up or
10 whatever. There are good --- they call it alternative
11 plans. There are alternative plans for any one setup
12 in any one mine.

13 Q. I think Tim asked you earlier if you had any
14 recollection of a floor outburst at UBB a few years
15 ago, like Mr. McAteer may have called upon you to see
16 if you have some recollection of it. Do you have any
17 knowledge of other such floor outbursts emitting
18 methane into the mine, other mines in your district,
19 in recent times? Is that a common occurrence?

20 A. No, it's not. That's not a common occurrence.
21 They had floor heave, ---

22 Q. Sure.

23 A. --- but not floor heave with gas outburst
24 inundation or whatever you want to call it. No,
25 that's not common, ---

1 Q. Okay.

2 A. --- not District 4.

3 MR. FARLEY:

4 Okay.

5 ATTORNEY WILSON:

6 Let's go off the record.

7 SHORT BREAK TAKEN

8 ATTORNEY WILSON:

9 Back on the record.

10 RE-EXAMINATION

11 BY MR. WATKINS:

12 Q. Okay. Richard, just a couple of questions come to
13 mind. We were talking about these denials that we
14 give to the managers at UBB. Was there ever any
15 discussion ---? After we give them a denial there,
16 did Massey ever come in to discuss that denial letter,
17 that you know of, I mean why we denied it?

18 A. Yeah, those conversations would occur, ---

19 Q. Okay.

20 A. --- specifically to any one denial here, I don't
21 keep a record of that, Tim.

22 Q. Okay.

23 A. But that would be something they'd do.

24 Q. Okay.

25 A. If they don't understand the regulation or don't

1 know how to fix it, they come back in and say, hey, we
2 don't know what to do about this or something to that
3 effect. That has occurred.

4 Q. Did they ever come in and that could be adamant
5 that what we denied wasn't the best thing for the
6 miners?

7 A. Well, I don't remember any of the specifics except
8 that we turn off the miner sections. Bill Ross used
9 to work for us. Bill Ross was adamant that that could
10 be stuck into the headgate or into the bleeders and
11 not have to walk it. And we stood our ground and said
12 no, that won't be that way. That's what he thought
13 was proper. Now that was the only one of whatever
14 problems they had here that I remember.

15 Q. If a company --- if we issue a denial letter and
16 of course the company doesn't agree that it should
17 have been denied, what avenue does the company have to
18 dispute our denial letter?

19 A. They appeal to Bob Hardman directly usually.

20 Q. Okay.

21 A. And that'll be discussed at his level. Other than
22 that, we'll write paper saying your plan is inadequate
23 or whatever. And they can go through that up through
24 the courts if they want, but that's never happened
25 that I know of.

1 Q. That was my next question, did that ever happen?

2 A. No. No. Most everything we've had like that's
3 been settled before it ever would get there. Any, not
4 ventilation but any, like health, too. With deep
5 cuts, we've had a lot of problems there. Those
6 usually get settled before they go anywhere.

7 Q. Was this mine on a 103(i) spot ---

8 A. Yes.

9 Q. --- for methane?

10 A. Yes.

11 Q. Do you know how much methane this mine liberates
12 normally?

13 A. Well, before the accident, they were just under a
14 million. And about the time of the accident, those
15 numbers came down a little over a million. So there,
16 whatever that spot is for a little over a million ---.
17 But that happened just about the first of April, so
18 you'll have to look at the record and see. I don't
19 remember the date, but I know it was the first of
20 April, of all crazy things, is when those total
21 liberation come in a little over a million.

22 Q. Okay. What's the process if they go over a
23 million in any one sample? Do they go to that spot,
24 five day spot, or do they take two samples? How many
25 samples do they take?

1 A. That's up to Link Selfe and up to Hay and Luther
2 as they set. Spots can be given not only for methane
3 but for other things. But in this particular case
4 here, they can decide to go on a more frequent spot if
5 they decide that's needful for the mine.

6 Q. Okay.

7 A. I think this one had a little problem there and I
8 don't remember exactly how that happened. In other
9 words, it was under a million ten day and then they
10 went over a million and were designated to go on a
11 five day spot but never made it and then the explosion
12 occurred. But I'd have to look at those dates and
13 see.

