



**SARGENT'S
COURT
REPORTING**

Quality Work. Quality People.

Transcript of the Testimony of Charles Semenske

Date: June 23, 2010

Case:

Printed On: July 9, 2010

Sargent's Court Reporting Services, Inc.

Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

STATEMENT UNDER OATH
OF
CHARLES E. SEMENSKE

taken pursuant to Notice by Danielle Ohm, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Beaver, West Virginia, on Wednesday, June 23, 2010 beginning at 4:30 p.m.

Any reproduction of this transcript is prohibited without authorization by the certifying agency.

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ROBERT S. WILSON, ESQUIRE
U.S. Department of Labor
Office of the Regional Solicitor
1100 Wilson Boulevard
22nd Floor West
Arlington, VA 22209-2247

PATRICK C. MCGINLEY
West Virginia Independent Investigation
West Virginia University College of Law
P.O. Box 6130
Morgantown, WV 26506-6130

TERRY FARLEY
West Virginia Office of Miners' Health,
Safety and Training
1615 Washington Street East
Charleston, WV 25311

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

2

3 BARRY KOERBER, ESQUIRE

4 West Virginia Office of Miners' Health,

5 Safety and Training

6 1615 Washington Street East

7 Charleston, WV 25311

8

9 JOHN GODSEY

10 Mine Safety and Health Administration

11 P.O. Box 560

12 Norton, VA 24273

13

14 JOHN F. MCCUSKEY, ESQUIRE

15 Shuman, McCuskey & Slicer, PLLC

16 1411 Virginia Street East

17 Suite 200

18 P.O. Box 3953

19 Charleston, WV 25339

20

21

22

23

24

25

I N D E X

1		
2	OPENING REMARKS	
3	By Attorney Wilson	6 - 7
4	WITNESS: CHARLES SEMENSKE	
5	EXAMINATION	
6	By Attorney Koerber	7 - 29
7	DISCUSSION AMONG PARTIES	29 - 33
8	EXAMINATION	
9	By Mr. Farley	34 - 64
10	EXAMINATION	
11	By Mr. Godsey	64 - 91
12	EXAMINATION	
13	By Mr. McGinley	91 - 101
14	EXAMINATION	
15	By Attorney Wilson	101 - 103
16	RE-EXAMINATION	
17	By Mr. Farley	103 - 105
18	RE-EXAMINATION	
19	By Mr. Godsey	105 - 116
20	RE-EXAMINATION	
21	By Mr. McGinley	116 - 117
22	CLOSING REMARKS	
23	By Attorney Wilson	117 - 119
24	DISCUSSION AMONG PARTIES	119 - 123
25	CERTIFICATE	124

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT PAGE

PAGE

NUMBER	DESCRIPTION	IDENTIFIED
One	Subpoena	8*
Two	Return of Service	8*
Three	Map	56*
Four	Map	56*

* Exhibit not attached

P R O C E E D I N G S

1

2

3 ATTORNEY WILSON:

4 Good afternoon. My name is Bob Wilson.

5 I am with the Office of the Solicitor, United States
6 Department of Labor. With me is John Godsey, an
7 investigator with the Mine Safety and Health
8 Administration. Today is June 23rd, 2010. We're here
9 to conduct an interview of Charles Semenske.

10 MR. SEMENSKE:

11 Right.

12 ATTORNEY WILSON:

13 Also present are individuals with the
14 State of West Virginia. Terry, could you put
15 your ---?

16 MR. FARLEY:

17 Yes. I'm Terry Farley with the West
18 Virginia Office of Miners' Health, Safety and
19 Training.

20 ATTORNEY KOERBER:

21 And I'm Barry Koerber. I'm Assistant
22 Attorney General for the State of West Virginia,
23 representing the Office of Miners' Health, Safety and
24 Training.

25 MR. MCGINLEY:

1 Patrick McGinley with the Governor's
2 Independent Investigation Team.

3 ATTORNEY WILSON:

4 Okay. Before we go any further, Mr.
5 Semenske, I'm going to ask that the court reporter
6 swear you in. If you would raise your right hand.

7 -----

8 CHARLES E. SEMENSKE, HAVING FIRST BEEN DULY SWORN,
9 TESTIFIED AS FOLLOWS:

10 -----

11 ATTORNEY WILSON:

12 And Mr. Koerber has some preliminary
13 matters to go through at this time.

14 EXAMINATION

15 BY ATTORNEY KOERBER:

16 Q. Mr. Semenske, would you please state your name for
17 the record and spell your last name?

18 A. Charles E. Semenske, S-E-M-E-N-S-K-E.

19 Q. Okay. And would you please state your address for
20 the record?

21 A. (b) (7)(C) .

22 Q. And the ZIP?

23 A. (b) (7) .

24 Q. And what is your phone number?

25 A. (b) (7)(C) , and I have a cell.

1 Q. That's fine. Mr. Semenske, were you served with a
2 subpoena compelling your attendance here today?

3 A. Yes, I was.

4 Q. I'd like to hand to your attorney a subpoena and a
5 return of service. If you'd just take a look at them
6 for a minute. I'd like to have those admitted into
7 the record as Exhibits One and Two.

8 A. All right.

9 ATTORNEY KOERBER:

10 Okay. The one-page document titled
11 subpoena, I would ask that that be marked as Exhibit
12 One.

13 (Semenske's Exhibit One marked for
14 identification.)

15 ATTORNEY KOERBER:

16 And the two-page document I would ask
17 that that be marked as Exhibit Two.

18 (Semenske's Exhibit Two marked for
19 identification.)

20 ATTORNEY WILSON:

21 All right. For the record, those have
22 been marked as Exhibit Semenske One and Exhibit
23 Semenske Two.

24 BY ATTORNEY KOERBER:

25 Q. Mr. Semenske, do you have an attorney or a

1 personal representative with you here today?

2 A. Yes, I do.

3 Q. Is it a personal representative or an attorney?

4 A. Both.

5 Q. Okay.

6 ATTORNEY KOERBER:

7 Sir, would you please state --- Mr.

8 McCuskey, please state your name for the record?

9 ATTORNEY MCCUSKEY:

10 Yes. John McCuskey. Law firm is Shuman,

11 McCuskey and Slicer in Charleston, West Virginia.

12 BY ATTORNEY KOERBER:

13 Q. Mr. Semenske, did you voluntarily choose this
14 individual to be your attorney?

15 A. Yes, I did.

16 Q. Did you retain this attorney or did someone retain
17 him for you?

18 A. Am I paying or what?

19 Q. Yes. Are you paying for ---?

20 A. No, I'm not.

21 Q. Okay. And can you answer who is?

22 A. I guess Massey Energy is paying.

23 Q. Has Mr. McCuskey represented you before this
24 matter?

25 A. No.

1 Q. How did you find Mr. McCuskey?

2 A. I found out I was coming to this subpoena and I
3 went to a vice-president of the company and asked him.
4 I told him I was having to come down here, and he
5 asked me if I needed any legal representation. I told
6 him, yes.

7 Q. Okay.

8 A. I'd rather not come by myself.

9 Q. Okay. And who was that vice-president that you
10 asked?

11 A. Wayne Persinger.

12 Q. Have you met with your attorney prior to today?

13 A. Yes.

14 Q. Where?

15 A. In my home.

16 Q. Have you signed any type of engagement letter or
17 engagement agreement with Mr. McCuskey?

18 A. No.

19 Q. Do you intend to in the near future?

20 A. Probably.

21 ATTORNEY KOERBER:

22 Mr. McCuskey, are you currently

23 representing Massey, Performance Coal or UBB?

24 ATTORNEY MCCUSKEY:

25 Name those again. UBB ---?

1 ATTORNEY KOERBER:

2 Are you currently representing UBB?

3 Let's take them one at a time.

4 ATTORNEY MCCUSKEY:

5 No.

6 ATTORNEY KOERBER:

7 Are you currently representing Upper Big

8 Branch Mine?

9 ATTORNEY MCCUSKEY:

10 When you say you, I'm going to assume

11 you're talking about my firm?

12 ATTORNEY KOERBER:

13 Yes.

14 ATTORNEY MCCUSKEY:

15 Right. No. And you know, this is a bit

16 odd, and there may be some questions that you ask me

17 which the interviewer asked beforehand that ---

18 oriented to what I consider attorney/client privilege,

19 I'm certainly not going to answer you.

20 ATTORNEY KOERBER:

21 Oh, I understand. I don't believe any of

22 my questions go to that level, but if you have a

23 problem with any of them, just state your objection.

24 ATTORNEY MCCUSKEY:

25 I will.

1 ATTORNEY KOERBER:

2 Are you currently representing
3 Performance Coal in any manner?

4 ATTORNEY MCCUSKEY:

5 No.

6 ATTORNEY KOERBER:

7 And by you, I mean, you or your firm.

8 ATTORNEY MCCUSKEY:

9 Correct.

10 ATTORNEY KOERBER:

11 And are you or your firm currently
12 representing Massey in any manner?

13 ATTORNEY MCCUSKEY:

14 I do not believe so. There is a civil
15 action that's of record in which our firm represents
16 an entity, but I don't believe it's Massey.

17 ATTORNEY KOERBER:

18 Okay. And Mr. McCuskey, as to Mr.
19 Semenske --- is it Semenske or Semenske (changes
20 pronunciation).

21 A. Semenske.

22 ATTORNEY KOERBER:

23 Semenske. Do you have an attorney/client
24 relationship with him?

25 ATTORNEY MCCUSKEY:

1 Yes, I do.

2 ATTORNEY KOERBER:

3 The third-party payer will have no
4 control in the litigation; would that be a correct or
5 incorrect statement?

6 ATTORNEY MCCUSKEY:

7 I suspect that would be a correct
8 statement, but my answers to questions along those
9 lines would be that I understand my responsibilities
10 under the West Virginia Rules of Professional
11 Responsibility and can ensure you that they would be
12 adhered to in all respects.

13 BY ATTORNEY KOERBER:

14 Q. Mr. Semenske, you understand that in the event
15 your attorney experiences or finds himself in a
16 conflict of interest, that at some time in the future,
17 there is the potential that Mr. McCuskey would have to
18 recuse himself from your matter? Are you aware of
19 that?

20 A. Yes, sir.

21 Q. During the questions that I've asked you so far
22 today and the responses that you have made, and Mr.
23 McCuskey, do you still want Mr. McCuskey to be your
24 representative for today?

25 A. Yes, sir.

1 ATTORNEY KOERBER:

2 Okay. Bob, do you have any questions you
3 want to follow up?

4 ATTORNEY WILSON:

5 Oh, just a couple follow-up questions.

6 Just to clarify, Mr. McCuskey, your client is Mr.
7 Semenske; is that correct?

8 ATTORNEY MCCUSKEY:

9 That is correct, sir.

10 ATTORNEY WILSON:

11 And you do not have an attorney/client
12 relationship with Massey or any of its affiliates; is
13 that correct?

14 ATTORNEY MCCUSKEY:

15 That is not what I said in response to
16 that earlier question. I indicated to you that our
17 firm, with respect to a civil action unrelated to
18 this, has a relationship with one of the Massey subs,
19 but it's not this one.

20 ATTORNEY WILSON:

21 All right. And that's a completely
22 unrelated case; is that correct?

23 ATTORNEY MCCUSKEY:

24 Completely unrelated.

25 ATTORNEY WILSON:

1 All right. With respect to your
2 representation of Mr. Semenske, would it be a correct
3 statement that you do not have an attorney/client
4 relationship with Massey?

5 ATTORNEY MCCUSKEY:

6 I don't think that --- in lawyer's terms,
7 that doesn't really, pardon what I'm going to say, but
8 make sense. Say that again. Then let me see
9 what ---.

10 ATTORNEY WILSON:

11 All right. Well, in some representation
12 you can have dual clients.

13 ATTORNEY MCCUSKEY:

14 That's right.

15 ATTORNEY WILSON:

16 All right. Now, I want to make sure that
17 in this instance you're representing Mr. Semenske and
18 your representation does not go towards Massey.

19 ATTORNEY MCCUSKEY:

20 That's correct.

21 ATTORNEY WILSON:

22 All right. And do you understand, Mr.
23 McCuskey, that you may not communicate with Massey
24 Energy or any of its affiliates, directors, officers
25 or attorneys concerning the substance of the interview

1 that Mr. Semenske will give today?

2 ATTORNEY MCCUSKEY:

3 And again, I fully understand my

4 responsibilities under the West Virginia Rules of

5 Professional Responsibility.

6 ATTORNEY WILSON:

7 Yeah. And do you agree that those

8 responsibilities include not communicating with Massey

9 or any of its affiliates or officers or directors

10 concerning the substance of the information that Mr.

11 Semenske will give here today?

12 ATTORNEY MCUSKEY:

13 I think that that would --- it would be

14 inappropriate for me to comment on the interpretation

15 of the West Virginia Rules of Professional

16 Responsibility, and all I can --- the only way I'm

17 going to answer that is to say I assure you that I

18 will adhere to all responsibilities under the West

19 Virginia Rules of Professional Responsibility.

20 ATTORNEY WILSON:

21 Okay. So then just to be clear, you're

22 not willing to state here today that you will not

23 communicate with Massey or any of its affiliates,

24 directors, officers or attorneys concerning the

25 substance of Mr. Semenske's interview today; is that

1 correct?

2 ATTORNEY MCCUSKEY:

3 I believe your question invades the
4 attorney/client privilege and is also an inappropriate
5 attempt to ask me to interpret the West Virginia Rules
6 of Professional Responsibility, and I'm not willing to
7 do that.

8 ATTORNEY WILSON:

9 Okay. Your attorney/client relationship,
10 again, is with Mr. Semenske; correct?

11 ATTORNEY MCCUSKEY:

12 That's correct.

13 ATTORNEY WILSON:

14 All right. So if you communicate with
15 Massey or any of its affiliates, how is that violating
16 your attorney/client privilege?

17 ATTORNEY MCCUSKEY:

18 The answer to your question is what would
19 be violating? You're asking me a question that would,
20 in my judgment, cause me to violate the
21 attorney/client privilege by answering, not the
22 answer, but the question. And I think that answers
23 I've given you to the appropriate questions cover
24 that.

25 ATTORNEY WILSON:

1 But do you understand that under Section
2 105(c) of the Mine Act that a miner has a statutorily
3 protected right to provide information to MSHA
4 concerning conditions at a mine where the person is
5 working or has worked?

