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Transcript of the Testimony of <sup>(b)(7)(C) & (b)(7)(D)</sup>

**Date:** <sup>(b)(7)(C) & (b)(7)(D)</sup>

**Case:**

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STATEMENT UNDER OATH

OF

(b)(7)(C) & (b)(7)(D)

taken pursuant to Notice by Alison Salyards, a  
Court Reporter and Notary Public in and for the  
State of West Virginia, at the National Mine  
Health & Safety Academy, 1301 Airport Road,  
Room C-137, Beaver, West Virginia, on Tuesday,  
(b)(7)(C) & (b)(7)(D)

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

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One	Mine Map	32*
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\* Exhibit not attached

P R O C E E D I N G S

1  
2 -----  
3 ATTORNEY BAXTER:

4 My name's Derek Baxter. Today is June  
5 22nd, 2010. I'm with the Office of the Solicitor,  
6 U.S. Department of Labor. With me is Erik Sherer, an  
7 accident investigator with the Mine Safety and Health  
8 Administration, MSHA, an agency of the United States  
9 Department of Labor. Also present are several people  
10 from the State of West Virginia. I ask that they  
11 state their appearance for the record.

12 MR. FARLEY:

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

15 MR. O'BRIEN:

16 John O'Brien with the West Virginia  
17 Office of Miners' Health, Safety and Training.

18 ATTORNEY MCATEER:

19 Davitt McAteer with the Governor's  
20 investigative team.

21 ATTORNEY BAXTER:

22 There are several members of the  
23 investigation team also present in the room today.  
24 Mr. Sherer, Mr. Farley and Mr. McAteer will be  
25 conducting the questioning today.



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

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

1 Miners' Health, Safety and Training. We appreciate  
2 your assistance in this investigation.

3 You may have your personal attorney  
4 present during the taking of this statement, or  
5 another personal representative if MSHA has permitted  
6 it, and may consult with your attorney or the  
7 representative at any time. Your statement is  
8 completely voluntary. You may refuse to answer any  
9 question and you may terminate your interview at any  
10 time or request a break at any time.

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

16 Your identity and the content of this  
17 conversation will be made public at the conclusion of  
18 the interview process and may be included in the  
19 public report of the accident unless you request that  
20 your identity remain confidential or your information  
21 would otherwise jeopardize a potential criminal  
22 investigation. If you request us to keep your  
23 identity confidential, we will do so to the extent  
24 permitted by law. That means that if a judge orders  
25 us to reveal your name or if another law requires us

1 to reveal your name or if we need to reveal your name  
2 for other law enforcement purposes, we may do so.

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

9 Do you understand?

10 (b)(7)(C) & (b)(7)(D) [REDACTED]:

11 Yes.

12 ATTORNEY BAXTER:

13 Do you have any questions?

14 (b)(7)(C) & (b)(7)(D)

15 No.

16 ATTORNEY BAXTER:

17 After the investigation is complete, MSHA  
18 will issue a public report detailing the nature and  
19 causes of the fatalities in the hope that greater  
20 awareness about the causes of accidents can reduce  
21 their occurrence in the future. Information obtained  
22 through witness interviews is frequently included in  
23 these reports. Since we will be interviewing other  
24 individuals, we request that you not discuss your  
25 testimony with any person aside from your personal

1 representative or counsel.

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

8 I would like to thank you in advance for  
9 your appearance here. We appreciate your assistance  
10 in this investigation. Your cooperation is critical  
11 in making the nation's 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 important. If at any time after the interview  
16 you recall any additional information that you believe  
17 might be useful, please contact or have your  
18 representative contact Norman Page at the telephone  
19 number or e-mail address provided to you.

20 Additionally, any statements given by miner witnesses  
21 to MSHA are considered to be an exercise of statutory  
22 rights and protected activity under Section 105(c) of  
23 the Mine Act.

24 OFF RECORD DISCUSSION

25 ATTORNEY BAXTER:

1 I think Terry has a statement that he'd  
2 like to make, too.

3 (b)(7)(C) & (b)(7)(D)

4 , I'm going to advise you,  
5 too, that on behalf of the Office of Miners' Health,  
6 Safety and Training, the West Virginia Mine and Health  
7 and Safety regulations also protect you against any  
8 potential discrimination which you might suffer as a  
9 result of participating in this interview. I'm going  
10 to pass along a memo and my business card with some  
11 contact information should you experience any such  
12 discrimination, and would advise you that should that  
13 happen, you need to file a complaint within 30 days.

14 (b)(7)(C) & (b)(7)(D)

15 Okay.

16 MR. FARLEY:

17 All right. Thank you.

18 -----  
19 (b)(7)(C) & (b)(7)(D) HAVING FIRST BEEN DULY SWORN,

20 TESTIFIED AS FOLLOWS:  
21 -----

22 ATTORNEY BAXTER:

23 Please state your full name and spell  
24 your last name.

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

1 ATTORNEY BAXTER:

2 And what is your address and telephone  
3 number?

4 A. (b)(7)(C) & (b)(7)(D) Telephone is  
5 (b)(7)(C) & (b)(7)(D)

6 ATTORNEY BAXTER:

7 Do you have a personal legal  
8 representative here with you today?

9 A. Yes.

10 ATTORNEY BAXTER:

11 Will your personal legal representative  
12 please identify herself?

13 MS. FERNALD:

14 Cindy Fernald.

15 ATTORNEY BAXTER:

16 And can you provide your address, as  
17 well?

18 MS. FERNALD:

19 105 Broncroft Place, B-R-O-N-C-R-O-F-T,  
20 Place in Daniels.

21 ATTO (b)(7)(C) & (b)(7)(D)

22 And did you voluntarily  
23 choose to have this individual as your personal legal  
24 representative?

25 A. Yes.

1 ATTORNEY BAXTER:

2 Did you feel like you had a choice in the  
3 matter?

4 A. Yes.

5 ATTORNEY BAXTER:

6 Do you consent now to having this  
7 individual as your personal representative?

8 A. Yes.

9 ATTORNEY BAXTER:

10 Do you understand that Massey Energy, its  
11 affiliates or its officers or directors or attorneys  
12 may not represent or direct you in this matter?

13 A. Yes.

14 ATTORNEY BAXTER:

15 And Ms. Fernald, are you legally  
16 representing the witness in this matter?

17 MS. FERNALD:

18 Yes.

19 ATTORNEY BAXTER:

20 Do you understand that you may not  
21 communicate with Massey Energy, its affiliates or its  
22 officers or directors or attorneys concerning the  
23 substance of this representation?

24 MS. FERNALD:

25 Yes.

1 ATTORNEY BAXTER:

2 Are you being paid by a third party to  
3 provide such representation?

4 MS. FERNALD:

5 No.

6 ATTO  
(b)(7)(C) & (b)(7)(D)

7 And having heard these

8 representations, do you still want Ms. Fernald as your  
9 personal legal representative today?

10 A. Yes.

11 ATTORNEY BAXTER:

12 Okay.

13 EXAMINATION

14 BY MR. SHERER:

15 Q. Okay. First of all, I want to thank you again for  
16 coming down here. This is extremely important to help  
17 us understand what went on leading up to the accident.  
18 We got several maps here. We got even more on the  
19 table, so if you need to look at a map to find  
20 someplace in the mine or clarify some details, we can  
21 certainly work with you there. We may ask you to take  
22 a marker and highlight areas on the map.

23 A. Uh-huh (yes).

24 Q. And if we do so, that map will become an exhibit  
25 and we'll attach it to your testimony. Are you



1 appearing here today voluntarily?

2 A. Yes.

3 Q. Roughly, how many years of mining experience do  
4 you have?

5 A. (b)(7)(C) & (b)(7)(D)

6 (b)(7)(C) & (b)(7)(D) 35). Can you give me just a real  
7 rough outline of what you've done, where you've done  
8 it?

9 A. For (b)(7)(C) & (b)(7)(D).

10 Q. Okay.

11 A. And then the (b)(7)(C) & (b)(7)(D)  
12 (b)(7)(C) & (b)(7)(D).

13 Q. Okay. Was that for --- obviously it wasn't for  
14 Upper Big Branch the entire time, but what mines did  
15 you work at?

16 A. I worked at --- started out in (b)(7)(C) & (b)(7)(D)

17 (b)(7)(C) & (b)(7)(D)

18 (b)(7)(C) & (b)(7)(D)

(b)(7)(C) & (b)(7)(D) and then Upper Big Branch. I think  
20 that's all.

21 Q. Okay. And how long have you done --- or how long  
22 were you with Upper Big Branch?

23 A. I believe they opened in '90 --- (b)(7)(C) & (b)(7)(D)  
(b)(7)(C) & (b)(7)(D)

25 Q. Okay. So you been here pretty much the entire

1 time this mine has been operating?

2 A. Yeah.

3 Q. Do you have any State or Federal mining  
4 certificates?

5 A. Yeah. Yes.

6 Q. What are those?

7 A. I've got mine foreman, and also I've got shop  
8 firers. That's all.

9 Q. Okay. What was your job at Upper Big Branch?

10 (b)(7)(C) & (b)(7)(D)

11 Q. Okay. Can you give me a rough idea of what that  
12 entailed?

13 (b)(7)(C) & (b)(7)(D)  
(b)(7)(C) & (b)(7)(D)

(b)(7)(C) & (b)(7)(D) did it.

16 Q. Okay. And you did this pretty much throughout the  
17 entire mine?

18 A. Yeah.

19 Q. So you're fairly familiar with the entire mine?

20 A. Uh-huh (yes), yes.

21 Q. Good. Was this job classified as hourly or  
22 supervisory?

23 A. I was hourly. I just got paid extra to be a  
24 foreman.

25 Q. Okay. And you said you supervised about seven

1 workers?

2 A. Uh-huh (yes). Seven to ten, whatever extras they  
3 had, you know.

4 Q. Okay. And you (b)(7)(C) & (b)(7)(D)

5 A. Right.

6 Q. Did you do these same tasks as the people you  
7 supervised?

8 A. Did I work along with them?

9 Q. Yes, exactly.

10 A. Yes.

11 Q. Okay. Did you set their hours, hire, fire,  
12 discipline? Did you do anything like that?

13 A. I could have --- I could have them fired if I  
14 wanted to.

15 Q. Okay. But you couldn't do that on the spot, say?

16 A. Yeah, I could fire them on the spot. Yeah.

17 Q. Okay. Could you hire them?

18 A. No.

19 Q. Okay. Did you order materials and make plans for  
20 the jobs that you did?

21 A. Yes.

22 Q. Okay. Did you determine the sequence of tasks,  
23 the duration and the standards for completion of those  
24 tasks?

25 A. They would tell me what needed done. Just for

(b)(7)(C) & (b)(7)(D)

1 instance, at last new Mother Drive.

2 They would just tell me to do that, and then I would  
3 go from there and do it.

4 Q. And you're probably an expert on Mother Drives, I  
5 imagine.

6 A. Yeah.

7 Q. Okay. Were you responsible for the safety of your  
8 crew?

9 A. Yes.

10 Q. Could you independently correct any safety hazard?

11 A. Yes.

12 Q. Could you pull your crew form an unsafe work  
13 environment?

14 A. Yes.

15 Q. Did you attend any meetings with other foremen or  
16 managers?

17 A. Some, but not all the time, no.

18 Q. Okay. Did you participate in planning, like,  
19 where to put these drives and overcasts and such?

20 A. Sometimes I had to, but usually the engineering  
21 would just draw up the maps and show where they was  
22 going to be. Then I would just go from there.

23 Q. Okay. Who was your supervisor?

24 A. Everett Hager.

25 Q. And who is he, please?

1 A. He was the superintendent.

2 Q. Superintendent in the mine. Now, I understand  
3 there was some division of this mine. Was he super,  
4 superintendent over the entire mine or just a portion  
5 of the mine?

6 A. He was over the Ellis side, Ellis Portal side.

7 Q. And that's the northernmost part of the mine?

8 A. Right.

9 Q. That's also the portion of the mine where the  
10 explosion occurred?

11 A. Yes.

12 Q. Okay. What type of things did you have to clear  
13 through him? Did you have any limitations as far as  
14 money or hours or people?

15 A. Well, not really nothing, not much of nothing.  
16 You know, if I'd run into a problem or we needed extra  
17 stuff or just say it wasn't high enough, ---

18 Q. Sure.

19 A. --- you know, you'd have to get more height and  
20 I'd have to clear that through him.

21 Q. Okay. Do you consider yourself a Massey manager?

22 A. Yeah. Yeah, I do.

23 Q. Okay. Is there any clear definition in the Massey  
24 organization of who is a manager and who was a worker?

25 Are you ware of anything like that?

1 A. No, not really.

2 Q. Okay. Thank you.

3 ATTORNEY BAXTER:

4 There's one other initial matter I wanted

5 to take care of, that you requested. Before the

6 interview started you requested confidentiality?