14 Q. Yeah. The previous longwall panels on the
15 map, ---

16 A. Uh-huh (yes).

17 Q. --- it's got several panels in one ditch, if you
18 will, did the methane level at the mine liberate, did
19 it go down once those panels were sealed off ---?

20 A. Excuse me, I don't know.

21 Q. Okay. Also looking at the map there's several
22 places in these panels that were skipped?

23 A. Yep.

24 Q. Do you have any recollection why those areas were
25 skipped?

1 A. I'd have to look. There's reasons. Overland
2 belt, I believe, was one reason or a power line in a
3 one case. I don't know the other case up there on
4 whatever panel that is. It's not on this map. Which
5 panel is that, Terry?

6 Q. Fourteen (14). Headgate 14. It would be that
7 Number ---.

8 A. Specifically to each of the left areas, I do not
9 know. Conditions can cause it, gas wells can cause
10 it. This mine has gas wells. Each one of those would
11 have to be looked at to see why they left 'em.
12 Now they have plans in now to go after some of those
13 barriers and mine them.

14 Q. Okay.

15 A. So, again, you'd have to look specifically at each
16 one. I don't personally have knowledge as to why.

17 Q. You mentioned gas wells. Did the company ever
18 submit anything to mine through gas wells?

19 A. Yes. They have a petition.

20 Q. They have a petition?

21 A. Uh-huh (yes).

22 Q. Okay.

23 A. And they have over here (indicating), nothing here
24 but over here. They went around the wells over here,
25 so far.

1 ATTORNEY WILSON:

2 When you're saying over here, you're
3 saying in previous panels they had plans ---

4 A. Yeah.

5 ATTORNEY WILSON:

6 --- to mine through the gas wells?

7 A. Yeah. What you guys call this previous --- the
8 sealed area?

9 BY MR. WATKINS:

10 Q. The sealed area.

11 A. The sealed area.

12 Q. But on the current longwall, there was no plan
13 to ---?

14 A. In the current mining area, they have wells. They
15 went around that well. And there's another one
16 somewhere.

17 Q. And that well meaning where the Eight North
18 section?

19 A. Yes, Eight North, Nine North. They'll have to
20 walk around it. So I don't think they have any plan
21 in to mine through a well here yet. I'm pretty sure
22 about that, because this wall will come out, and then
23 that's going to go somewhere. I don't --- yeah, I'm
24 pretty sure.

25 Q. Just as a general, not necessarily at this mine,

1 but has it been a problem with companies mining
2 through or taking the gas wells? Are they getting all
3 existing gas ---?

4 A. I'm sure it's happened but I don't remember the
5 last time. Most of the problem we had was with
6 another operator in another mine. And once that
7 problem got taken care of and our fights there were
8 over, everyone else fell in line. Quit smiling,
9 Terry. But anyways the speed mining, once we got
10 through those problems, most everybody fell in line
11 and they knew what had to be done and they did it.

12 Q. In that instance, was the gas well not showing on
13 a map or was it showing wrong location, not exactly
14 where they show? What was the issue?

15 A. Oh, it's a mixture of issues. There were and
16 there are, with the gas company drilling the way they
17 do, they put a well down through a coal seam and it
18 might have a problem, so they'll pull out of it and
19 move over, put another one down. So people do mine
20 through those because they're not charted. They're
21 not anywhere in any record.

22 I think most of our problems were with the way
23 they were plugged. Not being plugged properly,
24 according to the petition. And they'd leave the steel
25 down there. We had trouble getting the steel shredded

1 and slotted and so on, so the longwall shearer could
2 cut through it. But as I said, after we got done with
3 that operator, almost everybody knew how it could be
4 done safely and they did the proper plugging. I don't
5 know of any problem here. I just don't know.

6 Q. Okay. I know I'm getting around on you a little
7 bit, but --- ?

8 A. I don't think there's any ---. I don't know of
9 any problem like in this wall or anything like that.
10 Like they might have cut through something, ---

11 Q. Okay.

12 A. --- I don't remember anything.

13 Q. We talked a little bit earlier about seams above
14 the mine, and we talked about the floor hooving up in
15 the headgate entry and all that.

16 A. Yes.

17 Q. Was there any problems with roof conditions or
18 ground conditions or anything in the mines above
19 associated with the ---?