6 ATTORNEY MCCUSKEY:

7 I think that that's an inappropriate
8 question to ask me to interpret the law and what I
9 understand the law to be. I mean, I'm here as Mr.
10 Semenske's lawyer. He's under oath. He's going to
11 answer your questions to the best of his ability. And
12 I think asking me questions about my understanding of
13 the law and my role is not appropriate, and I'm not
14 going to answer that question.

15 ATTORNEY WILSON:

16 And do you understand that if a witness,
17 a miner, gives information to MSHA concerning
18 conditions at a mine, that that is privileged
19 information?

20 ATTORNEY MCCUSKEY:

21 Same answer. Questioning me on my
22 understanding of the law I think is inappropriate, and
23 I'm not going to answer that question as Mr.
24 Semenske's lawyer. I don't believe I was subpoenaed
25 here today to give testimony.

1 ATTORNEY WILSON:

2 Well, we're just trying to clarify that
3 the representation here is of Mr. Semenske and
4 not ---.

5 ATTORNEY MCCUSKEY:

6 I think the other questions have
7 clarified that. You asked me if I was Mr. Semenske's
8 Counsel, and it's pretty clear that I am. And the
9 other questions you asked me I think cover everything
10 that is appropriate to be asking Mr. Semenske's
11 attorney about our relationship.

12 ATTORNEY WILSON:

13 And one of our concerns is that
14 information that is provided during these interviews
15 is not being provided to Massey or any of its
16 affiliates. And what we're trying to understand here
17 today is if you understand that concern and if you
18 agree to abide by our request that you not provide
19 information to Massey, its officers, directors or
20 attorneys or any of Massey's affiliates concerning the
21 information that Mr. Semenske is going to provide here
22 today.

23 ATTORNEY MCCUSKEY:

24 Again, I think me --- you can ask me a
25 question and I can tell you if it's appropriate to

1 answer, but asking me to agree to your condition is
2 not an appropriate question, and I will simply answer
3 by saying that I have given answers that will cover
4 this situation and that as I've indicated, I will
5 comply with all responsibilities and the Rules of
6 Professional Responsibility in West Virginia and will
7 adhere to those.

8 ATTORNEY WILSON:

9 Okay. Well, frankly, Mr. ---.

10 ATTORNEY MCCUSKEY:

11 I think your question covers that area.

12 ATTORNEY WILSON:

13 Well, Mr. McCuskey ---.

14 ATTORNEY MCCUSKEY:

15 McCuskey.

16 ATTORNEY WILSON:

17 McCuskey. Sorry. Frankly, I'm not

18 satisfied here that you're not going to be providing
19 information to Massey. And we understand that when we
20 have a third-party payee, there is a potential
21 conflict of interest. You're being paid by Massey.

22 They're the ones paying your bills. And that's fine.

23 ATTORNEY MCCUSKEY:

24 I don't think ---

25 ATTORNEY WILSON:

1 But I want to ---.

2 ATTORNEY MCCUSKEY:

3 --- that's the testimony here. I think

4 Mr. Semenske said he believed that.

5 ATTORNEY WILSON:

6 Okay. Well, our understanding is that

7 that may be the case. Clearly you're being paid by a

8 third-party, and we want to make sure that Mr.

9 Semenske's rights under the Mine Act are protected,

10 that the information --- that he has assurances that

11 he information that he provides here today is not

12 going to be revealed to his employer.

13 ATTORNEY MCCUSKEY:

14 And see, that is --- all matters that Mr.

15 Semenske and I would have discussed are protected by

16 attorney/client privilege, and that's why I think your

17 questions go to the invasion of that, of our

18 privilege.

19 ATTORNEY WILSON:

20 Will you confirm that you will not

21 provide any information concerning the substance of

22 the interview here today to any third-party without

23 Mr. Semenske's consent?

24 ATTORNEY MCCUSKEY:

25 I will adhere to my responsibilities

1 under the West Virginia Rules of Professional
2 Responsibility. That's the only answer I can give
3 you, because to answer otherwise would be to invade
4 the attorney/client privilege, and just so it's clear,
5 the attorney/client privilege being Mr. Semenske. And
6 I'm not talking about any other privilege except our
7 privilege.

8 ATTORNEY WILSON:

9 Will you confirm that the third-party
10 payer in this matter will not direct, regulate or
11 interfere with your professional judgment in
12 representing Mr. Semenske?

13 ATTORNEY MCCUSKEY:

14 I will confirm that with respect to that
15 question, I will adhere to my responsibilities under
16 the West Virginia Rules of Professional
17 Responsibility.

18 ATTORNEY WILSON:

19 All right. Pat, did you have any
20 questions on this point?

21 MR. MCGINLEY:

22 No.

23 ATTORNEY WILSON:

24 Okay. Let's go off the record.

25 OFF RECORD DISCUSSION

1 ATTORNEY WILSON:

2 Mr. Semenske, having heard the
3 conversations so far here, I just want to confirm that
4 you agree to have Mr. McCuskey as your attorney in
5 this matter.

6 A. Yes.

7 ATTORNEY WILSON:

8 And that that choice is completely
9 voluntary.

10 A. Right.

11 ATTORNEY WILSON:

12 All right. Now, Mr. Semenske, I do want
13 to inform you of your rights as a miner under the Mine
14 Act. Any statements given by miner witnesses to MSHA
15 are considered to be an exercise of statutory rights
16 and protected activity under Section 105(c) of the
17 Mine Act. If you believe any discharge,
18 discrimination or adverse action is taken against you
19 as a result of your cooperation with this
20 investigation, you are encouraged to immediately
21 contact MSHA and file a complaint under Section 105(c)
22 of the Mine Act.

23 Remedies under the Mine Act include back
24 wages and immediate temporary reinstatement to your
25 most recent position with the company pending a

1 complete investigation of your complaint. In order to
2 file such a complaint, you should contact the MSHA
3 District Four office in Mount Hope, West Virginia or
4 you can go to MSHA's website at www.msha.gov for more
5 information concerning your rights under the Mine Act.
6 Terry?

7 MR. FARLEY:

8 Charlie, I also want to advise you on
9 behalf of the West Virginia Office of Miners' Health,
10 Safety and Training that West Virginia Code Chapter
11 22(a), Article 1, Section 22 protects miners against
12 discrimination. I'll give you some contact
13 information in the event you should experience any
14 such treatment as a result of participating in this
15 interview. I've also given you one of my business
16 cards and to your attorney also, where you can contact
17 me directly or Mr. Bill Tucker, who's also one of our
18 lead underground --- a lead underground investigator.

19 ATTORNEY KOERBER:

20 Let me just ask a couple more real quick
21 questions. Mr. McCuskey, do you have a written
22 agreement with the third-party payee for paying for
23 your representation here today?

24 ATTORNEY MCCUSKEY:

25 I'm afraid that that question would

1 violate attorney/client privilege and I don't think
2 it's an appropriate question.

3 ATTORNEY KOERBER:

4 Okay. But wouldn't it be true that if
5 the attorney/client privilege goes with Mr. Semenske
6 and there is no attorney/client privilege toward the
7 third-party payee, that that agreement there would be
8 no attorney/client privilege to?

9 ATTORNEY MCCUSKEY:

10 Well, that would be a possible
11 interpretation, but I don't agree with that because I
12 think the relationship with my client predominates,
13 and that is part of that relationship.

14 ATTORNEY KOERBER:

15 Okay. Is the arrangement made by the
16 third-party payee to pay for the services here today
17 or for any services needed to be performed pertaining
18 to anything that might arise in this state and federal
19 investigation?

20 ATTORNEY MCCUSKEY:

21 I'm afraid I believe that's an
22 inappropriate question. I'm not going to answer it.

23 BY ATTORNEY KOERBER:

24 Q. Mr. Semenske, hearing all that, do you still want
25 Mr. McCuskey as your lawyer here today?

1 A. Yes, sir.

2 Q. Okay. Let me get back to my form here. Okay.

3 Mr. Semenske, when you were giving me the information
4 at the very beginning, of your address, I failed to
5 write it down on this witness form as far as the form
6 for you to get the witness fee. I know this is a
7 repeat question, but would you please give me your
8 P.O. Box number one more time?

9 A. (b) .

10 Q. (b) . And you said (b)(7)(C) ; correct?

11 A. Correct.

12 Q. (b)(7)(C) ; right?

13 ATTORNEY MCCUSKEY:

14 Oh, I thought there were two N's. Just
15 one?

16 A. No, just one.

17 ATTORNEY MCCUSKEY:

18 Okay.

19 BY ATTORNEY WILSON:

20 Q. Pardon me?

21 A. Just one N.

22 Q. Okay. And that's, of course, West Virginia. And
23 what's your ZIP code?

24 A. (b)(7)(C)

25 Q. Okay. And you're here for one day, so that'll be

1 a \$40 witness fee. Would you please tell me to the
2 best of your knowledge what the round trip miles were
3 in your personal vehicle or your vehicle for which
4 you're responsible for here and --- from your house
5 back to here and back?

6 A. It's no more than four or five miles. I won't
7 even worry about it.

8 Q. Okay. So you're not worried about the mileage?

9 A. No.

10 Q. Okay. Did you pass through any tolls?

11 A. Pardon?

12 Q. Did you pass through any toll gates?

13 A. No, no.

14 Q. Okay. So your total here for today will be \$40.

15 I'm going to hand you the form. Mr. Semenske, for you
16 to get paid, you'll need to fill out your Social
17 Security number here in this box and sign your name
18 here together with the date, please.

19 ATTORNEY MCCUSKEY:

20 I talked to Mr. Semenske beforehand. I
21 don't think he wants the \$40 ---

22 ATTORNEY KOERBER:

23 He doesn't?

24 ATTORNEY MCCUSKEY:

25 --- because he doesn't want to --- you

1 have to put your Social Security number on there;

2 right?

3 ATTORNEY KOERBER:

4 Yeah.

5 ATTORNEY MCCUSKEY:

6 It becomes public; is that correct?

7 ATTORNEY KOERBER:

8 That won't be public. That won't be

9 public.

10 ATTORNEY MCCUSKEY:

11 Well, anyway, he said he ---.

12 A. Yeah.

13 ATTORNEY MCCUSKEY:

14 You can speak for yourself. Just want to

15 short circuit all that.

16 A. I don't want it.

17 ATTORNEY KOERBER:

18 Okay, okay, okay. Good enough. Thank

19 you.

20 ATTORNEY MCCUSKEY:

21 Last chance to get \$40.

22 A. A little paranoid.

23 ATTORNEY MCCUSKEY:

24 Going once.

25 BY ATTORNEY KOERBER:

1 Q. Would you just state for the record that you
2 decline the witness fee?

3 A. Right. I don't want the fee.

4 ATTORNEY KOERBER:

5 Okay. Thank you. I'm finished.

6 ATTORNEY WILSON:

7 All right. Mr. Semenske, government
8 investigators and specialists have been assigned to
9 investigate the conditions, events and circumstances
10 surrounding the fatalities that occurred at the Upper
11 Big Branch Mine South on April 5th, 2010. The
12 investigation is being conducted by MSHA pursuant to
13 Section 103(a) of the Federal Mine Safety and Health
14 Act and by the West Virginia Office of Miners' Health,
15 Safety and Training. We appreciate your appearance
16 here today.

17 Note for the record that there are
18 additional individuals present in the room from both
19 MSHA and the state teams. All members of the Mine
20 Safety and Health Administration Accident
21 Investigation Team and all members of the State of
22 West Virginia Accident Investigation Teams
23 participating in this interview shall keep
24 confidential all information that is gathered from
25 each witness who provides a statement until witness

1 statements are officially released. MSHA and the
2 State of West Virginia shall keep this information
3 confidential so that other ongoing enforcement
4 activities are not prejudiced or jeopardized by a
5 premature release of information.

6 This confidentiality requirement shall
7 not preclude investigation team members from sharing
8 information with each other or with other law
9 enforcement officials. Everyone's participation in
10 this interview constitutes their agreement to keep
11 this information confidential.

12 Mr. Semenske, this is not an adversarial
13 proceeding. This is a fact finding proceeding.
14 Formal Cross Examination will not be permitted.
15 However, your attorney may ask clarifying questions as
16 appropriate.

17 Your identity and the content of this
18 conversation will be made public at the conclusion of
19 the interview process, and may be included in a public
20 report of the accident unless you request that your
21 identity remain confidential. If you request us to
22 keep your identity confidential, we will do so to the
23 extent permitted by law. In other words, if a Judge
24 orders us to reveal your name or if another law
25 requires us to reveal your name, we may do so. There

1 may also be a need to use the information that you
2 provide to us today in other investigations or
3 hearings into the explosion. Do you understand that?

4 A. Uh-huh (yes).

5 ATTORNEY WILSON:

6 Do you have any questions?

7 A. No.

8 ATTORNEY WILSON:

9 All right. After the investigation is
10 complete, MSHA will issue a public report detailing
11 the nature and causes of the fatalities in hope that
12 greater awareness about the causes of accidents can
13 reduce their occurrence in the future. Information
14 obtained through witness interviews is frequently
15 included in these reports. We will be interviewing
16 other witnesses after today, and therefore, we request
17 that you not discuss your testimony with anyone other
18 than with your attorney. Do you understand that?

19 A. Yes, sir.

20 ATTORNEY WILSON:

21 A court reporter will be recording the
22 interview today, so please speak loudly and clearly.
23 Again, if you do not understand a question asked or if
24 you don't hear the question completely, please ask
25 that the question be restated. Please answer each

1 question as fully as you can, including any
2 information that you may have learned from someone
3 else. If at any point in time you need to take a
4 break, just let me know and we'll go off the record
5 and take a short break. Again, I want to thank you in
6 advance for your appearing here today and answering
7 our questions. Your cooperation is critical in making
8 the nation's mines safer.

9 After we have finished asking questions,
10 we will provide you an opportunity to either make a
11 statement for the record or to provide us with any
12 additional information that you believe may be
13 relevant or helpful in our investigation. If you
14 think of any additional information after the
15 interview is completed, please contact your attorney,
16 and he can contact either us or the state and let us
17 know that you have something else that you would like
18 to add; all right?