7 A. Right.

8 ATTORNEY BAXTER:

9 Okay. And could you explain why you'd

10 like to make

11 A. Well, I'm (b)(7)(C) & (b)(7)(D), you know, right

12 now. And then if they could beat me out of it, you

13 know, they could fight me from here on, on my

14 retirement. That's the main reason.

15 ATTORNEY BAXTER:

16 Okay. And so you're still --- you're

17 presently employed by Massey?

18 A. Yes.

19 ATTORNEY BAXTER:

20 Okay. Do I understand you right, that

21 you have some concerns you've expressed about possible

22 retaliation for participating in this interview?

23 A. No, just other than that, (b)(7)(C) & (b)(7)(D)

24 everything. They could, you know, slow that down real

25 slow for me.

1 ATTORNEY BAXTER:

2 That's your concern, that (b)(7)(C) & (b)(7)(D)

3 could be affected ---

4 A. Right.

5 ATTORNEY BAXTER:

6 --- if your cooperation with us is made

7 public?

8 A. Right.

9 ATTORNEY BAXTER:

10 Okay. And I just wanted to say again,

11 which I mentioned earlier, if you request us to keep

12 your identity confidential, we will do so to the

13 extent permitted by law. That means that if a judge

14 orders us to reveal your name or if another law

15 requires us to reveal your name or if we need to

16 reveal your name for other law enforcement purposes,

17 we may do so. And with that understanding, do you

18 want to request confidentiality?

19 A. Yes.

20 EXAMINATION

21 BY ATTORNEY MCATEER:

22 Q. Okay. Do you remember the last shift you worked

23 prior to April the 5th? Was it a Friday or Saturday?

24 A. It was a Thursday.

25 Q. A Thursday.

1 A. Yeah.

2 Q. Okay. And which shift did you normally work?

3 A. Dayshift.

4 Q. Dayshift. Okay. So you're off Friday, Saturday,  
5 Sunday, and you came back in on the Monday dayshift?

6 A. Right, right.

7 Q. Could you tell me where your crew worked on Monday  
8 the 5th?

9 A. Monday the 5th we --- they wanted us to come back  
10 down to the (b)(7)(C) & (b)(7)(D)  
11 head.

12 Q. Uh-

13 A. So (b)(7)(C) & (b)(7)(D), the new  
14 Mother Drive at the mouth of Headgate 22, and gathered  
15 up tools to (b)(7)(C) & (b)(7)(D)

16 Q. Okay.

17 A. But (b)(7)(C) & (b)(7)(D) yet.

18 Q. Sure.

19 A. So (b)(7)(C) & (b)(7)(D)

(b)(7)(C) & (b)(7)(D)

24 Q. Uh-huh (yes). Okay. And then that probably took  
25 up most of your day. Where were you at when the



1 explosion occurred? Do you remember?

2 A. Standing right at the Ellis punch-out, the drift  
3 mouth, right beside the drift mouth.

4 Q. Oh, jeez. Can you tell us what you saw and felt  
5 and experienced when that happened?

6 A. Well, I was not directly in front of the drift  
7 mouth. I was, like, ten foot over. And it just --- I  
8 could see it coming out. It was blowing crib blocks  
9 out and just like a real strong wind, like a hurricane  
10 wind.

11 Q. Uh-huh (yes).

12 A. And it was a couple people. It blew them out.  
13 They were rolling.

14 Q. Do you remember looking at your watch or the time?  
15 Do you know, roughly, when that happened?

16 A. Well, it was 3:04, because (b)(7)(C) & (b)(7)(D)  
17 (b)(7)(C) & (b)(7)(D) told me exactly what time it was.

18 Q. Okay. 3:04 p.m. I've got a lot of questions that  
19 we've put together, but you're obviously a very  
20 experienced individual. You know the mine. You know  
21 the people. You know the systems. You know how  
22 things work there. Could you just take us back from  
23 that explosion, from when you first saw stuff coming  
24 out of the portal, and then take us back to what you  
25 think contributed to that explosion. You're probably

1 in one of the best positions to help us out of anybody  
2 that we've interviewed so far.

3 A. What do you mean? What do I think caused the  
4 explosion?

5 Q. Sure.

6 A. Well, this is just what I think, ---

7 Q. Sure.

8 A. --- you know? It's no facts.

9 Q. Sure.

10 A. I think they hit a bleeder on the longwall.

11 Q. Okay.

12 A. And the longwall just set it off. Now, that's  
13 just my personal opinion.

14 Q. Sure. You say a bleeder, I assume you're  
15 referring to, like, a crack or a fissure where there  
16 was a sudden release ---

17 A. Right.

18 Q. --- of methane?

19 A. Right.

20 Q. Are you aware of any other place in the mine that  
21 something like this happened?

22 A. It's happened on the longwall before.

23 Q. Okay.

24 A. And we've had it happen two or three times on the  
25 longwall.

1 Q. Okay.

2 A. But luckily, you know, we caught it and cleared it  
3 out.

4 Q. Sure.

5 EXAMINATION

6 BY MR. FARLEY:

7 Q. Are you aware of any indication that something  
8 like that may have happened on April the 5th? Were  
9 there any smaller events leading up to that that  
10 you're aware of?

11 A. Well, they were having some methane problems on  
12 Headgate 22.

13 Q. Okay.

14 A. But you know, I don't know how bad or nothing. I  
15 wasn't up there. I just heard the guys talking. You  
16 know, they didn't have enough air up there.

17 Q. Okay. That's something that has come up in a lot  
18 of other situations is lack of air or ventilation  
19 issues, ventilation problems. Are you aware of any,  
20 any major ventilation issues that happened in this  
21 mine, say in the few days before the explosion?

22 A. Do you mean ventilation changes?

23 Q. Changes or problems, low air, reversed air?

24 A. The air reversed on the longwall face just real  
25 regular.

1 Q. Okay.

2 A. Like, you know, I wouldn't say daily, but close to  
3 it.

4 Q. Do you have any idea why that would happen?

5 A. Well, I have my opinion.

6 Q. Okay.

7 A. All this area back in here, this was full of  
8 water.

9 Q. Okay. And you're referring to the headgate ---

10 A. The longwall headgate.

11 Q. --- inby the current longwall panel?

12 A. Right.

13 Q. Roughly --- you're pointing to ---?

14 A. Well, all of back in here.

15 Q. Roughly, Break 80 on to the ---

16 A. Yeah.

17 Q. --- Bandytown fan obviously?

18 A. Uh-huh (yes). Yeah, there was dips and swags in  
19 there. This was all supposed to been graded to run  
20 down to that big turbine, or pump.

21 Q. Uh-huh (yes).

22 A. And it wasn't graded. They pulled them out of it  
23 before they could get it all graded where it had a  
24 slope back to the turbine pump.

25 Q. Okay.

1 A. And it had dips and swags, and they would fill up  
2 with water and roof out, and then your air would  
3 reverse.

4 Q. Okay.

5 A. It would pull this way. The way it was supposed  
6 to --- it wouldn't pull down this way. It would start  
7 pulling this way and going in that way, then, you  
8 know, just do all kinds of crazy things.

9 Q. Okay. Did the company do anything about these  
10 accumulations of water in the headgate?

11 A. Well, they tried to pump it, but they got --- it  
12 got so bad back in there, the top and everything, they  
13 couldn't go back in there and work no more.

14 Q. Okay. And what did the company do to address  
15 these air reversals? Do you know if they did  
16 anything?

17 A. They would work on them, but I --- actually I  
18 wasn't there and seen what they did.

19 Q. Okay.

20 A. I really don't know.

21 Q. Okay. Are you aware of any ventilation plans that  
22 changed because of this or did they just try to fix it  
23 in the mine?

24 A. They were just trying to fix it.

25 Q. Okay. Do you know who may have been involved in

1 this?

2 A. Well, practically everybody, you know? Everett  
3 Hagar and Blanchard, Chris Blanchard.

4 Q. Okay. And who was he?

5 A. He's the president.

6 Q. So the president of the mine went in to work on  
7 the ventilation system?

8 A. Uh-huh (yes).

9 Q. Is that normal in the mines around here?

10 A. No, not really. And Jason Whitehead could go back  
11 in there, too, and work on it.

12 Q. And who's Mr. Whitehead?

13 A. He's right under --- I can't think of his name ---  
14 Chris Adkins with Massey Coal Services.

15 Q. Okay. And Massey Coal Services is ---?

16 A. It's like the governing part of Massey. They run  
17 all --- they run all of the mines, Massey Coal  
18 Services does.

19 Q. Okay. Did they provide any sort of consulting or  
20 engineering services?

21 A. Massey Coal?

22 Q. Uh-huh (yes).

23 A. No, I don't think so.

24 Q. Okay. So you had air problems. It seems like  
25 everybody did something to fix them. Do you feel like

1 this effort was coordinated or ---?

2 A. No.

3 Q. It wasn't?

4 A. No. It was just --- nobody knew what was going on  
5 back there. Like, Chris --- or Chris Blanchard and  
6 Jason Whitehead would go back in there and work all  
7 day and, you know, who'd know what they did?

8 Q. Were there miners in the mine when they were doing  
9 this stuff?

10 A. Yes, uh-huh (yes).

11 Q. How do you feel about that?

12 A. It's not right. I don't know whether you've  
13 interviewed Mr. Blanchard or not, but once you  
14 interview him, you'll see what kind of person he is.

15 Q. Do you think there was a better way to do this?  
16 Well, if this mine was yours, how would you handle  
17 these ventilation issues?

18 A. Well, it don't matter now how I would do it, but  
19 the number one problem they had was when they sealed  
20 this Gerald Branch Fan off back here, right here and  
21 all this pump, because we never had any problems at  
22 all with ventilation.

23 Q. Uh-huh (yes).

24 A. And they sealed all this off, thinking the  
25 longwall wasn't coming back, so they sealed it off.

1 Q. Okay.

2 A. And then the longwall, they all of a sudden said  
3 it was coming back, so they had to drive all new  
4 entries, set a new fan, pump, everything. And it was  
5 all a big rush job.

6 Q. Okay.

7 A. And like I say, back through there, all these dips  
8 and everything, it wasn't graded out to where the  
9 water would run back to that turbine pump.

10 Q. Have you ever seen a longwall layout where they're  
11 virtually mining their main return? And if you look  
12 at the Bandytown fan ---.

13 A. Exactly, right. Here's what --- that's what I'm  
14 talking about, you know, where if they'd have cut over  
15 into this and not had all this sealed off, we wouldn't  
16 have had all this problems. See what I'm saying?

17 Q. Sure.

18 A. And then you would have bleeders going all the way  
19 around your longwall panels like we used to have.

20 Q. Uh-huh (yes).

21 ATTORNEY BAXTER:

22 And when you say, cut into this, you're  
23 pointing to the map.

24 A. Well, they couldn't now, because it was all a  
25 sealed area. But before they sealed all that ---.



1 MR. SHERER:

2 We'll let, let the witness mark the map  
3 up.

4 ATTORNEY BAXTER:

5 And we'll mark the map as (b)(7)(C) & (b)(7)(D)

6 Exhibit One.

7 (b)(7)(C) & (b)(7)(D) Exhibit One marked for  
8 identification.)

9 MR. SHERER:

10 What color do you prefer?

11 A. It don't matter to me. How about you? What color  
12 you like, Cindy?

13 ATTORNEY FERNALD:

14 Green is lovely.

15 A. Green? Well, they couldn't have done it. They  
16 sealed it all off and then you couldn't cut into it.

17 BY MR. FARLEY:

18 Q. Okay. Would you just draw, like, a circle around  
19 this area that ---

20 A. Circle?

21 Q. --- you're talking about?

22 WITNESS COMPLIES

23 BY MR. FARLEY:

24 Q. And what did you refer to that area as?

25 A. That is the Gerald Branch Fan and the turbine pump

1 over there.

2 Q. Okay. Would you mind writing that next to that  
3 circle, please?

4 A. It's right --- wrote right there.

5 Q. Oh, okay. Well, just ---.

6 A. Highlight it?

7 Q. Just highlight that. Yeah, exactly.

8 WITNESS COMPLIES

9 BY MR. FARLEY:

10 Q. Thank you. Okay. So we had a major problem with  
11 ventilation on the longwall. You also mentioned that  
12 there were ventilation problems on the Headgate 22  
13 section.

14 ATTORNEY MCATEER:

15 Terry, I'm sorry. Could you identify  
16 when the Gerald Branch area was cut off and sealed?

17 A. Oh, I don't --- it's been --- I don't know the  
18 years. It should be marked on the map somewhere,  
19 where they sealed the area.

