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Transcript of the Testimony of Michael Smith

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STATEMENT UNDER OATH
OF
MICHAEL SMITH

taken pursuant to Notice by Cynthia Piro Simpson, 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 121, Beaver, West Virginia, on Monday, June 21, 2010, beginning at 6:10 p.m.

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

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EXHIBIT PAGE

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DESCRIPTION

IDENTIFIED

One

Mine Map

18*

*exhibit not attached

P R O C E E D I N G S

1
2 -----
3 ATTORNEY BAXTER:

4 Let's go on the record. My name is Derek
5 Baxter. Today is June 21st, 2010. I'm with the
6 Office of the Solicitor, U.S. Department of Labor.
7 With me is Erik Sherer, an accident investigator with
8 the Mine Safety and Health Administration, MSHA,
9 agency of the United States Department of Labor. Also
10 present are several people from the State of West
11 Virginia. I ask that they state their appearance for
12 the record.

13 MR. FARLEY:

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

16 ATTORNEY MCATEER:

17 I'm Davit McAteer with the Governor's
18 investigation team.

19 ATTORNEY BAXTER:

20 There are several members of the
21 investigation teams also present in the room today.
22 Mr. Sherer, Mr. Farley and Mr. McAteer will be
23 conducting the questioning today.
24 All members of the Mine Safety and Health
25 Accident Investigation Team and all members of the

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

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

1 You may have your personal attorney
2 present during the taking of this statement, or
3 another personal representative if MSHA has permitted
4 it, and may consult with your attorney or the
5 representative at any time. Do you have a personal
6 representative here today?

7 MR. SMITH:

8 No, sir.

9 ATTORNEY BAXTER:

10 Your statement is completely voluntary.

11 You may refuse to answer any question and you may
12 terminate your interview at any time or request a
13 break at any time.

14 Since this is not an adversarial
15 proceeding, formal Cross Examination will not be
16 permitted. However, your personal legal
17 representative may ask clarifying questions as
18 appropriate.

19 Your identity and the content of this
20 conversation will be made public at the conclusion of
21 the interview process and may be included in the
22 public report of the accident unless you request that
23 your identity remain confidential or your information
24 would otherwise jeopardize a potential criminal
25 investigation. If you request us to keep your

1 identity confidential, we will do so to the extent
2 permitted by law. That means that if a judge orders
3 us to reveal your name or if another law requires us
4 to reveal your name or if we need to reveal your name
5 for other law enforcement purposes, we may do so.

6 We request that you refrain from
7 discussing your statement with others who may be
8 interviewed. Also, there may be a need to use the
9 information you provide to us or other information we
10 may ask you to provide in the future in other
11 investigations into and hearings about the explosion.
12 Do you understand?

13 MR. SMITH:

14 Yes.

15 ATTORNEY BAXTER:

16 And do you have any questions?

17 MR. SMITH:

18 Not yet.

19 ATTORNEY BAXTER:

20 After the investigation is complete, MSHA
21 will issue a public report detailing the nature and
22 causes of the fatalities in the hope that greater
23 awareness about the causes of accidents can reduce
24 their occurrence in the future. Information obtained
25 through witness interviews is frequently included in

1 these reports. Since we will be interviewing other
2 individuals, we request that you not discuss your
3 testimony with any person aside from your personal
4 representative or counsel.

5 A court reporter will record your
6 interview. Please speak loudly and clearly. If you
7 do not understand a question asked, please ask me to
8 rephrase it. Please answer each question as fully as
9 you can, including any information you've learned from
10 someone else.

11 I would like to thank you in advance for
12 your appearance here. We appreciate your assistance
13 in this investigation. Your cooperation is critical
14 in making the nation's mines safer.

15 After we have finished asking questions,
16 you'll have an opportunity to make a statement and
17 provide us with any other information that you believe
18 to be important. If at any time after the interview
19 you recall any additional information that you believe
20 might be useful, please contact Norman Page at the
21 telephone number or email address provided to you.

22 MR. FARLEY:

23 Michael, on behalf of the West Virginia
24 Office of Miners' Health, Safety and Training, I'd
25 like to advise you that the State of West Virginia has

1 Coal Mine and Health and Safety regulations which also
2 protect miners against potential discrimination, and
3 provide you with some contact information in the event
4 that you should suffer any such treatment for
5 participating in this interview.

6 MR. SMITH:

7 Okay.

8 MR. FARLEY:

9 Thank you.

10 ATTORNEY BAXTER:

11 Okay. Please swear the witness in.

12 -----
13 MICHAEL SMITH, HAVING FIRST BEEN DULY SWORN, TESTIFIED
14 AS FOLLOWS:

15 -----
16 EXAMINATION

17 BY MR. SHERER:

18 Q. Okay. Could you please state your full name and
19 spell your last name?

20 A. Michael Anthony Smith, S-M-I-T-H.

21 Q. Okay. Please tell us your address and telephone
22 number.

23 A. (b) (7)(C) .

24 (b) (7)(C) .

25 Q. Okay. Are you appearing here today voluntarily?

1 A. Yes, sir.

2 Q. Have you been offered any sort of compensation or
3 reward for appearing here?

4 A. No, sir.

5 Q. Thank you. Did anyone talk to you about this
6 interview?

7 A. Yes, sir.

8 Q. Can you please tell us who?

9 A. I had a meeting with Massey lawyers, telling me
10 that I could talk if I wanted to. Just let me know
11 what was going on.

12 Q. Okay. Did they ask you any questions about what
13 went on in the mine?

14 A. Yeah, they got a statement from me from my
15 experience. I guess the same thing that's going on
16 here.

17 Q. Were you cautioned about saying anything at this
18 interview?

19 A. No, sir.

20 Q. Okay. Did they ask you to report back to them
21 after this interview?

22 A. No, sir.

23 Q. Okay. Thank you. How many years of mining
24 experience do you have?

25 A. A little over two.

1 Q. Okay. Has it all been at Upper Big Branch?

2 A. Most of it. I had two months at Kingston as a red
3 hat ---

4 Q. Okay.

5 A. --- when I first started.

6 Q. So you started at Kingston. Then you ---

7 A. Right.

8 Q. --- moved to Upper Big Branch about ---?

9 A. Right. October 21st, 2007.

10 Q. Okay. You're employed as an employee of Upper Big
11 Branch, not a contractor?

12 A. Yes.

13 Q. Okay. And what do you do at Upper Big Branch?

14 A. Roof bolter operator.

15 Q. Okay. Which part of the mine did you work in?

16 A. I drove all of One section.

17 Q. Uh-huh (yes).

18 A. And at the time, I was on Tailgate 22 on the
19 evening shift.

20 Q. Okay. So you drove all of the One section ---

21 A. Right.

22 Q. --- which looks like the headgate on ---

23 A. Yes, the headgate.

24 Q. --- the current longwall panel.

25 A. Right.

1 Q. And then you were driving this parallel tailgate
2 for the next panel?

3 A. Yes. They had problems with the top and so they
4 said that the headgate that was going to be the
5 tailgate for the next longwall panel, said that it
6 couldn't support it. So they wanted us to draw --- I
7 think that they said 60 breaks, but the map looks like
8 more than 60.

9 Q. Do you remember when they were starting this new
10 tailgate section off? Did engineers come in and lay
11 out the spacing and such on the section, that you're
12 aware?

13 A. Not that I can remember. They may have done in on
14 dayshift, but ---.

15 Q. Oh, okay. But you had sidelines and such in place
16 when you started turning that section?

17 A. What do you mean?

18 Q. Do you have spads and ---?

19 A. Oh, yes, sir.

20 Q. Okay. What sort of training have you had at Upper
21 Big Branch?

22 A. Like, task training?

23 Q. All your training. Could you just give us a
24 little synopsis of that?

25 A. I've been task trained on just about all the

1 equipment. At pre-training we go through the four
2 classes. We do our rescuer training, shelter
3 training. We went through the smoke trailer.

4 Q. Okay.

5 A. That's the most of it.

6 Q. When did you get your ADR training?

7 A. My black hat?

8 Q. Yeah, your initial apprentice training? Do you
9 remember?

10 A. February of 2008 ---

11 Q. Okay.

12 A. --- I believe it was.

13 Q. Okay. And who provided that training? Do you
14 remember?

15 A. Are you talking about the ADR course?

16 Q. Yes.

17 A. Oh, I'm sorry. No, it wasn't --- that was at the
18 beginning of 2007. Then it was that place down right
19 here where the Mountain State Energy.

20 Q. Okay, okay. So you got your initial training
21 before you ever went to work for Massey?

22 A. Correct.

23 Q. Okay.

24 A. I worked there before I worked at Kingston.

25 Q. Oh, okay. How about your West Virginia

1 underground apprentice certificate? Do you remember
2 roughly when you got that?