19 A. Okay.

20 ATTORNEY WILSON:

21 Okay. At this time, is there anything
22 further?

23 MR. MCGINLEY:

24 I'd just like to say I'm sure the
25 investigation team, MSHA and the State Office of

1 Miners' Training, Health and Safety would join with me
2 in simply emphasizing that we're here to try to get to
3 the truth in order to find out what happened at the
4 Upper Big Branch Mine, try to determine what the cause
5 is. We've got widows and children, family members
6 that would want to know what happened there. What
7 caused it? What can we do to prevent something like
8 this in the future? So your truthfulness in answering
9 our questions is important not only to this panel, but
10 to those loved ones of those who were lost in this
11 disaster.

12 ATTORNEY WILSON:

13 Okay. Mr. McCuskey, is there anything
14 further you would like to add before we begin with
15 questions?

16 ATTORNEY MCCUSKEY:

17 Just one thing. We said this off the
18 record, but just so it's clear, Mr. Semenske has some
19 (b)(7)(C) . And it sounds like you're doing
20 a good job of enunciating when asking the questions,
21 but keep that in mind as you go along. And other than
22 that, no.

23 ATTORNEY WILSON:

24 All right. We'll pass it on to Terry
25 Farley to begin the questions.

1 EXAMINATION

2 BY MR. FARLEY:

3 Q. Okay. Charlie, where are you currently employed?

4 A. At UBB.

5 Q. Still there?

6 A. Right.

7 Q. Okay. Were you employed at UBB on April 5th,
8 2010?

9 A. Right.

10 Q. Okay. Now, how long have you been employed at
11 UBB?

12 A. Three or four years, approximately.

13 Q. Okay. Where'd you work before you came to UBB?

14 A. It was a little mine called Marfork Eagle.

15 Q. Okay. Is that a Massey company?

16 A. Yeah, it is.

17 Q. Okay. How many years experience do you have in
18 the coal mining industry?

19 A. Thirty-nine (39) years.

20 Q. Thirty-nine (39) years? Started early. How many
21 years have you been with Massey companies?

22 A. Fourteen (14) years probably.

23 Q. Okay. All right. As of April 5th of this year
24 and before, what was your normal shift and working
25 hours at the UBB mine?

1 A. Dayshift. I worked dayshift. I'd start at 6:00
2 and quit mostly before four o'clock in the evening.

3 Q. Okay. Who was your immediate supervisor then at
4 UBB?

5 A. Everett Hager.

6 Q. Okay. Now, what was your job? What was your
7 position at UBB April 5th?

8 A. I walked all the airways in the mine.

9 Q. Walked all the airways in the mine. Now ---.

10 A. Except the other side of the mines, now, you know,
11 but had the south said and UBB side.

12 Q. Okay. Which side did you walk?

13 A. I walked the UBB side where the longwall and
14 everything was at.

15 Q. Okay. Now, does that mean you would've traveled
16 the bleeder entries at the back end of the longwall
17 towards the Bandytown fan?

18 A. No. Now, that's not the one --- I didn't do that
19 one. That's one I used to walk, and they had another
20 guy going up there pumping every day. So instead of
21 both of us walking up there every day, they let him do
22 that.

23 Q. Okay. Now, if we laid out a map here, is it
24 possible for you to take one of these markers and
25 trace the area of your responsibility, areas where you

1 were supposed to mark --- where you were supposed to
2 examine at UBB?

3 A. You got a while?

4 Q. What?

5 A. You got a while? I mean, I ---.

6 Q. I'm getting hungry, but you know, we can --- I got
7 as long as you got.

8 A. Okay. I walked about 31 miles per week, but ---.

9 Q. Okay. Now, before, before we start marking here,
10 let me ask a couple more questions real quick here.
11 Are you an hourly employee at UBB?

12 A. Yes, sir.

13 Q. Okay. What exactly is your title?

14 A. I'm actually an electrician.

15 Q. Okay. That's your rate of pay?

16 A. That's my rate of pay.

17 Q. Okay. Are you considered a supervisor?

18 A. No.

19 Q. Okay. You don't boss anybody? Nobody ---

20 A. No.

21 Q. --- reports to you? Are you considered a member?
22 You're not a contractor?

23 A. No. I'm a member.

24 Q. Okay. Now, the examinations that you make --- or
25 made prior to April 5th, were these airways only?

1 A. Airways.

2 Q. Did you fire boss anything, working sections?

3 A. No.

4 Q. Okay. Did you fire boss any conveyor belts?

5 A. No.

6 Q. Okay. All right. We've got a map here now which
7 shows the area of the mine from about 78 Switch toward
8 the longwall area at the time of the explosion and the
9 area where the 22 Tailgate section was, the 22
10 Headgate was and the entries toward the Bandytown fan.
11 Now, is this an area of the mine you examined?

12 A. Part of it.

13 Q. Okay. Why don't you, if you would, just get up
14 and move about and see where you can ---

15 A. Yes.

16 Q. --- where you should mark the areas that you
17 examined in this part of the mine? And we'll get the
18 other map out and go from there. Come around here or
19 stay over there, wherever you can see it better. Now,
20 these airways --- these examinations, were these
21 weekly examinations?

22 A. Yeah, weekly.

23 Q. Did you do any daily examinations?

24 A. No.

25 Q. Okay. Just weekly examinations? Just please take

1 the marker and mark the airways that you traveled
2 prior to April 5th.

3 ATTORNEY MCCUSKEY:

4 Terry, may I ask, do you mean that day or
5 generally.

6 MR. FARLEY:

7 Well, let's start with that day.

8 A. Okay. It's not on this map.

9 BY MR. FARLEY:

10 Q. Okay. All right. Since we've got this map out
11 --- I assume you walked the same airways every week?

12 A. Right.

13 Q. Okay. Let's mark the areas that you would've
14 walked the week prior to the April 5th explosion.

15 A. Okay.

16 Q. Let's try it that way. And then we'll move to
17 April 5th. It's around 78 Switch here (indicating).
18 Charlie, would you want to use the wall map over here
19 that shows the entire mine?

20 A. No.

21 Q. Okay. Go ahead.

22 WITNESS COMPLIES

23 BY MR. FARLEY:

24 Q. Okay. You're marking what would be the Number
25 Five entry?

1 A. Yeah, at the intake.

2 Q. Okay. That would be in the diagonal going towards
3 Glory Hole up Six North Belt; right?

4 A. Yeah.

5 ATTORNEY WILSON:

6 And let the record reflect that the
7 witness is marking with a green highlighter.

8 A. Another guy took over about here (indicating) when
9 he went up here to the fan.

10 BY MR. FARLEY:

11 Q. Okay. Now, the area you're pointing to where
12 somebody else took over is about ---

13 A. Yeah.

14 Q. --- Number 70 Crosscut in the tailgate entries?

15 A. Well, it was the turn back here (indicating).

16 Q. Okay. Now, you've marked a considerable area in
17 this part of the mine. Now, before you move to
18 another map and you mark the rest of it, can you sort
19 of talk me through this and explain to me how you
20 would have examined this area the week before the
21 explosion? I know you've marked it on the map. If
22 you can just talk me through it if you don't mind.

23 A. Okay.

24 ATTORNEY MCCUSKEY:

25 Charlie, if I may, make sure the court

1 reporter can hear you. Terry's asking you a question,
2 but ---

3 A. Okay.

4 ATTORNEY MCCUSKEY:

5 --- she's the one that's got to write it
6 all down.

7 BY MR. FARLEY:

8 Q. Just take your time ---

9 ATTORNEY MCCUSKEY:

10 Yes. Take your time.

11 BY MR. FARLEY:

12 Q. --- and talk me through how you examined this
13 area.

14 A. Okay.

15 Q. Where you would've started and tell me --- you
16 know, tell me the difference between the intakes and
17 returns, if you would, please.

18 A. Okay. I usually did this airway on a Tuesday. I
19 start at Five Break, but the intake is not on here.

20 Q. Okay. All right.

21 A. I'd walk all the way up here to 85 Break right
22 here. And I would get out, come across the overcast
23 right here.

24 Q. And that overcast would be at 83?

25 A. Something like that.

1 Q. Okay.

2 A. Come back up the track entry.

3 Q. In the outby direction?

4 A. Right.

5 Q. All right.

6 A. Get out and to get in the return, come back down
7 this way.

8 Q. Coming back down that way, you're going up Number
9 One entry in the ---?

10 A. Going up toward the fan.

11 Q. Towards the Bandytown fan and ---

12 A. Right.

13 Q. --- the tailgate entries?

14 A. Right. And I'd get out ---.

15 Q. Or what turned out to be the tailgate entries ---

16 A. Right.

17 Q. --- when they passed the longwall?

18 A. Okay. I would go up to here, and that's where I'd
19 put my last name.

20 Q. Okay. Now, when you say, up to here, you're up at
21 about ---

22 A. Seventy (70) somewhere.

23 Q. --- 70? Looks like 71 Crosscut ---

24 A. Right.

25 Q. --- on the tailgate side of the longwall gob.

1 A. Okay. I messed up there, Terry. I can't get over
2 in here. I messed that one up, but anyway, I'd go up
3 here and I'd come back down the other --- walk the
4 same entry down, because everything over here is bad.
5 I mean, it's ---.

6 Q. When you say you walk this same entry back down,
7 you're going in the outby direction?

8 A. Right. Down to where the tail of the longwall
9 --- you'd get to the tail of the longwall and then
10 cross over and head on the airway this way
11 (indicating), comes up the tailgate. And I traveled
12 it out. You go down here to go to these other two
13 sections.

14 Q. Okay. Now, you would pass through the crossover
15 on the outby end of the longwall crossover?

16 A. Well, let me finish marking and then I'll show
17 you.

18 Q. Let's finish marking then.

19 WITNESS COMPLIES

20 A. And you could get in right --- a break or so above
21 the coal, it would be pretty bad, right in here, you
22 know.

23 BY MR. FARLEY:

24 Q. Now, when you say it's pretty bad right in here,
25 you're pointing towards the area where the --- on the

1 tailgate side of the existing longwall face; is that
2 right?

3 A. Right. And all of this (indicating) is filled in,
4 and the bottom's hooved up and you can't get nowhere
5 in it, nowhere close to it.

6 Q. Now, you're pointing to the area from about the
7 longwall tailgate of the existing face inby toward
8 where you ended up at about 71 Crosscut of the
9 tailgate side?

10 A. Uh-huh (yes).

11 Q. Now, when you say all of that is bad and fell in
12 through there, how many of those entries are actually
13 passable? How many of those entries did you actually
14 walk through?

15 A. Just one entry right here (indicating). Number
16 One entry going to the Bandytown fan.

17 Q. Okay. The entry that you marked --- now, from the
18 longwall face heading toward the Bandytown fan, which
19 was the tailgate entry, is that the only entry that
20 was passable there?

21 A. That's the only one. It's bad. It really is.

22 Q. Would that be the same for other people as far as
23 UBB?

24 A. I would think so.

25 ATTORNEY WILSON:

1 Take --- I have a blue marker --- in the
2 area that you're referring to.

3 WITNESS COMPLIES

4 BY MR. FARLEY:

5 Q. We obviously haven't seen it. Okay. Now, then
6 bad means bad roof conditions and floor hooving?

7 A. Right.

8 Q. Okay. All right.

9 A. I come all the way down to the head, and this
10 whole Two section, this whole Two section is what used
11 to be here, and they cut this across to make returns
12 for these other sections up here (indicating).

13 Q. Okay.

14 A. This is the one. I'd walk up here (indicating) on
15 this section.

16 Q. Now, when you say you're walking up here, you
17 crossed over ---

18 A. I was already past it.

19 Q. --- the outby entry ---

20 A. Yeah.

21 Q. --- and the longwall panel in this crossover area,
22 and you cross over and you turn left and go inby in
23 the ---

24 A. Right.

25 Q. --- One North entries and travel inby to what

1 appears to be the Number Four entry; is that correct?

2 A. Right. This is tailgate of the longwall that they
3 were driving.

4 Q. You walked to the tailgate section?

5 A. Right.

6 Q. What's on Tailgate 22; is that correct?

7 A. Intake and return.

8 Q. Okay.

9 A. Come up and go around and then ---.

10 Q. And when you say you come up and you go around,
11 you head north in the Number One entry and those
12 crossover entries ---

13 A. Right.

14 Q. --- connecting 22 Tailgate and 22 Headgate; is
15 that correct?

16 A. Right, yes. And usually I would take and cross
17 over down here (indicating), right here and come back
18 down this way right here, because that's pretty much a
19 day's work.

20 Q. Okay. All right.

21 ATTORNEY WILSON:

22 Charlie, just one thing. When you're
23 referring to locations on the map, if you could just
24 describe what you're referring to as opposed to saying
25 here, through the crossover here, because that won't

1 show up ---

2 A. Okay.

3 ATTORNEY WILSON:

4 --- on the transcript; okay? So could
5 you just describe what you just referred to?

6 A. Yeah.

7 ATTORNEY WILSON:

8 The area where you came back out?

9 A. Okay. I go down, cross to the set of --- goes
10 overcastting the door, come back out and get in the
11 return --- or the intake, I mean, and come back to ---
12 what break is this? Number Seven Belt. Okay. I
13 walked this (indicating) intake back to ---.

14 BY MR. FARLEY:

15 Q. When you say this intake, you walked ---?

16 A. At 78 Break.

17 Q. You're pointing to Crosscut 105 in the Six
18 North ---

19 A. Yeah.

20 Q. --- Belt entry?

21 A. Right.

22 Q. You traveled outby then?

23 A. Right. I go back down and get back in the primary
24 right here (indicating) at --- what is that, 78 Break?

25 Q. Thereabout, yes.

1 A. I get in my primary and walk all the way back to
2 Five Break.

3 Q. Okay. Go ahead and mark it.

4 WITNESS COMPLIES

5 A. And it's not on this map, but from here
6 (indicating) I go all the way to the outside of that
7 primary.

8 BY MR. FARLEY:

9 Q. All right. Now, let's talk about this area of the
10 mine before we go to another map. Now, you've marked
11 a considerable area of airways that you traveled,
12 which take you to the two miner sections, 22 Tailgate
13 and 22 Headgate, and up each side of the longwall
14 panel. Now, when you travel on this tailgate side of
15 the longwall, you travel up to about 71. Now, you've
16 indicated somebody else examines that area from there
17 toward the Bandytown fan; is that correct?