20 A. Oh, I don't know.

21 Q. Okay.

22 A. I've seen those maps in the mines but, oh, I don't
23 know.

24 Q. Okay.

25 A. Just not --- I can't recall.

1 Q. Okay. I think Davitt asked you about mine visits
2 that you made at this mine and you haven't been to
3 this mine recently; is that correct?

4 A. Two or three years since I've been at this ---

5 Q. Okay. And when you were ---?

6 A. --- mine or underground.

7 Q. And when you were there, it was down in the south
8 portion?

9 A. Yeah, I was in the mine down here, the last time
10 that I recall.

11 Q. Okay.

12 A. I've never been up in this area, never.

13 Q. This area referring to the longwall ---?

14 A. The present --- the current --- the present
15 mining ---

16 Q. Okay.

17 A. --- area.

18 Q. Let's go to the day of the accident, April 5th.
19 How were you notified of that accident?

20 A. Link Selfe got a call and we all then huddled
21 around to see what was going on because the
22 information was sketchy at first. I finally was able
23 to get through to Chris Adkins and ask him what's
24 going on, he didn't really know. He had miners
25 missing and something had happened underground, that's

1 all we knew. Bob Hardman left immediately for the
2 mine. I was told to stay in district office and
3 coordinate the efforts in the district office. So it
4 progressed from there.

5 Q. You mentioned Link, Link Selfe got a call. Did
6 you know who ---?

7 A. The hotline, I think it was.

8 Q. Do you know about what time he got the call?

9 A. Here we go with the time. About 3:30. I'm going
10 to say 3:27 was on the sheet.

11 Q. Okay.

12 A. I think that's if I remember the numbers right.

13 Q. Okay.

14 A. That was either the time of the call or the time
15 they thought the explosion occurred. And Tim, I'm
16 sorry I don't ---.

17 Q. That's okay. Do you remember what the initial
18 call --- what it said happened or what the condition
19 was?

20 A. It was not an explosion. They did not say it was
21 an explosion. They thought they had a fire somewhere,
22 as I recall.

23 Q. Do you recall who --- what company person called
24 in ---?

25 A. What company person, no, I don't.

1 Q. Okay.

2 A. I've looked at that and I don't remember. I don't
3 remember.

4 Q. But when you got the call, you said, we huddled
5 around, could you tell us who is we, I guess?

6 A. Bob Hardman, Link and myself and probably Mike
7 Dickerson, the staff assistant. And that's when Bob
8 said, we got a problem here and they left.

9 Q. They, Bob and ---?

10 A. Bob and Mike, I thought, but it might have been
11 Link. I think Link went, too. I'm not --- boy.

12 Q. But you were ---?

13 A. I was told to stay.

14 Q. Stay in the office and continue to do business in
15 the office or what?

16 A. No, support.

17 Q. Support?

18 A. Yeah, because I knew the calls would be coming.
19 You need maps, you need copies of plans and all that
20 sort of stuff, so we started gearing up for that.

21 Q. Did you send anyone else out to the mine that day?

22 A. Oh, I'd have to look at all my notes. We started
23 --- once we knew what was going on, how bad it was,
24 yes. Because we had to watch all exhaust from the
25 mine. And I believe Mackowiak and Keith Sigmon left

1 to start monitoring exhaust up here.

2 ATTORNEY WILSON:

3 Up here, you're pointing to Bandytown?

4 A. Bandytown. I don't know of anyone else that I
5 sent as such. I know we needed to do that, we had
6 inspectors. I don't remember when they left, Tim.
7 I'd have to look at the record on that.

8 BY MR. WATKINS:

9 Q. Were you responsible for updating headquarters?

10 A. Initially, yes, and then it was taken from me and
11 Bob did it directly from the mine.

12 Q. Do you know about what time --- I guess you said
13 Bob and Mike Dickerson went to the mine. Do you know
14 when they reported back to you with that first update
15 or whatever?

16 A. It's in my notes. I didn't bring 'em. I didn't
17 know you'd be asking. All those calls I logged in and
18 we logged in for days after that, 24 hours a day.
19 It's available.