20 MR. FARLEY:

21 We probably have the information on the  
22 seals, Davitt. We can get that.

23 A. Yeah, it's when they built all the seals around  
24 Headgate 11 and all that. That's when it was sealed  
25 off.

1 BY MR. FARLEY:

2 Q. They actually sealed off the biggest portion of  
3 the mine, it looks like.

4 A. Yes. They were trying to make two small mines, is  
5 what they were trying to do.

6 Q. Okay.

7 A. And also --- your map don't even go that far. Up  
8 here at the Ellis punch-out ---

9 Q. Uh-huh (yes).

10 A. --- there was supposed to been another fan set  
11 there.

12 Q. Okay.

13 A. And they scrapped that idea.

14 Q. Do you recall when that decision was made?

15 A. No. What the biggest problem was was you had the  
16 Bandytown fan pulling, exhaust fan, and yet over here  
17 you had the UBB fan blowing.

18 Q. Uh-huh (Yes).

19 A. Okay. That was pulling everything that UBB was  
20 putting out. See what I'm saying?

21 Q. Sure.

22 A. And it was coming straight right --- straight  
23 through here. A straight shot. And then you had  
24 Headgate 22 way up here and you had to try to make the  
25 air go over into there, and it was just about

1 impossible.

2 Q. So you're basically saying they had a lot of air?

3 A. Oh, yeah.

4 Q. But it wasn't directed ---?

5 A. They had plenty of air.

6 Q. It wasn't directed effectively to where it needed  
7 to be in the mine?

8 A. Right. Bandytown pulled 600,000. This one over  
9 here puts out 400,000. Plenty of air.

10 Q. Are you aware --- do you know what type of fan the  
11 Bandytown fan is?

12 A. It's an exhaust fan.

13 Q. Is an axial fan or a centripetal fan, do you know?

14 A. Oh, I don't know that.

15 Q. Okay. Okay. So Headgate 22, to had methane  
16 problems. What about the rock dust in this area?

17 A. I could always talk about the rock dust that I've  
18 seen on the mainline down in here, and it looked good.

19 Q. Okay.

20 A. Up on 22, I wasn't up there a lot, maybe once a  
21 week sometimes.

22 Q. Okay.

23 A. And it didn't look bad.

24 Q. Okay.

25 A. But it was wet on Headgate 22.

1 Q. Okay. How about float dust? Did you ever notice  
2 float dust on structures or equipment?

3 A. They had some float dust on the beltlines.

4 Q. How often did they rock dust the beltlines? Do  
5 you recall?

6 A. Well, they was supposed to had a crew that done it  
7 weekly, you know, just a different area every day.

8 Q. Uh-huh (yes).

9 A. And then they got rid of them and they had just  
10 put another crew back on starting the new belt.

11 Q. Okay. So they fell behind while they didn't have  
12 the crew to do it ---

13 A. Right.

14 Q. --- to make that happen? Do you recall anyplace  
15 in particular that needed dusting?

16 A. All around this Glory Hole area it needed dusted.

17 Q. Okay. Are you familiar with this Glory Hole?  
18 What is that?

19 A. Oh, yeah. (b)(7)(C) & (b)(7)(D)

20 Q. Okay. You're the expert on it?

21 A. It's a nightmare.

22 Q. A nightmare, what do you mean by that?

23 A. Well, from the time it started until it was  
24 finished, it was just a nightmare. It was basically  
25 an underground silo.

1 Q. Okay.

2 A. How to explain it, but they fed coal from Logan's  
3 Fork Mines up above us into the Glory Hole, and we had  
4 feeders on the bottom. And our feeders fed on our  
5 six-foot belts.

6 Q. Okay. So it conveyed mine --- coal from an upper  
7 mine and served as a storage place for that coal?

8 A. Right.

9 Q. Were there any methane issues associated with that  
10 Glory Hole?

11 A. We always had methane around it, nothing major.  
12 You know, maybe one percent here and there.

13 Q. Okay.

14 A. All I ever found.

15 Q. Okay. Do you know what the status of that Glory  
16 Hole was on April the 5th? Was it still in use?

17 A. No.

18 Q. Okay.

19 A. No.

20 Q. And had it just been abandoned or was it filled  
21 back in or ---?

22 A. Well, it had so much coal left in it, and then it  
23 was supposed to be sealed from over top of Logan's  
24 Fork.

25 Q. So it actually had coal in it?

1 A. Yeah.

2 Q. A lot of coal?

3 A. Well, it's a 20-foot diameter hole, and I believe  
4 they said that it had six foot of coal in it.

5 Q. Okay. And do you know when that sealing occurred?  
6 Do you recall?

7 A. Sealing at Logan's Fork? No.

8 Q. Yeah, of the Glory Hole.

9 A. No, I don't.

10 Q. Would it have been six months ago, a year ago?

11 A. Probably be a year ---

12 Q. Okay.

13 A. --- or more.

14 Q. So it'd been there for quite a while?

15 A. Yeah.

16 Q. Okay. Are you aware of any problems in this area  
17 immediately before the explosion or within a few  
18 weeks?

19 A. No.

20 Q. Okay. Are you aware of any, any other problems  
21 that might have contributed to the explosion?

22 A. No.

23 Q. Okay.

24 A. I just know they never had enough air on 22 and in  
25 this section here. This was 21 Tailgate. I don't

1 think they had enough air, either.

2 Q. Have you ever heard of the air reversing on these  
3 miner sections, like too much air coming down the belt  
4 or ---?

5 A. Yeah. Oh, yeah, yeah. That was pretty regular.

6 Q. By pretty regular, was it every few days or every  
7 few weeks?

8 A. I'd say more like every day.

9 Q. Every day?

10 A. Uh-huh (yes).

11 Q. Do you think that was because somebody was  
12 changing the ventilation?

13 A. Yeah.

14 Q. Do you think that the people working on the  
15 section, did they give them any notice of those  
16 changes? Did they say ---?

17 A. No, no, no, they didn't give them no notice.

18 Q. So they're cutting coal and all of a sudden they  
19 don't have any air?

20 A. Right.

21 Q. What about methane? You say that you think that  
22 there was a sudden influx of methane on the longwall.  
23 What about under just normal operating conditions?

24 Did the longwall have problems with methane?

25 A. I never heard of any on the longwall portion. I



1 didn't talk to the longwall guys a whole lot. They  
2 always had trouble with methane on 22.

3 Q. Oh, okay. When you say trouble, what sort of  
4 levels would you be talking?

5 A. Well, like one and a half, two percent.

6 Q. Okay. Would they continue to operate with one and  
7 a half percent?

8 A. Well, the machine will cut off at one and a half,  
9 so ---.

10 Q. Okay. Are you aware of anybody every tampering or  
11 bridging out a methane detector?

12 A. No.

13 Q. Okay. What about one percent? Did anybody talk  
14 about what happened when they got to one percent or  
15 slightly above one percent?

16 A. No.

17 Q. Do you think they continued to mine or do ---?

18 A. Yeah.

19 Q. You think they did continue to mine up to the  
20 point where the machine actually kicked off?

21 A. Uh-huh (yes).

22 Q. Okay.

23 A. Yes. I'm sorry.

24 ATT (b)(7)(C) & (b)(7)(D)

25 And why do you think that?

1 A. Why do I think that? Well, they was under  
2 pressure to run coal. They just kept running.

3 ATTORNEY BAXTER:

4 But did you observe that or ---?

5 A. No, I've never observed it. I've heard them talk  
6 about it, the guys that's dead now.

7 RE-EXAMINATION

8 BY MR. SHERER:

9 Q. What about some of the other tricks that we're  
10 aware of? Did people, like, spray water on the  
11 methane sensor or ---?

12 A. I've done it, but back in the 70s. I've done that  
13 before. Whether they did it or not, I don't know.

14 Q. Okay. Nobody ever talked about it?

15 A. No.

16 Q. I gather from your testimony you had concerns  
17 about ventilation in this part of the mine?

18 A. Uh-huh (yes).

19 Q. Did you feel that the mine ventilation was  
20 adequate at all times?

21 A. No, I did not.

22 Q. When you worked on the 5th, did you notice  
23 anything or was anything --- do you recall anything  
24 that was different from previous shifts?

25 A. Yeah, yeah. I know what you're getting to. I'll

1 just go ahead and tell you the whole story.

2 Q. Okay.

3 A. On Thursday down at this new section they were  
4 setting up at, like, 11 breaks inby Ellis, ---

5 Q. Uh-huh (yes).

6 A. --- they were coming out on the hoot owl and they  
7 were cutting out for a belt channel where I was going  
8 to set the head. Well, all the dust was coming outby,  
9 out Ellis Portal, which that's the way it should have  
10 been. Then Monday when (b)(7)(C) & (b)(7)(D)  
11 down to there, they were cutting out for an overcast.  
12 Well, all the dust was going inby that day.

13 Q. So that's a major ventilation change?

14 A. Yeah. And then directly after the explosion  
15 Monday evening, I had to monitor all the portals  
16 there. The air was coming outby again.

17 Q. Okay. Do you think there was a major  
18 rearrangement of ventilation in the mine over the  
19 weekend?

20 A. Yes, I think there was.

21 Q. Did the mine operate over the weekend?

22 A. The longwall did.

23 Q. The longwall.

24 A. Uh-huh (yes).

25 Q. Did the miner sections operate?

1 A. No.

2 Q. So it was just the longwall?

3 A. Uh-huh (yes).

4 Q. Do you know who may have worked on the ventilation  
5 change?

6 A. No, I don't.

7 Q. Did you work over the weekend?

8 A. No.

9 Q. Do you know anybody else that would have  
10 worked ---

11 A. No.

12 Q. --- over the weekend?

13 A. Some of the longwall guys worked. I know they  
14 worked that Saturday, but that's all I know.

15 Q. Okay. I understand they were shut down on Easter  
16 Sunday?

17 A. Yes, they was supposed to been shut down.

18 Q. Do you know the fire bosses that pre-shifted the  
19 mine on Monday morning?

20 A. You mean on the hoot owl shift?

21 Q. Yeah, uh-huh (yes).

22 A. Yeah, I know them, but it'll take me a minute to  
23 remember their names.

24 Q. That's okay.

25 A. Did I talk to them? No.

1 Q. Okay. Did you talk to anybody else concerning the  
2 explosion and then what may've happened? Do you  
3 recall any, anybody either before or after the  
4 explosion that voiced anything that may be a clue in  
5 this disaster?

6 A. Everett Hager may know something, but I don't  
7 know.

8 Q. And he was the mine superintendent?

9 A. Right.

10 Q. Okay. What about equipment doors? I remember you  
11 saying that you installed overcasts and you also  
12 installed doors. Do you think this mine used doors  
13 instead of overcasts?

14 A. I know they did, because I've set them in.

15 Q. Do you know why they did that?

16 A. Took less time, cheaper.

17 Q. Okay. What about the condition of those doors?  
18 Were they maintained in good condition?

19 A. No, no. No. You're talking about the 78 Break  
20 doors. I know what you're talking about. They were  
21 bad shape.

22 Q. So they had quite a bit of leakage?

23 A. Yeah. In fact, they had new doors laying there to  
24 be put up. They'd been laying there for two months.  
25 And they had never put them up.

1 Q. Do you know why they didn't put them up?

2 A. Yeah, because they had a contracting crew that  
3 come in, whoever made the doors, and they didn't have  
4 a permit to work with those contractors at our mines,  
5 so they made them leave.

6 Q. Okay. But was there anybody else that could put  
7 the doors up?

8 A. Yeah, sure.

9 Q. Okay.

10 A. I put them up.

11 Q. Okay. Do you know what happened when those doors  
12 were opened up or when they leaked? Did that affect  
13 the air in any significant way?

14 A. Yeah, sure. It took all the air. I'm trying to  
15 get my bearings straight here. They were up in here  
16 and the main intake come across the track.

17 Q. Uh-huh (yes). Would you mind ---?

18 A. I'm looking here.

19 Q. Okay. Sure.

20 A. So your main intake come across this beltline  
21 here. In the yellow you have it marked. There's the  
22 intake. And the doors were way down here. Yeah,  
23 that's why I couldn't find them. The doors were right  
24 here.

25 Q. Okay.

1 A. Okay? So your intake comes up and across right  
2 here, crossing over the track. It crossed over right  
3 here, these overcasts.

4 Q. Uh-huh (yes).

5 A. When you open these doors, all your intake was  
6 just coming right back down this way and shooting out  
7 that way.

8 Q. So it was effectively bypassing the miner  
9 sections?

10 A. And the longwall, too.

11 Q. And the longwall?

12 A. Yeah.

13 Q. Would you mind taking this blue marker and  
14 highlighting that area, please?

15 A. Just circle it?

16 Q. Yeah, uh-huh (yes).

17 WITNESS COMPLIES

18 BY MR. SHERER:

19 Q. Okay. Thank you. What about the use of those  
20 doors? Did you ever come up on them and find one or  
21 more of them open?