18 A. That's correct.

19 Q. Who made that examination prior to April 5th?

20 A. Jeremy Burdoff, B-U-R-D-O-U-H, or something like
21 that.

22 Q. Okay. All right. Now, when was the last time
23 that you personally would've traveled from that
24 location at 71 in the tailgate entries toward the
25 Bandytown fan?

1 A. Okay. The next day I would've traveled it, so
2 it'd been six days.

3 Q. No.

4 A. Going from the Bandytown?

5 Q. Yeah. From here (indicating) at 71 in the
6 tailgate entry.

7 A. Okay.

8 Q. From there to Bandytown, when was the last time
9 that you personally traveled that route?

10 A. It had been several months before that because we
11 had such a problem with the water up here
12 (indicating). We had to keep somebody up there all
13 the time to keep check on the water because it got
14 roofed out several times.

15 Q. Okay. Can you direct me to where that water was
16 that you had trouble with ---

17 A. Yeah.

18 Q. --- at that time? And this is how many months
19 before April 5th?

20 A. Oh, yeah, yeah.

21 Q. How many months, Charlie?

22 A. It's probably longer than six months at least.

23 Q. Okay. All right. Where was the water problem
24 toward Bandytown fan that you know of --- that you
25 knew of?

1 A. Well, it was all in this (indicating) entry. It's
2 Number Seven --- Five entry. Well, let me see. Four
3 entry, all up and down through here, as you can see on
4 the map there.

5 Q. You seem to be marking an area from the One North
6 Headgate side until about 85 toward the Bandytown
7 fan ---

8 A. Right.

9 Q. --- all the way?

10 A. All the way up, all the way up to the fan,
11 actually.

12 Q. Now, when you say there was a water problem in
13 there, how high are the entries back there to begin
14 with?

15 A. Some of them are nine, ten foot.

16 Q. Okay. How deep was the water, the best you
17 recall?

18 A. It was almost roofed in two entries.

19 Q. Okay. Which ---?

20 A. It was roofed in two entries.

21 Q. Okay. Which two entries were roofed? Can you
22 point ---?

23 A. These (indicating) two over here. Three and Four.
24 Two, Three and Four. I'm sorry.

25 Q. Two, Three and Four ---

1 A. Right.

2 Q. --- entries in the area of 110 to 115?

3 A. Right.

4 Q. Okay. And that's, of course, again, several
5 months before April 5th; right?

6 A. Right. Right.

7 Q. That's the last time you were there?

8 A. Uh-huh (yes).

9 Q. Now, as of April 5th, what did you hear from
10 Burdoff about the water in that same area? Was it in
11 the same condition? Was it similar?

12 A. No, no, it wasn't that bad. They had some air
13 pumps and put several pumps up in there to take care
14 of the water.

15 Q. All right.

16 A. It was doing good.

17 Q. Okay. All right. Now, you would have examined
18 the intakes and returns on the 22 Tailgate and 22
19 Headgate sections the week before the explosion; is
20 that right?

21 A. Yeah.

22 Q. What did those airways to and from both of those
23 sections look like in terms of the quality of rock
24 dust?

25 A. Well, it wasn't bad, you know. You can always use

1 rock dust, but it wasn't bad.

2 Q. Okay. Did you make any entries in your exam book
3 that those airways, the 22 Headgate intake and return
4 on the way back, were in need of rock dust?

5 A. No. I don't believe I did.

6 Q. Okay. What about for 22 Tailgate? The same thing
7 here?

8 A. I don't think so.

9 Q. Okay. Were the airways passable? Were there any
10 obstructions?

11 A. They were passable.

12 Q. Okay. Was there any water accumulated in the
13 airways to and from either section?

14 A. There was water on the headgate side over here
15 (indicating), but ---.

16 Q. Now, are you pointing to 22 Headgate section?

17 A. Yeah, yeah, that's it right there, 22 Headgate.
18 Yeah. There was some water there, but it --- you
19 know, you could get through it.

20 Q. Okay. And when you say you could get through it,
21 did you have to wade it?

22 A. Yeah.

23 Q. How deep was it?

24 A. It wasn't over your boots.

25 Q. Okay. All right. Now, your markings on the map

1 also indicate that you traveled up and around in the
2 area of the mine known as Eight North; is that
3 correct?

4 A. Right.

5 Q. Now, when you traveled into Eight North around the
6 week before April 5th, did you detect any methane at
7 any place, any location?

8 A. I always picked up some methane, but nothing
9 major.

10 Q. Okay. What's the bottom, the floor look like in
11 that Eight North area? Is there evidence of heaving
12 or hooving?

13 A. Yeah, it hooves in places. Yeah, it's hooving in
14 places.

15 Q. Anywhere in particular?

16 A. Just anywhere. Hooved anywhere.

17 Q. Now, you traveled a considerable part of the mine.
18 Is floor heaving or hooving, whatever you choose to
19 call it, common throughout the mine?

20 A. Yes.

21 Q. Okay. Now, in this area of Eight North, the map
22 indicates that there's a gas well here (indicating) in
23 a block of coal. Have you ever detected any gas or
24 methane in the area of that well?

25 A. No. Like I say, just a small, small amount of

1 gas, something like two or three tenths or something.

2 You know, nothing big.

3 Q. Okay. All right. And again, what was the quality
4 of the rock dusting in the area you traveled into and
5 out of Eight North?

6 A. Pretty fair.

7 Q. Same question for the Glory Hole area. Did you
8 detect any gas in there?

9 A. I would pick up some gas, like I say, but nothing,
10 nothing major.

11 Q. All right. When you say nothing major ---

12 A. Two or three tenths.

13 Q. --- give me a number.

14 A. Two or three tenths.

15 Q. Okay. All right. Did any of your examinations
16 ever take you across the longwall face?

17 A. No, no, sir. Another guy did these (indicating)
18 intakes over here.

19 Q. Now, when you're saying these intakes here, you're
20 talking about the One North Headgate section beside
21 the longwall panel?

22 A. Yeah, right here. This was the longwall's primary
23 escapeway. That's what he'd use.

24 Q. Who's he?

25 A. Harold Lilly.

1 Q. Harold Lilly? Okay. All right. Before we move
2 to another map, this area around 78 Switch, map
3 indicates there's a couple sets of doors down there.
4 Did you ever pass through those doors in the week
5 preceding the accident?

6 A. Yes, sir.

7 Q. What was the condition of those doors?

8 A. They were bent a little. They were just bent up a
9 little bit where they'd been run into with motors and
10 mantrips and stuff.

11 Q. Okay. Would you have to close them manually?

12 A. Yeah.

13 Q. Okay. Would you have to use a rope or wire or
14 anything to keep them closed?

15 A. No.

16 Q. Okay. You ever experience any instances of those
17 doors opening by themselves?

18 A. You just had to make sure they were shut. You
19 couldn't just go back there and not pay any attention
20 to them and go, you know. You had to make sure they
21 was shut good and tight.

22 Q. So is it possible that ---?

23 A. It's possible they could've opened.

24 Q. It's possible they could've opened from time to
25 time by themselves?

1 A. Yeah.

2 Q. Okay. Do you know how frequently that might've
3 occurred?

4 A. No, sir.

5 Q. Okay. When you traveled this area a week before
6 in this, in these tailgate entries up to 71 in the
7 longwall tailgate entries, did you detect any methane
8 in there the week preceding the accident?

9 A. I did get some methane. Like I say, it just never
10 was nothing major, you know, two or three tenths.

11 Q. Two or three tenths. Okay. What kind of methane
12 detector did you carry, Charlie?

13 A. A Solaris.

14 Q. Okay. And did you always keep it turned on when
15 you're ---?

16 A. I keep it right here on my --- (indicating).

17 Q. Okay. All right. Did you have any high spots in
18 your area of travel here where you couldn't reach ---
19 where you couldn't get within a foot of the roof to
20 make an exam?

21 A. No.

22 Q. Did you have an extending probe that you used?

23 A. I never had to have one.

24 Q. Okay. All right. I think we need another map now
25 for the rest of the mine.

1 ATTORNEY WILSON:

2 Why don't we go off the record while we
3 get that out here?

4 OFF RECORD DISCUSSION

5 (Semenske's Exhibits Three and Four
6 marked for identification.)

7 ATTORNEY WILSON:

8 Okay. We're back on the record and we
9 marked the map that we were using as Exhibit Semenske
10 Three, and now we have another map which has been
11 marked Exhibit Semenske Four.

12 BY MR. FARLEY:

13 Q. Okay. Now, Charlie, before you start marking on
14 this other map, I think you indicated that you carried
15 your Solaris detector and you pointed to your right
16 shoulder.

17 A. No. I had a --- I wear a belt and it got
18 harnesses with it. I've got a clip to hold it on and
19 use another clip to hold it so I can't lose it.

20 Q. Okay. And that's in the area of your right
21 shoulder?

22 A. Yeah.

23 Q. Okay. Now, did you take your detector home with
24 you on a daily basis?

25 A. Yes, sir.

1 Q. Okay. Did you charge it at home?

2 A. Yes, sir.

3 Q. Who calibrated it and did maintenance work on it?

4 A. I calibrated it.

5 Q. Okay. Did you use a known gas mixture to
6 calibrate it?

7 A. We had a machine at the mines that calibrated it.

8 Q. Okay. As far as you know, was it fully
9 functional?

10 A. Yes, sir.

11 Q. Okay. All right. Now, we've got a map here.
12 We're moving toward the southern part of the mine.
13 Now, actually, the 78 Switch would be to the left or
14 north here. Can you pick up where you would've left
15 off here on Four North and show us the airways that
16 you examined in the southern part of the mine and
17 toward the Ellis Portal, please?

18 A. Okay. I'd run on the primary escapeway.

19 Q. What's that panel called over there, Charlie?

20 A. They don't call it anything. I just call it an
21 intake.

22 Q. Okay. Now, that'd be on the north end of the map
23 here?

24 A. Uh-huh (yes).

25 Q. Okay. Continue, please.

1 WITNESS COMPLIES

2 BY MR. FARLEY:

3 Q. Charlie, did you say earlier that you ---
4 approximately how far you walked in a week?

5 A. Thirty-one (31) miles per week.

6 Q. Okay. That's six miles a day or a little bit
7 more?

8 A. I don't know. It's a lot. I know that. I don't
9 have no trouble sleeping.

10 Q. Okay. Is that it?

11 A. No. I've got DPP right there.

12 Q. Go ahead. Take your time.

13 WITNESS MARKS EXHIBIT

14 A. I think that's it.

15 BY MR. FARLEY:

16 Q. Is that it?

17 ATTORNEY WILSON:

18 Just for the record, Exhibit Number Four

19 was marked in green, indicating all of the air courses
20 that were examined by Mr. Semenske.

21 BY MR. FARLEY:

22 Q. I guess my first question is, considering the
23 extent of the airways you had to walk at UBB, did you
24 have enough time to make the examinations?

25 A. Yes.

1 ATTORNEY MCCUSKEY:

2 Make sure he's done with his question
3 before you answer.

4 A. Sorry.

5 BY MR. FARLEY:

6 Q. Now, when you were walking your airways in the
7 northern part of the mine and you'd go up to 78 Switch
8 and then you go to the two miner sections and the
9 tailgate entries of the longwall, in the months --- in
10 the three-month period, let's say, preceding the
11 explosion on April 5th, in that three-month period,
12 January, February, March of this year, did you ever
13 have any experiences where the air in those, any of
14 those airways ever reversed?

15 A. No, sir.

16 Q. At any time, did you ever find the air going in
17 the wrong direction, what would be the opposite
18 direction of what it's supposed to be going?

19 A. No.

20 Q. Okay. When you made your examinations, did you
21 ever vary your route of travel? Did you pretty much
22 travel the same entries throughout?

23 A. Yes, sir, I pretty much went the same way.

24 Q. Okay. Well, I guess in some instances you
25 probably had to.

1 A. Yeah.

2 Q. The tailgate area by the longwall. As you made
3 your underground examinations of those airways, did
4 you ever become aware of any ventilation changes made
5 in the mine? Did you ever find something different
6 than the week before, something different, meaning air
7 going in a different direction or the velocity had
8 changed considerably at any particular location?

9 A. Well, on the weekends they had made some air
10 changes, which is standard.

11 Q. When you say the weekends, which weekends?

12 A. I don't know exactly what weekend, but on a
13 Saturday and Sunday. I know they have made air
14 changes, because they told me they were going to make
15 air changes so I would know that they made a change,
16 and they showed me the map where I was supposed to go,
17 you know.

18 Q. Now, when you say a Saturday and Sunday, would
19 that have been Saturday and Saturday, April 3 and
20 April 4.

21 A. I can't say what month. I can't remember. I
22 really don't.

23 Q. Okay. Would it have been just a few days before
24 the explosion?

25 A. Not that I know of.

1 Q. Okay. Now, when you say they told you they were
2 going to make air changes, who was they? Who would
3 usually do that?

4 A. Wayne Persinger, vice-president.

5 Q. Okay. Now, on April the 5th, did you work
6 dayshift as you normally do?

7 A. Yes, sir.

8 Q. Okay. Where did you travel to on April 5th?

9 A. Right down here (indicating), this area.

10 Q. Are you pointing to the south end of the mine?
11 What's that area called, Charlie?

12 A. We just call them EP Three Piece. Lower Big
13 Branch is where --- what they used to call it, Lower
14 Big Branch ---.

15 Q. You're pointing to the area of EP-54?

16 A. Right. I did all the EPs that day.

17 Q. Okay. All right. Now, where were you at the time
18 of the explosion?

19 A. I was in the shower.

20 Q. Okay. What did you hear or see or experience at
21 that point that led you to believe that there was a
22 problem?

23 A. Well, some of the men --- I was drying, putting my
24 clothes on. Some guy said that something's happened.
25 I said, what do you mean something's happened? They

1 said, well, you know, they said the evening shift came
2 back out and said something had happened. It sounded
3 like a tornado coming down the track and they come
4 back out. They looked like they done worked all
5 shift, you know. And then the superintendent, he told
6 me, he said, get your clothes back off and put your
7 clothes on. He said, we got to go back to the mine.
8 I said, what's going on?

9 Q. What superintendent are you talking about?

10 A. Everett Hager.

11 Q. Okay. Now, where did you actually portal? Where
12 was your bathhouse?

13 A. Ellis.

14 Q. You were at Ellis?

15 A. Yeah.

16 Q. Okay. All right. What did Everett tell you other
17 than get your clothes back on?

18 A. That's what he said. He said, you need to put
19 your clothes on, because you know the mine better than
20 anybody. He said, you need to go.

