

1 **WEST VIRGINIA MINE SAFETY AND HEALTH ADMINISTRATION**

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4
5 **IN THE MATTER OF:**

6 **THE INVESTIGATION OF THE**
7 **APRIL 5, 2010 MINE EXPLOSION**
8 **AT UPPER BIG BRANCH MINE.**

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15 **The interview of CHARLES EDWARD SEMENSKE,**
16 **taken upon oral examination, before Elizabeth A.**
17 **Howd, Registered Diplomate Reporter, Certified**
18 **Realtme Reporter, and Notary Public in and for the**
19 **State of West Virginia, Tuesday, October 26, 2010,**
20 **at 7:57 a.m., at the Mine Academy, 1301 Airport**
21 **Road, Beaver, West Virginia.**

22 **JOHNNY JACKSON & ASSOCIATES, INC.**
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EXAMINATION INDEX

	PAGE
CHARLES EDWARD SEMENSKE	
BY MR. FARLEY	10
BY MR. GODSEY	13
BY MR. MCGINLEY	23
BY MR. FARLEY	48
BY MR. GODSEY	48
BY MR. MCGINLEY	68
BY MR. MCGINLEY	79

EXHIBIT INDEX

Exhibit		PAGE
1	Subpoena to Charles Semenske	9
2	Weekly Examinations, Week Ending 12/19/2009	26
3	Weekly Examinations, Week Ending 2/13/2010	31
3	Weekly Examinations, Week Ending 12/19/2009, Hazardous Conditions	26
4	Weekly Examinations, Week Ending 12/19	31
5	Weekly Examinations, Week Ending 1/24/2010, Air Way Travels	45
6	Map of the longwall	60
7	Weekly Examinations, Week Ending 4/3/2010, Air Readings	69

1 MR. KOERBER: My name is Barry Koerber.
2 I'm an Assistant Attorney General, and I'm
3 assigned to represent the West Virginia Office of
4 Miners' Health, Safety and Training.

5 Today is October 26, 2010. We're here to
6 conduct an interview on behalf of the Office of
7 Miners' Health, Safety and Training pertaining to
8 the April 5th, 2010, mine explosion at the Upper
9 Big Branch mine.

10 The person that will be interviewing on
11 behalf of the State today, I would ask that he
12 identify himself.

13 MR. FARLEY: I'm Terry Farley with the
14 Office of Miners' Health, Safety and Training.

15 MR. KOERBER: And we also have another
16 gentleman present, John O'Brien, who has just
17 stepped out of the room momentarily. He will
18 return.

19 Also present today is two other entities,
20 and I would ask that THEY identify themselves.

21 MR. GODSEY: John Godsey, MSHA.

22 MS. HAMPTON: My name is Pollyanna
23 Hampton. I'm AN attorney with the Solicitor's
24 Office with the Department of Labor here

1 representing MSHA.

2 MR. KOERBER: The governor's independent
3 team will be present, and we'll ask that they
4 identify themselves when they arrive.

5 There is one person in the room, sitting
6 in the back. I would ask that he identify
7 himself.

8 MR. STOLTZ: Rick Stoltz.

9 MR. KOERBER: And you're with?

10 MR. STOLTZ: With MSHA.

11 MR. KOERBER: You were here before,
12 Mr. Semenske, and it's pretty similar to when you
13 were here before.

14 We have a court reporter present. We'll
15 ask that you speak out loud, "yes," "no," no
16 nodding of the head. Wait until one person ceases
17 speaking before you start to speak, and I would ask
18 that the interviewers wait until you finish
19 speaking before they begin to speak again.

20 The court reporter is transcribing
21 everything that is said today. She is working on a
22 three-day turnaround, which means, today being
23 Tuesday, three days from now puts us at Friday.

24 So Monday of next week or any day

1 thereafter, if you would choose to want to read the
2 transcript, you will be allowed to go to Johnny
3 Jackson & Associate's court reporter office in
4 Charleston, West Virginia, and you may take your
5 attorney with you if you so choose. You will be --
6 you need to call in advance and schedule a time
7 that they have their conference room available, and
8 you will be able to go in and you will be able to
9 sit down with your attorney in the conference room,
10 read the transcript, and make any corrections that
11 you deem necessary on an errata sheet which will be
12 attached to the original.

13 You will not be allowed to take a copy
14 with you after you leave. You'll have to work
15 inside the conference room of Johnny Jackson &
16 Associates.

17 Hopefully, the court reporter brought some
18 business cards, and if --

19 MR. McCUSKEY: I got one.

20 MR. KOERBER: So that you know who to
21 contact.

22 If at any time during this interview you
23 need a break, just say so. We'll take a break.
24 Hopefully this interview will not take too long.

1 We request that you not discuss your
2 testimony here today with anybody other than your
3 attorney.

4 If you would, would you please swear in
5 the witness.

6 CHARLES EDWARD SEMENSKE, WITNESS, SWORN

7 MR. KOERBER: We have a member of the
8 governor's independent team present now. I would
9 ask that he identify himself for the record.

10 MR. MCGINLEY: Patrick McGinley.

11 MR. KOERBER: Sir, would you please state
12 your full name for the record and spell your last
13 name

14 THE WITNESS: Charles Edward Semenske,
15 S-e-m-e-n-s-k-e.

16 MR. KOERBER: And would you please state
17 your address and telephone number for the record.

18 THE WITNESS: My address is Post Office
19 (b) (7)(C) . Phone
20 number is (b) (7)(C)

21 MR. KOERBER: Do you have an attorney
22 appearing with you here today?

23 THE WITNESS: Yes.

24 MR. KOERBER: And would the attorney

1 please identify himself?

2 MR. McCUSKEY: Yes. John McCuskey, law
3 firm of Shuman, McCuskey & Slicer in Charleston,
4 West Virginia.

5 MR. KOERBER: And is Mr. Semenske your
6 client, Mr. McCuskey?

7 MR. McCUSKEY: He was and still is, yes.

8 MR. KOERBER: I notice that there is
9 another attorney sitting at the table. I would ask
10 at this time that he identify himself, the firm
11 he's with, and the client he represents.

12 MR. ALLEN: I represent the company.
13 Robert B. Allen with the firm of Allen, Guthrie &
14 Thomas.

15 MR. KOERBER: Mr. Semenske, are you
16 appearing here today as a result of being served
17 with a subpoena?

18 THE WITNESS: Right.

19 MR. KOERBER: And would this be a copy of
20 that subpoena?

21 THE WITNESS: Yes, sir.

22 MR. KOERBER: I would ask that this be
23 marked as Exhibit 1.

24 (Exhibit No. 1 marked for

1 identification.)

2 MR. KOERBER: And at this time I will turn
3 the interview over to Mr. Farley to begin his
4 questions.

5 EXAMINATION

6 BY MR. FARLEY:

7 Q. Mr. Semenske, thank you for coming back
8 today.

9 I'm going to revisit a couple of things
10 that we may have talked about during your first
11 interview.

12 If I remember correctly, you did, in fact,
13 work at the UBB mine on April 5th, 2010. Is that
14 correct?

15 A. Yes, sir.

16 Q. Now, you did, in fact, work underground
17 that day; is that correct?

18 A. Yes.

19 Q. Now, if you would remind me again, what
20 time did you start to work that day?

21 A. 6:00 a.m.

22 Q. And your shift, if you'll remind me again,
23 lasted until when?

24 A. 3:00.

1 Q. Now, were you outside the mine at
2 3:00 p.m.?

3 A. Yes, sir.

4 Q. What time did you get outside?

5 A. It was probably after 1:00, about 15 after
6 1:00.

7 Q. Now, from the time you started to work
8 that day, throughout your shift, whether you were
9 underground or on the surface, did you overhear any
10 conversation on the mine phone coming from the
11 longwall section to the surface of the mine?