22 A. Yeah, they would blow open on their own sometimes.

23 Q. Okay. How about people --- when you got up two or  
24 three mantrips going in or out of the mine, you're  
25 aware of, say, the first trip opening the doors

1 and ---?

2 A. The last trip shutting them, yes.

3 Q. Was that ---

4 A. Pretty common.

5 Q. --- fairly common?

6 A. Yeah.

7 Q. Okay. And during --- roughly, how long do you  
8 think that may have existed like that?

9 A. Well, when the longwall started is when the door  
10 --- these were electric doors.

11 Q. Okay.

12 A. And when the longwall started setting everything  
13 up, the doors got tore up. Then you had to get off  
14 and open them manually.

15 Q. Uh-huh (yes).

16 A. So it started from them.

17 Q. Okay. And that was going back around the end of  
18 2009?

19 A. Yeah, October, September.

20 Q. When you had your shift change and there were  
21 several crews going in or out, do you know how long  
22 that interval may have been when the doors were open?

23 A. Well, now, I've never known of from, like, the  
24 dayshift coming out and leaving them open, but the  
25 evening shift coming in and shutting them.



1 I don't think they ever done that.

2 Q. Okay. So it was just the trips actually going in  
3 or out?

4 A. Right.

5 Q. How long would that take, roughly, five minutes?

6 A. Five, ten minutes.

7 Q. Thank you. Do you ever notice any chains or ropes  
8 or anything like that on the doors to help keep them  
9 closed?

10 A. No.

11 Q. You ever hear of mining taking place on the miner  
12 section without curtains in place or ---?

13 A. Yeah.

14 Q. Was that common?

15 A. That I couldn't tell you.

16 Q. Okay. Have you ever seen or are you aware of  
17 little areas where the floor was hooving or cracking  
18 and then methane was bubbling up ---

19 A. Yeah, uh-huh (yes).

20 Q. --- in puddles and such?

21 A. Yes.

22 Q. Have you personally seen that?

23 A. Yes.

24 Q. Do you recall where you saw that?

25 A. On Headgate 22 I've seen it. I've seen it up in

1 the North Mains.

2 Q. Okay.

3 A. Practically pretty much anyplace in the mines you  
4 could see that.

5 Q. Okay. When you say anyplace in the mines, would  
6 that include the area around the UBB portals or ---?

7 A. No, not on that side.

8 Q. Okay. Just on the ---

9 A. Mainly over on the north side.

10 Q. --- north side. Do you recall if you could notice  
11 that, say, out near the Ellis Portals?

12 A. No, up in this area up in here.

13 Q. Yeah.

14 A. Up in the deeper part of the mines.

15 Q. Okay. And you're pointing to an area that's  
16 roughly inby, like, 100 Break or so?

17 A. Yeah, around the Glory Hole, all up through there.

18 Q. So in the Glory Hole all the way down?

19 A. Uh-huh (yes).

20 Q. Okay. Did those happen rapidly after they mined a  
21 few lifts or did they occur further outby? Do you  
22 recall?

23 A. Further outby.

24 Q. So it took a while for them to develop?

25 A. Yes, uh-huh (yes).

1 Q. What about just floor hoove in general, was that a  
2 common problem here at UBB?

3 A. Yes. Yes, it was.

4 Q. What type of heaving did you --- do you recall?  
5 Was it just cracks or did it actually come up into the  
6 entry?

7 A. Yeah, it would come up into the entry.

8 Q. Was it six inches high, two feet high, do you  
9 recall?

10 A. Just different, you know. I've seen it two foot.

11 Q. Okay. Do you recall having to take a miner to ---

12 A. Yes.

13 Q. --- mine it down?

14 A. Yes.

15 Q. Do you recall where that was at?

16 A. Well, that's happened all over the mines.

17 Q. Okay.

18 A. You know, even on the south side. That happened  
19 over there, too.

20 Q. Okay. Do you recall what they would do with the  
21 gob? Would they stack it in the crosscuts or put it  
22 on the belt or ---?

23 A. Crosscuts, wherever they could get it.

24 Q. So there was a lot of areas gobbed out in the  
25 mine?

1 A. Oh, yeah. It was full of gob.

2 Q. Do you think that may have affected ventilation?

3 A. No, I don't think. They would usually put it up  
4 against the stopping and I don't think that affected  
5 it.

6 Q. Okay. Did stoppings crush out anywhere in this  
7 mine?

8 A. Yes.

9 Q. Was that a regular occurrence?

10 A. Uh-huh (yes).

11 ATTORNEY BAXTER:

12 Was that a yes?

13 A. Yes.

14 BY MR. SHERER:

15 Q. How did they inspect and maintain those stoppings  
16 if they had gob up against them?

17 A. Well, you could go to the other side.

18 Q. So they'd just stack it on one side?

19 A. Right.

20 Q. Okay. Are you aware of any sort of notice of  
21 either State or Federal inspectors being on the  
22 property?

23 A. Notice?

24 Q. Yeah. Advanced warning?

25 A. Well, sure. Every time they'd come through the

1 guard check, they'd call down they was on the way.

2 Q. Okay. That's fairly consistent. Do you know if  
3 respirable dust pumps were ever hung in the intake, or  
4 were you ever told to do anything different from what  
5 you normally did when dust pumps were being run?

6 (b)(7)(C) & (b)(7)(D) and yes, I was told to  
7 stay away from the dust and not do certain things  
8 while I was wearing the dust pump.

9 Q. Okay. Do you think that was common?

10 A. Yeah. Yes, sir.

11 Q. Okay. So nobody was really sampled when they were  
12 doing their normal job?

13 A. No.

14 Q. Okay. Do you know of anybody that's ever  
15 complained about safety issues there in the mine,  
16 maybe refused to do a job or wanted to do something  
17 differently because of safety concerns?

18 A. No.

19 Q. Okay. Do you know anybody that's ever been  
20 retaliated against because of safety issues?

21 A. No. I've heard of it, but I don't know  
22 personally.

23 Q. Okay.

24 RE-EXAMINATION

25 BY MR. FARLEY:

(b)(7)(C) & (b)(7)(D)

1 Q. I'll probably be working backwards  
2 here so please bear with me. I'll start with kind of  
3 a philosophical question here. You indicated the  
4 security guard would always call when inspectors  
5 arrived?

6 A. Yeah.

7 Q. If there was some way to arrange things so an  
8 inspector could get from the parking lot into the mine  
9 and to a working section without the people on the  
10 section being notified in advance, do you think the  
11 mine ventilation would improve?

12 A. Would improve?

13 Q. Yeah.

14 A. You mean ---?

15 Q. Would the daily ventilation be better?

16 A. Sure. If he could just pop in at any time he  
17 wanted to and nobody tell him, yeah, yeah. They'd  
18 have to keep it right.

19 Q. Okay. Let's go back to the doors at 78.

20 A. Okay.

21 Q. I think you said that there were times they would  
22 just occasionally just blow open on their own?

23 A. Yeah, uh-huh (yes).

24 Q. Did you ever actually see them do that?

25 A. Yeah.

1 Q. Okay.

2 A. If I come up on them, they would open. Yeah.

3 Q. Okay. So it was possible that could've happened  
4 on April the 5th?

5 A. Sure. Yeah, it's possible.

6 Q. Okay. You also said that new doors have been  
7 purchased and have been sitting at 78 for  
8 approximately two months. Do you know when the doors  
9 were purchased? Obviously they'd been sitting ---

10 A. The two doors ---.

11 Q. --- for two months, but --- let me start again.

12 Do you know --- who would have purchased the doors?

13 Who would have given the order to purchase the doors?

14 A. Who would have?

15 Q. Yes, sir.

16 A. Who would have given the order or who would have  
17 purchased them?

18 Q. Both.

19 A. Well, Greg Clay would have purchased them.

20 Q. Okay.

21 A. And I would say Wayne Persinger would have given  
22 the order to him to buy them.

23 Q. Okay. Would it have been normal routine for Greg  
24 Clay to maintain a record of any purchase he made?

25 A. Yes. Yes.

1 Q. Okay. On April 4th there have been rumors of an  
2 air change that might have been made that day. Do you  
3 know anything about that?

4 A. I've heard rumors.

5 Q. Okay.

6 A. All of them.

7 Q. All right. Now, as we understand it, the mine  
8 would have been idle on April 4th; is that correct?

9 A. Yes.

10 Q. Now, when the mine is idle for a day like that,  
11 which is pretty rare, would there still be a security  
12 guard at the gate?

13 A. Yes.

14 Q. Okay. Now, on a day like that, would there still  
15 be some type of person in the mine office if somebody  
16 showed up and decided to go underground, or do you  
17 know?

18 A. I would doubt it.

19 Q. Okay.

20 A. You mean somebody, like, watching out for  
21 inspectors coming? Is that what you're saying?

22 Q. Well, yeah. I mean, somebody on the phone in case  
23 you got in trouble doing whatever you're doing  
24 underground and needed to call for help.

25 A. I doubt it.



1 Q. Okay. But your experience, though, that there  
2 would have been a security guard ---

3 A. Yeah, they're usually there.

4 Q. --- at the gate?

5 A. They're usually there every day.

6 Q. Now, if you're going to the main UBB Portal ---

7 A. Uh-huh (yes).

8 Q. --- at Montcoal ---

9 A. Right.

10 Q. --- and when you cross the creek down at Montcoal  
11 and you turn right and you go through security guard  
12 gate; ---

13 A. Uh-huh (yes).

14 Q. --- is that correct?

15 A. Yes.

16 Q. Now, is there any way to get to the --- other way  
17 to get from --- get to that portal, to the main UB  
18 Portal? Is there any other way to drive there other  
19 than that way?

20 A. Yeah, there's a way to drive. You could go up  
21 across Progress Strip and come back in the back way  
22 and you know. I wouldn't know of anybody doing it or  
23 why they would do it.

24 Q. Okay. I was just curious.

25 A. Yeah.

1 Q. I'm trying to track down the business of what  
2 might have happened on that weekend.

3 A. Well, you can --- well, you can go in the Ellis  
4 Portal and be at the same place.

5 Q. Okay. All right. Jason Whitehead, do you know  
6 his actual title?

7 A. His actual title now is --- I think he's  
8 vice-president of operations, I think.

9 Q. Okay. Do you know who he actually reports to, who  
10 his boss is?

11 A. Chris Adkins.

12 Q. Now, we talked about ventilation changes being  
13 made underground with no advance notice of any kind.

14 A. Uh-huh (yes).

15 Q. And we talked about the possibility of a change  
16 being made on April 4th or during that particular  
17 weekend.

18 A. Uh-huh (yes).

19 Q. Aside from Chris Blanchard as the company  
20 president or Jason Whitehead, vice-president of  
21 operations, is there anybody else who might be  
22 involved in such a change?

23 A. Wayne Persinger.

24 Q. Okay. Would anyone else have been notified if  
25 such a change were to occur?

1 A. No, that was probably it, I would say.

2 Q. Okay. Now, on April 5th you indicated that there  
3 was an overcast being cut down near the Ellis Portal  
4 area?

5 A. Uh-huh (yes).

6 Q. And on that day, the dust from this location would  
7 --- and the air were moving in the inby direction?

8 A. Towards the longwall, yes.

9 Q. Which would have been just the opposite of the way  
10 the air was moving on the Friday, Thursday or Friday  
11 before; is that correct?

12 A. That's correct.

13 Q. Now, is that due to the fact that a door was open  
14 on April 5th, or is it some other possible change?  
15 What do you know?

16 A. I'd say it's something else has happened, because  
17 the doors were down at Ellis Portal, and if they were  
18 opened, then all of the dust come out Ellis Portal.

19 Q. Okay.

20 A. If those doors were opened ---

21 Q. Okay.

22 A. --- it would make no difference.

23 Q. Okay.

24 A. But if they were shut, then all the dust would go  
25 out the return.

1 Q. Okay. Now, after the explosion you monitored the  
2 portals and you indicate the air was coming was coming  
3 out?

4 A. Out.

5 Q. Out the Ellis Portal?

6 A. Yes.

7 MR. SHERER:

8 Would you like to see a map of that area?

9 A. Yeah, if you all would. I mean, I ---.

10 MR. SHERER:

11 Yeah. Yeah, we've got one right under  
12 here.

13 MR. SHERER:

14 Need to take a break or anything?

15 A. No, I'm good.

16 MR. SHERER:

17 Here you go. If you could just scoot  
18 down a bit, here's a Ellis Portal.

19 A. What do you want to know, where the section's  
20 going to be?

21 BY MR. FARLEY:

22 Q. Yes, where this overcast that you refer to ---?

23 MR. SHERER:

24 Yeah, specifically mark it.

25 A. Well, I can't show you exactly where the overcast

1 was at.