21 Q. Okay. Did you go?

22 A. No. I didn't find --- I couldn't see nobody. I
23 didn't see nobody around, so --- then they come out
24 with the men, the first load of men. And that's all
25 I ---.

1 Q. Okay. But did you enter the mine after the
2 explosion?

3 A. No.

4 Q. Okay. When you say they came out with the men,
5 who brought --- did you see who brought the injured
6 and deceased people out?

7 A. No, no, I didn't see because as soon as they got
8 outside, they started getting the men off, doing CPR
9 and trying --- you know, trying to revive them.

10 Q. Okay. All right. Were you involved in any of
11 that?

12 A. Yeah.

13 Q. Okay. As you examined your airways, particularly
14 in the northern area of the mine the week before the
15 explosion, did you notice anything different, anything
16 that caught your attention that might've led you to
17 believe that there was a problem somewhere?

18 A. No.

19 Q. Okay. How was the air velocity passing through
20 those tailgate entries toward the Bandytown fan last
21 time you traveled through there?

22 A. As a total at the fan, we were --- I was getting
23 something like 400-some thousand.

24 Q. Okay. Now, did you take air readings for both the
25 headgate and tailgate sides of the longwall? Was it

1 possible to do that?

2 A. It is, but I didn't do the headgate side of the
3 longwall that was running. Now, I did do the return.

4 Q. Did you take an air reading at the 71 location in
5 those tailgate ---

6 A. Yes.

7 Q. --- entries when you were there? When were you
8 last there?

9 A. Six or seven days before that.

10 Q. Okay. What kind of an air reading did you get at
11 that location, if you can remember?

12 A. I tell you, I really can't remember. It's been a
13 while back, plus a lot's gone on.

14 Q. What did you usually get there?

15 A. Anywhere from 40,000 or 50,000 up at One entry.
16 That was your return.

17 Q. That would be the outside Number One?

18 A. Uh-huh (yes).

19 Q. The one you could travel?

20 A. Right.

21 MR. FARLEY:

22 Okay. John, anything?

23 EXAMINATION

24 BY MR. GODSEY:

25 Q. Charlie, has anyone made any promises to you for

1 giving this statement or offered you any reward in
2 exchange for making your statement?

3 A. No, sir.

4 Q. Has anyone threatened you or warned you not to
5 provide this statement?

6 A. No, sir.

7 Q. Has anyone from the company or persons
8 representing the company talked to you concerning the
9 explosion?

10 A. No.

11 Q. Other than your attorney, did you receive any
12 direction regarding, for instance, how to give your
13 testimony today?

14 A. No, sir.

15 Q. Did a company representative or anybody suggest
16 you contact them or anything like that?

17 A. No.

18 Q. Okay. That's it. I just threw that in. Do you
19 have any mine certifications or special training?

20 A. Yeah.

21 Q. What are they?

22 A. Electrician, shop fire and mine foreman.

23 Q. How long have you had a mine foreman?

24 A. '78.

25 Q. What was your first job assignment at Upper Big

1 Branch?

2 A. I'd run airways.

3 Q. You've done air since you've been there?

4 A. Yeah, but it wasn't the whole mine.

5 Q. Okay. What areas did you visit?

6 A. I did the Lower Big Branch area.

7 Q. And when was the last time that you've had annual
8 refresher training?

9 A. This year.

10 Q. Okay. And go back just a minute. When you first
11 went to the Upper Big Branch and you got --- you said
12 you had your initial training, do you know who
13 traveled with you underground, showed you around, who
14 gave you the tour?

15 A. No, sir, I don't know.

16 Q. And have you received Massey's initial training?

17 A. Uh-huh (yes).

18 ATTORNEY WILSON:

19 You need to give a yes or a no.

20 A. Yes, yes.

21 BY MR. GODSEY:

22 Q. What is the management structure at Upper Big
23 Branch like, starting with your supervisor and go up
24 to maybe president? Who are the people that's in
25 those positions?

1 A. Chris Blanchard was president. Wayne Persinger
2 was vice-president and Everett Hager was
3 superintendent, and Terry Moore was mine foreman.

4 Q. I think you said that Everett was your --- you
5 answered to Everett?

6 A. Yes.

7 Q. Okay. On your first day of the week, where did
8 you start your ventilation ---?

9 A. Lower Big Branch down here (indicating).

10 Q. Who was responsible for getting the portal
11 readings in all the intakes and returns?

12 A. Yeah. Okay. The one guy did airways and stuff on
13 this (indicating) side. Harley Taylor was his name.
14 He got those. And then on this (indicating) side of
15 the mines I got the airway portal readings.

16 Q. At Ellis Portal?

17 A. No, not at Ellis. On this other side over here
18 (indicating).

19 Q. Who got the readings at Ellis Portal intake?

20 A. I got the intake reading at the Ellis Portal,
21 yeah.

22 Q. Okay. When was the last time you did that?

23 A. Probably six or seven days, you know.

24 Q. Okay. Do you record those in a thicker book?

25 A. Uh-huh (yes).

1 ATTORNEY WILSON:

2 Was that a yes?

3 A. Yes.

4 BY MR. GODSEY:

5 Q. As you make these airways, and say you have a ---
6 have you ever found any hazards conditions in any of
7 these airways?

8 A. Yes, sir.

9 Q. Who'd you report them to?

10 A. I usually tell the mine foreman and I'll tell the
11 superintendent.

12 Q. Are they cooperating? Do they cooperate with
13 getting the area corrected?

14 A. Yeah.

15 Q. Do they cooperate with you to get the areas
16 corrected in a timely manner?

17 A. Yeah, they try.

18 Q. And you mentioned about some floor problems. Do
19 you remember any --- have you ever seen where the
20 floor had ruptured or heaved to a point that --- where
21 it's impassable?

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

23 Q. Where was that?

24 A. Up in this --- going to Bandytown fan in that area
25 between the return and the longwall gob.

1 Q. And while we're talking about the Bandytown fan,
2 you said you walked that back to a point. I forget
3 what the crosscut ---.

4 A. 71 Break.

5 Q. And Burdoff or another person took it from there.
6 How did he travel? Did he walk or did he have a ride
7 to go from that point back towards the Bandytown fan?

8 A. They had a ride to go from 78 Break up to about 60
9 Break on the track; okay? And then they had to walk
10 to get through a --- get in through a door into the
11 return and walk the rest of the way. They'd walk the
12 rest of the way up.

13 Q. Now, how many people were working behind the
14 longwall towards Bandytown fan on the dayshift?

15 A. Usually three or four.

16 Q. And did they have a supervisor with them?

17 A. Yes.

18 Q. And that was ---?

19 A. Jeremy.

20 Q. Okay. Who were the other people that were with
21 him? Were they Massey employees or ---

22 A. Yes.

23 Q. --- contractors?

24 A. No.

25 Q. Okay. What depth of water did they have to --- or

1 do you know --- ever talk to you about that they had
2 to work in?

3 A. No, they never said.

4 Q. They never said?

5 A. No.

6 Q. You never saw them come out or anything?

7 A. Well, they never were wet, so --- most of them I
8 did see.

9 Q. Okay. In your weekly exams that you make, did you
10 get all your split readings, intake split readings
11 going to the sections where the air split? Did you
12 get readings, air readings?

13 A. Uh-huh (yes), yes, sir.

14 Q. And what did you do with those?

15 A. I put them in a book.

16 Q. Did you call them out or did you bring them out?

17 A. I bring them out.

18 Q. Did you ever notice whether your supervisor
19 countersigned them or they looked at them?

20 A. Yes, sir, they countersign them.

21 Q. Okay. Have you ever --- or how often have you
22 marked a hazardous condition and you was going to put
23 it in a book or you put it in a book, and someone
24 said, well, don't put that in there you might make us
25 look bad. Have you ever had that happen?

1 A. Yes, sir.

2 Q. When was that?

3 A. Can't tell you what day it was, but it did happen.

4 I don't know what date.

5 Q. What was the condition that you put --- that was
6 placed in or noted in the weekly book?

7 A. That we didn't have enough rescuers. They had
8 changed their escapeway out the UBB side. We had two
9 places that didn't have enough rescuers. And I put in
10 the book that we needed more rescuers, at least 40
11 rescuers, something like that, apiece.

12 Q. Well, what happened to it? How did you find out
13 that --- was it altered? Was your entry --- was it
14 changed?

15 A. Entry wasn't changed. They just changed the
16 escapeway at that time because they was working on the
17 Ellis side. It hadn't been finished yet.

18 Q. What did they say to you for making that entry?

19 A. Well, they said just that was a red flag for an
20 inspector.

21 Q. Okay. Did that kind of strike you in a funny way
22 there or was that normal for that?

23 A. Well, no, it didn't really strike me too bad, but
24 I mean, I told them I'd put it in there, you know.

25 ATTORNEY WILSON:

1 Who said this to you?

2 A. Who?

3 ATTORNEY WILSON:

4 Do you recall who told you this?

5 A. Gary May.

6 ATTORNEY WILSON:

7 And who is Gary May?

8 A. He was at that time a mine foreman.

9 BY MR. GODSEY:

10 Q. Did you take evaluation points, EP points or ---
11 on the longwall?

12 A. Yes. No, no.

13 Q. Who did? Who took those?

14 A. Jeremy Burdoff.

15 Q. And I noticed here today that you put an extreme
16 amount of area that you had to travel. Do you walk
17 every piece of that or do you have some kind of ride
18 that you use?

19 A. No, sir, I don't have no ride.

20 Q. Have you ever asked for one?

21 A. It's no use to ask for one.

22 Q. Okay. Do you perform any pre-shift examinations?

23 A. No, sir.

24 Q. Just only weekly?

25 A. Yes, sir.

1 Q. And you said also that --- earlier that you were
2 an electrician?

3 A. Yes, sir.

4 Q. Do you perform any electrical work or electrical
5 examinations on any of the power centers?

6 A. Yes, sir.

7 Q. Which ones do you ---?

8 A. I do permissibility on some pumps we have in the
9 returns and stuff.

10 Q. Where are they located?

11 A. One or two's on the Upper --- Lower Big Branch
12 side and then I have a couple in the intake. It's
13 back along the airway somewhere there. I forget
14 exactly what break it is.

15 Q. Do you make the entries in a book?

16 A. Yes.

17 Q. You do?

18 A. Yes, sir.

19 Q. Anything else that you check there that's
20 electric?

21 A. No, sir.

22 Q. Do you work on any equipment?

23 A. No, sir.

24 Q. Do you also or have you ever been trained to check
25 refuge alternatives?

1 A. Check what now?

2 Q. Refuge alternatives.

3 A. No, sir.

4 Q. And I asked you earlier, I think. Did you carry
5 out or did you call out most of your reports?

6 A. I carried it out.

7 Q. Now, since you probably know this mine probably, I
8 guess what I've heard today --- you was talking ---
9 probably better than anyone, what about the belt
10 lines? How are they maintained as far as cleanup,
11 coal dust, float coal dust? Is it maintained or is it
12 --- you're finding conditions are a bit --- that needs
13 to be corrected?

14 A. They got men they had to keep on the belt. Yeah,
15 they're in pretty good shape.

16 Q. Okay. How often would they rock dust the belt?

17 A. I'd say probably every couple days.

18 Q. And what shift do they do that on?

19 A. Mostly midnight.

20 Q. And have they done that continuously for the last
21 two or three months, or have they discontinued it for
22 a while or ---?

23 A. Not that I know of. Now, most of the time when we
24 come in, we're dusted out anyway, you know. So we'd
25 have to wait for them to come in, so evidently they've

1 still been doing it.

2 Q. What about the returns? Do they have trickle
3 dusters or --- to maintain the float and rock dust in
4 the return?

5 A. No, sir.

6 Q. Do they have trickle dusters anywhere on the ---?

7 A. Yeah, on the belt lines.

8 Q. How many do they have of those?

9 A. I know of three.

10 Q. You said you travel the intakes and returns.
11 Where were the regulators located on, like, 22
12 Headgate and 22 Tailgate on, you know, the section
13 return? Are they regulated?

14 A. No.

15 Q. Are they regulated on the intake?

16 A. I mean, yeah, they had some regulation on the
17 intake.

18 Q. Where was that? Where'd they regulate that, and
19 how did they regulate it?

20 A. With a stopping. They would take a stopping belt,
21 you know, leave so many blocks out and ---.

22 Q. Would you find this change much any during your
23 travels?

24 A. No, sir.

25 Q. Did you see any --- have you been on your travels

1 --- well, you're there every day. Did you see anyone
2 in there that's been tearing out stoppings while you
3 were making --- putting in stoppings?

4 A. No, sir.

5 Q. Okay. Have you ever --- or noticed any
6 fluctuation in your air readings?

7 A. Only fluctuation in air readings I've found was on
8 these (indicating) EPs over here the day of the
9 explosion.

10 Q. How much fluctuation did you ---?

11 A. 5,000 to 10,000.

12 Q. Did you talk to anyone? I mean, you probably
13 didn't have time to talk to anyone.

14 A. No, I didn't really get a chance to talk to
15 anybody because wasn't nobody outside. I usually got
16 out before everybody and I fill my book out and go
17 take a shower and then somebody might be out by then.
18 Then, you know, I'd tell them.

19 Q. Did you try to find out what the problem was?

20 A. Well, I was going to ask a supervisor, you know,
21 Ray --- not Ray, but Mr. Persinger.

22 Q. Okay. Would you mark that on the maps where you
23 found the low air?

24 A. It's on the other end of the mines. It's not low
25 air. It was good air, but it was still lower than

1 what I used to get.

2 Q. Okay. Was it on --- which, the south side or the
3 north side?

4 A. No, it was on the north side. It was back over
5 there on Lower Big Branch, right here (indicating).

6 Q. Oh, right here?

7 A. Yeah.

8 Q. Can you mark with a blue marker where that is?

9 WITNESS COMPLIES

10 ATTORNEY WILSON:

11 All right. So you marked on Exhibit Four
12 four areas of blue circles, indicating --- those are
13 the EP points ---

14 A. Right.

15 ATTORNEY WILSON:

16 --- where you detected lower than normal
17 air on ---

18 A. Yes.

19 ATTORNEY WILSON:

20 --- April 5th; is that correct?