3 A. My black hat?

4 Q. Yeah.

5 A. That was in February of '08, I believe.

6 Q. Okay, okay.

7 A. Sorry. That's what I thought you were talking
8 about.

9 Q. Oh, no, that's my fault. I apologize. Okay. Do
10 you have any Federal or State mining certifications?

11 A. The only special training I had was a EMT card.

12 Q. Okay.

13 A. And I got that from here.

14 Q. Okay. Which shift did you work at Upper Big
15 Branch?

16 A. As a red hat I was dayshift, and when I got my
17 black hat in February, they put me on production on
18 evening shift.

19 Q. Okay. And that was February of 2010 or 2009?

20 A. Production crew?

21 Q. Yeah.

22 A. 2008.

23 Q. 2008, okay. Thank you. How did you normally
24 travel to the existing tailgate section you were
25 working on? Which portal did you enter?

1 A. UBB side.

2 Q. Okay, UBB. And do you remember going through any
3 equipment doors on the way to that section?

4 A. We had probably eight or nine sets ---

5 Q. Okay.

6 A. --- to go through.

7 Q. Were all those doors in good repair?

8 A. The only one that I had in question was right in
9 this area somewhere. It looked like they were trying
10 to make a regulator out of it on the longwall side.
11 Like, you had a set of doors and then you had half the
12 block over here. It was maybe four foot tall, and
13 then it had the big hole cut out.

14 Q. A hole beside the door?

15 A. Right.

16 Q. Okay.

17 A. Yeah, it was on both sets of the door in the same
18 spot. It was like they were trying to make a
19 regulator.

20 Q. Okay. That's interesting. Do you remember,
21 roughly, what break that was at?

22 A. I have no idea.

23 Q. Okay.

24 A. It was on the track entry, so it had to be in the
25 middle somewhere.

1 Q. Uh-huh (yes). Let's see here.

2 A. And it was as soon as you entered the headgate.

3 Q. Okay. This map is showing two sets of doors.

4 A. Right. We had two sets of --- oh, yeah, two sets.

5 We had one set was regular and then the other one had
6 the regulator.

7 Q. Is this pair of doors the one you're saying that
8 was a regulator?

9 A. I'm pretty sure it was the set.

10 Q. Could I get you to take one of these markers and
11 just highlight those doors.

12 ATTORNEY BAXTER:

13 I think we'll mark this map as Smith
14 Exhibit One.

15 (Smith's Exhibit One marked for
16 identification.)

17 MR. SHERER:

18 Uh-huh (yes).

19 A. Oh, sorry.

20 MR. SHERER:

21 No problem.

22 MR. FARLEY:

23 Just draw a circle around them. That'll
24 show up. There you go.

25 MR. SHERER:

1 And then, put a line up there and then

2 put your initial ---

3 MR. FARLEY:

4 Yeah.

5 MR. SHERER:

6 --- so that --- that's right. Uh-huh

7 (yes). Go ahead. And then a line back to the

8 drawing ---.

9 BY MR. SHERER:

10 Q. And can I get you to write doors, or regulator?

11 WITNESS COMPLIES

12 BY MR. SHERER:

13 Q. Okay. Thank you. Okay. So were the other doors
14 maintained in good repair?

15 A. Yes, for the most part. We had to get out and
16 open them all. That was just aggravating, but as in
17 the condition of the doors, they were good.

18 Q. Okay. Were any of these doors automatic doors?

19 A. The very first set on UBB side was the only
20 automatic doors we had, and most times they were down.

21 Q. Okay. Have you ever seen ropes or any other way
22 to fasten these doors attached to the doors?

23 A. We attached ropes to these --- where is that? The
24 doors that connected the Tailgate 22 ---

25 Q. Uh-huh (yes).

1 A. --- the longwall because they kept trying to blow
2 open.

3 Q. Okay. Can I get you to circle that, those doors
4 in maybe another color marker? Just, just draw a
5 circle around.

6 A. Yeah, I was just making sure it was this set ---

7 Q. Okay.

8 A. --- here for sure.

9 Q. Okay.

10 ATTORNEY BAXTER:

11 The witness is using a green marker. He
12 used the yellow for the first one.

13 A. And right down there.

14 BY MR. SHERER:

15 Q. Yeah, just say rope.

16 A. Yeah, we used rope hangers.

17 Q. Okay. Rope --- whatever. Okay. And draw a
18 little line between.

19 A. This eventually got turned into a stopping.

20 Q. Okay. And the reason for the rope was the doors
21 didn't fit quite right or something?

22 A. Their intake was right next to our intake, and our
23 intake would blow their --- or no. I guess it was
24 return, but the doors would blow open ---

25 Q. Oh, okay.

1 A. --- sometimes.

2 Q. Okay. Have you ever seen replacement doors
3 anywhere around the existing doors?

4 A. Like leaning on the rib or ---?

5 Q. Just near them. I don't know where.

6 A. The four sets that we went through at 85 Break,
7 the first set got taken out by the motor, and they
8 took those doors off and leaned them up against the
9 rib, the bad doors.

10 Q. Okay.

11 A. And then they put new doors in.

12 Q. Okay. So they repaired the damage?

13 A. Right.

14 Q. How long did it take them to do that, do you
15 remember?

16 A. It was the same day, because the motor took it
17 out.

18 Q. Okay. And there were no other replacement doors
19 that you're aware of?

20 A. No, sir.

21 Q. Okay. Thank you. Who's the boss on this tailgate
22 section?

23 A. My boss was Brian Collins.

24 Q. Okay. Had he been your boss the entire time you
25 worked on the headgate and then the tailgate?

1 A. No, sir. We started out the tailgate with Okie
2 Cook.

3 Q. Uh-huh (yes).

4 A. And then it moved --- we went through a few
5 bosses, and then for the most part in this area it was
6 Ronnie Wickline.

7 Q. Okay. So do you know why you went through a lot
8 of bosses? Was there some problem?

9 A. Nobody wanted evening shift.

10 Q. Oh, okay. Thank you. Have you ever been injured
11 at this mine?

12 A. Yes.

13 Q. Do you mind telling us, was it a lost work time
14 injury or ---?

15 A. Yes, at 26 Break on Two section, we first started
16 right here. I was hanging a miner cable with --- I
17 can't remember his name. We called him Pickles. He
18 was a boss. I know. Yeah. He was the one that got
19 caught with the fake card.

20 Q. Uh-huh (yes).

21 A. But me and him were hanging a miner cable and my
22 (b) (7)(C) .

23 Q. Oh, okay. All right.

24 A. And I was off for two months.

25 Q. Oh, jeez. Did you do any light duty associated

1 with that?

2 A. No, sir.

3 Q. All right.

4 A. There was none available.

5 Q. Okay. How's your (b)(7) now?

6 A. It's okay. Thank you for asking.

7 Q. Sure. Would you tell us a little bit about your
8 roof bolting? Like, what type of bolter did you use?

9 A. For the headgate we used the rib bolters, the
10 DDRs. And then over here we had roof rangers, the
11 ones with plug heads.

12 Q. I imagine these are dual operator bolters?

13 A. Yes.

14 Q. Okay. Were either one of them washer-type
15 bolters?

16 A. No, sir.

17 Q. Okay. How's the coal in this area?

18 A. In this area it was six foot, and it got down to
19 about five foot in here, I believe.

20 Q. Okay. Were they taking any top for clearance?

21 A. Yes, sir. It had stayed about seven foot high.

22 Q. Okay.

23 ATTORNEY BAXTER:

24 And can I ask you --- sorry to interrupt

25 --- where you're indicating where it's six foot and

1 where five foot, what part is that?

2 A. I would say 60 Break on up to 130 Break, it was
3 about 6-foot of coal and the offset was probably about
4 five foot of coal. It was good coal up there.

5 BY MR. SHERER:

6 Q. Okay. So and they were taking seven foot of
7 clearance, so you were cutting between a foot and two
8 foot of ---

9 A. Right.

10 Q. --- roof or floor?

11 A. If they could cut the floor, they would, but if
12 the top got bad, they would cut the top. And that's
13 when we'd have to use the rib bolters a lot, because
14 they try to stay out of the ribs, because that took us
15 a lot of time to bolt the ribs.

16 Q. Sure. Did you have a lot of rock ---?

17 A. We were real big on bolting those, because they
18 always ---. One guy got hurt toward the end because
19 he was bolting a rib and the rib rolled out on him. I
20 can't remember his name. But he hadn't been bolting
21 for too long. They put him on dayshift.

22 Q. Okay.

23 A. He got injured.

24 Q. What sort of bolts did you guys use?

25 A. Six-foot torque tensions in --- let's see. It was

1 from about 20 Break it was 6-foot torque tensions, and
2 before 20 Break, if I'm thinking right it was 4-foot
3 torque tensions.

4 Q. How was the roof in this area?

5 A. The only bad spot that I remember was between 45
6 and 60 Break, was about the worst top that we had. We
7 were putting up 12-foot torque tension. I mean,
8 12-foot cable bolts.