20 Q. We'll probably ask you for those. Did you ever go
21 to the mine site ---?

22 A. Not April 5th or after, no, sir.

23 Q. You didn't ---?

24 A. Never. No. I was setting up people to do all the
25 sampling, making sure the lab was set up to sample,

1 coordinating all that, getting the reports out,
2 getting those reports to tech support, so Urosek, his
3 people could chart and all that and follow this thing,
4 but I never went to the mine myself.

5 ATTORNEY MCATEER:

6 I've just got a couple.

7 RE-EXAMINATION

8 BY ATTORNEY MCATEER:

9 Q. Richard, you testified that are there 150
10 underground mines. I thought I heard Joe --- him
11 testify that there are 245; is that ---?

12 A. Now, what are you asking me? Underground mines?

13 Q. Underground mines.

14 A. About 150, whatever the number is. I don't know
15 where 245 had come from.

16 Q. We'll try to ---.

17 A. And then these are different data, do you
18 understand that?

19 Q. Sure I understand that.

20 A. Okay.

21 Q. What's the advantage of an operator for using
22 double doors, or using doors?

23 A. Access. Double doors usually gives equipment
24 access.

25 Q. Right.

1 A. I could take a scoop or other piece of equipment,
2 roof bolter, into an area to do some work.

3 Q. Are there automatic doors?

4 A. There are. I don't know what these are. I don't
5 know if these are automatic or manual, rollups or
6 swing. I don't know.

7 Q. Okay. And were you familiar with a project
8 proposal to run a parallel entry to Ellis Portal or a
9 plan that was submitted to get more air?

10 A. I know of a talk about it. I'm not familiar with
11 the specifics of the plan. That's down that way, ---

12 Q. Right.

13 A. --- yes. And they needed more intake capacity.

14 Q. But you're not familiar with the plan submission
15 or anything?

16 A. I don't remember, Davitt, if they actually
17 submitted that plan. They talked about it, I know
18 about it because of a meeting we had, but I don't know
19 if it's actually, you know, formally submitted.

20 Q. Sure.

21 A. I know they were going to do that.

22 ATTORNEY MCATEER:

23 And can we get the log from the office
24 for the record, his log?

25 ATTORNEY WILSON:

1 Yes.

2 ATTORNEY MCATEER:

3 Okay. Thank you. That's all the
4 questions I have, Richard. Thank you.

5 A. You're welcome.

6 RE-EXAMINATION

7 BY MR. FARLEY:

8 Q. I'm sure it isn't fair at this stage of the
9 investigation to ask you or anyone else what you think
10 might have happened to cause this explosion. However,
11 I will ask you, would you like to offer any plausible
12 scenarios as to what you think might have happened?

13 A. A plausible scenario. Well, we talked about and
14 you guys have ---

15 Q. Or theory.

16 A. --- probed me ---. Well, it's my opinion and all
17 that. I'd be worried about the water up here and the
18 closure on that headgate. If that happened, the whole
19 ventilation of this longwall could be differed and
20 therefore gas back here in the face. However, we
21 talked about those doors and the rumor I heard about
22 the doors. Those doors are left open. And now we've
23 changed the whole ventilation, the whole intake, the
24 whole system here, not only to these sections but to
25 the longwall also. When that happens and if you have

1 complacency with people, for six guys there in the
2 face and so on, they might have continued to operate
3 even though their air wasn't proper. And that happens
4 and the gas comes out through the shields, you can pop
5 it.

6 I don't know on the section how gas could build so
7 quick up there if it happened over there. I don't
8 have a theory or an opinion on that.

9 Q. Okay.

10 A. I don't see a gas well. I don't see floor heave
11 there. I just don't know. It's just pure
12 speculation. But those are the two. I don't like the
13 doors, and I didn't like all this water here
14 (indicating) as being possibilities. Got the air
15 pumps in there and of course the turbine at the back.
16 It's just a system with so many parts prone to fail.

17 And then what happened on that weekend before the
18 explosion, with power and the air compressor and other
19 things that I've heard. I don't have any record of
20 it. But it just seems to add up to something bad here
21 in this tailgate.

22 Q. Tailgate or headgate?

23 A. Headgate. Yeah. I'm sorry. Thank you. The
24 headgate, the water in the headgate, conditions in the
25 headgate. Over here is pretty open (indicating) and I

1 think it still is, even though we've not been there
2 yet, but ---.