12 A. No, sir.

13 Q. Did you hear, overhear, any call for Jack
14 Roles on the mine phone during that shift?

15 A. No, sir.

16 Q. Not at any time?

17 A. No.

18 Q. Did you hear, overhear, any conversations
19 whatsoever in the mine on the mine phone during
20 that day?

21 A. No, sir.

22 Q. Okay. Also during your shift on April 5
23 did any person, particularly a foreman, ask to
24 borrow your methane detector at any time?

1 A. Yes.

2 Q. Who asked to borrow your methane detector?

3 A. Jeremy Burghdoff.

4 Q. Jeremy Burghdoff. Now, at what point
5 during the day did Mr. Burghdoff ask you for your
6 methane tank?

7 A. It was after the explosion, and they were
8 to monitor all the holes outside.

9 Q. Now, did Mr. Burghdoff not have a methane
10 detector himself?

11 A. Yes, he had one.

12 Q. Then why would he ask to borrow yours?

13 A. He said his was dead.

14 Q. Were those his exact words, "It's dead,"
15 "Mine is dead"?

16 A. Yes.

17 Q. Did he tell you why it was dead?

18 A. No.

19 Q. Did he tell you how long it had been
20 dead?

21 A. No.

22 Q. Give you any other information at all?

23 A. (Shaking head.)

24 Q. Now, after -- since you provided -- did he

1 eventually return the methane detector you had
2 loaned him on April 5th?

3 A. I didn't loan him my detector.

4 Q. Did he get one from elsewhere?

5 A. Evidently he did.

6 Q. Okay. Fine. But he asked to borrow
7 yours?

8 A. Yeah.

9 MR. FARLEY: I don't have anything else.

10 EXAMINATION

11 BY MR. GODSEY:

12 Q. We'll go back to June when you were here.
13 What portal did you enter on April 5th?

14 A. UBB portal.

15 Q. Is that the --

16 A. Yeah.

17 Q. Not Ellis portal?

18 A. No.

19 Q. What portal did you exit that afternoon?

20 A. UBB portal.

21 Q. Did you at any time travel around Ellis
22 portal?

23 A. No, I didn't do any traveling there.

24 Q. Where did you -- did you bathe at -- what

1 portal did you bathe at?

2 A. I bathed at Ellis.

3 Q. And you were there when the explosion
4 occurred?

5 A. Yes, sir.

6 Q. What did you -- what did you see?

7 MR. McCUSKEY: Ask to clarify. You said
8 you were there when the explosion occurred.

9 Q. Were you at Ellis?

10 A. I was at the mines, yes.

11 Q. What portal were you at?

12 A. At Ellis portal.

13 Q. When did you become aware of what happened?

14 A. Well, some of the man-trip -- two of the
15 man-trips came back outside, and guys were pretty
16 upset. And that's when we knew something happened.

17 Q. Did anyone ever mention to you that day
18 that the air had reversed in the belt entry at
19 Ellis portal?

20 A. No, sir.

21 Q. Your job, I think, was -- you was a weekly
22 mine examiner?

23 A. Right.

24 Q. And you was to take care of 22 headgate,

1 and what was the other ones that you --

2 A. 21 tailgate and all your main returns.

3 Q. When you -- did you make the belts on,
4 examine --

5 A. No, I don't do belts.

6 Q. So you just did the intakes?

7 A. Right.

8 Q. And returns and the bleeder; is that
9 correct?

10 A. Right.

11 Q. When you traveled your intakes up, say, to
12 22 headgate, where did you take your split air
13 readings?

14 A. I would take it at the mouth of the
15 section.

16 Q. Where would you take the one at
17 22 tailgate?

18 A. I would take it in the last open break,
19 because they were just starting up.

20 Q. Where did you record these, or did you
21 record all readings?

22 A. Yeah, I recorded them in a fire boss book.

23 Q. During the March to April time frame, I
24 think there had been -- had problems with

1 ventilation that were able to change on certain
2 sections. And one of the sections, I think it was
3 22 headgate, had some problems with it.

4 Did you ever -- during your weekly
5 examinations, did you ever notice any changes to
6 the air ventilation going to 22?

7 A. I know that they had a low -- not a low
8 air -- not as much air in the last open break as
9 they had had.

10 Q. Did you bring that to the attention of
11 anyone outside?

12 A. Yes.

13 Q. What was their reaction?

14 A. I really don't remember what they said.

15 Q. Do you remember who you talked to?

16 A. No.

17 Q. Did you make any of the tailgate side of
18 the longwall?

19 A. No. Yes, I did too. I'm sorry.

20 Q. What was the general appearance of, say
21 from the tailgate outby towards 78 break in the
22 tail entry? What did they look like?

23 A. The bottom was hooving up pretty bad, and
24 the top was coming in. You know, it was not safe

1 to travel.

2 Q. What about the rock dust? What did it
3 look like, the rock dust?

4 A. Well, that longwall puts off a lot of
5 dust, and it didn't look real good.

6 Q. How far did it -- what areas didn't look
7 good? How far from the tailgate out did it not
8 look good?

9 A. Well, really, you couldn't hardly tell
10 because everything was falling in, you know. You
11 couldn't tell that much about it.

12 Q. How often would you see them -- from week
13 to week would they come in there and rock dust?

14 A. I never seen them.

15 Q. And how long had you been traveling it?

16 A. I can't give you an amount of time, but I
17 have been doing it a long time.

18 Q. So, in other words, and I'm not trying to
19 put words in your mouth, did it ever change any?
20 Did they ever rock dust any?

21 A. Not that I know of.

22 Q. And did you ever travel back towards
23 Bandytown fan?

24 A. Yes, sir.

1 Q. And how far did you travel back there?

2 A. I went all the way to the fan.

3 Q. Did it ever change? Did they ever break
4 that travelway up or somebody else travel from
5 Point A to Bandytown fan?

6 A. Yes, sir.

7 Q. And who was that?

8 A. Jeremy Burghdoff.

9 Q. What was his main job there?

10 A. He was a pumper, in charge of pumping the
11 water and stuff back out there. And he was to do
12 the weekly on the Bandytown fan there, the reading
13 and everything.

14 Q. Did he ever -- did you ever discuss with
15 him about the air readings back there and the water
16 situation?

17 A. Huh-uh.

18 Q. What did you travel to? What crosscut?

19 A. 75 break.

20 Q. And what was the condition in that -- what
21 entry did you travel?

22 A. Number 1 entry.

23 Q. Did you travel any of the other ones?

24 A. No.

1 Q. Why didn't you?

2 A. They were too bad to travel.

3 Q. What about their appearance over there
4 with rock dust, concerning rock dust?

5 A. It was pretty well rock dusted, the
6 Number 1 entry was.

7 Q. What about the other ones, 2, 3, and 4?

8 A. No, they wasn't real good.

9 Q. That afternoon when you came out, how did
10 you travel? Did you walk out?

11 A. I walked out to UBB, and I had to take my
12 car over to the mines, because if you waited on a
13 ride you might not get back.

14 Q. When you started your -- on Monday
15 morning, did you have a certain area that you would
16 go on Monday, Tuesday, Wednesday, Thursday, and
17 Friday?

18 A. Yes, sir.

19 Q. Where was your Monday travel?

20 A. I walked the EPs out at -- out at the
21 other fan.

22 Q. Talking about the north and south portals?

23 A. Yeah.

24 Q. Was there any areas that you couldn't make

1 because of water accumulations?