9 Q. Oh, okay.

10 A. And we were still having problems with that.

11 Q. How many cable bolts were you putting?

12 A. About anywhere from one to every row to --- oh, I
13 mean two, because one for each side.

14 Q. Uh-huh (yes).

15 A. But anywhere from one to every row to every other
16 row.

17 Q. That's a lot of cable bolts. Do you know what was
18 going on in here?

19 A. Just that it was bad top.

20 Q. Did you notice sandstone coming down into the coal
21 seam through this area, maybe a punch-out or a roll or
22 something?

23 A. Stack rock, if I'm thinking right?

24 Q. Yeah, or just the roof comes down into the coal
25 seam? It kind of pinches down in the coal? Do you

1 remember anything like that?

2 A. Like roll over the rock?

3 Q. Yeah.

4 A. Yeah, there was some of those.

5 Q. Okay.

6 A. But those were mostly on the left side. I didn't
7 see too many on the right. And kettle bottoms weren't
8 a big problem, either.

9 Q. Okay.

10 A. We didn't hit those until the end.

11 Q. Okay.

12 ATTORNEY BAXTER:

13 And by the left side, you're referring to
14 the new tailgate section?

15 A. Number One entry around 50 Break.

16 BY MR. SHERER:

17 Q. Adjacent to the longwall panel?

18 A. Right.

19 Q. What about the floor through here? Do you
20 remember?

21 A. The only thing I can remember was a lot of water
22 toward the end, like around 100.

23 Q. And you're pointing to, roughly, 100 Break?

24 A. Right; between 100 and 110 there was --- we had a
25 lot of problems from water, and they said it was from

1 old panels flooding in on us, coming through the
2 cracks in the bottom.

3 Q. Okay. So it was coming through the bottom?

4 A. Yeah, that's what they told us.

5 Q. Okay. Did you notice much water coming from the
6 roof as you were drilling the holes?

7 A. No, sir. The only time I had water was on Four
8 section.

9 Q. All right.

10 A. And it's not shown on the map.

11 Q. Sure. How about floor heave or floor hoove?

12 A. The bottom hooved quite often.

13 Q. Can you give us an idea of where, roughly, or how
14 much? Was it half the headgate or ---?

15 A. It was probably at least half.

16 Q. Okay. Was it worse down toward the Bandytown fan
17 or up near the mouth of ---?

18 A. It's more toward the fan.

19 Q. Okay. So the floor hooving got worse, you said at
20 115, 120 Break?

21 A. Yeah, I'd say around then.

22 Q. Okay. What about where this connector comes
23 through? Did you remember anything in particular
24 about the floor or the ribs or anything like that?

25 A. Not that I can remember.

1 Q. Okay. What about the floor heave? Was it a foot
2 high or two foot high? Did they have to go back in
3 with a miner and grate it out or could they get it
4 with scoops?

5 A. Most times they got it with the scoops. It was
6 maybe in six inches top.

7 Q. Okay.

8 A. Or six inches thick.

9 Q. Okay. So it was roughly a six inch heave.

10 A. But the one thing that I thought was --- I had
11 never seen before was when I was running with Ronnie
12 Wickline.

13 Q. Uh-huh (yes).

14 A. We were standing in the entry talking, because the
15 miners were down, and there was about a foot of water,
16 I'm guessing between 115 and 120.

17 Q. Uh-huh (yes).

18 A. And I remember the bottom bumping, and we were
19 making jokes because the water disappeared and it
20 didn't come up in any other entry.

21 Q. I'll be darn.

22 A. And it was --- like I say, it was the whole
23 intersection, you know, 20 foot around over a foot
24 deep and it just disappeared. Like I said, that
25 was ---.

1 Q. That is unusual. I've seen more come in ---.

2 A. Yeah, I've seen water come in, but I've never seen
3 water disappear and ---. Well, we were happy to get
4 rid of the water, but it was just wild to see it.

5 Q. That's interesting. How about gas when the floor
6 would heave like that? Did you ever notice gas
7 bubbles if there was any water or ---?

8 A. Yeah. There was places that looked like a sauna.

9 Q. Oh, okay.

10 A. But like I say, when you put your detector down to
11 it, you'd get eight percent, but if you raised it less
12 than a foot off the water, you wouldn't get anything.

13 Q. Okay. So it was being diluted by the ventilation?

14 A. Correct.

15 Q. I assume that you carried a spotter with you?

16 A. Yes, sir.

17 Q. Do you remember what kind of spotter it was?

18 A. Just one of the ones with a little display screen.
19 I'm not for sure.

20 Q. Would Solaris sound like the type?

21 A. I don't know. It wasn't a Solaris, because you
22 had to push the button. It's the one that goes in the
23 probes.

24 Q. Oh, okay. Did you leave that at the mine or did
25 you take it home?

1 A. Well, most times we left it on the bolter for
2 the ---

3 Q. Oh, okay.

4 A. --- crew behind ---.

5 Q. Okay. How about the calibration of those
6 spotters?

7 A. I have no idea on it.

8 Q. Okay.

9 A. I don't know how often they got calibrated.
10 Because they got bumped around a lot on the bolter.

11 Q. Okay. Sure. Go back for just a minute. You
12 mentioned there were places it looked like a sauna
13 with the gas bubbling up out of the floor. Do you
14 remember, roughly, where those were?

15 A. Not really.

16 Q. Okay. Was it more down toward Bandytown fan or up
17 near the mouth of the section? Do you recall?

18 A. Well, before the fan, when we got to about 80
19 Break all the way up to the 130 Break we had terrible
20 problems with gas.

21 Q. Okay.

22 A. I mean, it was horrible with gas. The ventilation
23 got real tough to get up here.

24 Q. Okay.

25 A. Even after Two section punched into us, we had bad

1 problems with gas.

2 Q. Oh, jeez. How much were you required --- what
3 ventilation going through you're required to keep in
4 the Balzi faces? Do you recall?

5 A. 3,000, 3,500. It wasn't much.

6 Q. Okay. And when you had that ventilation quantity,
7 you still have problems with gas?

8 A. Yeah. Even with that type of ventilation we would
9 have to get the bolter out of the cut and move the
10 curtain to the center of the entry to get a better
11 return.

12 Q. Could you just wait and the gas level would go
13 down and then go back in and bolt?

14 A. Most times we did. If we moved the curtain we
15 could wait probably 20 minutes and it would be gone.

16 Q. Okay.

17 A. But there's a lot of times we'd have to put up a
18 couple bolts and then the gas would be back, because
19 we moved the curtain back to the rib to get the bolter
20 in.

21 Q. Sure. Did the bolters you use have the methane
22 sensors on the ATRS?

23 A. No, sir.

24 Q. Okay. Just use the handheld ---

25 A. Correct.

1 Q. --- units and the probes?

2 A. Correct.

3 Q. You recall how deep a cut the miner was taking up
4 through here (indicating)?

5 A. Thirty-fives (35), I believe.

6 Q. Thirty-five (35) foot cuts?

7 A. Correct.

8 Q. The entire length of the headgate?

9 A. I'm almost positive it was 35s the whole way.

10 Q. Okay.

11 A. The only time I know we cut it down, that was
12 because of us. It was, like I say, right around 50
13 Break is when the top got real bad. We would maybe
14 take a ten-foot cut and it would fall in.

15 Q. Yeah.

16 A. So we come down real low right through there.

17 Q. Okay. And you're using a 35-foot extendable
18 probe, the motor at the mouth end of the face?

19 A. That's right.

20 Q. Okay.

21 A. Like I said, the methane was absolutely horrible
22 up there. I mean, we would --- there was a lot of
23 times that the gas would get up to one percent and the
24 boss would just tell us just go ahead and bolt it.

25 Q. Oh, jeez. What about the model was it having

1 problems with methane, also?

2 A. Yeah, it was gassing off a lot. But like I said,
3 they cut --- we cut it down to sweep area just the one
4 miner at a time. And we would put all the air on that
5 one miner, just I mean ventilate that one miner as
6 heavy as we could, and it was still having problems.
7 And a lot of the talk was that people would leave
8 these doors open. Sorry, wrong doors. The doors at
9 85 Break, because that's where our intake come in was
10 across those doors.

11 Q. Okay. You say talk was that the doors would be
12 left open. Do you recall what that would do to your
13 ventilation?

14 A. It would completely shut it down, because like I
15 say, our intake come in between the two doors and then
16 it come up to us.

17 Q. Have you ever or do you recall being on the face
18 and you notice that the ventilation would increase or
19 decrease?

20 A. Oh, yeah. That's what I was talking about, was
21 you could tell when they opened those doors, because
22 the --- like, the curtain would slap the top a couple
23 times and then it was just gone.

24 Q. Yeah, just dead.

25 A. Yeah.

1 Q. What did you do when that happened?

2 A. Continue to bolt.

3 Q. Okay. What about the miners, do you recall what
4 they did?

5 A. Yeah, they continued to mine.

6 Q. What about the dust and stuff?

7 A. They use their scrubbers mostly to get rid of
8 dust.

9 Q. Okay. Now, the miners have methane monitors on
10 them, don't they?

11 A. Yes, sir.

12 Q. What sort of readings would they get? Do you
13 recall?

14 A. I remember a lot of times they would start
15 flashing. I'm not sure what they would flash at, but
16 they would flash. And they told me that that was a
17 warning, to back up.