2 BY MR. FARLEY:

3 Q. Maybe the general area, as close you can?

4 A. Yeah.

5 ATTORNEY BAXTER:

6 And we'll mark this map as (b)(7)(C) & (b)(7)(D)

7 Exhibit Two.

8 (b)(7)(C) & (b)(7)(D) Exhibit Two marked for  
9 identification.)

10 A. See, they were setting up a panel over in here.

11 And they were coming over in here and going to mine  
12 this, going to set up a longwall panel. You want me  
13 to just circle the whole deal?

14 BY MR. FARLEY:

15 Q. Uh-huh (yes), please.

16 MR. SHERER:

17 How about this? This looks more like a  
18 longwall ---

19 A. Yeah.

20 MR. SHERER:

21 --- panel.

22 A. They was going to get this and this ---

23 MR. SHERER:

24 Oh, okay.

25 A. --- somehow.

1 ATTORNEY MCATEER:

2 Excuse me. Was this going to be done  
3 because Headgate 22 wasn't ready?

4 A. Yeah, yeah. It was right in here. Let's see.  
5 They were all coming down in this way. The beltline  
6 was over here and it was going to dump --- it was  
7 right in this area here somewhere.

8 ATTORNEY MCATEER:

9 Okay.

10 A. See, they were going to come over and drive over  
11 like this, and then they was going to try to longwall  
12 this and all this right in here.

13 MR. SHERER:

14 And so you circled that area with a blue  
15 marker?

16 A. Uh-huh (yes).

17 MR. SHERER:

18 Okay. Thank you. And that's where the  
19 air reversals took place?

20 A. Uh-huh (yes).

21 ATTORNEY MCATEER:

22 Were the overcasts built or just ---?

23 A. No, they were cutting it, cutting it out. They'd  
24 cut out a belt channel on Thursday and Monday they  
25 were cutting overcasts out.

1 MR. SHERER:

2 Were they cutting the roof or taking the  
3 floor?

4 A. Cutting the roof.

5 MR. SHERER:

6 How high was the mining height through  
7 there?

8 A. Probably six foot.

9 MR. SHERER:

10 And they were cutting, what, ten foot?

11 A. I would say.

12 MR. SHERER:

13 Okay, okay. Thank you.

14 BY MR. FARLEY:

15 Q. Earlier when Erik, you and Erik were talking about  
16 the methane pump, you said you always had methane  
17 trouble on 22. Now, when you said 22, did you mean 22  
18 Headgate, 22 Tailgate, or did you mean the One North?

19 A. Twenty-two (22) Headgate.

20 Q. Okay. All right. Anybody ever give you any  
21 detailed information on that methane problem on 22  
22 Headgate?

23 A. No.

24 Q. Anybody ever specify that we detected in excess of  
25 one or two percent or anything like that?

1 A. Yeah, some of the guys that's dead, they'd talk  
2 about it.

3 Q. And what exactly did they tell you? How much did  
4 they tell you they had ---

5 A. Like ---.

6 Q. --- actually detected?

7 A. Like, three and a half, four percent, up in that  
8 area.

9 Q. Okay. And was that in the faces that we're  
10 talking about?

11 A. Yeah.

12 Q. Okay. Can you recall the last time you had that  
13 conversation with them before April 5th?

14 A. No, no.

15 Q. Okay.

16 ATTORNEY BAXTER:

17 Can you recall any of the names of the  
18 people who are deceased who told you that?

19 A. Well, Dean Jones was one of them, the foreman.  
20 And Ronald Maynor was one. Boone Payne was one.  
21 That's just practically all of them.

22 ATTORNEY BAXTER:

23 Okay.

24 BY MR. FARLEY:

25 Q. Okay. Now, when the explosion occurred on April



1 5th, you were standing by outside the portal at Ellis.

2 A. Right.

3 Q. Did you go into the office ---

4 A. Yes.

5 Q. --- after that?

6 A. Yes.

7 Q. Okay. Was the power off? Did the power go off at  
8 that time, too?

9 A. Yeah.

10 Q. We understand some people may have, may have gone  
11 underground ---

12 A. Yes.

13 Q. --- after the explosion.

14 A. Yes.

15 Q. Do you recall who they were?

16 A. Yes.

17 Q. Can you name them for me, please?

18 A. Chris Blanchard.

19 Q. Uh-huh (yes).

20 A. Everett Hagar.

21 Q. Uh-huh (yes).

22 A. Jason Whitehead and Wayne Persinger.

23 Q. Okay. Now, was Blanchard at the Ellis Portal when  
24 the explosion occurred ---

25 A. No.

1 Q. --- or did he come elsewhere?

2 A. He come from elsewhere.

3 Q. Okay. Did any of, any of the other individuals  
4 you named come from elsewhere that you know of?

5 A. Jason Whitehead did. He come from elsewhere.

6 Q. Okay. Did they arrive pretty soon after the  
7 explosion?

8 A. Yes. Yes, like, within five minutes.

9 Q. Okay.

10 A. You know, real soon.

11 Q. Okay. They had to be pretty nearby, then, didn't  
12 they?

13 A. Yes.

14 ATTORNEY BAXTER:

15 Did you see them go underground?

16 A. Yes.

17 BY MR. FARLEY:

18 Q. Now, you also said earlier that at the Ellis  
19 punch-out there was supposed to be another fan, but  
20 that plan was scrapped?

21 A. Yes.

22 Q. Do you know who made the decision to do that,  
23 scrap the fan?

24 A. I would say Chris Blanchard, but I don't know  
25 that.

1 Q. Okay. All right. Do you know when that decision  
2 might've been made?

3 A. No, I don't. Everything was in such a hurry, and  
4 they done a --- took a lot of shortcuts. That was one  
5 of them.

6 Q. Okay. Because you indicated that originally this  
7 Gerald Branch area was sealed, and the thinking was  
8 that the longwall was not coming back?

9 A. Right.

10 Q. Now, during Blanchard's tenure as president, would  
11 the decision to bring the longwall back have been made  
12 by him as president?

13 A. Yes.

14 Q. Okay. Do you recall when that might have  
15 occurred, when they decided to bring the longwall  
16 back?

17 A. Well, it would have been in ---.

18 Q. We know they started out --- you said that the  
19 longwall started in September.

20 A. Okay. The decision was probably just long enough  
21 for us to --- they hadn't even drove this. I mean,  
22 all the way. The miner section was still driving back  
23 in here ---

24 Q. Uh-huh (yes).

25 A. --- while they were setting the longwall up.

1 Q. Okay.

2 ATTORNEY BAXTER:

3 And when you say back in here, where are  
4 you pointing to?

5 A. Back towards the Bandytown fan now. And they were  
6 already setting the longwall up.

7 BY MR. FARLEY:

8 Q. Now, you also pointed out an area generally from  
9 about Crosscut 70 in the One North Headgate entries  
10 and inby towards the Bandytown fan, where you said  
11 there has always been water problem?

12 A. Yes.

13 Q. When was the last time you might have been in that  
14 area personally?

15 A. Personally it was right the day the longwall  
16 started. That's the last time I was back in there.

17 Q. Okay. Do you know who might have been --- who  
18 might have traveled the tailgate side of the longwall  
19 in the direction of the Bandytown fan on April 5th,  
20 2010? Who would have been traveling in that area?

21 A. You mean fire boss-wise?

22 Q. Yes. Whether it been pumping purposes or any  
23 other purpose.

24 A. Yeah. Charlie Semenske traveled all of this. He  
25 was the fire boss.

1 Q. Okay.

2 A. And Jeremy Burdoff went back in here daily,  
3 pumping.

4 Q. Okay. Burdoff went in there daily. Semenske ---.

5 A. Weekly.

6 Q. Weekly?

7 A. Uh-huh (yes).

8 Q. Okay. Did you portal at Ellis every day?

9 A. Yes.

10 Q. Okay. During the average dayshift at UBB prior to  
11 this explosion, was it normal routine for the coal,  
12 the miner sections and the longwall to call out  
13 production and downtime numbers periodically  
14 throughout the shift?

15 A. Yes.

16 Q. Okay. Who would they have reported those numbers  
17 to?

18 A. Greg Clay.

19 Q. Okay. Now, would he have recorded those numbers  
20 on paper or on a computer?

21 A. Probably computer.

22 Q. Okay.

23 A. Greg Clay took the longwall reports.

24 Q. Uh-huh (yes).

25 A. And I think the dispatcher took the miner section

1 reports.

2 Q. Okay. Do you remember who the dispatcher was on  
3 the day?

4 A. That day?

5 Q. Yes.

6 A. Yeah. It'll come to me in a minute. Well, you  
7 all mentioned his name just a minute ago.

8 Q. Was it Adam ---?

9 A. Adam Jenkins.

10 Q. Adam Jenkins.

11 A. Right.

12 Q. All right. The 78 doors, ---

13 A. Uh-huh (yes).

14 Q. --- you got new doors sitting there that were  
15 waiting to be installed on April 5th. Who was the  
16 door installation contractor that you were referring  
17 to?

18 A. I think it was Blizzard, is the name of the door  
19 manufacturer.

20 Q. Uh-huh (yes).

21 A. And I think they were the ones to come in and put  
22 them up.

23 Q. Okay.

24 A. But that's all I can tell you. Just Blizzard's  
25 all I know.

1 Q. Okay. Now, I think you said you thought that the  
2 contractor didn't have the appropriate contractor's  
3 registration in the paperwork or something to that  
4 effect?

5 A. Well, they had to have some kind of special permit  
6 to work certain contractors at the mines the way I  
7 understood it. And they got caught and they told them  
8 they had to leave.

9 Q. Okay. Also, you said earlier that the UBB  
10 longwall had, on previous occasions, encountered  
11 methane bleeders?

12 A. Yes.

13 Q. Do you recall when that was?

14 A. No. It's been years.

15 Q. Okay. All right.

16 A. It's happened two or three times, but it's been  
17 years.

18 Q. And do you recall anything happening on the ---

19 A. This panel?

20 Q. --- longwall in operation on April 5th before  
21 April 5th? It started in September of '09 and the  
22 explosion occurred on April 5th.

23 A. No. You mean on this panel?

24 Q. Yes, sir.

25 A. No.

1 Q. Okay.

2 EXAMINATION

3 BY ATTORNEY MCATEER:

4 Q. Okay. I hate to run you through it again, but I  
5 have a couple different things that I'm trying to get  
6 at the information that you're going to give out. I  
7 appreciate very much you're understanding of the mine,  
8 in particular your understanding of the way it  
9 operates. I'm going to go back to the question that  
10 you said about the pushing fan and the pulling fan.  
11 The Bandytown fan pulls and the UBB Fan pushes, and  
12 you --- could you describe for me where that goes and  
13 how that air is ultimately passed through the mine?

14 A. Map's not big enough.

15 MR. SHERER:

16 We actually have a smaller scale.

17 A. If you got a smaller scale map, I can show you.

18 SHORT BREAK TAKEN

19 BY ATTORNEY MCATEER:

20 **(b)(7)(C) & (b)(7)(D)** if I can start back to --- what I'm  
21 going to do is try to follow your testimony and get  
22 some clarification out of some of the matters that you  
23 talked about before, so some of it will appear to be  
24 repeating, but try to make it a little more  
25 clarification. You talked about the dips and swags in



1 the headgate going up at 80 to the Bandytown fan.

2 That was not graded?

3 A. No. Some of it was, but not all of it.

4 Q. And there was not a slope that allowed for the  
5 water to go back to the pump?

6 A. No.

7 Q. Is that recognized by the principals, by the  
8 supervisors?

9 A. Yes.

10 Q. And did the water top out frequently?

11 A. Yes.

12 Q. What impact would that have on the air?

13 A. Well, you couldn't get as much air through it.

14 Q. Uh-huh (yes). You testified that the air effort  
15 was not coordinated. What did you mean by that?

16 A. Nobody knew what was going on, actually, you know?  
17 Like, Blanchard, Whitehead and Persinger would go in  
18 and do something to the air and nobody else would  
19 know, like Everett, nobody would know.

20 Q. All right. Did you ever see the involvement of  
21 the engineering group, Route 3 Engineering?

22 A. On what part?

23 Q. On any of these changes that you would, you  
24 suggested that Blanchard may have made with the other  
25 group?

1 A. No, I never seen them involved.

2 Q. Did you see the Route 3 engineers at the mine very  
3 often?

4 A. Yes.

5 Q. Okay.

6 A. There was one that stayed at the mine.

7 Q. What was his name?

8 A. Erik ---

9 Q. Lilly?

10 A. --- Lilly, uh-huh (yes).

11 Q. Where was his office?

12 A. Where?

13 Q. Uh-huh (yes).

14 A. He had a little office in the --- it was called  
15 the Communications Room at UBB.

16 Q. Did you have the impression or did you have an  
17 understanding that the engineering, Mr. Lilly and the  
18 others from Route 3 would make the decisions on the  
19 modifications or any changes?