2 A. No, sir.

3 Q. Did you have many water pumps out there
4 that you had to examine?

5 A. I had three in the return.

6 Q. What did you -- how did you -- what did
7 you do to those pumps?

8 A. Well, I did permissibilities once a week
9 on them. Plus, I would, you know, keep check on
10 them, make sure they was pumping and everything.

11 Q. What did you do after you -- did you --
12 when you come to the surface, what did you do with
13 the results of that?

14 A. I put them in the book.

15 Q. And did you ever discuss any of the
16 readings or anything with your supervisor?

17 A. On the pumps?

18 Q. Anywhere in the mines that you made --

19 A. If I had something that was wrong, yes, I
20 would talk to the supervisor.

21 Q. Who was he?

22 A. Most of the time it would be Everett
23 Hager.

24 Q. Did anyone, say from March till up to the

1 explosion, did anybody, any of the section foremen,
2 discuss with you any changes that they was
3 concerned with about their ventilation?

4 A. They were going to make one air change
5 that a person had talked to me about.

6 Q. Who was that?

7 A. That was Wayne Persinger.

8 Q. What were they going to do?

9 A. They were just going to change and put
10 more air on another section.

11 Q. Which section was that?

12 A. Headgate 22.

13 Q. Was that the one that was low on air?

14 A. Yeah.

15 Q. Who was the section foreman there?

16 A. Dino Jones.

17 Q. Was he concerned about the ventilation?

18 A. Yes.

19 Q. Did he ever talk to you about it?

20 A. Yeah, I have talked to him.

21 Q. During your weekly examinations, you know,
22 you observed stoppings and all that stuff. Did you
23 ever see from week to week changes that weren't
24 there the previous week, like stoppings that were

1 there last week but they weren't there this week?

2 A. No.

3 Q. You never -- what about overcast?

4 A. When they started making air changes, they
5 did, you know, they did put in overcast and
6 stoppings different places.

7 Q. Were you aware of all ventilation changes
8 that they conducted?

9 A. I thought I was.

10 Q. Well, did you see -- I said did you ever
11 notice any that had changed that you didn't --

12 A. No.

13 Q. How much air would it fluctuate on the
14 headgate 22 section?

15 A. Usually four or five thousand.

16 Q. And did they use regulators in the returns
17 on the sections to regulate the air?

18 A. No.

19 Q. Did they use any regulators at all?

20 A. I don't believe they did.

21 Q. What about on the intake?

22 A. (Shaking head.)

23 Q. So all of them is free, open?

24 A. Right.

1 Q. The main returns, what condition were they
2 in, say from the longwall -- excuse me, not the
3 longwall -- from the 22 tailgate and the headgate?
4 What did they look like?

5 A. They had a lot of mud and water, and it
6 was mostly mud and water is what it was.

7 Q. What about, was the area well rock dusted,
8 roof, ribs and floor?

9 A. Well, a lot of it you couldn't tell
10 because you had so much water, you know. It looked
11 brown anyway.

12 Q. Did you say, were you ever on any of the
13 belt lines?

14 A. No.

15 Q. Never?

16 A. No.

17 Q. Were you near the longwall the day of
18 April 5th?

19 A. No.

20 MR. GODSEY: That's about all.

21 EXAMINATION

22 MR. MCGINLEY:

23 Q. Good morning, Mr. Semenske. I have a few
24 questions.

1 I was looking through the weekly
2 examination reports, and I had some questions about
3 that. You filled those in?

4 A. Yes, sir.

5 Q. That was part of your assigned
6 responsibility?

7 A. Yes, sir.

8 Q. What were you instructed to do with regard
9 to filling out those reports? Another way to say
10 that would be, what kind of training did you have?

11 A. Well, I went through foreman school. I
12 went a year and a half to college, mine technology.

13 Q. Okay. With regard to Massey, what did
14 they tell you to do in terms of filling in these
15 reports?

16 For example, the weekly examination
17 reports have a list of columns for you to fill in,
18 date, EP, CH₄, oxygen, CO, CFM, direction of air,
19 signature, certification.

20 What were you told about filling in those?

21 A. They didn't tell me nothing. I knew what
22 to fill in.

23 Q. How did you know where to take air
24 readings?

1 A. I have been in the mines 39 years. I
2 pretty much know what I need to do, whatever job I
3 have.

4 Q. So you had no instructions? You have to
5 say yes or no.

6 A. No.

7 Q. There's a place -- there's a form that
8 says, "Hazardous Conditions," that you filled out
9 every week; is that correct?

10 A. Yes, sir.

11 Q. What did that mean to you, hazardous
12 conditions?

13 A. That meant something that wasn't safe and,
14 you know, needed to be -- attention needed to be
15 taken, you know, right then to clear up whatever it
16 was.

17 Q. So when you say it wasn't safe, that
18 condition, whatever you wrote in the weekly
19 examination book under "Hazardous Conditions,"
20 would have in some way jeopardized the safety of
21 people working in the mine --

22 A. It could.

23 Q. -- in your view?

24 A. It could.

1 Q. Also on that form, the Hazardous Condition
2 page, at the bottom it says, "Corrections from week
3 of." Are you familiar with that?

4 A. Yes, sir.

5 Q. And what were you supposed to put in
6 there?

7 A. Say if you went by a certain area that you
8 had wrote up before that needed fixed, and if it
9 had been done, you would put that in that area on
10 the bottom that it had been fixed and report it had
11 been fixed already.

12 Q. I'm sorry. If you walked by and it hadn't
13 been -- it had been fixed, you would write that
14 under "Corrections from the week of"?

15 A. Yes, sir.

16 Q. I noticed in looking through your weekly
17 examinations there seem to be a lot more conditions
18 than corrections.

19 A. Yes, sir.

20 MR. MCGINLEY: For example, you might mark
21 this as Exhibit 2.

22 (Exhibit No. 2 marked for
23 identification.)

24 Q. This is a weekly examination from the week

1 ending December 19th, 2009. Take a look at that.

2 I'm just trying to get an understanding of
3 these forms, Mr. Semenske. There you had written a
4 number of hazardous conditions that you observed
5 during your weekly examination that week; is that
6 correct?

7 A. Yes, sir.

8 Q. But at the bottom, "Corrections from week
9 of," there isn't anything there.

10 A. Yes, sir.

11 Q. Do you know whether -- how would one know
12 from looking at that report whether those
13 conditions had been corrected?

14 A. Because I worked -- I walked a certain
15 part of the mines on a certain day. And when I
16 went back through that area, if it hadn't been
17 fixed, you know, I knew not to put it in the
18 corrections.

19 Q. If it had not been fixed?

20 A. If it had not been fixed.

21 Q. So one could look at what you wrote on
22 that weekly report, 12/19/2009, and look at your
23 subsequent examinations to determine which of those
24 hazardous conditions have been corrected; is that

1 right?

2 A. You say 12/19?

3 Q. Yeah. It's up there, I think up there in
4 the right-hand corner.

5 A. Oh, okay. They hadn't been fixed if it
6 wasn't down here.

7 Q. Okay. But they would show up if they had
8 been fixed on subsequent --

9 A. Yes.

10 Q. -- weekly examinations --

11 A. Yes.

12 Q. -- that you did?

13 Let me ask you, too, about Exhibit 2,
14 there seems to be different handwriting. At the
15 top part, can you identify whose handwriting that
16 is? Start with, is any of it yours?

17 A. No, it's not mine. I initial behind
18 everything I write.

19 Q. I noticed that. You put "CS"? You have
20 to say yes or no.

21 A. Yes.

22 Q. Can you identify any of that handwriting?

23 A. No, sir.

24 Q. There are also signatures at the bottom.

1 What's the significance of those? One is,
2 obviously, Everett Hager, because it's a signature
3 over the words "Mine Foreman."