18 Q. Did the power ever kick on the mine?

19 A. I think maybe twice at least.

20 Q. Okay.

21 A. The power went off and we would re-ventilate the
22 curtain in the middle.

23 Q. Were these the miners that they could restart
24 remotely to back out?

25 A. I don't know. You couldn't set the breaker up

1 from the box or nothing.

2 Q. Okay.

3 A. You had to go --- actually go to the power center.

4 Q. Okay. What about the methane sensors themselves?

5 Have you ever heard of anybody tampering with one of
6 those?

7 A. Just one time. It was rock fell on the miner, and
8 I seen him pull the read-out off and he twisted two
9 wires together and we backed it out, and he changed
10 something behind the heads and it read at four for a
11 little while, and then he got it fixed.

12 Q. Okay.

13 A. And it read right.

14 Q. So it was damaged?

15 A. Yeah, somehow it --- when the rock fell on it, I
16 don't know, jarred it or something, but it just kept
17 reading at four and trying to shut the miner off.

18 Q. Okay. Did anybody measure the methane around the
19 miner when this was taking place?

20 A. I don't remember.

21 Q. Okay. You say you were mainly on the headgate and
22 then you started on the tailgate, and you have a lot
23 of ventilation problems when you were driving the
24 headgate?

25 A. Right.

1 Q. Was this the only part of the mine that had
2 ventilation problems? Do you know?

3 A. I know that the headgate and the tailgate, we both
4 had problems, but there was no one else mining around
5 us. Everybody else was more toward the UBB side.

6 Q. Uh-huh (yes).

7 A. And I don't think they had any problems at all.

8 Q. What about the 22 Headgate, the newer headgate
9 that the other section was driving?

10 A. It's completely hearsay, but I heard that they had
11 some problems with gas. I remember when we were first
12 starting this right here --- it was before the
13 overcasts were put in and it was ---. Our intake was
14 mixing with their return and the boss walked two or
15 three breaks outby and he said that he was getting gas
16 but he wasn't getting gas in our intake, so he just
17 let her fly.

18 Q. Okay. You mentioned that you heard that Headgate
19 22 had gas problems. Do you recall who you heard that
20 from?

21 A. Just a couple of the bosses.

22 Q. Okay. Anyone in particular?

23 A. Patrick Hilbert. I heard that there was a little
24 bit of gas from Adam Fraley. He was a roof bolter
25 operator, and that was about all I talked to.

1 Q. Okay. Are you aware of any problems with large
2 volumes of air coming down the belt line onto these
3 sections in the week or so prior to the explosion?

4 A. We actually had a problem on the Tailgate 22 of
5 that happening, and we shut the section down.

6 Q. Do you recall, roughly, when that was?

7 A. Not really.

8 Q. Okay. Do you recall what someone may have done to
9 alleviate that problem?

10 A. I remember me and, was it Brian Collins and --- I
11 just know his nickname. His name --- we called him
12 Smurf.

13 Q. Okay.

14 A. He was a buggy operator. But we went down and we
15 hung some curtain, but it took us about two hours to
16 find out what the problem was, and it was a curtain
17 down somewhere, I think, two breaks behind us.

18 Q. Okay. By curtain, do you mean, like, a belt
19 check?

20 A. It couldn't been. It wasn't on the belt line,
21 though. It was beside the belt line.

22 Q. Do you recall roughly where that curtain was at
23 that was down?

24 A. I think it might have been a stopping curtain
25 where we needed to build a stopping or they had

1 knocked a stopping or it got crushed out or ---.

2 Q. Okay. And it was on the tailgate section itself
3 or was it more outby?

4 A. No, it was the tailgate.

5 Q. Okay. Do you recall, roughly, how may breaks from
6 the working faces it was?

7 A. I think --- I don't really remember. I know it
8 was --- I think two breaks behind a feeder, but I'm
9 not sure how behind the feeder was.

10 Q. Okay. Tell me about --- we hear that there was a
11 lot of problems with ventilation. How did the mine
12 --- how did the mine respond to that? Were
13 ventilation changes made to improve the ventilation in
14 these sections?

15 A. Yes, but I'm not exactly for sure what they done.
16 I remember that we were off for three days, I believe,
17 because the air to the longwall had reversed. The
18 return became intake and they said it was going from
19 tailgate to headgate, or it was just going backwards.

20 Q. And roughly, when was that?

21 A. Less than a month before the accident.

22 Q. What about changes to regulators or things of that
23 nature? Are you aware of any of those type changes
24 being made?

25 A. During mining, like ---?

1 Q. Either during mining or ---.

2 A. I know that when they punched into us the first
3 time from Two section, they sent us home the first
4 day, but the second time they punched into us, they
5 made us sit in the feeder while they punched into us
6 and built stoppings.

7 Q. How long did you stay in the feeder.

8 A. Until they cut it, bolted it and built a stopping.
9 And we went back to cutting.

10 Q. Roughly, half a shift?

11 A. I think three hours.

12 Q. Okay.

13 A. Because like I said, they may --- they cut it to
14 within, I think ten feet.

15 Q. Uh-huh (yes).

16 A. And they had a couple of us go over and help build
17 stoppings, but the other ones were working on the
18 other stoppings, our return stoppings, catching those
19 up.

20 Q. Okay. What about while you were actually bolting?
21 You mentioned the equipment doors would cause the air
22 movement to change and the curtains to change
23 position. Was there other things to cause the
24 ventilation to act that way? Do you think people
25 could have been changing regulators or something else?

1 A. Not that I've heard.

2 Q. Okay. What about Blanchard and Whitehead? Were
3 they ever on the section much?

4 A. Not often. When our production would go pretty
5 low, they would come up there and give us a pep talk
6 and I guess get us in gear, you could say.

7 Q. Do you recall if they ever made changes to the
8 ventilation system?

9 A. I heard that they brought --- Blanchard, Whitehead
10 and Everett worked for the first two days when the air
11 had reversed.

12 Q. Uh-huh (yes).

13 A. And they actually brought Jamie Ferguson in, and
14 he found the problem and fixed it. Ended up being a
15 stopping had crushed out.

16 Q. Okay.

17 A. But that's the only change that I can remember.

18 ATTORNEY BAXTER:

19 And who is Everett?

20 A. Everett Hager, he was the mine foreman at the time
21 of the event.

22 BY MR. SHERER:

23 Q. You say that you have methane problems as you're
24 driving the headgate. Did you have any methane
25 problems as you were driving the new tailgate?

1 A. The only time that I can remember is when they ---
2 like I said, before that overcast was built we had it
3 in our intake, but once it got --- our intake made it
4 to our faces, there was nothing, so our boss said it
5 wasn't a problem.

6 Q. Are you aware of large volumes of methane coming
7 into the mine?

8 A. No, sir.

9 Q. Have you ever heard of anything like that?

10 A. No, sir.

11 Q. Okay. Have you ever heard of methane coming in
12 and sounding like a jet engine anywhere?

13 A. You could hear it hissing up where I said it was
14 gassy before.

15 Q. But it just ---?

16 A. Not nothing real loud. Like you could hear it
17 hissing, but ---

18 Q. Okay.

19 A. --- nothing that would really catch your
20 attention.

21 Q. Okay. And you were able to control the methane
22 with ventilation?

23 A. Not up in the end. Like I said, that's where ---
24 like I said, that's where I was having problems with
25 the bolting and everything.

1 Q. Okay. So you just barely got by there?

2 A. Right.

3 Q. You said that you were sent home for what, three
4 days, due to an air reversal on the longwall. Have
5 you ever been sent home any other time or asked not to
6 show up for work due to ventilation problems?

7 A. Just the one time that they had punched into us
8 right here. They sent us home.

9 Q. Okay.

10 MR. FARLEY:

11 Excuse me.

12 MR. SHERER:

13 Sure.

14 MR. FARLEY:

15 The one time they sent you home, you
16 pointed to a location where they punched into.

17 A. Yeah.

18 MR. FARLEY:

19 Now, are you referring to the same
20 situation where you were sitting at the feeder and the
21 diagonal was cut through?

22 A. We were mining up here and --- well, I think we
23 were actually further up, but they said that --- they
24 called over and said that they were getting close,
25 getting ready to punch in. And we called outside and

1 asked them what they wanted us to do, and they told us
2 to go home. So we went home.

3 MR. FARLEY:

4 Okay. So that's not the same time as
5 when you were sitting at the feeder and cut the
6 diagonal?

7 A. No, sir. No, sir. This one, we were mining and I
8 think we were --- we were further up. Like we were
9 pretty far away from where --- I guess nobody would be
10 around it at the time. And they told us to go to the
11 feeder and sit, that it had been punched. I think it
12 was just maybe one or two breaks they punched in at
13 that time, and they were doing most of it during hoot
14 owl.