20 A. No. They told them what they wanted done, from  
21 what I seen.

22 Q. Who would that be?

23 A. Blanchard.

24 Q. Blanchard.

25 A. And Whitehead with him.

1 Q. And they would present them the plans, based upon  
2 what they were instructed?

3 A. Yeah.

4 Q. Engineering drawings and things like that?

5 A. Yeah.

6 Q. Did they give you engineering drawings and stuff?

7 A. No, just to the area where I was working.

8 Q. Right.

9 A. They'd give me maps of that.

10 Q. Sure. And who would give that to you?

11 A. Usually Everett Hager or Wayne Persinger.

12 Q. Okay, okay. Now, you talked about he ceiling of  
13 the Gerald Branch Fan, and you said you didn't  
14 remember when that was?

15 A. No, I don't remember. It was right before the  
16 longwall ever come ---

17 Q. Okay.

18 A. --- when we built all the seals at the mines.

19 Q. Right. Okay. But prior to the sealing of that  
20 Gerald's Branch, you suggested that there was not  
21 ventilation problems?

22 A. Never. We never had any.

23 Q. Uh-huh (yes). You said they sealed it off and  
24 they were trying to make two small mines. Could you  
25 tell me what their ---?

1 A. Well, at the Ellis Switch we had a set of airlock  
2 doors, and they were trying to make it from Ellis  
3 Switch outby to UBB one mine, from Ellis Switch inby,  
4 another mine. They were eventually going to build  
5 seals there.

6 Q. I see. And that's why they went to this sort of  
7 zone area ---

8 A. Yeah.

9 Q. --- of authority and responsibility?

10 A. Right.

11 Q. I didn't understand that.

12 A. Yeah. Well, I didn't either, but they did. You  
13 wasn't supposed to be allowed to work in --- like, I  
14 wasn't supposed to be allowed to work from Ellis  
15 Switch outby UBB Portal.

16 Q. Okay.

17 A. You see what I mean?

18 Q. All right.

19 A. I was supposed to work from Ellis Switch inby, all  
20 up in the north area.

21 Q. Okay.

22 A. Unless they needed me.

23 Q. And in addition ---?

24 A. I mean, if you want the truth, that's the truth.

25 Q. In addition to these zone areas, of course there's

1 the longwall crew?

2 A. Yes.

3 Q. Okay. We've had testimony that they operated  
4 independently or differently than the regular crew or  
5 that they were sort of --- but what was their superior  
6 structure and how did they work?

7 A. I don't know what you're talking about.

8 Q. Were they part of this zone system?

9 A. Well, they were strictly worked the longwall.

10 Q. Okay.

11 A. But they could be in from UBB side.

12 Q. Okay, okay.

13 A. No, they come in from Ellis side; I'm sorry.

14 Q. All right.

15 A. The longwall did.

16 Q. And who was in charge of those people?

17 A. Jack Roles.

18 Q. Did Jack have any responsibility on the UBB side  
19 or the Ellis side or ---?

20 A. The longwall.

21 Q. Just the longwall?

22 A. Well, unless he was needed someplace else, but  
23 mainly longwall.

24 Q. Okay. And did you have any interaction with these  
25 longwall crews or ---?

1 A. Oh, yeah, yeah.

2 Q. Okay. Now, you talked about the dust crews, and  
3 you said that the main line was dusted well. The  
4 Headgate 22 was not bad. It was wet there.

5 A. Uh-huh (yes).

6 Q. And then you said the crew was to do the dusting  
7 on a weekly basis, but you got --- they got rid of  
8 them?

9 A. Yeah.

10 Q. Can you tell me what happened there?

11 A. Well, they caught, caught, caught him asleep and  
12 they fired him.

13 Q. Fired one fellow for sleeping?

14 A. Yes.

15 Q. Probably the first miner ever fired for sleeping  
16 on the job.

17 A. I'd say.

18 Q. And did they have then --- who was the dust crew  
19 then?

20 A. Well, one of the guys was Cliff Stogel. He was  
21 put on that. He originally (b)(7)(C) & (b)(7)(D)

(b)(7)(C) & (b)(7)(D) and put him on the dust crew.

23 Q. Can you remember when that was?

24 A. No, I don't remember the date. It was probably a  
25 month, maybe six weeks before the explosion.

1 Q. And were the other members of the dust crew, were  
2 they red hats?

3 A. Usually, yes.

4 Q. And did they use mechanical dusting or they do it  
5 by hand?

6 A. They have a tank duster they pulled with a motor,  
7 big bulk duster.

8 Q. Uh-huh (yes). You talked about the Glory Hole.  
9 Would the Glory Hole impact the ventilation system?

10 Did the Glory Hole impact the ventilation system?

11 A. Did it?

12 Q. Uh-huh (yes).

13 A. When it was running, yes. When we were using the  
14 Glory Hole, yes, it did.

15 Q. Okay.

16 A. Like, when it would empty up on coal, all of our  
17 air would go up the Glory Hole into Logan Fork.

18 Q. Right. But it wasn't being used now?

19 A. No.

20 Q. Okay. So it wouldn't have had any impact on it?

21 A. Shouldn't have.

22 Q. Uh-huh (yes). You testified that the air reversed  
23 pretty regularly on 22 Headgate and along the --- on  
24 the longwall. Can you testify what caused that?

25 A. Just what I think.

1 Q. Yes, you ---.

2 A. I think the water built up over on this side and  
3 would cause it to --- or the water would build up over  
4 here and just cause it to pull the easiest direction.

5 Q. Have you ever had any discussions with Everett or  
6 any other supervisors about it or ---?

7 A. No.

8 ATTORNEY BAXTER:

9 I'm sorry, Davitt. And when you  
10 testified it was pretty regularly, just so I  
11 understand, was this every day or nearly every day?

12 A. Probably nearly every day.

13 ATTORNEY BAXTER:

14 Nearly every day?

15 A. Yeah.

16 ATTORNEY BAXTER:

17 Okay.

18 BY ATTORNEY MCATEER:

19 Q. Now, you testified that the Thursday before the  
20 accident at the new section --- that is 11 --- at the  
21 11 Break inby the Ellis Portal they were going to  
22 build an overcast.

23 A. They were cutting out for it.

24 Q. They were cutting that out?

25 A. Uh-huh (yes).



1 Q. And was that being cut out over the weekend or was  
2 that cut on Thursday?

3 A. The belt channel was cut out Thursday. The  
4 overcast was being cut Monday ---

5 Q. Okay.

6 A. --- the day of the explosion.

7 Q. Was that your crew or was that ---?

8 A. No.

9 Q. Okay.

10 A. That was another crew.

11 Q. Who was that?

12 A. Well, there was two guys down there that the  
13 foreman --- Bobby Baker was one of them and Marvin  
14 Perdue was one of them.

15 Q. What time would that have been done on Monday? In  
16 the dayshift?

17 A. Yeah, on the dayshift.

18 Q. In your opinion, would that have --- could that  
19 have impacted the airflow?

20 A. Cutting the overcast?

21 Q. Yes.

22 A. No, but the air was going the wrong direction that  
23 day.

24 Q. Uh-huh (yes). And why do you think the air was  
25 going the wrong direction?

1 A. I have no idea, just something been done to change  
2 it. I know that, but I don't know what.

3 Q. And that's something you --- and in your opinion,  
4 would that have been something done over the weekend?

5 A. Yeah.

6 Q. Was there any discussion with Mr. Hager or anybody  
7 else about what was done over the weekend?

8 A. No.

9 Q. That's your recollection?

10 A. He didn't know either.

11 Q. He didn't know either?

12 A. No. He told me he didn't.

13 Q. And did he know who worked over the weekend?

14 A. No. He would have known the longwall crews,  
15 people like that would have worked, but ---

16 Q. Sure.

17 A. --- as far as anybody else, you know, coming in,  
18 doing that, he wouldn't know the ventilation change.

19 Q. Going back to the doors at 78, were the  
20 replacement doors the same size or were they different  
21 size?

22 A. Same size.

23 Q. Okay. Who's Jim Ferguson?

24 A. Jamie Ferguson?

25 Q. Jamie Ferguson?

1 A. I don't know what his title is. He was like the  
2 vice-president of Performance. He is now president of  
3 Marfork Coal.

4 Q. Do you know if he had any involvement in the days  
5 running up to the accident?

6 A. Oh, beforehand?

7 Q. Right.

8 A. Yeah. Yeah, he was in there, too.

9 Q. Did he have any --- can you tell me what his  
10 involvement was with regard to the --- particularly  
11 with regard to ventilation?

12 A. If there was air changes going on, he was in the  
13 middle of it, too.

14 Q. Okay. And then who would the other people have  
15 been in your estimation?

16 A. Been Blanchard, Whitehead and Wayne Persinger.

17 Q. And Ferguson?

18 A. And Ferguson.

19 Q. Ferguson been at the mine a long time?

20 A. Yeah.

21 Q. On the notification about inspectors coming, was  
22 there any codes used at any time that you know or ---?

23 A. No, they would just radio up to the mines, the  
24 guard shack and say, such-and-such from the State or  
25 the Federal is on the property.

1 Q. Identify them by name if they could?

2 A. Uh-huh (yes).

3 Q. Were these doors purchased or were they in the  
4 supply house? Along 78, I'm sorry.

5 A. The new doors?

6 Q. Uh-huh (yes).

7 A. They were purchased.

8 Q. Okay. When the explosion occurred, what was the  
9 --- if you can describe to me, what happened that you  
10 saw at the moment of the explosion?

11 A. Well, I was outside.

12 Q. Right.

13 A. Just dust coming out of the drift mouth, all the  
14 drift mouths and ---.

15 Q. What color was it?

16 A. It was like a brown.

17 Q. Okay. And was there anything being --- you  
18 testified that there were things being pushed out of  
19 the mine?

20 A. Yeah, yeah. I seen crib blocks blow out of the  
21 mines and a couple people blew out of the mines. You  
22 know, they were walking in just ---

23 Q. Uh-huh (yes).

24 A. --- a little ways and they got blew back out.

25 Q. Do you remember their names or anything?

1 A. Dustin Ross was one of them, Ralph Plumley.

2 Q. How long did it last?

3 A. Seemed like it last forever, but probably 30  
4 seconds.

5 Q. Okay. You testified that there was a group that  
6 went underground, including Mr. Blanchard and Everett  
7 Hager, Jason Whitehead and Wayne Persinger.

8 A. Uh-huh (yes).

9 Q. Did they go as a group?

10 A. No, I think Everett went first and Whitehead and  
11 Blanchard went together, and maybe Persinger was with  
12 them. I'm not 100 percent sure about that.

13 Q. If you know, can you tell me how that happened? I  
14 mean, Everett just says, I'm going in?

15 A. Yeah, Everett --- Everett just took off and went  
16 in. He was going to see what happened. I was  
17 actually going with him, and I went back to get my  
18 light on and they wouldn't let me go then. One of the  
19 mine rescue teams was there and wouldn't let me go.

20 Q. One of the mine rescue teams?

21 A. Uh-huh (yes).

22 Q. Massey team?

23 A. Yeah, I think so.

24 Q. One from Kentucky?

25 A. No, it was our rescue team.

1 Q. Okay.

2 A. I don't remember who.

3 Q. So Everett's now gone. You're outside.

4 A. Uh-huh (yes).

5 Q. And so now the second group from management goes

6 --- gets ready to go in?

7 A. They just take off and go. Blanchard come  
8 upstairs and asked me to give him a light, and I told  
9 him to get his own light, and then he was gone.

10 Q. And who was with him?

11 A. Whitehead, Jason Whitehead.

12 Q. Were the mine rescue teams out there at the time?

13 A. They were arriving.

14 Q. Did they tell them not to go?

15 A. No. Don't guess, they went.

16 Q. Sure.

17 ATTORNEY BAXTER:

18 Were these management people bare-faced?

19 A. The mantrip people?

20 ATTORNEY BAXTER:

21 The management people that went in?

22 A. Yes. Yes, they were bare-faced.

23 BY ATTORNEY MCATEER:

24 Q. Now, how about Wayne Persinger, you said he went,  
25 as well?

1 A. Uh-huh (yes).

2 Q. A different group or a different grouping?

3 A. I'm not sure whether --- he didn't go with  
4 Everett. Him and Blanchard and Whitehead may have  
5 went together. I'm not sure.