4 A. These three guys were on the midnight, I
5 guess supposed to have been working on some of this
6 stuff, but evidently they didn't. I really don't
7 know what their job was. I mean, I know they were
8 foremen.

9 Q. I see. And who were they? Can you tell
10 from that?

11 A. Kyle Anderson was one of them. He worked
12 the midnight, a foreman.

13 And this Rick Hutchins, I don't know him,
14 unless he goes by another name. You've got a lot
15 of nicknames in mines for people.

16 Q. Sure. Now, you didn't write -- you didn't
17 fill in that report, the bulk of that, but you
18 signed it. Why did you sign it?

19 A. The bulk of what?

20 Q. The handwriting here that you can't
21 identify below the words "Hazardous Conditions,"
22 down to the end of that "Need of" -- I can't read
23 it from here -- "Need repaired."

24 What was the purpose of these signatures?

1 Why did you sign it?

2 A. I signed it because I filled out this
3 report up here on top for hazardous conditions. I
4 signed it because of what I put in there.

5 Q. Oh, is any of --

6 A. Not all of it. Mine. Mine.

7 Q. Which part? I was trying to figure that
8 out. What part of that document is your
9 handwriting?

10 A. From 12/15 to -- and 12/16.

11 Q. And did you put your initials there next
12 to your handwriting?

13 A. Yes, sir.

14 Q. Okay. So that would be what you wrote?

15 A. Yes, sir.

16 Q. So with regard to filling out these forms,
17 anybody who wrote in hazardous conditions was
18 supposed to sign at the bottom? Is that --

19 A. I always did.

20 Q. Were you required to do that, or did you
21 have any instructions?

22 A. No.

23 Q. And you don't know why Mr. Hutchins or
24 Anderson filled this out?

1 A. No, sir.

2 Q. You have seen signatures at the bottom of
3 weekly examination forms on other occasions; is
4 that right?

5 A. Yes, sir.

6 Q. But you don't know why those appeared
7 there either, but you suppose that that indicated
8 the knowledge of what was in the hazardous
9 conditions of the person who signed?

10 A. Yes, sir. I know the mine foreman and
11 superintendent usually signed them to verify that
12 they did know what was in the reports.

13 Q. So one of the purposes of the weekly
14 examination, especially the hazardous condition
15 part, was to inform the superintendent and mine
16 foreman --

17 A. Yes.

18 Q. -- of those conditions?

19 A. Yes, sir.

20 MR. MCGINLEY: Let's mark these as 3 and
21 4.

22 (Exhibits 3 and 4 marked for
23 identification.)

24 Q. Mr. Semenske, I'm going to show you a

1 couple of documents marked for identification as
2 Exhibits 3 and 4.

3 At the top one of them says, "Weekly
4 examinations, week ending 12/19." I take that to
5 be, from the context of the reports received by the
6 investigation, to be 12/19/2009.

7 Then there's a report, Exhibit 3 --
8 sorry. I may have misidentified them.

9 12/19 was Exhibit 4.

10 February 13th, 2010, was Exhibit 3.

11 I would ask you to take a look at those
12 for a moment, please.

13 Are those documents that you previously
14 have seen?

15 A. I probably have, but I don't remember.

16 Q. Does one of them have your signature on
17 it?

18 A. This one has one right here.

19 Q. Okay. At the bottom is that your
20 signature?

21 A. Yes, sir.

22 Q. So you have seen --

23 MR. McCUSKEY: Let's make sure we know
24 which ones he's identifying here for the record.

1 MR. MCGINLEY: Thank you very much.

2 Q. So your signature appears on 3, is that
3 correct, indicating that you took air readings at
4 least once during the week of February 13th, 2010?

5 A. Yes, sir.

6 Q. And on Exhibit 4, you signed at the bottom
7 of that. That was weekly examinations for week of
8 December 19th, 2009.

9 You also took an air reading as indicated
10 on that document?

11 A. Yes, sir.

12 MR. MCCUSKEY: I think there are several,
13 actually.

14 THE WITNESS: Three air readings.

15 Q. What I want to -- just very simple
16 questions about that, for the record.

17 There are abbreviations indicating where
18 these various air readings were taken. Can you
19 identify each of those on both documents so that
20 investigators and, when these are released to the
21 public, others will know what place in the mine
22 these readings were taken?

23 A. Okay. On Exhibit 4, this TGI 1 and 2,
24 that is behind the longwall.

1 Q. Any particular place behind the longwall,
2 can you tell, or do you know?

3 A. Yes. It was checkpoints where you go and
4 take air readings behind the longwall to see how
5 much methane and air you had coming through there.

6 Q. And are those checkpoints identified on
7 any maps? How would one look at Exhibits 3 and 4
8 and determine with precision where those air
9 readings were taken, if they could?

10 A. Yes, sir, they're on the map.

11 Q. And which of the maps? The ventilation
12 map or --

13 A. It's on the main map.

14 Q. Main map.

15 A. Main mine map.

16 Q. There are some others. If you would go
17 through there and identify each of those places
18 where the readings were taken.

19 A. Okay. EP 2, that's another one behind the
20 wall.

21 Q. And that would be identified on the main
22 map --

23 A. Yes, sir.

24 Q. -- as an air sample?

1 A. Yes, sir.

2 Q. Can you just go through the list of the
3 column and identify each spot?

4 A. Okay. EPL 3 is in behind the wall.

5 And LW 2 is behind the wall. They have
6 got four different entries they have checked.

7 Q. When it says EP 2, that's Entry 2, second
8 entry? What do the numbers mean?

9 A. I really don't remember where EP 2 was
10 right off, because I haven't walked in behind the
11 wall for a while.

12 Q. Okay. Is it possible that the 2 relates
13 to the entry, or you don't know what those numbers
14 mean?

15 A. No.

16 MR. McCUSKEY: You don't know? Is that
17 what you were telling him?

18 THE WITNESS: Yeah, I don't know.

19 Q. Are there any other -- I think there's
20 some other sampling points there.

21 A. Longwall 2. He's just got abbreviations
22 down here for the three others. He's got 2, 3,
23 4, 5 entries.

24 Q. What does that mean to you?

1 A. The only thing I know, he's took a test in
2 2, 3, 4, 5 entries for methane and air readings.

3 Q. Would those sampling points be identified
4 on the map?

5 A. They should be, yes, sir.

6 Q. And who was it that took those?

7 A. Harold Lilly.

8 Q. Are there any other sampling points on
9 either of those that you haven't identified yet?

10 MR. McCUSKEY: You said either of those.
11 He's been looking at Exhibit 4. Do you want him to
12 then --

13 MR. MCGINLEY: I want him to look at both
14 of those documents, and for each one -- he doesn't
15 have to duplicate them, but just for the purposes
16 of identification, indicate what the abbreviations
17 on each means.

18 MR. McCUSKEY: I think he's covered 4.
19 Now he's going to look at 3.

20 MR. MCGINLEY: I appreciate that. Thank
21 you.

22 A. Okay. On Exhibit 3 you have TGI. That is
23 behind the wall. You've got 1, 2, and 3 entries.
24 All three of those have to be checked.

1 Q. Do you know what TGI refers to?

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

3 Q. Could that be tailgate?

4 A. It could be tailgate.

5 Q. Are there any others that you haven't
6 identified yet on --

7 A. TG 1. TG 1 three different times. Then
8 Longwall 3. That's 3, 4, and 5 entry he checked
9 for air and methane. And 2, 3, and 4 is three
10 different entries they have checked for methane in
11 there.