15 MR. FARLEY:

16 I'm sorry. I didn't mean to interrupt
17 you.

18 MR. SHERER:

19 Do you want to go ahead and take some of
20 the questions?

21 MR. FARLEY:

22 Whenever you're ready.

23 MR. SHERER:

24 Sure.

25 EXAMINATION

1 BY MR. FARLEY:

2 Q. What we just talked about, when this crossover at
3 the inby end of the longwall was cut, you were sent
4 home?

5 A. Correct.

6 Q. Okay.

7 A. That was about --- it was close to the end of the
8 shift because they were ---.

9 Q. Okay.

10 A. It was supposed to happen between shifts, and it
11 didn't, so they went ahead and sent us underground to
12 run some coal. And I think we got maybe two or three
13 cuts and then they sent us home.

14 Q. Okay. And when the diagonal was mined through
15 into One North, you were instructed to sit at the
16 feeder while that cut-through took place?

17 A. Right.

18 Q. And how far inby the diagonal were you at that
19 time?

20 A. I don't know. We were at least ten breaks away
21 because we couldn't even hear it. We couldn't hear
22 the miner running. But our intake was on this side,
23 so we caught some of the dust.

24 Q. When you were mining in One North, you indicated
25 that you had terrible problems with ventilation?

1 A. Yes.

2 Q. Now, you mentioned that sometimes you'd be bolting
3 and you had one percent; ---

4 A. Correct.

5 Q. --- is that correct? Did you ever have more than
6 that?

7 A. I wouldn't bolt in anything --- if it said one
8 percent, I shut down, anything close to one percent.

9 Q. But how often did you take a legal methane reading
10 of more than one percent?

11 A. It was pretty often.

12 Q. How often?

13 A. Basically three times a day.

14 Q. Okay. Now, when we say more than one percent, how
15 much more than one percent?

16 A. The most I ever remember was in Number Three entry
17 one time we were getting ready to turn it, and I'm
18 thinking it was something close to five percent.

19 Q. Okay.

20 A. And it was just in the face. I would say it
21 wasn't even at the end of the break. It was just in
22 the face. And I remember I was a little worried about
23 it, but one of the --- Bobbie Pauley, ---

24 Q. I know Bobbie.

25 A. --- right, she asked Ronnie Wickline what --- if

1 that was legal. And he said that it's --- they'd only
2 send us home if five percent got at the power center.
3 So we continued to mine.

4 Q. Now, Ronnie Wickline was the foreman?

5 A. Yes. He was the boss.

6 Q. And the foreman told people on the section that
7 they would only send you out if the methane reached
8 five percent at the power center?

9 A. That's what he told us.

10 Q. Was he joking?

11 A. I don't guess because she left. I thought that's
12 what it was, too, because that's what he said.

13 Q. Okay. Who was your roof bolting partner?

14 A. Adam Fraley.

15 Q. Whenever you would detect these higher numbers of
16 methane, did anybody --- did you ever get anybody to
17 get a second detector to double check?

18 A. A lot of times I'd ask Ronnie to bring his
19 detector over. He had the Solaris. And we would put
20 it on the probe and it would go crazy, too. So that's
21 what made me think that mine was pretty accurate
22 because that was nothing ---.

23 Q. Okay.

24 A. You know, I was pretty close to his. But how
25 often his was checked I'm not for sure either, so ---.

1 Q. Okay. Did it ever read anything more than five
2 percent in One North, in this area inby this diagonal?

3 A. Not that I can remember. I've heard talk of there
4 being nine percent, but I think that that was just a
5 joke, because I don't see there being nine percent up
6 there.

7 Q. I don't know. I have other people tell me
8 eight-and-a-half.

9 A. Eight-and-a-half?

10 Q. It might not have been a joke.

11 A. Well, like I said, I heard talk of nine percent,
12 but I just thought it was a joke because I had never
13 had anything over five.

14 Q. Probably not. Now, when you mined this area, One
15 North, particularly here where you had your methane
16 problems inby the diagonal, would this have been
17 sometime in 2009?

18 A. Yeah. It would be toward the end of 2009, I
19 believe, ---

20 Q. Okay.

21 A. --- if I'm thinking right. Mid to end. I'm not
22 for sure when it was. Because when they finished up
23 here, they sent me to Slip Ridge.

24 Q. The longwall started in September, ---

25 A. Yeah.

1 Q. --- so ---.

2 A. It had to be well --- it had to be well before it
3 ended because they had the fan in, and then it was ---
4 I remember it was a little while because I was at Slip
5 Ridge when the longwall started because I was one of
6 the ones that when they were digging the borehole ---
7 I mean, not the borehole but the hole for the fan,
8 they were moving sections also. And they sent me to
9 Slip Ridge, and I ended up fracturing my ankle after
10 three weeks of being at Slip Ridge.

11 Q. How long were you at Slip Ridge?

12 A. I was only there for three weeks, but the crew
13 that got sent with me were there for six, and they
14 went to the Headgate 22.

15 Q. Okay. When did you come back to UBB from Slip
16 Ridge?

17 A. I'm not real for sure about that.

18 Q. How long were you off with the ankle?

19 A. Six weeks.

20 Q. Okay.

21 A. I tried to come back sooner, but the doctor
22 wouldn't let me.

23 Q. Would it have been after the first of the year
24 2010?

25 A. I'm not really sure on the dates.

1 Q. Okay. You were talking about air problems on 22
2 Tailgate?

3 A. Yeah.

4 Q. Okay. You indicated you had a lot of air coming
5 up through the beltline?

6 A. Right.

7 Q. Now, can we pin down a time for that? Was that
8 about a week before the explosion, two weeks before?
9 I mean, ---.

10 A. I would say not more than two weeks before the
11 explosion.

12 Q. Okay. Was one of the guys who helped find the
13 ventilation problem a section electrician?

14 A. Scott might have been there. I'm not for sure.
15 Scott ---.

16 Q. Barnett?

17 A. Yeah. He was the only electrician we had up
18 there. I'm not for sure if he was up there with us.
19 He probably was because him and our boss was pretty
20 hard to separate because they were both foreman's.

21 Q. Were what?

22 A. Both bosses.

23 Q. Oh, okay.

24 A. Scott had boss' rights, too.

25 Q. Okay. But did the --- were they able to fix the

1 problem, so the air's not coming up the belt ---?

2 A. Yes. Yeah, we fixed it before we started running
3 again.

4 Q. Do you recall what --- how much --- what the
5 quantity of air was measured coming up the belt?

6 A. It was a lot. It was more than we had coming up
7 the intake.

8 Q. Could it have been like 40,000 cfm?

9 A. I'd say it was between 30,000 and 40,000.

10 Q. Okay. Did you ever experience anything else like
11 that while you were on 22 Tailgate, air coming up the
12 belt when it's not supposed to or going in the wrong
13 direction?

14 A. We had it reversed one other time. It stayed
15 reversed for, I think, two hours and it corrected
16 itself.

17 Q. Corrected itself?

18 A. I don't know. Like I said, we were on the
19 section. It was coming up the wrong way. And then
20 all of a sudden it wasn't. So it had to be somebody
21 outby doing something else.

22 Q. Do you know when that was?

23 A. We wasn't on the tailgate for maybe three months,
24 so like I say, it couldn't have been too long.

25 Q. All right. Let me see. What was the last shift

1 you worked on the 22 Tailgate section?

2 A. The Saturday before Easter --- or Friday before
3 Easter. Sorry.

4 Q. April 2nd, does that sound about right?

5 A. I'm not sure of the day. Like I say, it was ---.

6 Q. The accident was on Monday, April 5th, so ---

7 A. Right.

8 Q. --- four, three, two ---.

9 A. Right. Like I say, it was a Friday. It
10 wasn't ---.

11 Q. Okay.

12 A. We had Saturday, Sunday and ---.

13 Q. Okay. So that's ---.

14 A. We had something. We had three days off. It was
15 a three-day holiday.

16 Q. You worked ---?

17 A. It would have to be the 2nd, because the 5th ---
18 yeah, it would be the 2nd or 1st.

19 Q. When you traveled to your section on that last
20 shift along the track entry, which way did you travel
21 from 78 to 22 Tailgate?

22 A. We turned right at 78. We ended up coming down
23 and circling back.

24 Q. So you pointed to up this diagonal, up Seven
25 North?

1 A. Correct, right beside the beltline. And we turned
2 in toward Head gate 22, and then there was a switch
3 that was ---.

4 Q. Back south towards 22 ---

5 A. Right.

6 Q. --- Tailgate?

7 A. Right.

8 Q. Now, as best you can remember, on the last shift
9 that you traveled to and from 22 Tailgate, on the
10 track you just identified, what did it look like?