3 Q. Over here meaning?

4 A. Tailgate, I'm sorry. One left tailgate, I think,
5 was pretty open. I don't see anything there. Okay.
6 My two things again, water here, causing a ventilation
7 change and doors. It could have been those doors, it
8 could have been another set of doors somewhere else
9 left open and no one go back to close 'em, complacency
10 whatever it's called.

11 Q. Okay. You mentioned an air compressor. Where was
12 that again, please?

13 A. I've been told, haven't been there. Air
14 compressor up here some place, down the hole to run
15 air and water pumps in the One North headgate.

16 Q. In the Bandytown fan ---?

17 A. Somewhere around Bandytown fan. I've never been
18 there, so I haven't had my eyes on it. And I heard
19 power went off that weekend. They were, I think, idle
20 that weekend or the compressor burned up or something.

21 MR. FARLEY:

22 Okay. Thank you.

23 MR. WATKINS:

24 Can I ask you where you heard that at?

25 Where did you hear that from?

1 A. Oh, I think general discussions with Joe Mackowiak
2 is I believe where, because Joe was over there most of
3 that week, long hours trying to glean --- you know,
4 listen to people over there, so ---. I think it was
5 Joe Mackowiak.

6 RE-EXAMINATION

7 BY ATTORNEY MCATEER:

8 Q. Richard, you mentioned, too, the water and then
9 the door. The water is a reality in a sense that it
10 was cited. It had been ---?

11 A. Yes, it has.

12 Q. The doors is just gossip or rumor or discussion,
13 but no ---?

14 A. Now, I asked for an opinion of what could have
15 happened ---

16 Q. I understand, ---

17 A. --- to cause something.

18 Q. --- but I'm just trying to distinguish between
19 that one is a concrete and this one is more --- you're
20 just, you know, like we all do, speculating,
21 considering it.

22 A. Yeah, but see those are okay and they're okay by
23 regulation.

24 Q. Right.

25 A. But if you don't operate them properly ---

1 Q. Sure.

2 A. --- you then cause a problem, like leaving them
3 open, short ---.

4 Q. But we don't have any record of that happening in
5 this instance?

6 A. Oh, no.

7 Q. Okay.

8 A. No. I don't know of any violation of that ---

9 Q. Right.

10 A. --- or record of any kind.

11 ATTORNEY MCATEER:

12 Thank you.

13 ATTORNEY WILSON:

14 All right, let's go off the record.

15 Let's take a short break, just to go over questions
16 and see if we have anything to finish up.

17 SHORT BREAK TAKEN

18 ATTORNEY WILSON:

19 Back on the record. Anything further?

20 MR. WATKINS:

21 I just got one follow-up question here as
22 far as --- in regards to the plan submittals and the
23 denials.

24 A. Okay.

25 RE-EXAMINATION

1 BY MR. WATKINS:

2 Q. The revisions in the supplements, you mentioned
3 come quite often. Is there any procedures in place as
4 far as consolidating all of them into one base plan?
5 Do you get so many revisions before you consolidate
6 'em? How does that --- how does that work?

7 A. Some are dictated by regulation. Others we do at
8 our SOPs. Ventilation is very open and very loose.
9 This had so many revisions that that seems like an
10 inordinate amount. In retrospect now, and in the
11 future, we'll probably clamp down on that. At least
12 yearly we should get another base plane. We should
13 not let it go. And, you know, history is what it is
14 and the record's going to show, you had 28 or 29
15 ventilation revisions to a base plan.

16 To a CMI going out to inspect, that is not fair to
17 that CMI, let alone the rest of us trying to
18 understand the ventilation of a mine. The other
19 groups roof, health and so on, we're closer, we don't
20 allow that. Roof, I think it's four at that --- four
21 revisions, we'll ask for a new base.

22 Ventilation was let go because it's very
23 complicated for a lot of mines. This is a relatively
24 larger mine. So it takes effort to do a new base plan
25 for a mine this size. And, therefore it was left

1 looser. We allowed more revisions to be submitted.

2 Q. Do you think cutting down on the number of
3 revisions to four day, submit a new plan would help
4 the problem you mentioned earlier about the
5 engineering of the mine? Would it make 'em ---

6 A. No, sir.

7 Q. --- closer and make ---?

8 A. No, sir. No. It's going to make it worse.

9 Q. How so?

10 A. All the changes. They won't have time to
11 engineer. They won't have time to know their mine
12 because they'll be making a new base plan for us more
13 often.