6 Q. Okay.

7 A. And did you remain then, in the communications  
8 office or did you remain up in the office?

9 A. I was up and down.

10 Q. All right.

11 A. Backwards and forwards.

12 Q. Did you hear any communication from inside out?

13 A. Yes.

14 Q. And what was that communication?

15 A. Pertaining to ---?

16 Q. Who was calling and what did they say?

17 A. They called out and said they needed --- first  
18 they said they needed ten ambulances.

19 Q. Who was that?

20 A. Who was it?

21 Q. Uh-huh (yes).

22 A. I'm not sure.

23 Q. Okay.

24 A. And then they called out and said they need to get  
25 every ambulance that they could in Rawley and Boone

1 Counties.

2 Q. Do you remember who that was or ---?

3 A. No.

4 Q. So that was the second call?

5 A. Uh-huh (yes).

6 Q. Did they say they'd identified any bodies or  
7 anything?

8 A. No, no.

9 Q. Okay. How long did you stay at the mine?

10 A. Until 6:30 the next morning.

11 Q. The Blizzard Manufacturing Company, is that a  
12 local company?

13 A. I don't know where they're out of. They must be  
14 local somewhere.

15 Q. Okay. And the Kentucky mine rescue team from  
16 Massey, I think they're from Stanley, Kentucky?

17 A. I don't know, don't have any idea.

18 Q. Do you know when they arrived?

19 A. No.

20 Q. Okay.

21 A. There were so many people up there.

22 Q. Sure.

23 A. And then part of them went to UBB side and it was  
24 just mass confusion up there that night.

25 Q. Uh-huh (yes).



1 ATTORNEY MC  
(b)(7)(C) & (b)(7)(D)

2 Thank you, . That's all the  
3 questions I have at the moment.

4 A. All right.

5 EXAMINATION

6 BY MR. SHERER:

7 Q. Okay. I've got a few more follow-up questions,  
8 (b)(7)(C) & (b)(7)(D) Have you ever or are you aware of any  
9 doors that also served as regulators in this mine,  
10 like some of the blocks were moved next to the door  
11 or ---?

12 A. They had stoppings with regulators in them.

13 Q. Were those adjacent to the doors?

14 A. To the 78 Break doors?

15 Q. Or any other doors?

16 A. No.

17 Q. Okay. You were talking about the ventilation  
18 reversals on the longwall. Can you help me out a  
19 little bit? Were those reversals on the --- of air on  
20 the belt or the air coming off the face or actually  
21 the air going up and down the face?

22 A. Up and down the face.

23 Q. So it would actually one day flow from the head to  
24 the tail and the next day from the tail to the head?

25 A. Uh-huh (yes).

1 ATTORNEY BAXTER:

2 Is that a yes?

3 A. Yes.

4 BY MR. SHERER:

5 Q. Would they cut coal with the air flowing from the  
6 tail to the head?

7 A. Yes.

8 Q. Do you know what was in there vent plan? Was that  
9 part of their vent plan?

10 A. No, that wasn't part of their vent plan.

11 Q. Okay. Do you have any idea what possibly could've  
12 been done over the weekend to make this major  
13 ventilation change?

14 A. No, I don't.

15 Q. Okay.

16 A. I don't even know there was one made that weekend.

17 Q. Okay. You just ---

18 A. I don't know.

19 Q. --- think there may have been? What about the  
20 responsible person in charge of the evacuation of the  
21 mine? You say right after the explosion, all the  
22 members of upper management entered the mine. Were  
23 any of those people the responsible person, do you  
24 recall?

25 A. We had three or four designated responsible

1 persons. Yeah, Everett was one of them.

2 Q. Who was directing the evacuation of the mine, do  
3 you recall?

4 A. Who was directing it?

5 Q. Uh-huh (yes).

6 A. I don't recall anybody, you know.

7 Q. There was nobody manning the mine phone and  
8 looking a the CO monitoring system and trying to  
9 figure out where people are at ---

10 A. Yeah.

11 Q. --- in the tracking system?

12 A. My son was doing that.

13 Q. Okay. And he was at the Ellis Portal or ---?

14 A. The UBB Portal.

15 Q. UBB Portal.

16 A. Uh-huh (yes).

17 Q. Was he the responsible person?

18 A. No, but he's over all of the tracking system of  
19 the mines.

20 Q. Okay.

21 A. So he was monitoring the tracking and the CO  
22 monitors.

23 Q. Okay. Do you know if he was in direct  
24 communication with somebody in management that was  
25 directing the evacuation?

1 A. I don't think so, no.

2 Q. Okay. Do you recall if the people that got out of  
3 the mine, were they told to evacuate or did they just  
4 do that on their own?

5 A. They done that on their own.

6 Q. Okay. Was there any system in place to track who  
7 went into and come out of the mine after the  
8 explosion?

9 A. Well, we got the tracking system, but it was blew  
10 apart at the explosion.

11 Q. Okay.

12 A. You mean was anybody writing anybody's name down?

13 Q. Yeah, or ---

14 A. No.

15 Q. --- hanging tags or anything like that?

16 A. Not at that time, no. After, you know, when the  
17 mine rescue teams started going in, yes, there was a  
18 guy there doing that.

19 Q. Okay. So there was just a period of time where  
20 there wasn't any clear coordination of anything?

21 A. Right. We really knew --- didn't know what  
22 happened, you know. We didn't have a clue.

23 Q. Right.

24 A. You know, all of us had our ideas what happened,  
25 but nobody really knew.

1 Q. When you were standing next to the portal and you  
2 saw the dust come out, what did you think happened?

3 A. I thought it was an explosion.

4 Q. Did anyone around you express an opinion on what  
5 had happened?

6 A. Everett was standing right beside me and his exact  
7 words, what the hell have they done now, (b)(7)(C) & (b)(7)(D)  
8 was his exact words. He didn't know what happened,  
9 either.

(b)(7)(C) & (b)(7)(D)

10 Q. Okay. Thank you. You're a which  
11 indicates that (b)(7)(C) & (b)(7)(D)

(b)(7)(C) & (b)(7)(D) and you testified that you were

13 instructed to stay away from the dust ---

14 A. Yes.

15 Q. --- when you were wearing a dust pump.

16 A. Uh-huh (yes).

17 Q. Who directed you to do that? Do you recall?

18 A. Everett, Everett Hager. Berman Cornett. They  
19 just ---. Berman Cornett. He's a safety director.

20 Q. Okay. You mentioned several times that you feel  
21 that a lot of shortcuts were taken, particularly since  
22 they brought the longwall back. Could you just go  
23 through that for us? Do any of those shortcuts stick  
24 out as potential problems?

25 A. Well, the doors at 78 Break. I tried to get them

1 to cut overcasts, but they didn't want to take the  
2 time. They wanted to put doors there.

3 Q. Okay.

4 ATTORNEY BAXTER:

5 And who was that that didn't want to take  
6 the time?

7 A. Blanchard, Chris Blanchard. He said we're in the  
8 coal business. We're not in the rock business.

9 ATTORNEY BAXTER:

10 When was that?

11 A. These dates, I can't --- it was before the  
12 longwall come. I couldn't tell you the date.

13 ATTORNEY BAXTER:

14 That's good.

15 BY MR. SHERER:

16 Q. Any other shortcuts like that that you're aware  
17 of?

18 A. Well, all this back in here where I've already  
19 said, you know, that they didn't grade the bottom  
20 right to where the water would run to the turbine  
21 pump.

22 Q. Uh-huh (yes). Any other shortcuts?

23 A. Well, they wanted to set the belt heads and stuff  
24 like that just the quickest way possible, you know,  
25 just anything fast. Throw it in and get out of there.

1 Q. Do you know why there was such a rush on doing  
2 these things? Was the mine having problems meeting  
3 contracts or anything like that?

4 A. That I don't know. We were shorthanded, you know?  
5 Like, where I was setting the belt head, I would have  
6 two more to set, you know, so they would rush me up to  
7 set this one so I could go get on the other ones.

8 ATTORNEY BAXTER:

9 And who was it that was rushing you to  
10 set the belt heads?

11 A. It was all of them, Everett and Blanchard, all of  
12 them.

13 BY MR. SHERER:

14 Q. Do you feel like that was common with all the  
15 other crews in the mine?

16 A. Yes.

17 Q. And do you recall any comments that any of these  
18 people made? Just run coal no matter what, anything  
19 like that?

20 A. No. They just knew they had to run coal. Nobody  
21 commented about it. Everybody just knew --- you know.

22 Q. Okay. It was just a general atmosphere?

23 A. Right.

24 Q. Do you have any idea how far up the company  
25 organization that came from? Was it just the people

1 at the mine, do you think or ---?

2 A. No, I think it come from Blanchard, Chris  
3 Blanchard.

4 Q. Okay.

5 ATTORNEY BAXTER:

6 And why do you think that?

7 A. The way he is. He was just arrogant.

8 BY MR. SHERER:

9 Q. Does he get some ---?

10 A. Push.

11 Q. Do you know if he got some sort of bonus ---

12 A. I'm sure he did.

13 Q. --- based on production?

14 A. I'm sure he did.

15 Q. Okay. Did you keep any sort of notebook or notes  
16 when you (b)(7)(C) & (b)(7)(D) and doing this,  
17 these str

18 A. Yes.

19 Q. Do you know if other foremen kept notes like that?

20 A. Yeah.

21 Q. Do they keep a notebook in their pocket?

22 A. Usually they did and, you know, they just, just  
23 keep adding them up and then get them to full, new ---  
24 or get one full, get --- and then get a new one, you  
25 know.



1 Q. Was there anyplace people would put these  
2 notebooks once they got filled up or ---?

3 A. I know I took mine home.

4 Q. Okay.

5 ATTORNEY BAXTER:

6 Can you get us a copy of the book?

7 A. You already got them.

8 ATTORNEY BAXTER:

9 Okay.

10 A. Somebody does. Who's got them, Cindy?

11 ATTORNEY FERNALD:

12 I'm not sure.

13 A. Well, then ---.

14 ATTORNEY BAXTER:

15 We can discuss that off the record.

16 ATTORNEY FERNALD:

17 Yeah.

18 BY MR. SHERER:

19 Q. Do you know anything about the folks you talked  
20 about going in right after the explosion, Blanchard,  
21 Whitehead, Persinger? Do you know anything about what  
22 they did, where they went? Did anybody ever mention  
23 anything about their efforts?

24 A. Everett told me that they went up and found the  
25 dead bodies that was --- I think they were at 66

1 Break.

2 Q. 66 Break.

3 A. I think.

4 Q. At 66 Break on --- where at in the mine? Do you  
5 recall?

6 A. From what I recall, it was North Mains. It's down  
7 this way.

8 Q. Okay. So it's outby the 78 doors you were  
9 referring ---

10 A. Yes.

11 Q. --- to earlier?

12 A. These guys had they been three minutes sooner  
13 they'd have survived.

14 Q. And these were the victims on the mantrip?

15 A. Yes.

16 Q. Okay. So they found those victims.

17 A. I think it was 66 Break.

18 Q. Who got that mantrip out, do you know?

19 A. Who brought it outside?

20 Q. Uh-huh (yes).

21 A. Everett, Everett Hager.

22 Q. And there were two survivors on that mantrip?

23 A. They were on another mantrip.

24 Q. Oh, okay.

25 A. There were two mantrips.

1 Q. Okay. I didn't realize that. So he got everybody  
2 together. Were all of the victims on that particular  
3 mantrip or did he have to ---?

4 A. How about I just do this? I know what you're  
5 coming to. I'm just going to go ahead and tell you  
6 what happened.

7 Q. I appreciate that.

8 A. Because I know what you're working to. Everett,  
9 Wayne Persinger, Gary May, Blanchard and Jason  
10 Whitehead was there. Okay. Gary May and Wayne  
11 Persinger brought the first mantrip out with the two  
12 survivors.

13 Q. Okay.

14 A. Rick Foster was in there somewhere, but I'm not  
15 sure where he was at now. Everett was at the mantrip  
16 and had bodies everywhere and --- it's a little hard  
17 to talk about.

18 Q. Sure, sure. Just take your time.

19 A. But anyway, they had one body laying on top the  
20 mantrip. They were working with him and Everett was  
21 left by himself. Whitehead and Blanchard took off  
22 walking. And he had to holler at them, cussing,  
23 telling them, you got to come back and help me do  
24 something with these bodies.

25 Q. Sure.

1 A. So they did. They come back and took the one off  
2 the mantrip and stuffed him inside the mantrip, you  
3 know. It was terrible when they come out.

4 Q. Sure.

5 A. But then they said --- Everett --- they come on up  
6 walking.

7 Q. They went further inby?

8 A. Yes. And Everett had to bring them outby by  
9 hisself and then he told me hisself he had to stop  
10 every five minutes to make sure he wasn't tearing  
11 their arms and legs and stuff off. And they ---  
12 Whitehead and Blanchard went on in. So I knew that's  
13 what you was working towards.