11 A. It looked normal to me. I mean, ---.

12 Q. How was it rock dusted?

13 A. It was --- it looked good. I mean, I didn't see
14 no problems with the rock dust at all.

15 Q. Okay. You know how sometimes when you come in and
16 the area is all white because ---

17 A. Right.

18 Q. --- it was rock dusted ---

19 A. Freshly, right.

20 Q. --- a couple hours before? When was the last time
21 that you can recall that experience, as you traveled
22 that way to 22 Tailgate?

23 A. From 78?

24 Q. Yes, sir.

25 A. Had to be at least a month.

1 Q. Okay.

2 A. But like I say, it didn't look bad, but you could
3 tell it wasn't nothing fresh.

4 Q. Okay. All right. Do you ever walk your section
5 belt from one end to the other or any of the other
6 belts in that area?

7 A. We put the end of this belt head in, so we did a
8 lot of walking. This is the beltline right here,
9 right before the section started up.

10 Q. Okay. So before the section started up. That
11 would have been about a good three months before ---

12 A. Right.

13 Q. --- the explosion; right?

14 A. Right. Something around three months.

15 MR. FARLEY:

16 Who's next?

17 EXAMINATION

18 BY ATTORNEY MCATEER:

19 Q. Mike, thanks for coming in. You work today?

20 A. Yes. I just got transferred today, actually.

21 Q. Oh, is that right?

22 A. Yeah. I went from Ellis Eagle to Slip No. 1.

23 Q. You said that --- you testified earlier that there
24 were some doors and you were starting to identify them
25 and then went on that if you opened them and closed

1 them they would pull the --- one set would pull the
2 other door closed or open. Can you identify those?

3 A. The rope doors.

4 Q. Okay. The rope doors, right.

5 A. Right. They had ropes on them. We put ropes on
6 the set closer to the longwall side because they would
7 just pop open. And it would pull both of the doors
8 close to the longwall open, but it only pulled the one
9 on the right-hand side as you're walking towards it,
10 because we always --- because we --- when that was
11 happening, we were actually traveling there at the
12 same track. We had to walk past the mule train to get
13 to the section. Right at the end, I think it was like
14 18 breaks we had to walk to the section. But like I
15 say, when we'd come through those doors, we'd have to
16 put a rope on them because they'd try to open back
17 because they didn't have the track laid, of course,
18 over here yet.

19 Q. So you roped them in order to keep them closed?

20 A. Right.

21 Q. All right. Okay. And how often did that happen?
22 Can you remember?

23 A. It was every time we went through, they would open
24 back.

25 Q. Yeah.

1 A. So it might have been leaning the wrong way or the
2 air blowing the wrong way, but it would --- like I
3 say, it would open every time.

4 Q. Now, you talked about a regulator --- or door
5 being converted into a regulator. Where was that?

6 A. That was up here in this area.

7 Q. Right.

8 A. I have no idea what they are because I've never
9 seen them before. They just looked stupid to me. And
10 like I say, we went through two sets of doors, and
11 then the next set of doors there was the doors over
12 the track and then there was about four foot high
13 block. And then the rest of it, from rib to door, was
14 completely open. Like, it was big enough for me to
15 walk through if I wanted just to step over the block.

16 Q. So it wasn't a regulator. It was just open?

17 A. Yeah, it was just open.

18 Q. Okay.

19 A. Like that's what made me think it was like a
20 regulator.

21 Q. I mean, it was not like a piece of equipment
22 regulator?

23 A. No.

24 Q. It was just an opening in the ---?

25 A. Right. Like the opening I think was at least

1 seven foot by maybe three or four foot tall, but it
2 was --- like I say, it was big enough for me to walk
3 through just to step over the block. It was big.

4 Q. Okay.

5 A. And I'd never seen nothing like that before.

6 Q. You said that the day of the --- the time you were
7 sent home and when Mr. Blanchard and Whitehead were
8 trying to address the question of the reversal, ---

9 A. Right.

10 Q. --- that an individual came with them. Do you
11 remember who that was?

12 A. Jamie Ferguson came with them the last day to get
13 it fixed. They ended up walking up the crib side
14 of --- it was a third entry over. It was the side
15 that was cribbed from the longwall. They walked up
16 there and they found out where some stoppings were
17 being crushed out, I guess, from the longwall. They
18 put up Kennedy stoppings.

19 Q. And who is Mr. Ferguson?

20 A. He stepped into Blanchard's place right now. I
21 think he's, what, production manager or something like
22 that.

23 Q. Have he been at this mine before?

24 A. Yeah. Yeah, he knew the mine pretty well. He was
25 there for a while.

1 Q. When Blanchard and he were there, what was he
2 doing? Or Blanchard had been promoted? I don't ---
3 I'm not following you. Sorry.

4 A. After the explosion, Blanchard went to someplace
5 in Richmond. I'm not for sure what he's doing now.
6 But Ferguson stepped into his place, whatever Chris
7 Blanchard was doing.

8 Q. In Richmond, Virginia?

9 A. Yeah. Like I say, I'm not for sure what that is,
10 but that's just what I've heard, that Blanchard
11 stepped up, and now Ferguson is in his spot.

12 Q. Would that be the headquarters of Massey?

13 A. I would suppose.

14 Q. Okay. You said you received, at one point, a
15 reading of five percent in the face or you were there
16 when a reading was made of five percent.

17 A. Yeah. I took the reading.

18 Q. You took the reading?

19 A. Right. And I didn't believe it, so I went and got
20 my boss, and we used his Solaris, too.

21 Q. And who was the boss?

22 A. Ronny Wickline.

23 Q. And Bobbie Pauley was involved with this as well?

24 A. Yeah, because she questioned the five percent in
25 the face, if we were still allowed to be up there.

1 And that's when he told us that as long as it's not at
2 the power center, we're okay.

3 Q. You said that you thought it was okay because
4 Ronnie Wickline said that?

5 A. I didn't know no better. Right. I just listened
6 to the boss.

7 Q. Sure. You didn't have any other way.

8 A. Right.

9 Q. Now, the second instance when the reversal
10 occurred, can you tell me where that was?

11 A. The second time it occurred was on the section, I
12 believe, because the first time it was big. It was
13 the whole longwall reversing. But the second time I
14 believe it was just the Tailgate 22, because nobody
15 else reported anything.

16 Q. But were you there at the time?

17 A. At Tailgate 22?

18 Q. Uh-huh (yes).

19 A. Yes, sir.

20 Q. And how long did this reversal take place --- go
21 on?

22 A. About two hours, I believe it was.

23 Q. And did you hear of any --- when you said earlier
24 that something --- somebody had done something outby
25 to fix it, did you get any sense of what that was?

1 A. No idea. That's what makes me think it was
2 somebody playing with the ventilation outby, because
3 we had no idea. The boss couldn't even figure it out.
4 It just changed after about two hours.

5 Q. Did that concern you?

6 A. A little bit. But they're on us for production,
7 so we just went back to running coal because
8 everything was right.

9 Q. How did you know they were on you for production?

10 A. That's just --- they would always tell us, you
11 know, run good coal and stuff like that. Like I say,
12 the boss that I had at the time, Brian Collins, this
13 is actually his second time being back at Performance
14 because the first time he bossed us he shut down the
15 section for low air, and I believe he was one of the
16 bosses before Ronnie Wickline, where I mentioned that
17 there was a bunch of bosses. I believe he was one of
18 the bosses, and he got fired because Massey wants I
19 think 20,000 in the return or in the intake or
20 something, and we only had 15,000. And they said that
21 that was legal with inspectors but not legal with
22 Massey, and he shut us down trying to get the
23 ventilation. And they fired him over it, because he
24 said --- they said it was legal for him to run. They
25 fired him and he went to Harris, I believe it as.

1 Q. And then he came back?

2 A. Yes. He come back because Jamie Ferguson offered
3 him better money.

4 Q. Okay.

5 ATTORNEY MCATEER:

6 That's all I have right now.

7 MR. SHERER:

8 Do you want to take a short break or get
9 some water?

10 SHORT BREAK TAKEN

11 ATTORNEY BAXTER:

12 Let's go on the record, please.

13 RE-EXAMINATION

14 BY MR. SHERER:

15 Q. Okay. Mike, I've got a few follow-up questions,
16 if you don't mind. When you were on the headgate and
17 you said you got into the higher concentrations of
18 methane, you said you wouldn't run your bolter at over
19 one percent?

20 A. Right.

21 Q. Was the boss aware of this? Did you tell him?

22 A. Yeah, I told him that, because he tried to get me
23 to run it over, and I wouldn't.

24 Q. And he told you to go ahead and bolt at over one
25 percent?

1 A. Yeah.

2 Q. Have you been trained in what to do when you reach
3 one percent?

4 A. Yeah. Shut down and re-ventilate.

5 Q. Okay. What about one-and-a-half percent, what are
6 you supposed to do then?

7 A. Knock the power.

8 Q. Knock the power of the ---?

9 A. Just the equipment that's in there, I think.

10 Q. Equipment that's in there. Did you do that?

11 A. Yes.

12 Q. Okay. Did the boss tell you to knock it at
13 one-and-a-half percent?

14 A. No.

15 Q. You did that of your own volition?

16 A. Right.

17 Q. You say that the spotter was kept on the bolter.
18 Did you ever go up there and the spotter not be
19 charged?

20 A. Not often, because dayshift mostly took care of
21 that. They would switch them out at least, I'd say,
22 two to three times a week at least.