12 Q. 2, 3, and 4, that was which? LW?

13 A. On the longwall.

14 Q. So LW?

15 A. LW 3.

16 And the DPP 1 is on the other end of the
17 mines.

18 Q. You usually check that one?

19 A. Yes, sir.

20 Q. Where is that?

21 A. It's on the UBB side of the mines.

22 Q. There is a place where the TGI reading was
23 taken three times in the same day; is that right?

24 A. Yes, sir.

1 Q. And that was taken by Mr. --

2 A. Burghdoff.

3 Q. Burghdoff?

4 A. Yes, sir.

5 Q. That indicates the three readings were
6 taken in the same place on the same day?

7 A. It shouldn't have been in the same place.
8 It should have been in three different areas.

9 Q. But you can't tell from that?

10 A. No.

11 Q. If you were taking those readings, would
12 you have differentiated if there were three
13 different places where the reading was taken on the
14 weekly examination report?

15 A. Yeah, I believe I would have did a little
16 bit different beside TG 1 all three times. I would
17 have made it 1, 2, 3 or something.

18 Q. Well, it would have to correspond with the
19 map?

20 A. Right.

21 Q. So TGI 1 or TGI, whatever it says on the
22 exhibit, that sampling point could be identified on
23 the map?

24 A. Yes, sir. It should be.

1 Q. So literally what -- if you looked at what
2 Mr. Burghdoff wrote on the exhibit, you would
3 conclude that he took the same reading at the same
4 place three times on the same day; is that correct?

5 A. Yes, sir.

6 MR. McCUSKEY: Professor McGinley, before
7 we leave that, may I ask that Mr. Semenske clarify
8 what is actually written on this report that he's
9 referring to? I'm not testifying. I'm just asking
10 for a clarification.

11 MR. MCGINLEY: Sure.

12 MR. McCUSKEY: He indicated that there are
13 three different readings signed by another person
14 for TGI and all three of them say TGI, but I think
15 I might ask him to clarify what it means the fact
16 that there's a different number written out beside
17 each of those three reading locations.

18 You see what I'm saying?

19 MR. MCGINLEY: Sure. That's fine. If you
20 know.

21 MR. McCUSKEY: I don't know what it means.

22 MR. MCGINLEY: I mean if the witness
23 knows.

24 THE WITNESS: It's three different entries

1 where he's took a reading he shows right here.

2 BY MR. MCGINLEY:

3 Q. So to the left of the date on Exhibit 3 is
4 written 3, 4, and 5. And that indicates to you,
5 Mr. Semenske, that readings were taken in
6 Entries 3, 4, and 5?

7 A. Yes, sir.

8 Q. At TG -- is this 1 or I?

9 A. I don't know really which one it is.

10 Q. So where in those entries would these
11 readings have to be taken? I mean, you have got a
12 lot of experience. You didn't have to be trained.
13 Where is it that one would take those samples?

14 A. They were more or less an EP point, an
15 examination point, for you to go and check for
16 methane and gas and everything, I mean, the air.

17 Q. Do those examination points change as the
18 mine advances?

19 A. It will after -- say if they work out, you
20 know, some of them will. Not all of them.

21 Q. Would those changes be reflected on the
22 map that you previously identified were where
23 sampling points are represented? That is to say,
24 if the EP, examination points, were to change, then

1 the map would change?

2 A. Yes, sir, it's supposed to.

3 Q. Does it change, from your experience? Do
4 the maps actually reflect the places where the air
5 samples are taken?

6 A. Well, they have got several violations on
7 the maps, so I would say not.

8 Q. I just have a few more questions, sir.

9 You can tell based on your experience when
10 rock dusting doesn't appear to be good; is that
11 correct?

12 A. Yes, sir.

13 Q. And that's based upon what? What do you
14 base that on? Is that the color of the rock dust,
15 color of the ribs?

16 A. Yes, sir. Usually the color of
17 everything.

18 Q. Do you know, even if the color of the rock
19 dust is white, whether the rock dusting meets the
20 MSHA and state standards with regard to intake and
21 return?

22 A. You can't really tell unless you see how
23 much they have put on it, you know, more or less
24 just dig down, you know, and see how much dust you

1 have on it.

2 Q. So even then can you be sure, without
3 actually taking a sample and sending it to the lab,
4 whether rock dusting meets the regulatory
5 requirements?

6 A. By looking, no.

7 Q. Have you had any training with regard to
8 how to determine when the rock dust in the mine
9 meets the regulatory requirements?

10 A. When I took my foreman school, they did a
11 lot of that.

12 Q. When did you take the foreman's school?

13 A. '78.

14 Q. Since you have been working for Massey,
15 have you had any training with regard to being able
16 to identify whether rock dusting meets the intake
17 and return rock dusting requirements?

18 A. No, sir.

19 Q. Let me ask a couple questions about your
20 hand-held spotter. You used Solaris?

21 A. Yes, sir.

22 Q. That has a digital readout?

23 A. Yes, sir.

24 Q. What gases does it identify?

1 A. It has CO, CH₄, and oxygen.

2 Q. What range, in your experience, of CH₄
3 have you found at UBB?

4 A. Probably the most I have ever found was
5 just a little over 1 percent.

6 Q. What about oxygen? What's the range of
7 oxygen you have found?

8 A. I have found not deficiency, but it's been
9 a low oxygen reading in some of the returns.

10 Q. So your experience is that both -- well,
11 strike that.

12 Your experience has been that spotters
13 pick up methane even in small amounts; is that
14 correct?

15 A. Yes, sir.

16 Q. Is it hundredths?

17 A. Yes, sir.

18 Q. Or tenths? Hundredths?

19 A. Hundredths.

20 Q. Do you very frequently find no methane
21 detected?

22 A. Yes.

23 Q. Or is that unusual?

24 A. No. It just determines what area you're

1 in.

2 Q. Where would you be likely to find methane,
3 just a small fraction, even 1/100?

4 A. Around the headgate 22 you would find
5 some.

6 Q. What about, going back in your experience
7 at UBB, what type of places would you expect to
8 find some level of methane rather than zero?

9 A. Usually at the Glory Hole I would find
10 methane about every time I went up there, but it
11 was, say, a 10 or 15 reading.

12 Q. That would be hundredths?

13 A. Hundredths, yes.

14 Q. And was there a sampling point at the
15 Glory Hole?

16 A. Yes, sir.

17 Q. Any other places in the mine where you
18 would be expected to find at least some level of
19 methane?

20 A. Yes, sir. In the return coming up from
21 the longwall.

22 Q. And with regard to the spotter's detection
23 of oxygen, it would vary from time to time. It
24 wouldn't always be one number. Is that correct?

1 A. On your oxygen?

2 Q. Yes.

3 A. Most of the time it stayed 20.8.

4 Q. But it would vary?

5 A. It has, yes.

6 MR. MCGINLEY: Would you mark this,
7 please?

8 (Exhibit No. 5 marked for
9 identification.)

10 Q. I'm going to show you a document marked as
11 Exhibit 5. At the top it says, "Weekly
12 Examinations, Week Ending January 24th, 2010."
13 Actually, it says, "1/24/2010." It says, "Air Way
14 Travels."

15 I just want you to identify this and
16 explain so that people that read these documents
17 will know what they represent.

18 A. This is all the places I would travel on a
19 certain day, from one point to another.

20 Q. What's the purpose of that, if you know?

21 A. The purpose of -- one, it's federal law,
22 and I would -- you check for methane, CO, air, any
23 hazardous conditions that you might find.

24 Q. And also for purposes of informing mine

1 management where you went and what you found?