14 Q. Okay.

15 A. That's my opinion.

16 Q. No, no, that's fine.

17 A. If I can only submit to you three or four
18 ventilation revisions before I put a new base plan in.
19 The problem is much deeper than that, Tim.

20 Q. Okay.

21 A. The revision is submitted by them, it's approved
22 by Bob Hardman. Let's say it happens that way and it
23 goes back to the mine. Now they have a revision.
24 Will they run out that first weekend and put all those
25 things in and get 'em done? Probably not. Some of

1 these revisions like Davitt was talking about the
2 signs Ellis Portal, they have to be driven. They're
3 not as simple as changing a stopping or something or
4 putting an overcast in. They're getting more
5 complicated and some of the revisions in this mine
6 were a bit complicated. Some of the revisions they
7 got into found they couldn't do them and submit
8 another revision because they couldn't do the revision
9 that was here the day before. And they go back to the
10 mine and try again.

11 Q. Uh-huh (yes).

12 A. So it's more complicated than just a paper
13 exercise in a district, an understanding exercise.
14 And that's why I go back to the engineering of the
15 mine. If you don't understand your mine, you're not
16 going to get a revision, probably, that will work,
17 because you haven't thought it through, you haven't
18 engineered it. You don't know your mine. You haven't
19 got a pressure quantity survey or you just don't know.

20 Q. Uh-huh (yes).

21 A. So I think there's more of that going on and
22 that's why I think a lot of our numbers are coming
23 from revisions that they try and don't work. There's
24 no mechanism for revision to be put in and we go out
25 the next day and make sure they did it. It's up to

1 the operator to ventilate the mine and put them into
2 affect.

3 Now, I'll go on a little bit here. Most operators
4 don't work that way. There are a lot of good
5 engineering and operators still in District 4, but I
6 see this happening with more and more young engineers
7 not knowing their mine. And a revision is submitted
8 because someone says do it. And it's not engineered,
9 so it will work when they get it in the mine.

10 Q. If they submit a revision and you approve it,
11 okay. and you mentioned it may not be there the next
12 couple days. If not, how long do they have to
13 implement that plan once it's approved?

14 A. There's no limit, that's the problem.

15 Q. But if I go out the next day and ---

16 A. You don't have it done yet ---.

17 Q. --- it's not done, is that a violation?

18 A. Not necessarily. You have to look at what the
19 conditions are. You have to find a violation, and
20 because they didn't implement a revision may not be a
21 violation. And, you know, I can't sit here and go
22 through the myriad of different revisions. There's
23 everything to a revision. A simple one to move a
24 section versus complete change of the longwall
25 ventilation in some cases.

1 MR. WATKINS:

2 Thank you.

3 ATTORNEY WILSON:

4 Rich, on behalf of MSHA and the Office of
5 Miners, Health, Safety and Training, again, I want to
6 thank you for appearing and answering our questions
7 today. Your cooperation is very important to the
8 investigation as we work to determine the cause of the
9 accident. Because we will be interviewing additional
10 witnesses, we require that you not discuss your
11 testimony with anyone. After questioning other
12 witnesses, we may call you if we have any follow-up
13 questions that we feel that we need to ask you. If at
14 any time you have additional information regarding the
15 accident that you would like to provide to us, please
16 contact Norman Page at the telephone number that was
17 provided to you.

18 At this time I want to give you an
19 opportunity to go back over any answers that you've
20 given, if there's anything that you want to clarify or
21 if there's any statement that you would like to make
22 or any additional information that you would like us
23 to consider at this time you can say ---.

24 A. No, I don't have anything else to say or statement
25 to give. You have asked me for the notes from the

1 time of the explosion during that week, which I will
2 furnish to you, originals to you.

3 ATTORNEY WILSON:

4 Yes.

5 A. And either --- well, I'll furnish them, hard
6 copies.

7 ATTORNEY WILSON:

8 Okay. I appreciate that. All right.
9 Again, I want to thank you for your cooperation in
10 this matter. Let's go off the record.

11

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STATEMENT UNDER OATH CONCLUDED AT 9:32 A.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Brett Steele, 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.



Brett Steele