23 Q. Okay. So it was generally in good shape?

24 A. Yeah. For the most part anyway. Like I said,
25 there might have been once or twice, but it wasn't ---

1 most of the times it was taken care of.

2 Q. Okay. And in those cases what did you do?

3 A. That's another time I hollered at the boss to use
4 his Solaris, so ---.

5 Q. Your partner had a Solaris, you mentioned?

6 A. Adam, yeah. Well, no, not a Solaris. It was the
7 same thing I had. The boss had the Solaris. He was
8 the only one that had a Solaris.

9 Q. Okay. We were talking about dust, rock dust, and
10 do you remember how the dust was applied on the
11 section? Was it --- did you put it out by hand
12 or ---?

13 A. Yeah. Well, you run a Bruger duster every once in
14 a while, the bust duster. That was mostly done once a
15 week, like the last day of the week, because
16 everything had to be bolted up. Most of the time we
17 backed the equipment out of the face and just had
18 perfect opportunity for the scoop to get in there and
19 Bruger dust. But it was about once a week.

20 Q. Okay. And in between what would you do?

21 A. Hand dust if we could get the scoop in there to
22 clean it, but it wasn't often that it was hand dusted.

23 Q. So you just run with less than optimal dust?

24 A. Yes.

25 Q. How far back was the dusting? A couple breaks?

1 A. Well, we're lucky to hit 200 feet, so it wasn't
2 very far. Like I say, it might have been two breaks
3 at the most that I Bruger dusted. But like I said,
4 they tried to keep up with the hand dusting. We
5 didn't really have a scoop man, so we didn't really
6 have many people to dust.

7 Q. Okay. So you're light on the dusting?

8 A. Correct.

9 Q. No pun intended. What about the distribution of
10 the dust? You were working around the roof quite a
11 bit in the upper part of the ribs. Did they have a
12 good coat of dust on them or was the dust mainly on
13 the floor?

14 A. When we'd hand dust, we'd only hand dust the ribs.
15 We wouldn't hand dust the top. Most of the time the
16 top was hand dusted --- or Bruger dusted with a scoop
17 duster and a bucket duster. Like I say, that was done
18 basically once a week by us.

19 Q. Okay. What about float coal dust? Did you ever
20 notice float dust on top of the rock dust?

21 A. Maybe outby the track entry maybe, like riding in
22 from underground. Like I was telling him earlier,
23 they tried --- you could tell they tried to keep up,
24 but they didn't really keep up, you know.

25 Q. Okay.

1 A. But like I said, they --- you could tell they were
2 working on it.

3 Q. Did the float dust ever look terribly dark?

4 A. Not real dark. Like I said, they never come inby
5 the doors when they dusted --- or not that often,
6 anyways, because would come with the section a lot.

7 Q. And you're pointing to the doors at Break 78?

8 A. Eight-five (85).

9 Q. Eighty-five (85)?

10 A. Yes. The mainline was pretty well coated?

11 A. But they would stop the dusting there at the ---?

12 A. Well, they wouldn't --- like I said, they wouldn't
13 completely stop it. They just wouldn't dust this line
14 as often as they would the mainline.

15 Q. Okay. Do you know why they didn't take the dust
16 up into there?

17 A. My guess, it would just interfere with the
18 sections.

19 Q. Okay.

20 A. Because most times it was pretty late, about time
21 for the section to be leaving before they made it up
22 here.

23 ATTORNEY BAXTER:

24 And where are you indicating?

25 A. On the inby side of 85.

1 BY MR. SHERER:

2 Q. Okay. Did you always have curtains up when you
3 were cutting coal?

4 A. When we were cutting, mostly. There might have
5 been a few occasions where we didn't have curtain up,
6 but we most of the time tried to keep the curtain up
7 to keep what air we had up there, you know, because we
8 didn't have a lot of air up there.

9 Q. Okay.

10 A. We tried to keep what we had.

11 Q. You mentioned stoppings crushing out primarily
12 when you're talking about the headgate. You said they
13 had to go back and fix some stoppings when you had the
14 air reversal. Do you remember on the tailgate you
15 were on and whether there was any crushing of those
16 stoppings up through there?

17 A. Not when we were driving the tailgate, but ---
18 well, it wasn't when we was driving the headgate
19 either. It was while the longwall was running.

20 Q. Okay. So it's primarily next to the longwall?

21 A. Right. Like I said, it was in that --- I think it
22 was probably in that third entry they had something
23 about the stoppings crushing out there because they
24 --- let's see. When that fall --- when that roof fall
25 happened at 52 or 50 Break --- because it was 50 Break

1 here, but for some reason it was 52 over here. They
2 had --- we worked during vacation. I can't remember
3 which exactly vacation. But they had us coming in for
4 a vacation, the volunteers, and we had to hand carry
5 block from somewhere between 48 and 50. We had to
6 hand carry block I think a break or two to build a
7 stopping. It was like 17 foot high.

8 Q. That's a lot of block.

9 A. Yeah.

10 Q. You mentioned you had a short reversal of air on
11 the section about --- that lasted about two hours.

12 A. Yeah.

13 Q. What did the section do during that two hours?
14 Did you run coal?

15 A. No. Like I said, we sat around the feeder and the
16 boss on the phone. We was trying to figure out what
17 the problem was. Scott, the other --- the
18 electrician, he walked around, trying to figure out
19 what it was. He went down the intake. There was some
20 of us that went down the return. But like I said,
21 mostly it was just sat at the feeder and I guess you
22 could say shot the breeze.

23 Q. Okay. The belt on the 22 Tailgate, was that in
24 good shape? Was there any coal accumulations on or
25 around that?

1 A. Not really because this was basically new belt.

2 Q. Okay.

3 A. Because like I say, we just put these belt lines
4 in.

5 Q. Okay. Did you have a trickle duster on that belt?

6 A. Not that I know of. I remember seeing one. It's
7 right around 78 Break with --- I think it was five or
8 six-foot belts. But I never seen a trickle duster
9 just right in that area because it was a --- like I
10 say, it was 78 Break, and then there was a power
11 center sitting right through here. It was the next
12 break past the power center.

13 Q. Is that the only trickle dusters up in this
14 northern part of the mine you're aware of?

15 A. Yeah. But like I say, I hadn't been around a lot
16 of --- I know there's one at the Glory Hole somewhere,
17 but I seen that when I was a red hat. That was two
18 years ago. So I know that they were around, but I
19 wasn't for sure where.

20 Q. Okay. Could you take us through your bolting
21 cycle for one cut? How would you do that?

22 A. Well, back here where there wasn't no gas, most
23 times we would take the bolter in the cut and go ahead
24 and set the T-bar up. And most of the times while the
25 operator was setting the ATRS up, the off side guy was

1 taking a reading. And like I'd say, we'd already been
2 in the cut. And after he got the ATRS up and while
3 the off side was taking the reading, the operator
4 would usually go ahead and start molding. And
5 depending on what side the curtain was on, they --- we
6 didn't really advance curtain. We got actually caught
7 on that a couple times. Let's see. There was ---
8 yeah, we finished the cut, and a lot of times we'd ---
9 if it got real hot in there or the gas built up a
10 little bit, we'd hang a curtain. But if the gas
11 didn't build up, then we wouldn't really fool with the
12 curtain until we were done cutting --- or done
13 bolting, I mean.

14 Q. Do you recall what your ventilation plan said
15 where you were supposed to keep the curtain?

16 A. Ten feet behind us.

17 Q. Okay. And you normally didn't do that?

18 A. Normally didn't. But like I say, once we hit the
19 gas up here and started --- I think once we'd seen an
20 average of a .2 or .3, that's when the curtain stayed
21 right on top of it.

22 Q. Okay.

23 ATTORNEY BAXTER:

24 And what are the two areas you're
25 referring to? Can you describe them?

1 A. Like I say, basically around 35 to, I'd say, 65,
2 because we started hitting gas around 80.

3 BY MR. SHERER:

4 Q. So from 80 on down you would keep the curtain up?

5 A. Right. And on the tailgate side, we usually kept
6 the curtain up because after they put that fan in down
7 there, the --- we actually had air, because like I
8 said, we didn't really hang no curtain because we
9 didn't really have no air. But after they put the fan
10 in we had good air, so we kept curtain in there
11 because it really just kept us cooled down.

12 Q. Okay. Thank you. Do you recall the boss' name
13 that told you to keep bolting when you had one percent
14 methane?

15 A. Ronnie Wickline, W-I-C-K-L-I-N-E.

16 Q. Have you ever knocked a stopping out or are you
17 aware of anybody else knocking a stopping out to
18 affect the ventilation?