2 A. Yes, sir.

3 Q. And on that particular document,

4 Exhibit 5, is that all your handwriting?

5 A. No, sir.

6 Q. That which you wrote on that document, do

7 you have your initials next to it?

8 A. Yes, sir.

9 Q. Do you know who the other individuals were
10 who made notations on Exhibit 5?

11 A. On 1/20, Scott Halstead initialed this one
12 escapeway from the longwall face to the mouth.

13 Q. Who is Scott Halstead?

14 A. He was a fire boss.

15 Q. At the bottom of that document there are
16 some signatures. Do you see that?

17 A. Yes, sir.

18 Q. Does your name, your signature, appear
19 there?

20 A. Yes, sir.

21 Q. What other signatures appear there?

22 A. Terry Moore. He was the mine foreman.

23 And Jeremy Burghdoff, he was the pumper.

24 That's his writing on this top line.

1 Q. On the very top line?

2 A. 1/18. Yes, sir.

3 Q. Any other signatures there at the bottom?

4 A. Scott Halstead is here too.

5 Q. Can you tell whether anyone other than
6 Mr. Burghdoff wrote notations on Exhibit 5?

7 A. Just 1/18 is the only one I can tell that
8 he's wrote on it.

9 Q. So all the other writing there, except for
10 the signatures, is yours?

11 A. Yes, sir.

12 MR. MCGINLEY: Thank you very much,
13 Mr. Semenske. I don't have any further questions.

14 MR. McCUSKEY: Would it be okay, since you
15 came in late, but, Professor, would you identify
16 yourself for the record so we know you're here and
17 were conducting the questions?

18 MR. MCGINLEY: I think I was identified.

19 MR. KOERBER: I asked him as soon as he
20 sat down.

21 MR. MCGINLEY: I'm with the Governor's
22 Independent Investigation Panel.

23 MR. McCUSKEY: I apologize. I remember
24 you saying another name would be coming in.

1 MR. McGINLEY: We also were here in the
2 previous -- Mr. Semenske and I met on a previous
3 occasion.

4 MR. McCUSKEY: Oh, I'm well aware of that.

5 MR. FARLEY: I have maybe one or two more.

6 EXAMINATION

7 BY MR. FARLEY:

8 Q. Mr. Semenske, in the months preceding the
9 UBB explosion on April 5th, did you take any of the
10 MP readings in the tailgate entries of the
11 longwall?

12 A. Prior to it?

13 Q. Yes, sir.

14 A. I don't believe so.

15 Q. Do you know who routinely did that?

16 A. Harold Lilly.

17 Q. Do you know how often he did that?

18 A. Supposed to have did it once a week, but I
19 don't know for sure. I can't say for sure.

20 MR. FARLEY: All right. Thank you.

21 EXAMINATION

22 BY MR. GODSEY:

23 Q. You said a few minutes ago that you found
24 some low oxygen in returns on some of the areas?

1 A. Yes, sir.

2 Q. Where was this at?

3 A. It would just drop down. It wouldn't go
4 below 20.

5 Q. Where was the area at?

6 A. It would be in a return where some pumps
7 were at and on the side that they had some seals.

8 Q. Going to seals, during your weekly
9 examinations, did you ever -- were you responsible
10 for seals?

11 A. No.

12 Q. Who pumped the seals?

13 A. Harley Taylor.

14 Q. You didn't check any of the seals?

15 A. No, sir.

16 Q. And you said earlier that you went back to
17 the 71 crosscut on the tailgate entry. Did you
18 take another reading back there?

19 A. Yes, sir.

20 Q. What readings did you usually get there?
21 What was the amount?

22 A. It was a pretty high reading.

23 Q. You don't remember what --

24 A. I don't remember, no.

1 Q. You also said that the other entries, I
2 believe you said 2, 3, 4, were accessible?

3 A. You couldn't travel them.

4 Q. Did anyone record that, that that area was
5 hazardous to travel?

6 A. Yes, sir. Everyone knew, the
7 superintendent, the inspectors, because they had
8 went and looked to see if it could be traveled and
9 found out it couldn't.

10 Q. And you traveled the Number 1 entry back
11 to Bandytown. What extra supports did they -- did
12 they put any extra supports in that area when they
13 traveled through there?

14 A. In 2, 3, and 4?

15 Q. In the one they --

16 A. 1 entry?

17 Q. Yeah.

18 A. They had some posts. They would set posts
19 and stuff, timbers.

20 Q. But you couldn't get into the other
21 adjacent entries, could you?

22 A. No.

23 Q. And directly right inby the longwall
24 tailgate entry, what was the appearance of that

1 according to the rock dust? How did that look?
2 You talked about the outby way. How did it look
3 from the tailgate inby, like in the 2, 3, and 4, 5
4 entry? Was it well rock dusted?

5 A. It wasn't well rock dusted, but it didn't
6 look that bad.

7 Q. It didn't look as bad --

8 A. Just looking.

9 Q. It didn't look as bad as it did outby?

10 A. No.

11 Q. And how far inby the tail entry could you
12 travel in all the entries?

13 A. You really couldn't go very far.

14 Q. Were there checkpoints inby the tail
15 entry?

16 A. Yes.

17 Q. How did they get to those?

18 A. Well, you could get to those.

19 Q. And did you get those or did someone else?

20 A. At one time I did.

21 Q. During your weekly exams, when you were
22 traveling, did you have any areas that you had to
23 go under some deteriorated roof in the returns or
24 intakes or anything, or areas it wasn't good to

1 travel through?

2 A. Had some top that looked, you know, pretty
3 ragged.

4 Q. Was it ever reported?

5 A. Yes, sir.

6 Q. What did they do with it?

7 A. Nothing.

8 Q. Did they ever correct it?

9 A. No.

10 Q. Also, you walked through the intakes and
11 the returns throughout the mine.

12 A. Yes, sir.

13 Q. And water accumulations. Did you ever
14 have any problems making an entry in its entirety
15 due to accumulations of water?

16 A. Yes.

17 Q. Where you had to go around?

18 A. Yes.

19 Q. Do you know what those areas were?

20 A. Yes, sir.

21 Q. Could you tell me?

22 A. In the right return on LBB there is two or
23 three. It's been well over a year, if not longer,
24 that it's been reported, and it's still the same

1 way.

2 Q. So could you make the entry in its
3 entirety, or did you have to go around?

4 A. No. You have to go around.

5 Q. Did you talk to the mine foreman about it?

6 A. Yes.

7 Q. What was his -- who did you talk to?

8 A. It was a different mine foreman than what
9 we have now.

10 Q. Who was it?

11 A. Gary May.

12 Q. What did he say?

13 A. He said, "Build a bridge."

14 I'm a fire boss. I don't have time to
15 build no bridge.

16 Q. Did you talk to the next mine foreman and
17 bring it to his attention?

18 A. No.

19 Q. Did you take the air intake split readings
20 on the longwall?

21 A. No.

22 Q. Who took those?

23 A. Harold Lilly, I would think.

24 Q. And we talked earlier, I think I asked you

1 this, but on the headgate entry you know you had
2 the headgate, tailgate 22, and the longwall.

3 And you were responsible for, I think you
4 said, 22 headgate and 22 tailgate.

5 Walk me up through the intake, how you
6 walked the intake to those entry -- to those panels
7 and explain how you took your -- where you took
8 your readings and if they ever changed any.

9 Say you walked your intake up to
10 headgate 22. Where would you take your split
11 reading?

12 A. I would take -- a lot of times I would
13 take one in the last open break.

14 Q. Would you take any at the mouth of the
15 panel?

16 A. Yes.

17 Q. Whereabouts would you take it?

18 A. Right where your air would, you know,
19 start coming that way, it would branch off, and I
20 would take it at the mouth of the section.