21 A. Uh-huh (yes). Yes, sir.

22 BY MR. GODSEY:

23 Q. EP 58, EP 52 and EP 54.

24 A. Fifty-three (53).

25 Q. Fifty-three (53). Excuse me. Have you ever --- I

1 forgot to ask you. Have you ever went to other parts
2 of the mine like that and found air changes like that
3 or fluctuation there at any other time in your travels
4 since you've been doing this?

5 A. No, sir, I can't say I had.

6 Q. In the last month or so or last two months, have
7 you had visits from upper management --- I'm talking
8 like the vice-president --- at this mine more often
9 than what you normally would have?

10 A. No, sir.

11 Q. Have you had any --- the week prior, any upper
12 management come into the mine?

13 A. Oh, you talking about at Upper Big Branch ---

14 Q. Yeah, I'm talking about ---.

15 A. --- before the explosion?

16 Q. Everything I'm talking about is Upper Big Branch.
17 Yeah. It was like the president or the
18 vice-president.

19 A. Yes.

20 Q. How often had they been coming there?

21 A. We had the vice --- the president coming almost
22 daily for a week or so.

23 Q. Now, who was that now? I forgot.

24 A. Chris Blanchard.

25 Q. Okay. Well, where would he go?

1 A. He would go in the mines.

2 Q. Would he ever tell anybody where he was going?

3 A. Well, not that I know of. I don't know. I was in
4 the airways. I never did know.

5 Q. Okay. You don't know. Was anybody else ---
6 upper management had been there at least more than
7 usual?

8 A. Yeah, but I can't think of his name.

9 Q. Do you remember what his position was?

10 A. He was higher than Chris Blanchard.

11 Q. Well, maybe I'm guessing. Would that be Jason
12 Whitehead?

13 A. Yes, sir. That's him. That's who it is.

14 Q. And what would they do?

15 A. I really don't know. Production went way down. I
16 just figured they went in and checked, you know, to
17 see what was going on and stuff, you know.

18 Q. Had anybody brought up any question about the
19 ventilation being low on the sections? Like, some
20 sections maybe had more fluctuate, some might not have
21 any?

22 A. Yeah. Yes, sir, I've heard.

23 Q. Where were these locations?

24 A. On the Headgate 22.

25 Q. Who was the supervisor there?

1 A. Dean Jones.

2 Q. Okay. What did he say about the air? What was
3 his concern?

4 A. Well, they worked on the air, you know. That's
5 all I know was working on the air.

6 Q. Were they constantly working on the air?

7 A. I think so, yeah.

8 Q. Do you remember what shift they would do that on?

9 A. No, sir.

10 Q. Did they ever get the air satisfactory on Headgate
11 22 to Mr. Jones?

12 A. I don't think so.

13 Q. Did Mr. Jones ever indicate to you that he's found
14 any methane up there on the section?

15 A. No, sir.

16 Q. Any other section? Anybody else?

17 A. No, sir.

18 Q. You said that early on in 22 Headgate that you ---
19 in the Number Three entry that there was some water.

20 Were there any pumps in that return on the 22
21 Headgate?

22 A. Oh, yes, yes. There was a pump there.

23 Q. How many pumps did they have?

24 A. They had one pump in there, right there
25 (indicating).

1 Q. Okay. Was it a permissible pump or you ---?

2 A. They had it down in the --- beside the roadway and
3 they just put the pump in the break where it was
4 coming under a stopping or something.

5 Q. Okay. Did you go to the face area where they were
6 working on 22 Headgate?

7 A. Sometimes.

8 Q. When was the last time --- or roughly when was the
9 last time that you went there?

10 A. Last --- well, it'd been the last day I walked
11 that intake.

12 Q. So a week prior?

13 A. Right.

14 Q. Okay. Did you watch them producing?

15 A. No, sir.

16 Q. Did you see the curtains on a section? Did you
17 look at any of the curtains, the face curtains or
18 anything?

19 A. Oh, yes, sir.

20 Q. Were any of them left down or not using them
21 according to the ventilation plan?

22 A. No, sir. I can tell you right now the crew right
23 there was one of the best crews I've ever seen. They
24 was older men. They knew what they were doing.

25 Q. I think Mr. Farley asked you, what was the

1 condition of that --- the return from the face to the
2 mouth of the panel? Was there a lot of heaving in
3 that area?

4 A. Yes.

5 Q. Okay. What about roof problems? Were there any
6 problems with the mine roof up there?

7 A. Not on that section, no.

8 Q. Were there any falls around that area, any roof
9 --- had they any roof falls up there?

10 A. There were some falls at different places up
11 there, yes.

12 Q. How high would it --- did you look at any of the
13 falls?

14 A. I had seen one.

15 Q. Could you tell what the makeup was of the roof?

16 A. It looked like it may have been ten foot high, you
17 know, to the top.

18 Q. Could you tell if it was sandstone or stack rock
19 or ---?

20 A. No, I didn't pay any attention.

21 Q. Did you ever walk the belt line, like the belt
22 line on the 22 Headgate?

23 A. No, sir.

24 Q. Do you know whether they used belt air on the
25 section?

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

2 Q. Okay. And the intake, what was the condition of
3 the intake, again? You've probably already said it.

4 A. It was rock dusted. You know, it wasn't real
5 thick, you know. It was white. I'll say that.

6 Q. What about heaving in the Number One entry in the
7 belt, floor heaving?

8 A. In the belt entry?

9 Q. In the belt, yeah. You said ---.

10 A. I didn't walk it.

11 Q. Well, what about the Number One, the ---?

12 A. Not close to the face. It'd be back, you know,
13 away from the face.

14 Q. Has anybody ever mentioned to you about feeling
15 the floor move or when it was hooving up there, they
16 was having problems up there?

17 A. No, sir, I've never heard that.

18 Q. Now, what about the 22 Tailgate section? Who was
19 the supervisor up there on your shift?

20 A. Can't think of his name there. We just had a
21 nickname for him.

22 Q. Okay. Was it any different than 22 Headgate, the
23 condition?

24 A. Yeah.

25 Q. What was the difference?

1 A. Air, for one thing.

2 Q. Okay. In what way was that?

3 A. Last open break on that section, I'd get 50,000.

4 And the last open break on the other section, I would
5 get something like 16,000, 17,000.

6 Q. What did management talk --- did they ever discuss
7 that, the difference in the ventilation of this
8 section?

9 A. They didn't with me.

10 Q. Okay. And how about the longwall? Did you ever
11 go to the longwall?

12 A. No.

13 Q. Never been on the longwall?

14 A. I've been on it, yes, but I'm not too ---.

15 Q. Have you known or anybody mentioned to you about
16 the floor heaving on the longwall face?

17 A. No, sir.

18 Q. What about an outburst? Anything you're aware of
19 having an outburst of methane on the longwall?

20 A. No, sir, I've never heard.

21 Q. Did you walk down the --- that day, your last
22 examination, did you --- were you ever on the belt
23 line of the longwall?

24 A. No, sir.

25 Q. How many fire bosses do they have at UBB, at Upper

1 Big Branch?

2 A. I'm guessing five or six total, maybe more.

3 Q. Okay. Do you know their names or do they all have
4 nicknames?

5 A. No. I know most of them's names.

6 Q. You know what --- what are those?

7 A. Harley Taylor, John Bedford, George Curry, Jim
8 Bowier.

9 Q. Okay. When one of these people were off, did they
10 have fill-ins for them? Like, if you were off, did
11 they have somebody to fill in for you? Like, you was
12 on vacation, did they have somebody to fill in for
13 your position?

14 A. Well, I was on vacation one time and the mine
15 foreman filled in.

16 Q. Didn't have anybody else?

17 A. No.

18 Q. And all the other fire bosses were on different
19 shifts?

20 A. Yes.

21 Q. Excuse me. Were you the only fire boss on the
22 dayshift?

23 A. No.

24 Q. Who was the other one with you?

25 A. The one that I was talking about right there.

1 Q. Do you know of any particular place, belt, where
2 they had a particular problem with accumulations of
3 coal or coal dust?

4 A. I'm sorry?

5 Q. Accumulations of coal or coal dust.

6 A. Well, if they run the longwall too fast. All of
7 them have. But nothing in --- you know, no place in
8 particular that I know of.

9 Q. Well, do you know of a place that maybe had been
10 --- had accumulation for an extended period of time
11 and wasn't taken care of?

12 A. No, sir.

13 Q. I'm going to kind of change this a little bit
14 here. Would upper management, when they needed a job
15 done, would they put a lot of pressure --- like,
16 getting the longwall started, would they put a lot of
17 pressure on the foremen and stuff to get that done?

18 A. Yes, sir.

19 Q. What if they ever get behind? What would the
20 management say to them?

21 A. Well, they'd just be on them.

22 Q. Would they ever threaten them any way?

23 A. I've never heard them, but --- I've heard they
24 did, but I've never heard them, so I'm not sure.

25 Q. Okay. In other words, you heard other foremen say

1 that?

2 A. Yes.

3 Q. You don't know who they were?

4 A. No, sir.

5 Q. How about working people long shifts? Do you know
6 of any time that they work people double shifts a lot,
7 put extra pressure on any particular --- like a fire
8 --- a foreman or a maintenance foreman or electrical
9 foreman or something like that?

10 A. Not that I know of.

11 Q. Do you or did you feel that the ventilation was
12 adequate at all times?

13 A. I feel like it was.

14 Q. And what about --- you told me earlier that when
15 you were on a section --- how about when you visit 22
16 Tailgate --- I forgot to ask you. Did you notice
17 their curtains on the section, how they were used?
18 Were they according to the ventilation plan or did you
19 see ---

20 A. Yes.

21 Q --- curtains down?

22 A. Yes, sir.

23 Q. Were they mining when you were up there?

24 A. Yes, sir.

25 Q. Do you remember if they were running the scrubber

1 or anything?

2 A. No, I don't.

3 Q. Did you watch them --- ever watch them bolt any?

4 A. No.

5 Q. What about cleanup? Did you ever see a scooper
6 clean up a entry or ---?

7 A. No.

8 Q. You don't know what the depth of cuts they were?

9 A. No, I don't.

10 Q. Have you or do you know of anybody that's ever
11 discussed safety concerns or problems with management?

12 A. Not that I know of. I mean, they haven't did it
13 where everybody could see, I guess you might say, but
14 I don't know.

15 Q. What would you think would be --- if you had
16 brought a safety concern up to the management, what do
17 you think they would've done? Would there be any
18 retaliation toward them ---

19 A. Hasn't me.

20 Q. --- or anybody? Do you know of anybody?

21 A. No.

22 Q. Okay. Do you know of anybody that's recently been
23 injured and they're placed on light duty, still having
24 to be put on --- be off for a while, like, sit around
25 the office?

1 A. I've knew of some people, yes.

2 Q. How long ago was it?

3 A. Probably before the explosion.

4 Q. How close before the explosion?

5 A. I don't know.

6 Q. How many people do you think would be involved?

7 A. Just one.

8 Q. Do you know what his injury was?

9 A. No, sir.

10 Q. Have you ever known anybody that's ever been told
11 not to report an accident?

12 A. No, sir.

13 Q. Are you aware of any oncoming shift that's been
14 cancelled due to a safety problem at the mine?

15 A. No, sir, not to my knowledge.

16 Q. Have you been underground or known when they've
17 evacuated the mine for any reason?

18 A. No.

19 Q. So you worked April 5th?

20 A. Yes, sir.

21 Q. Do you know if the longwall was down for any
22 extended period of time?

23 A. I thought I heard that morning it was down for
24 some reason. Or no, I don't know what.

25 Q. Do you know what time they got started back?

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

2 Q. Have you ever or do you know of anybody that's
3 ever been concerned for their safety at that mine up
4 at UBB?

5 A. Not that I know of. They've never said nothing.

6 Q. No one's ever discussed it with you?

7 A. No.

8 Q. You been there several years and you've been a lot
9 of places. Did you ever know when an inspector, state
10 or federal, was coming underground?

11 A. Most times.

12 Q. How would you find out?

13 A. Someone would call in from outside.

14 Q. Okay. Who was that that would usually do that?

15 A. Well, might be the dispatcher or just some --- you
16 know, one of the men outside, foreman or chief
17 electrician or something.

18 Q. Do you know if they were warned prior to an
19 inspector coming up on the hill, like when he'd come
20 into the gate down at the guard shack?

21 A. I don't know about that.

22 Q. Did you talk to any inspector?

23 A. Yes, sir.

24 Q. Did you ever express any safety concern or
25 anything?

1 A. No, sir.

2 Q. Okay. This event, did it surprise you?

3 A. Yes, sir, it did.

4 Q. Why? I mean, why was that?

5 A. I took my kids in that mines. That's how safe I
6 thought it was.

7 Q. Is there anything else that maybe I haven't asked
8 you and you thought about while we've been asking you
9 questions that you thought of that you would like to
10 --- might want to mention?

11 A. No, sir, not that I know of.

12 ATTORNEY WILSON:

13 Pat, do you have some follow-up?

14 MR. MCGINLEY:

15 I have a couple questions.

16 EXAMINATION

17 BY MR. MCGINLEY:

18 Q. You were asked whether ventilation was adequate at
19 all times at Upper Big Branch, and you said you felt
20 like it was. Do you remember that?

21 A. Yes, sir.

22 Q. Yet there were reported to be ventilation problems
23 over a long period of time at Upper Big Branch six
24 months or so before the explosion. How do you square
25 that?

1 A. I didn't know they was complaining for six months
2 myself, but you know, if you work down in the mine, a
3 lot of guys complain about everything, and half the
4 time you can't believe about half of what any of them
5 say. It's fact.

6 Q. That true of management as well?

7 A. No.

8 Q. Your management always tells you --- when you hear
9 something from them, it's always true?

10 A. If they tell me something, it's usually true, or
11 I'll go back and ask them again. I'm not bashful.

12 Q. Do you know that the mine received 47 --- do you
13 know what a (d) order is?

14 A. Yes, sir.

15 Q. Forty-seven (47) (d) Orders between April, October
16 of 2009?

17 A. Yes, sir.

18 Q. Is that a very large number of (d) Orders?

19 A. It's a large number, but that's big mines.
20 They're real big mines.

21 Q. Did that trouble you that there were 47 (d) Orders
22 during that period of time?

23 A. Excuse me, now?

24 Q. Did that trouble you?

25 A. No, sir.

1 Q. Did you know that Upper Big Branch Massey
2 management believed that the ventilation plan you were
3 operating under was putting safety of miners at risk?