19 A. I remember on the intake side one time they backed
20 a scoop battery --- they were changing the batteries
21 in a scoop and they knocked the stopping by accident.

22 Q. Okay.

23 A. But they didn't shut the section down, but we
24 moved the scoop in there and rebuilt it while we were
25 running. And I think that was four breaks, five

1 breaks from the face.

2 Q. Did they put up some curtains while they was
3 rebuilding that stopping; do you know?

4 A. I don't remember. I just know that we made him
5 rebuild it because we were making fun of him for it.

6 Q. Okay. What about when inspectors came on the
7 property, either State or Federal, do you guys know
8 that when you're up on the sections?

9 A. They told us, yes.

10 Q. How did they do that?

11 A. Just call in. Ronnie thought that he would get in
12 trouble if they told him that somebody was on the
13 property, said he would ask what did you have for
14 Sunday dinner or something. And if he told him what
15 was for dinner, then that meant there was nobody
16 outside. And if he said that it wasn't nothing good,
17 then that meant there was inspectors outside.

18 Q. Okay. Did you do anything different when you
19 learned that there was inspectors on the property?

20 A. We'd just shut the section down for maybe 10 or 15
21 minutes and make sure everything was right.

22 ATTORNEY BAXTER:

23 And by Ronnie, who are you referring to
24 again?

25 A. Ronnie Wickline.

1 BY MR. SHERER:

2 Q. Do you know anybody at this mine that's ever filed
3 a safety-related complaint?

4 A. Not that I know of.

5 Q. You mentioned that you were bolting in high levels
6 of gas and it made you uncomfortable, and you
7 discussed or told your section boss. Do you think he
8 did pass that information on up the chain?

9 A. I doubt it, because the way you're saying it,
10 that's --- it's obviously not right. And actually,
11 until right now, I didn't know that that was wrong.
12 About that five percent at the power center, I didn't
13 know that.

14 Q. So you're unaware of anybody filing a safety
15 complaint. What about a 1-800 number to call for
16 safety complaints?

17 A. I've heard about it, but I've never taken the time
18 to report it.

19 Q. Do you know anybody that's ever done that?

20 A. If I had to guess, I would say Bobbie Pauley had,
21 the girl that complained about him, because she always
22 threatened him with it, but nothing ever happened.

23 Q. Okay.

24 A. So either she didn't call or nothing came about.

25 Q. Okay. What about the explosion itself, were you

1 working or coming on shift when the explosion
2 occurred?

3 A. I was on my way up the hill in my truck, and I got
4 out of the truck and went in and there was some fire
5 bosses that are usually --- that usually talk to me.
6 And they told me not to worry about getting dressed
7 today, that there's been a major roof and rib fall and
8 --- I went ahead and got dressed because most times
9 they make us clean it up or go in and check it out or
10 something. So I went ahead and got dressed and went
11 upstairs, and they told us that --- just to sit
12 around, that we wouldn't be going underground.

13 Q. So you went upstairs. Did you notice any alarms
14 going off or anything, like the CO monitoring system
15 or anything like that?

16 A. That was in the --- those were in the lighthouse.

17 Q. Okay.

18 A. And I don't --- I didn't really go in the
19 lighthouse until after I heard the phone call.

20 Q. Okay. Were you involved in the rescue and
21 recovery effort?

22 A. No, sir.

23 Q. Okay. Thank you.

24 RE-EXAMINATION

25 BY MR. FARLEY:

1 Q. Back on Mr. Wickline. At the time that he tried
2 to convince you to continue bolting when you had a
3 methane content in excess of one percent, ---?

4 A. He never tried to convince us because he already
5 knew that we had the right-of-way because ---.

6 Q. Did he ask you to do it? Did he come down and
7 say, will you continue ---?

8 A. He never told us --- he never actually come out
9 and asked us would you. He told us that we need to
10 keep up, but he's never come straight out and said
11 that we have to get in there and bolt.

12 Q. Did he suggest or imply that you should continue
13 bolting?

14 A. No. He told us that we had to keep up. But like
15 I say, we usually kept up with the miner because ---.

16 Q. Okay. And your partner --- your roof bolting
17 partner at the time was Adam ---?

18 A. Adam Fraley.

19 Q. Adam Fraley. Okay. Who was the continuous miner
20 operator at the time?

21 A. We called him Dude. It was Griffith --- I can't
22 remember his first name. His brother passed away in
23 the event. His brother was on dayshift.

24 Q. Okay.

25 A. His name is Griffith, I believe. I'm not for

1 sure.

2 Q. Okay.

3 A. It was him and sometimes we'd have Morris
4 Hulligan, I believe was his name.

5 Q. Hulligan?

6 A. Yes. I think that's his last name. I think
7 that's how you pronounce it.

8 Q. Okay.

9 ATTORNEY BAXTER:

10 Davitt, do you have any questions?

11 ATTORNEY MCATEER:

12 I'm sorry. Just a couple of questions.

13 RE-EXAMINATION

14 BY ATTORNEY MCATEER:

15 Q. Water disappearing, you said that was a drought
16 break on 15 to 120?

17 A. That's really just a guess.

18 Q. Okay.

19 A. I would say it's --- I would say it's more around
20 like 110. But like I say, it was really just a guess
21 about where it was. I just remember the event, the
22 event itself, because we were just, you know, sitting
23 there talking after we left.

24 Q. And the water, how large a pool was it?

25 A. It was a whole intersection. Like I say, it was,

1 I don't know, probably about 20 foot around, and it
2 was at least a foot deep. I just thought it was wild
3 that it completely disappeared.

4 Q. You described the air, that it would just die at
5 some points. You were thinking that that was impacted
6 by the doors?

7 A. Yeah, that's what we heard, is that that was ---
8 the doors up at 85 Break, they would --- like the
9 motormen coming through, like maybe they would leave
10 those sets open or something. But like I said, the
11 air would --- we'd be in there and --- of course, the
12 bolters are hot, and I think sometimes you could have
13 a breeze and you could feel it hitting you, and then
14 all of a sudden it would just leave, and there would
15 be nothing you could do to get it back.

16 Q. Just one last question. You had the --- you said
17 that you didn't hand dust the roof. Why not?

18 A. Just --- well, we really had no ---. Well, we
19 really had no air. If we --- it would just leave a
20 cloud of dust and choke us up.

21 ATTORNEY MCATEER:

22 That's all the questions I have.

23 MR. FARLEY:

24 I got just a couple more.

25 RE-EXAMINATION

1 BY MR. FARLEY:

2 Q. Have you ever seen a dust pump hung in an intake
3 when it should have been on a miner operator?

4 A. No. But when we run dust pumps, instead of
5 setting it with bars like we usually would, they would
6 tell us to go set in the intake, when we weren't
7 bolting.

8 OFF RECORD DISCUSSION

9 BY MR. FARLEY:

10 Q. Do you think the ventilation was adequate at all
11 times?

12 A. No. It was never really adequate, I don't
13 believe. There was a lot of times we had to shut the
14 miner down just to get enough air to ventilate the
15 bolter to cut --- or to bolt a cut.

16 Q. Were miners ever subjected to threats or
17 retaliation for reporting safety concerns?

18 A. No. We didn't --- we could tell them whatever we
19 wanted to. But whether they done something about it
20 was a different story.

21 Q. Sure.

22 ATTORNEY BAXTER:

23 On behalf of MSHA and the Office of
24 Miners' Health, Safety and Training, I want to thank
25 you for appearing and answering questions today. Your

1 cooperation is very important to the investigation as
2 we work to determine the cause of the accident. We
3 request that you not discuss your testimony with any
4 person, aside from your personal representative.

5 After questioning other witnesses, we may call you if
6 we have any follow-up questions that we feel that we
7 need to ask you. If at any time you have additional
8 information regarding the accident that you would like
9 to provide to us, please contact us at the contact
10 information that was previously provided to you.

11 Any statements given by miner witnesses

12 to MSHA are considered to be an exercise of statutory
13 rights and protected activity under Section 105(c) of
14 the Mine Act. If you believe any discharge,
15 discrimination or other adverse action is taken
16 against you as a result of your cooperation with this
17 investigation, you are encouraged to immediately
18 contact MSHA and file a complaint under Section 105(c)
19 of the Act. Remedies under the Mine Act include back
20 wages and immediate temporary reinstatement to your
21 most recent position with the company pending a
22 complete investigation of your complaint. In order to
23 file such a complaint, you should contact the MSHA
24 District 4 office. For more information concerning
25 your rights as a miner under the Mine Act, please

1 visit MSHA's website at www.msha.gov. If you wish,
2 you may now go back over any answer you've given
3 during this interview. You may also make any
4 statement that you'd like to make at this time.

5 A. I believe I've said everything I knew.

6 ATTORNEY BAXTER:

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

9

10 * * * * *

11 STATEMENT UNDER OATH CONCLUDED AT 7:50 P.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Cynthia Piro Simpson, 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.



Cynthia Piro Simpson