21 Q. Then where would you go? I mean, follow
22 the --

23 A. I would walk the primary up to the
24 section.

1 Q. Then would you go to 22 tailgate? Would
2 you follow the intake there?

3 A. Yes.

4 Q. Where would you get the split reading
5 there?

6 A. Like I say, there wasn't but two or three
7 breaks, and I would take a last open break air
8 reading.

9 Q. You would just take the air reading on the
10 section?

11 A. Yeah.

12 Q. In other words, you wouldn't take any
13 outby?

14 A. I had something like 56,000 in the last
15 open break.

16 Q. And you said you didn't take it on the
17 longwall?

18 A. No.

19 Q. Did you walk the return entries off 22
20 headgate and 22 tailgate?

21 A. Yes, sir.

22 Q. How did you get to -- when you walked
23 down -- which one did you walk first usually?

24 A. I usually walked the tailgate first.

1 Q. And you would walk it down to -- where
2 would you walk it to? From what area to what area?

3 A. I would walk the return to the tailgate
4 from 81 break -- I mean from where I would go out
5 the return to 75 break. I would come back down and
6 cross the overcast and return and go across to that
7 section.

8 Q. Did you take air readings at the mouth of
9 the panels?

10 A. Yes, sir.

11 Q. Or the immediate returns and splits?

12 A. I took air readings at the other side of
13 the overcast.

14 Q. And what did you do with those?

15 A. I recorded them in the book.

16 Q. Did you ever walk from the 22 tailgate all
17 the way back to 71 crosscut on the tailgate where
18 you said that you went back as far as you went?

19 A. On the tailgate section?

20 Q. Yeah. Was that part of your walk?

21 A. Yes.

22 Q. What was the return like from the
23 22 tailgate to the tailgate entry? Was it --

24 A. It had some water.

1 Q. Down in the overcast and -- excuse me for
2 interrupting you.

3 A. We had water.

4 Q. Did you see any areas that -- did you ever
5 mark any areas for hazardous conditions for rock --
6 float dust?

7 A. No, sir.

8 Q. And what about the intake? I may not have
9 asked you about the intake. How did they rock dust
10 the intakes?

11 A. Midnight would take a bucket duster and
12 dust them.

13 Q. Would they do all the intakes?

14 A. No. They would just do one section.

15 Q. How about the outby areas? How did they
16 look?

17 A. They didn't look too bad. They had a crew
18 on the midnight that rock dusted.

19 Q. What did the returns look like going
20 outside, according to the rock dust?

21 A. They needed dust. They needed some dust.

22 Q. Was it black?

23 A. No, it wasn't black, but they needed some
24 dust.

1 Q. What percentage of methane did you ever
2 find back at 71?

3 A. A little over 1 percent.

4 Q. When was this?

5 A. I really don't remember.

6 Q. Did you report that to anyone?

7 A. Yes.

8 Q. Do you remember who you reported it to?

9 A. Everett Hager.

10 Q. What did he tell you?

11 A. I really don't remember.

12 MR. GODSEY: That's all I have.

13 MS. HAMPTON: Could we just go off the
14 record for a minute.

15 (Off the record.)

16 MR. McCUSKEY: If we're back on the
17 record, I want to ask, there have been a couple of
18 people that have been coming and going here out of
19 this private hearing. I wanted to see if we could
20 get identification of the other people who have
21 come and left this hearing.

22 MR. KOERBER: Would you please identify
23 yourselves?

24 MR. WATKINS: Tim Watkins with MSHA.

1 MR. PAGE: Norman Page with MSHA.

2 MR. KOERBER: Could we go off the record
3 for just one quick second.

4 (Off the record.)

5 BY MR. GODSEY:

6 Q. Mr. Semenske, you said you made your
7 weeklies on your intakes and returns. Could you
8 start and just mark how you traveled the intakes up
9 and where you took your air readings on the 22
10 headgate and 22 tailgate? Take this pink marker.

11 MR. McCUSKEY: May I note for the record
12 that this is all materials, as I recall, according
13 to my notes, that we have done before.

14 You can do whatever you want. I'm just
15 here representing my client, but this has all
16 occurred before.

17 Q. If you could mark just your travelways for
18 your weekly travels for your intake to your 22
19 headgate and 22 tailgate and where you took your --

20 A. I need to turn it around. It's upside
21 down.

22 MS. HAMPTON: Do you want to come around
23 to this side?

24 THE WITNESS: It don't matter.

1 MR. McCUSKEY: Do we have the map from our
2 first interview that did all this? Perhaps we
3 could use that.

4 MR. GODSEY: It wouldn't be here. It's
5 not here.

6 MR. MCGINLEY: Mr. McCuskey, it was a
7 different map. This is a different scale.

8 MR. McCUSKEY: I agree it's a different
9 scale. Same area.

10 MR. MCGINLEY: Well, I think that's why
11 they want to ask the questions.

12 MR. McCUSKEY: I don't know why they want
13 to do it again.

14 MS. HAMPTON: For the record, this is a
15 map of the longwall, and if we could mark this as
16 Exhibit 6.

17 (Exhibit No. 6 marked for
18 identification.)

19 BY MR. GODSEY:

20 Q. If you could, just mark where you started
21 and then follow -- just take us through the
22 sections, and maybe take us back towards 71
23 crosscut on the tailgate entry.

24 MR. McCUSKEY: Let's make sure. You're

1 asking Mr. Semenske to mark his route?

2 MR. GODSEY: Of travel.

3 MR. McCUSKEY: At what period of time?

4 Q. Say the week of April 5th, what was your
5 travel route?

6 A. It's not on here.

7 Q. When did you travel this area last?

8 A. Tuesday or Wednesday.

9 Q. Well, could you mark it for Tuesday or
10 Wednesday, what you traveled and where you started?

11 MR. FARLEY: When you say Tuesday or
12 Wednesday, you mean the week prior to?

13 THE WITNESS: Yes. The next two days I
14 would have been up here.

15 MR. GODSEY: It was the week previous to
16 April 5th. Excuse me. This is a sealed area.
17 This would be the active part. This would be the
18 78 crosscut. He's marking the tailgate Number 1
19 north, Number 1 entry, in pink.

20 BY MR. GODSEY:

21 Q. Where would you get your air readings on
22 that day?

23 A. I would take one right here.

24 Q. Would you mark that?

1 MS. HAMPTON: Maybe mark that in a
2 different color to make that stand out a little
3 better.

4 He's going to mark the areas where he took
5 the air readings in orange.

6 BY MR. GODSEY:

7 Q. Did you take any other air readings in
8 that area?

9 A. I usually took one ...

10 Q. Now, that would have been -- you would be
11 traveling neutral up until it went into the --

12 A. Return.

13 Q. -- return.

14 How would you travel your intakes up to
15 the section? I guess what I want you to do is just
16 tie your intakes and bring it back to your return
17 and mark where you took your air readings on your
18 headgate and tailgate.

19 MR. GODSEY: So he's marking -- he
20 traveled the belt entry of the Headgate Number 1.
21 He's marking headgate 22 belt entry.

22 A. I would go over here. Then I would walk
23 up here to 78. I would usually walk this here.
24 That would be it for the day.

1 Q. When did you walk the outby entries, the
2 intake, this bit here?

3 A. That was on Wednesday.

4 Q. Did you get any air readings there on
5 that?

6 A. Yes, sir. I got them up here.

7 Q. Would you show us where?

8 A. (Indiscernible).

9 THE COURT REPORTER: Excuse me, sir?

10 MR. McCUSKEY: Even though you guys are
11 talking, it's hard to understand what you're
12 saying. So make sure she heard what you said for
13 the record.