4 A. I knew they didn't like it.

5 Q. Did they ever tell you that they thought you were
6 at risk?

7 A. They never directly told me. I just heard ---
8 overheard some people talking, you know.

9 Q. Who'd you hear talking?

10 A. I don't remember who it was.

11 Q. Well, since the explosion, have you heard ---?

12 A. No.

13 Q. Have you looked at the Massey website?

14 A. No.

15 Q. Did you know Massey's been saying that they were
16 forced to use a ventilation plan that was in effect at
17 the time of the explosion?

18 A. Not really.

19 Q. You said at some point, you can't remember when,
20 you were told that a ventilation change had been in
21 the mine over a weekend. Do you recall saying that?

22 A. Repeat that question.

23 Q. You said at some point you were told that there
24 were ventilation changes over a weekend, Saturday to
25 Sunday?

1 A. Right.

2 Q. But you don't know --- remember when that was?

3 A. Not the date.

4 Q. But you indicated that Wayne Persinger --- did he
5 tell you that?

6 A. Yes, sir.

7 Q. And why would he be telling you that?

8 A. I'm fire boss.

9 Q. And were you reporting directly to him?

10 A. I do when he tells me to, yeah.

11 Q. Okay. So did this happen --- did he explain this
12 on a Monday after a weekend? It would be logical if
13 there ---.

14 A. No, he explained it before they did it.

15 Q. I see. And how did he explain it? Did he show
16 you on a map?

17 A. Yes, sir.

18 Q. And what were those changes, if you recall?

19 A. I don't really recall, because there's a lot of
20 things you have to do to make a change like that.

21 Q. I understand. So there were significant changes?

22 A. Right.

23 Q. And this would've been sometime in the spring of
24 2005?

25 MR. GODSEY:

1 2001.

2 BY MR. MCGINLEY:

3 Q. I'm sorry.

4 A. 2005.

5 Q. You don't remember that. How about 2010? How
6 about 2010, spring of 2010?

7 A. No.

8 Q. Winter?

9 A. You better tell me again.

10 Q. Well, I'm just wondering when this conversation
11 with the vice-president took place where he was
12 explaining to you that there were changes in the
13 ventilations system over a weekend.

14 A. Yes.

15 Q. What's a ballpark idea of when this happened?

16 A. Well, he had told me that Friday and they were
17 going to do it on a Saturday or Sunday. I don't know
18 which day, because I didn't work weekends.

19 Q. Right.

20 A. And he told me, and then I come in that Monday.
21 We talked some more about it so I would, you know, be
22 up on what changes were made so I could, you know,
23 inspect and stuff.

24 Q. So these were significant changes?

25 A. Yes.

1 Q. Or you wouldn't have --- he wouldn't have come to
2 you and wanted to explain them?

3 A. Right.

4 Q. And is that the only time he ever did that?

5 A. Yes, sir.

6 Q. And was this in 2010?

7 A. Yes, sir.

8 Q. I'm just looking for a ballpark. I understand.
9 I'm not trying to pin you down or anything with a
10 date. February, March, April, January, you have any
11 sense of that? It'd be helpful to us to know that.

12 A. Maybe February, maybe. January, February. Like I
13 say, I don't know for sure.

14 Q. Other than explaining what the changes were
15 showing on the map, did he talk to you at all about
16 why the changes were being made, what they were trying
17 to accomplish, you being the --- you walk the whole
18 mine and understand the airflow; right?

19 A. Uh-huh (yes).

20 Q. So did he explain what they were trying to do?

21 A. Trying to get more air.

22 Q. So there wasn't enough air somewhere?

23 A. Well, they thought --- they needed --- they wanted
24 more air for some reason. I don't know. They
25 explained just what changes they were ---.

1 Q. Where were they trying to put more air? What area
2 of the mine were they trying to put more ---?

3 A. I really don't know.

4 Q. You can't recall that?

5 A. I mean, you know, I really don't remember. He
6 probably did tell me, but everything that's gone on
7 here, you know --- I don't know.

8 Q. Did it make a difference in the route you walked,
9 those changes?

10 A. Not very much.

11 Q. Well, what difference does it make, if you recall,
12 in terms of the way you walked after those changes?

13 A. Yes. Not a whole lot of difference.

14 Q. Well, where were the changes? I mean, where
15 were ---

16 A. Well, I can't ---.

17 Q. --- changes in your --- where you walked?

18 A. I really can't tell you right now. You know, I
19 just can't remember where I did and what I did. I
20 mean, I ---.

21 Q. Well, wasn't that a --- you know, you walked the
22 same course every week for how long, a couple years?

23 A. Yes.

24 Q. So you had some changes. Do you remember where
25 those changes in the course ---?

1 A. That's what I'm telling you.

2 Q. Okay. If you don't remember, that's fine.

3 A. Okay.

4 Q. So do you basically know what the ventilation plan
5 was for the mine?

6 A. Yes, sir.

7 Q. Those areas you observed where the water was
8 roofed out --- and where was that? It's not on the
9 other map.

10 A. Bandytown.

11 Q. Up at the Bandytown. Was that before they
12 excavated the sump up there?

13 A. Yes.

14 Q. And so the ventilation wasn't flowing the way ---
15 consistent with the ventilation plan when those
16 entries were roofed out with water; is that right?

17 A. Well, naturally they wouldn't get the amount of
18 flow you would get before, you know.

19 Q. Sure. So did you write that up in your report?

20 A. I was on vacation the next week. I did put it in
21 my book.

22 Q. It's in your book, so we will find it there?

23 A. Okay.

24 Q. Okay. And have you ever see any men wearing
25 waders?

1 A. Yes, sir.

2 Q. Those chest waders?

3 A. Yes, sir.

4 Q. Why were they doing that?

5 A. Going in water somewhere, I guess.

6 Q. Did you ever do that?

7 A. No, sir.

8 Q. You said that the area was roofed out and there
9 were roof falls up there, too, around the Bandytown
10 fan?

11 A. No.

12 Q. No roof falls?

13 A. Not that I know of.

14 Q. But you said you weren't going to walk over in
15 those other entries?

16 A. Like I said, I was walking in water over my boots.
17 Company don't buy them. I pay for them, and they
18 don't last long.

19 Q. So other people did; is that right?

20 A. I answer for myself.

21 Q. Well, I understand, but do you know? Did other
22 people walk those areas that you refused to walk?

23 A. They could have. I mean, I didn't. You know,
24 that's what I'm saying.

25 Q. Did you tell the supervisor that you didn't want

1 to walk there?

2 A. I told my working boss. And I don't have to under
3 the law. I don't have to.

4 Q. Did anybody ever tell you a few years ago that a
5 couple of times there were methane inundations of the
6 mine, and one time the mine was shut down for two and
7 a half days because it was filled up with methane?

8 A. No.

9 Q. Never heard that?

10 A. I never heard that.

11 Q. Would you have liked to have known that?

12 A. I don't figure it made any difference.

13 Q. Well, would you have liked to know that there was
14 the --- where there was a potential to have the whole
15 mine inundated with methane?

16 A. Well, yes, probably.

17 OFF RECORD DISCUSSION

18 ATTORNEY WILSON:

19 We're back on the record. Pat.

20 BY MR. MCGINLEY:

21 Q. You mentioned in response to a question about
22 getting a 16,000 and 17,000 reading at --- I can't
23 remember if it was the headgate or tailgate, and then
24 50,000 the other side.

25 A. Tailgate section got 50,000 at the last open

1 break.

2 Q. And 17,000 --- 16,000, 17,000 was ---?

3 A. Last open break on the other section.

4 Q. And when was that? I mean, you know, this year,
5 two years ago?

6 A. Yes.

7 Q. This year?

8 A. Last time I examined that.

9 Q. Oh, okay.

10 ATTORNEY WILSON:

11 Please, just looking at Exhibit Number

12 Three, 22 Headgate, is that --- what's labeled 22

13 Headgate, is that where you got the lower reading, the
14 15,000 to 16,000?

15 A. Yeah. Yeah.

16 ATTORNEY WILSON:

17 And then what's labeled MMU 040, that's

18 where you were getting ---?

19 A. The tailgate. Right.

20 ATTORNEY WILSON:

21 Okay. And that's where you were getting

22 the 50,000 to 60,000 reading?

23 A. Uh-huh (yes.)

24 ATTORNEY WILSON:

25 And you took those readings in the last

1 open break outby the faces; is that right?

2 A. Right. Last open break right here (indicating).

3 ATTORNEY WILSON:

4 Okay. And you're pointing on O40 where

5 you indicated with the green marker where you

6 examined?

7 A. Right.

8 ATTORNEY WILSON:

9 Okay. I'm sorry, Pat.

10 ATTORNEY MCGINLEY:

11 Oh, that's it. No more questions.

12 ATTORNEY WILSON:

13 Before I turn it to Terry, just, I mean,

14 do you know why there was such a discrepancy in the

15 amount of air on the 22 Headgate and on the MMU O40?

16 A. One reason, this section here (indicating) was

17 just starting out.

18 ATTORNEY WILSON:

19 The tailgate?

20 A. And the other reason, that one's drove up several

21 breaks. It was up in there a long way.

22 ATTORNEY WILSON:

23 So the air has a lot further to

24 travel ---

25 A. Right.

1 ATTORNEY WILSON:

2 --- to get up to the faces?

3 A. Right.

4 ATTORNEY WILSON:

5 Okay. Terry.

6 RE-EXAMINATION

7 BY MR. FARLEY:

8 Q. Charlie, concerning the EP readings at 58, 54, 53
9 and 52 that you made on April the 5th, was each EP
10 5,000 or 10,000 cubic feet per minute lower, or was it
11 the total of all four that you refer to?

12 A. Each one was probably that much.

13 Q. 5,000 to 10,000 CFM lower?

14 A. (Indicates yes.)

15 ATTORNEY WILSON:

16 Was that a yes?

17 A. Yeah.

18 BY MR. FARLEY:

19 Q. When you traveled your airways, how did you test
20 the methane above roof fall areas?

21 A. I didn't have roof falls in my airways. I'd
22 either go --- you know, they'd be stopped off and go
23 around or whatever.

24 Q. Okay. I think you had some conversations with
25 Dean Jones about his ventilation problems on Headgate

1 22 Section. Do you know if Dean complained to anybody
2 in management about those problems?

3 A. No, sir, I don't.

4 Q. Okay. When you encountered a hazardous condition
5 in your airways that you had seen, did you record it
6 in the book?

7 A. Yes, sir.

8 Q. Okay. Did you sometimes have to continue to
9 report the hazards, hazardous conditions in your books
10 until they would eventually correct them?

11 A. Yes, sir.

12 Q. During your examinations of the airways, did you
13 ever danger off areas that you felt were hazardous and
14 record it in your examination book?

15 A. Yes, sir.

16 Q. Did you danger off any areas inby the Crosscut
17 Number 71 in the longwall tailgate entries that you
18 described as bad earlier?

19 A. Not on that side. In the return side, I did.

20 Q. Okay. Now, on the evening of April the 5th, 2010,
21 after the explosion, what time did you leave the mine
22 after the explosion?

23 A. Eight or nine o'clock that night.

24 Q. Okay. Now, any time after the explosion on April
25 5th or during that evening, did you have any

1 conversations with your boss, Everett Hager?

2 A. No, sir.

3 Q. Okay. Have any conversations with any other
4 management people?

5 A. No, sir.

6 Q. Okay.

7 RE-EXAMINATION

8 BY MR. GODSEY:

9 Q. Okay. I just have a few questions here to ask
10 you. You said that on this day that you made your air
11 run up here (indicating) at 29 Crosscut on 22
12 Tailgate, there is a regulator to the right --- left
13 of the belt drive. Do you take air readings there?

14 A. Most of the time, yes.

15 Q. How much would you normally --- or what would be
16 the reading there?

17 A. On the belt regulator?

18 Q. Yes, the one at --- on the 29 Crosscut there,
19 right across from the --- I guess it's the drive right
20 there (indicating), just up by the overcast, between
21 the overcast and the double doors on Headgate ---
22 Tailgate 22.

23 A. You said that's a belt --- that's a belt
24 regulator? Does that regulate the belt?

25 Q. It shows a regulator right there going in here,

1 right here (indicating).

2 A. Oh, okay. Yeah, that right there is regulating
3 the belt.

4 Q. Okay. How much air do you remember? How much
5 velocity, volume ---?

6 A. I really don't remember.

7 Q. How about the pressure? Do you remember how much
8 pressure you had on it or ---?

9 A. No, sir, I don't.

10 Q. Okay. When you were up in here (indicating) on
11 your weekly examinations, you have to take, you know,
12 split air readings, can you mark on the map, on this
13 map where you've taken all your air readings?

14 WITNESS COMPLIES

15 A. Right here is one.

16 BY MR. GODSEY:

17 Q. Could you circle those, please?

18 ATTORNEY WILSON:

19 In blue you're circling that. And is
20 that 85 Crosscut? And this is on Exhibit Three. Now,
21 you've circled between 139 and ---

22 A. Forty (40).

23 ATTORNEY WILSON:

24 --- 140 --- or actually, that would be
25 between 140 and 141 Crosscut.

1 A. 130.

2 ATTORNEY WILSON:

3 And that's at about 132 Break, and that's
4 just outby the Number 22 Headgate.

5 A. Now, I always took one in the intake, too, intake
6 and return.

7 BY MR. GODSEY:

8 Q. That's all the places there that you took the ---

9 A. Yeah.

10 Q. --- readings there?

11 A. Going up to the section here (indicating).

12 Q. What about the longwall?

13 A. I didn't.

14 Q. Who did that, now?

15 A. Harold Lilly.

16 Q. Harold?

17 A. Right.

18 Q. Did anyone ever travel with you when you were
19 making examinations?

20 A. Yes, sir.

21 Q. And who traveled with you?

22 A. I've had several federal inspectors.

23 Q. Did you have any company personnel that would
24 travel with you?

25 A. Yes, sir.

1 Q. Who were they?

2 A. Berman Cornett.

3 Q. And he's a ---?

4 A. Safety director.

5 Q. Do you know of anybody who's ever been dismissed
6 for not maintaining the water levels back by the
7 longwall or anything?