14 Q. I appreciate that, sir. Do you know anything else  
15 about what Blanchard and Whitehead ---

16 A. No.

17 Q. --- did, where they went?

18 A. I know I've heard one time they were trying to go  
19 deeper in the mines and whoever was at the command  
20 center --- I don't know who it was --- told them to  
21 stay at 78 Break.

22 Q. Okay.

23 A. Whether they did or not, I don't know.

24 Q. Okay.

25 ATTORNEY BAXTER:

1 And who'd you hear that from?

2 A. Who did I hear it from? That was from Marvin  
3 Perdue. He was monitoring the phone. He was told to  
4 monitor the mine phone that --- all that night.

5 BY MR. SHERER:

6 Q. Where you were standing next to the portal and  
7 immediately prior to that, could you hear the mine  
8 phone from there?

9 A. No.

10 Q. Okay.

11 A. I went upstairs after that. That's when I went.

12 Q. Okay. Do you know if the longwall was running  
13 coal on the 5th?

14 A. I've heard that they were down all day, the big  
15 part of the day. And I've heard that they started  
16 back up at 2:30.

17 Q. Okay.

18 A. But I don't know that.

19 Q. Yeah. Who did you hear that from?

20 A. Greg Clay.

21 Q. Greg Clay, okay.

22 A. Yeah.

23 Q. And he was the guy that would keep up with the  
24 longwall ---

25 A. Uh-huh (yes).

1 Q. --- production?

2 A. Uh-huh (yes).

3 Q. Was it common in this mine to have to report  
4 downtime and reasons for downtime?

5 A. Yes.

6 Q. Would that have been reported to Mr. Clay?

7 A. Yes.

8 Q. Would he have passed that to someone else?

9 A. Yes.

10 Q. Who would that ---?

11 A. Probably Chris Adkins.

12 Q. Okay. So Chris Adkins, who was over this  
13 division?

14 A. Uh-huh (yes).

15 Q. Okay. Did Blanchard have a mine phone in his  
16 office, do you know?

17 A. I don't know.

18 Q. Okay. You mentioned (b)(7)(C) & (b)(7)(D)  
19 some overcasts and stuff at the Ellis Portal. Who  
20 told (b)(7)(C) & (b)(7)(D)

21 A. Everett Hager.

22 Q. Okay.

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

24 (b)(7)(C) & (b)(7)(D)

25 Q. Okay. Yeah, sure. We talked about cracks on the

1 longwall two or three times. I think you've mentioned  
2 that was --- occurred years before this accident?

3 A. Yeah, it's occurred several times.

4 Q. How did you find out about those cracks? Were you  
5 there?

6 A. Yeah, I was there.

7 Q. Could you describe those cracks to us and what  
8 happened?

9 A. Well, there was just --- just a crack come in the  
10 bottom, and then methane would come out. Sounded like  
11 a gas well. It would sound like a gas well.

12 Q. What does a gas well sound like? A big rushing  
13 sound?

14 A. Yeah, yeah.

15 Q. Okay. When it did that, did it trip the methane  
16 sensors on the longwall?

17 A. Yes, then it did.

18 Q. Okay. Do you know how long that lasted?

19 A. Some of them lasted, like, four days.

20 Q. Oh, jeez. When this happened, was it all of a  
21 sudden or did it kind of build up?

22 A. No, it was all of a sudden.

23 Q. All of a sudden, okay. Thank you. You mentioned  
24 that some gentlemen had gotten fired on the rock dust  
25 crew for sleeping. Do you recall roughly how far ---

1       how long before the explosion that happened?

2       A. It'd probably been two or three months.

3       Q. That long? And do you know what they did in the  
4       interim? Did they keep dusting on the regular  
5       schedule or did ---

6       A. No.

7       Q. --- they cut back?

8       A. No, they didn't have anybody to do it.

9       Q. So there wasn't a rock dust crew in that area?

10      A. No, not for a while.

11      Q. Okay. Thank you. And you say that the guards at  
12      the guardhouse would call up whenever there were  
13      inspectors on the property?

14      A. Yes.

15      Q. Now, was that every time the inspector drove up?

16      A. Yes.

17      Q. Okay. You said you'd heard about retaliation from  
18      some of the workers who had issues with safety. Do  
19      you recall what you heard?

20      A. Well, they would just take them off the piece of  
21      equipment and doing something else, you know.

22      Q. Okay. So it was kind of a --- was it like a way  
23      to punish ---

24      A. Yeah, uh-huh (yes).

25      Q. --- those people? Was that common knowledge?



1 A. Uh-huh (yes).

2 Q. So what sort of effect do you think that had in  
3 this mine concerning safety? Did it encourage safety?

4 A. No, it didn't encourage safety. No.

5 Q. Did it discourage safety?

6 A. Oh, yeah.

7 ATTORNEY BAXTER:

8 Okay. Do you remember which workers were  
9 involved?

10 A. No.

11 ATTORNEY BAXTER:

12 Okay.

13 BY MR. SHERER:

14 Q. Do you recall hearing anything about why the  
15 longwall was down on Monday?

16 A. Why?

17 Q. Yes.

18 A. I think it had a broke shearer pin on the --- or a  
19 head jack pin or something.

20 Q. Okay. So it was a maintenance issue?

21 A. Yeah.

22 Q. Do you recall any special crews or equipment going  
23 underground to work on that?

24 A. Uh-uh (no), no.

25 Q. Okay. Do you recall anybody talking about methane

1 on the longwall prior to this event?

2 A. No.

3 Q. And you said that the Glory Hole was sealed off by  
4 --- were you involved in sealing that?

5 A. No. I said it was supposed to have been sealed  
6 off. I don't know that it was sealed.

7 Q. Okay. Would it have been the upper mine ---

8 A. Uh-huh (yes).

9 Q. --- that had worked on that?

10 A. Yes.

11 Q. Okay. Do you know what it was supposed --- how it  
12 was supposed to have been sealed?

13 A. No, I don't.

14 Q. Okay. Thank you. When Mr. Blanchard and  
15 Whitehead were in the mine and then prior to the teams  
16 going in, did you hear any --- either one of them  
17 calling out about where they were at or what they were  
18 doing?

19 A. No.

20 Q. So they were just off the radar for some period of  
21 time?

22 A. Yeah.

23 Q. Do you recall when they were found again?

24 A. The last I heard --- and I couldn't tell you a  
25 time, I heard them tell them to stay at 78 Break.

1 Q. Okay.

2 A. Like, somebody from the command center told them  
3 that.

4 Q. Okay. And at that point in time, were there ---

5 A. This was later.

6 Q. --- teams in the 78 Break?

7 A. Yes. Yes, there was teams in there. And I think  
8 the teams were up there at 78. They done got their  
9 fresh air base set up at 78 Break.

10 Q. Okay. So they were told to stay at the fresh air  
11 base?

12 A. Yes, uh-huh (yes).

13 MR. SHERER:

14 Okay. That's all I've got. Do you have  
15 any more Terry?

16 MR. FARLEY:

17 Yes.

18 RE-EXAMINATION

19 BY MR. FARLEY:

20 Q. You stated that Greg Clay told you that the  
21 longwall had been down most of the day on April 5th?

22 A. Uh-huh (yes).

23 Q. When and where did you actually speak with Greg  
24 Clay when he told you that?

25 A. In his office. When, I don't know. It was ---.

1 Q. After the explosion?

2 A. Oh, yeah, after the explosion.

3 Q. Yeah. Would that have been ---

4 A. It would have been ---.

5 Q. --- same day, the next day?

6 A. No, no, no. This would have been weeks, weeks  
7 later, because (b)(7)(C) & (b)(7)(D) for ---

8 Q. Okay.

9 A. --- a little while after that.

10 Q. Okay. Did he specify how long they had been down  
11 that day?

12 A. He said they'd started running at 2:30.

13 Q. Okay.

14 A. So they had been down from I guess the time they  
15 went in until then.

16 Q. All right. Now, you say that this Mr. Hager  
17 brought out a mantrip with six bodies by himself ---

18 A. Uh-huh (yes).

19 Q. --- and after Blanchard and Whitehead continued to  
20 advance inby. Did you hear that directly from Mr.  
21 Hager?

22 A. Yes.

23 Q. When did you speak with Mr. Hager about that?

24 A. That evening. That day.

25 Q. Okay. And did Mr. Hager tell you, in so many

1 words, that he had to holler and cuss at ---

2 A. Yes.

3 Q. --- Blanchard to come back and help him load the  
4 bodies?

5 A. Yes.

6 Q. Okay. One other thing. You said that when you  
7 were standing outside the Ellis Portal with Mr. Hager  
8 when he said, what the hell have they done now <sup>(b)(7)(C) & (b)(7)(D)</sup>

9 A. Yes.

10 Q. Who do you think he was talking about when he said  
11 they?

12 A. Chris Blanchard and Whitehead and Wayne Persinger.

13 Q. Okay. All right. Where's Blanchard now? Where's  
14 he employed now, do you know?

15 A. He's still down there.

16 Q. Is he still at Performance?

17 A. Yeah, but I don't know what he does. I see him  
18 down there every now and then.

19 Q. Okay. All right. Thank you.

20 A. But he's still employed with Massey.

21 MR. FARLEY:

22 Okay. Thank you very much.

23 RE-EXAMINATION

24 BY ATTORNEY MCATEER:

25 Q. Just the last couple questions. Mr. Blanchard is

1 still at the Performance Mine?

2 A. He is there periodically. I see him there.

3 Q. Okay.

4 A. But I don't know who or what his title is or  
5 nothing.

6 Q. Sure. And do you know who fired the rock duster?

7 A. Wayne Persinger.

8 Q. Okay. Was Mr. Hager distressed, upset by the fact  
9 that he had to bring the bodies out by himself?

10 A. Yes.

11 Q. But you don't recall --- I'm sorry. When the  
12 command center gave the direction to --- at Jason  
13 Whitehead and Chris Blanchard to remain at 78, had the  
14 federal officials arrived there by that time?

15 A. Yes, I think so.

16 Q. Okay.

17 A. I'm pretty sure they had. They were there pretty  
18 quick.

19 ATTORNEY MCATEER:

20 Okay. That's all the questions I have.

21 A. That's it?

22 MR. FARLEY:

23 Have you got any questions for me?

24 ATTORNEY FERNALD:

25 I'm going to request a copy of the

1 transcript for him to review.

2 ATTORNEY BAXTER:

3 We'll take that under advisement and get

4 back to you. On behalf of MSHA and the Office of

5 Miners' Health, Safety and Training, I want to thank

6 you for appearing and answering questions today. Your

7 cooperation is very important to the investigation as

8 we work to determine the cause of the accident. We

9 request that you not discuss your testimony with any

10 person aside from your personal representative. After

11 questioning other witnesses, we may call you if we

12 have any follow-up questions that we feel that we need

13 to ask you. If at any time you have additional

14 information regarding the accident that you would like

15 to provide to us, please contact us at the information

16 that was previously provided to you.

17 Any statements given by miner witnesses

18 to MSHA are considered to be an exercise of statutory

19 rights and protected activity under Section 105(c) of

20 the Mine Act. If you believe any discharge,

21 discrimination or other adverse action is taken

22 against you as a result of your cooperation with this

23 investigation, you are encouraged to immediately

24 contact MSHA and file a complaint under Section 105(c)

25 of the Act.

1 Remedies under the Mine Act include back  
2 wages and immediate temporary reinstatement to your  
3 most recent position with the company, pending a  
4 complete investigation of your complaint. In order to  
5 file such a complaint, you should contact the MSHA  
6 District 4 office. For more information concerning  
7 your rights as a miner under the Mine Act, please  
8 visit MSHA's website at [www.msha.gov](http://www.msha.gov).

9 If you wish, you may now go back over any  
10 answer you've given during this interview, and you may  
11 also make any statement that you'd like to make at  
12 this time.

13 A. No.

14 ATTORNEY BAXTER:

15 Again, I want to thank you for your  
16 cooperation in this matter.

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1 STATE OF WEST VIRGINIA )

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CERTIFICATE

5

I, Alison Salyards, a Notary Public in and

6

for the State of West Virginia, do hereby certify:

7

That the witness whose testimony appears in

8

the foregoing deposition, was duly sworn by me on said

9

date and that the transcribed deposition of said

10

witness is a true record of the testimony given by

11

said witness;

12

That the proceeding is herein recorded fully

13

and accurately;

14

That I am neither attorney nor counsel for,

15

nor related to any of the parties to the action in

16

which these depositions were taken, and further that I

17

am not a relative of any attorney or counsel employed

18

by the parties hereto, or financially interested in

19

this action.

20



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*Alison Salyards*

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