8 A. No, sir.

9 Q. Has the longwall ever had any water problems where
10 they were down for an extended period of time?

11 A. Yes, sir.

12 Q. When was that?

13 A. It's back this year. If I'm not mistaken, right
14 after the first of the year.

15 Q. How much water did they have to have? Was it in a
16 travel way, a longwall face or ---?

17 A. It was in the face.

18 Q. Do you know how much water?

19 A. It must've been quite a bit. They had a couple
20 ten-horsepower pumps and stuff like that, you know,
21 trying to get it out.

22 Q. How long were they down?

23 A. They were down a few days.

24 Q. Did they ever figure out where the water was
25 coming from?

1 A. Yes.

2 Q. Where was that?

3 A. Up at the Bandytown fan.

4 Q. It was coming from the Bandytown fan?

5 A. Uh-huh (yes).

6 Q. Any particular place between the longwall and the
7 Bandytown fan or ---?

8 A. I don't know if it was coming from the bottom,
9 where it was coming from, you know. I think that's
10 what they determined. I'm not really sure about that.

11 Q. Did you ever overhear any management, or did they
12 talk to you about the mining in the seam above them?

13 A. No, sir.

14 Q. You've been on the sections several times, I
15 think. Have you ever known of a time or anybody talk
16 to you about when they were --- when Berman or
17 somebody was running a respirable dust pump, that they
18 had taken a pump off of a designated occupation or
19 something, placed it in the intake air course?

20 A. No, sir. I don't think.

21 Q. You never run up on something like that?

22 A. No.

23 Q. How did they maintain the --- I may have asked you
24 this, but how did they maintain the intake and return
25 air courses? Did they machine dust them, hand dust

1 them?

2 A. They had a scoop duster. You know what I mean?

3 Q. Uh-huh (yes).

4 A. And sometimes they would take them and go down the
5 return off of a section, intake, whatever, and go down
6 and dust them.

7 Q. How much did they dust with a scoop? Did the
8 power hold up long enough or did they --- how far did
9 they get with it?

10 A. Now, I can't say. That's midnight work.

11 Q. Okay. What did that look like, the intakes and
12 returns?

13 A. They looked fair.

14 Q. Was it thick, I mean, or just like a hand dusting
15 or ---?

16 A. No, it wasn't real thick. It was muddy. We had a
17 lot of water and it was muddy and --- you know.

18 Q. Okay. Did you ever have to put in one of your
19 books that it needed dusted --- rock dusted anywhere
20 in any of the ---?

21 A. I'm sure I have, but I just probably --- I don't
22 know what.

23 Q. We talked earlier about, you know, once you'd make
24 the examination and you made your --- I guess you
25 carry a notebook and keep all your notes in it, and

1 you go out to the mine office. What books do you do?

2 What books do you place all your readings in?

3 A. I've got a primary escapeway book. That's all my
4 escapeways, all my air readings and my dangers,
5 hazards I find. And then I've got a separate primary
6 book, you know, for my primary escapeway where I
7 traveled it for that week, and it's a book we've got
8 to keep by itself, three primaries.

9 Q. Do you keep a weekly book for returns and
10 bleeders?

11 A. Yeah.

12 Q. Okay.

13 A. Yeah. It covers returns, intakes and everything.

14 Q. Did management, when they had a approved
15 ventilation plan change approved, did they go over
16 that with you?

17 A. Yes, sir.

18 Q. And they explained it to you in detail?

19 A. Yes, sir.

20 Q. Okay. Were you ever underground when they made
21 one of those changes?

22 A. Not that I know of.

23 Q. Okay. Were you ever underground when maybe they
24 made a change that you weren't aware that they were
25 going to do, but you were there --- but you realized

1 they were doing it?

2 A. Not that I know of.

3 Q. And who instructed you where to take your air
4 readings?

5 A. Nobody.

6 Q. Nobody went over the map with you?

7 A. Well, yeah. I traveled with a guy before, you
8 know. The guy that was doing it before, I traveled
9 with him and then I took over.

10 Q. Okay. When you traveled up to 22 Headgate and 22
11 Tailgate and you took your intake readings, except for
12 splits, did you ever get much change in them?

13 A. Yeah. I'd always get a little bit more on the
14 tailgate.

15 Q. How much more?

16 A. Sometimes 20,000, 30,000.

17 Q. Did you ever talk to your --- Everett about
18 finding these conditions?

19 A. Well, I talked to the boss.

20 Q. That would've been Deano?

21 A. Deano.

22 Q. Everett, did he countersign the books that you
23 filled out?

24 A. No. I don't think. I don't know.

25 Q. Do you know who did?

1 A. I think Terry Moore did.

2 Q. And Terry Moore was a ---?

3 A. Mine foreman.

4 Q. Okay. As you walked in all the extended air
5 courses, have you ever seen any time where water was
6 boiling, like the bubbles coming out of the bottom?

7 A. No, sir. No.

8 Q. And you said you were an electrician, and you said
9 --- have you ever said --- you answered electric. You
10 didn't do electrical work at the mines other than work
11 pumps?

12 A. You're right.

13 Q. Anybody talk to you about bridging out the meth
14 monitors or placing some kind of a plastic bag over it
15 to --- over the sensor to render it useless?

16 A. Never.

17 Q. And just rehashing stuff. You told me earlier on
18 the SCSRs that you were --- that they would rather you
19 not put that statement there that there was a lack of
20 SCSRs in the escapeway. Is there any other time that
21 you were asked not to put something in the book or not
22 to report it?

23 A. No.

24 Q. And I think Terry asked you that. Back on 53 and
25 54, do you remember what the normal readings were?

1 A. I don't remember exactly what they were. It was
2 still a high reading, but it was just lower than what
3 I ordinarily get, you know.

4 Q. And I think ---.

5 A. It was a lot of air.

6 Q. And I think I asked you, too, did you report that
7 to anybody?

8 A. Like I say, I was going to that evening, and
9 that's when everything started happening.

10 Q. On that Monday, also, we were talking about
11 earlier that the longwall had been down a good part of
12 the day. Who told you that the longwall was down?

13 A. No one, just hearsay.

14 Q. Okay. And in all of your many travels in through
15 here, how much --- what was the highest methane
16 reading that you ever had on any of these air courses?

17 A. Probably three quarter in a return.

18 Q. Do you remember where that was?

19 A. It was going down to Bandytown fan.

20 Q. Where are the regulators you examined between
21 Headgate 22 and Tailgate 20 --- Headgate 22 and
22 Tailgate 22? Do you have any regulators you got to
23 check, intake regulators or ---?

24 A. No.

25 Q. But we were talking about that we had --- you

1 didn't have any return regulators.

2 A. Uh-huh (yes).

3 Q. Did you all have any intake regulators to ---?

4 A. No.

5 Q. Was it just three splits wide open?

6 A. (Indicates yes.)

7 Q. Okay.

8 ATTORNEY WILSON:

9 You have to say yes for the record.

10 A. Huh?

11 ATTORNEY WILSON:

12 You nodded your head. If your answer was
13 yes, you have to say yes for the record.

14 A. Yes.

15 BY MR. GODSEY:

16 Q. And you also said you checked pumps. What was
17 your procedure for checking pumps?

18 A. I do permissibility. I check permissibility on
19 them. I check the bolts, and on your starting box,
20 check the cat head and all that and make sure
21 everything was marked, you know, with the power center
22 and your ground straps were on, no cuts in the cable,
23 fire extinguishers, and take a filter gauge and go
24 around your panel on your box and make sure everything
25 was in good shape.

1 Q. And did you do it weekly or monthly?

2 A. Weekly.

3 Q. Didn't do any monthly?

4 A. No.

5 MR. GODSEY:

6 Okay. Give me a second. I can go over

7 and see if I forgot anything. I believe that may be

8 just about all I have.

9 ATTORNEY WILSON:

10 Anything further?

11 MR. MCGINLEY:

12 Yes.

13 RE-EXAMINATION

14 BY MR. MCGINLEY:

15 Q. I asked you earlier about a Notice of Violation

16 that Upper Big Branch had received in the last year or

17 so. Do you recall that?

18 A. Yes, sir.

19 Q. You recall that you --- you stated that you knew

20 about the 40-some D orders, so you knew that the mine

21 had been cited for reversed air; right?

22 A. No, I didn't know that. I mean, I may have

23 forgot.

24 Q. You didn't know that the air had been reversed for

25 days?

1 A. No.

2 Q. Is that serious?

3 A. Yeah, it's serious. Yeah.

4 Q. And Mr. Persinger never talked to you about that?

5 A. I hadn't heard anything.

6 Q. You don't know what area of the mine that took
7 place?

8 A. No.

9 MR. MCGINLEY:

10 No further questions.

11 ATTORNEY WILSON:

12 Terry, anything else?

13 MR. FARLEY:

14 No.

15 ATTORNEY WILSON:

16 Okay. Then Mr. Semenske, on behalf of

17 MSHA and the Office of Miners' Health, Safety and
18 Training, I want to thank you for appearing today and
19 answering questions. Your cooperation is very
20 important to the investigation as we work to determine
21 the cause of the accident. Again, I'll remind you
22 because we are going to interview additional
23 witnesses, we request that you not discuss your
24 testimony with anyone other than your attorney.

25 After questioning other witnesses, we may

1 call you if we have any follow-up questions. If at
2 any time you have additional information that you
3 recall that you would like to provide to us, please
4 have your attorney contact one of us.

5 Before we finish and go off the record, I
6 do want to give you an opportunity. If there's
7 anything else that you would like to add to the record
8 or if there's any statement that you would like to
9 make, you may do so at this time.

10 A. I'd like to say that those 29 men, I knew every
11 one of them men. I've worked with them. And I'd like
12 to know as much as anybody what killed them men,
13 because I was good friends with a lot of them. And I
14 don't want this to happen to nobody else, you know,
15 and anything I know that can --- I could help you
16 with, I would tell you, you know. And I hate to see
17 anybody else go through what these other people had to
18 go through. Even one person is too many, let alone
19 29. So that's all I've got to say about it.

20 ATTORNEY WILSON:

21 All right. Well, again, we appreciate
22 your cooperation here today. Unless there's anything
23 further ---.

24 ATTORNEY MCCUSKEY:

25 Now, ---

1 ATTORNEY WILSON:

2 Yes?

3 ATTORNEY MCCUSKEY:

4 --- I assume I had an opportunity if I
5 wanted to do clarification, but ---

6 ATTORNEY WILSON:

7 Okay.

8 ATTORNEY MCCUSKEY:

9 --- I don't have any questions to ask. I
10 wanted to make sure it was on the record, but ---
11 except this. You had indicated just now, Mr. Wilson,
12 to Charlie that he is not to --- that I think you said
13 you requested him not to discuss his testimony with
14 anyone else. Now ---.

15 ATTORNEY WILSON:

16 Other than you.

17 ATTORNEY MCCUSKEY:

18 Okay. Other than me. Right. I don't
19 know if that's a direction, or you're claiming that as
20 a violation of law, but I'd just like to make sure
21 it's clear. He might be talking to his buddies. I
22 just want to make sure he knows what you're saying he
23 can and cannot do.

24 ATTORNEY WILSON:

25 There is no legal prohibition against him

1 talking with anyone else. It is a request on our
2 behalf so that when we interview other witnesses,
3 we're getting their knowledge and not information that
4 they heard from somebody else.

5 ATTORNEY MCCUSKEY:

6 Okay. That's all I wanted to know. And

7 secondly, I assume --- I'm use to after a deposition
8 saying I'd like to have the transcript. I assume ---
9 no, let me ask. Would you all --- are you willing to
10 make a transcript available of this hearing today?

11 ATTORNEY WILSON:

12 If you request --- generally when a
13 transcript like this is produced, a witness, before
14 it's certified as accurate, has an opportunity to sit
15 down and read the transcript. And if there are any
16 corrections to be made, not substantive changes, but
17 just corrections to a name or a spelling or something
18 like that, the witness has an opportunity to make
19 those corrections. And you do --- you will have that
20 opportunity at a time after all of the interviews are
21 completed and before they're released to the public.
22 If a witness would like to review their transcript, we
23 will provide for that.

24 The witnesses also have the option of
25 just waiving the reading and accepting what the court

1 reporter publishes. So you can contact --- you can
2 either ask us now on the record for the opportunity to
3 read or you can contact --- you can confer with your
4 lawyer and then contact us later and we will respect
5 that request. But it would not be provided until
6 after all of the --- or at least the first round of
7 interviews are completed.

8 ATTORNEY MCCUSKEY:

9 We would like to --- he would like to
10 read and review the transcript. And we'd like to have
11 that available, I mean, as soon as you can have it.

12 ATTORNEY WILSON:

13 Right. Well, like I said, we're not
14 going to release any of the transcripts to any of the
15 witnesses for reviewing until after all the initial
16 interviews are completed, ---

17 ATTORNEY MCCUSKEY:

18 Do you have any ---

19 ATTORNEY WILSON:

20 --- but we will ---.

21 ATTORNEY MCCUSKEY:

22 --- idea how long that's going to be?

23 ATTORNEY WILSON:

24 No.

25 ATTORNEY MCCUSKEY:

1 Are we talking months?

2 ATTORNEY WILSON:

3 But it will be before they're publicly
4 released.

5 ATTORNEY MCCUSKEY:

6 Okay. That's fine, but I'd like to make
7 the request for immediate --- or as soon as it's
8 available. You're going to deny the request, but I
9 want to make sure it's on the record that I'm asking
10 for it.

11 ATTORNEY WILSON:

12 Sure.

13 ATTORNEY MCCUSKEY:

14 And I'd also like to ask, if you're not
15 going to provide that immediately, the section on the
16 questioning that took place of me, I don't think that
17 has anything to do with the investigation and what the
18 facts are. I'd like to have a --- I'd like to request
19 a copy of that as soon as --- immediately.

20 ATTORNEY WILSON:

21 Okay. And we'll take that under
22 advisement.

23 ATTORNEY MCCUSKEY:

24 Okay.

25 ATTORNEY WILSON:

1 All right then. We'll go off the record.

2

3

* * * * *

4

STATEMENT UNDER OATH CONCLUDED AT 7:30 P.M.

5

* * * * *

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF WEST VIRGINIA)

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

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



Danielle Ohm