14 MR. KOERBER: He said something like
15 "CCE 4" or something like that.

16 A. It's not a DPP on this map right here.
17 It's the Glory Hole.

18 Q. Do you know approximately where you were?

19 A. It was right here.

20 Q. Right there?

21 A. Yeah. I'd take my air reading right here.

22 Q. So you're showing all the air readings
23 that you took during your weeklies up here?

24 A. Yes.

1 Q. And they're marked in brown, I guess.

2 A. May not be exact, but, I mean, it's close.

3 Q. You're showing that you walked a lot of
4 the belt lines.

5 A. No. I have messed up right there. I
6 didn't mean to do that.

7 Q. Well, you showed you walked the headgate,
8 the -- did you walk the belt line for the headgate?

9 A. No. Right here is where I walked.

10 Q. Do you want to correct that?

11 MR. McCUSKEY: May I suggest that maybe
12 you take one marker and cross off, Mr. Semenske,
13 what you didn't -- the corrections. And then mark
14 where you did. Is that all right, John?

15 MR. GODSEY: That would be fine.

16 MR. McCUSKEY: He is marking with orange
17 marker. He's marking all the incorrect lines.

18 BY MR. GODSEY:

19 Q. And on the 22 headgate, when did you walk
20 the return?

21 A. 22 head -- I would do it the same day.

22 Q. Do you want to mark that in the same color
23 you're showing your air readings?

24 A. I'm sorry.

1 Q. And show us where you got your air
2 readings on your tail -- I mean your return. Is
3 that --

4 MR. McCUSKEY: Charlie, mark off the one
5 that was incorrect, too, if you would, while you're
6 at it. Use the orange. Use the orange to mark off
7 the one that's wrong.

8 Yeah, there you go. Like you did over
9 here.

10 BY MR. GODSEY:

11 Q. So you've got all your routes marked and
12 all the air reading locations showing on the map?

13 A. That's for Tuesday.

14 Q. And what else areas did you travel up here
15 on other days?

16 A. I traveled this intake over here, these
17 going out to Ellis.

18 MR. McGINLEY: Do you want to identify
19 that?

20 Q. Could you mark these and what day you did
21 it on?

22 And did you walk that all the way to the
23 portal?

24 A. Uh-huh.

1 Q. Ellis portal.

2 Does that finish all your weeklies up
3 here?

4 A. I believe.

5 Q. Did you get any air readings --

6 A. Yeah.

7 Q. -- down in here?

8 MR. FARLEY: How many air readings did you
9 actually mark, if you don't mind totaling them up
10 for me, please? One --

11 THE WITNESS: Two, three, four, five, six,
12 seven, eight, nine, ten.

13 MR. FARLEY: Okay.

14 MR. GODSEY: And you have some more down
15 here, right?

16 THE WITNESS: I've got more up here.

17 MS. HAMPTON: Off the map, you're pointing
18 to?

19 THE WITNESS: Outby.

20 BY MR. GODSEY:

21 Q. We were talking earlier while we were
22 looking at the map. We talked about some areas in
23 the tailgate entry that were not sufficient in rock
24 dust. Could you point those areas out?

1 A. It was on back up here.

2 Q. You said earlier, though, that from the
3 tailgate outby towards 78 it was --

4 A. Yeah, the tailgate outby.

5 Q. And I'm not trying to put words in your
6 mouth, but you said you don't think they ever rock
7 dusted it, something to that effect?

8 A. I can't say for sure because I really
9 don't know.

10 Q. But did you ever see it when --

11 A. I never seen anybody rock dust.

12 Q. Or did you see any results where it had
13 been rock dusted?

14 A. No.

15 Q. So you have got -- this is the -- your
16 weekly examinations for the north part of the mine?

17 A. Right.

18 MR. GODSEY: Okay.

19 MR. MCGINLEY: Mr. Semenske, I have got a
20 couple of follow-up questions.

21 MR. McCUSKEY: Do you want him to come
22 back and sit down, or do you want to just all stand
23 up? I don't care. I just want to find out. Are
24 you done with him?

1 MR. GODSEY: I am.

2 EXAMINATION

3 BY MR. MCGINLEY:

4 Q. Mr. Semenske, you have marked, what is it,
5 eight places where you took air readings?

6 MS. HAMPTON: I think he was up to 11.

7 Q. Or 11 places you took air readings?

8 A. Yes, sir.

9 Q. In the week before the explosion, is that
10 right, as indicated --

11 A. Yeah. Approximately.

12 Q. And where would you write the results of
13 each sample?

14 A. In the fire boss book.

15 Q. Would that be the weekly examination book,
16 pages of which you identified earlier?

17 A. Yes, sir.

18 Q. And each of the places where you marked
19 that you took the air readings, they would also be
20 identified on the main map, as you testified
21 earlier, as the sampling points?

22 A. I'll say they should be. Well, I really
23 don't know for sure. I don't know.

24 Q. Is there any other place other than the

1 weekly examination book where you would write the
2 results of the air sampling that you took the week
3 before the explosion, the April 5th, 2010,
4 explosion?

5 A. No, sir.

6 (Exhibit No. 7 marked for
7 identification.)

8 Q. Let me show you a document marked for
9 identification as Exhibit 7 and ask you to identify
10 it, please. What is that document?

11 A. That is where I took air readings on --
12 return air readings on -- let's see. I don't know
13 if that's headgate 22 or not.

14 Q. Up at the top right-hand corner, that's
15 the weekly examination book for the week ending
16 April 3rd, 2010; is that correct?

17 A. Yes, sir.

18 Q. So can you mark on the map, which is
19 Exhibit 6, each place -- let's mark in blue, I
20 think there's a blue one there -- each place where
21 the examination book for the week ending April 3rd,
22 2010, where you reported the air readings?

23 A. You want me to mark where I took these air
24 readings?

1 Q. Exactly.

2 Mr. Semenske, for the record, how many
3 spots did you mark in blue on the map?

4 A. Five.

5 Q. In your previous testimony, you indicated
6 there were more places where you took air
7 readings. Did you write those readings down
8 somewhere, or do you think your recollection might
9 have been faulty when you identified the spots on
10 the map in orange where you took air readings?

11 A. Well, it could be. I may not -- you know,
12 it might not be exactly where I took them at.

13 Q. You mean the places you marked in orange
14 may not be exactly the place where you took the air
15 readings that you wrote down in the weekly
16 examination book for the week ending April 3rd,
17 2010?

18 A. Well, I'm not sure. I tell you what. I
19 have been through a lot since all this stuff has
20 happened.

21 Q. I understand.

22 A. And, you know, and I'm going to tell you,
23 it's really bears on my mind a pretty good bit and,
24 you know, I just -- I just can't, you know, think

1 as good as what I should. But, you know, I'm
2 sorry, but that's the way it is.

3 Q. No, I completely understand. You know, we
4 have a job to do too. We're just trying to find
5 out what happened. And we have to look at the
6 written records that Massey has produced, and we
7 have to ask people questions. And that's what I'm
8 doing here.

9 So is it fair to say that the readings
10 that you took the week ending April 3rd, 2010, are
11 reflected on this Exhibit 7 and there weren't any
12 other readings or you would have written them down?

13 A. Probably, yes.

14 Q. Just a couple other questions. You
15 answered a question about the rock dusting inby the
16 tailgate entry. You said it wasn't as bad. Do you
17 remember that just a few minutes ago?

18 A. Yes, sir.

19 Q. What does that mean? Does that mean that
20 you still had some concern it may not have been --

21 A. You still had -- you had dust. You had
22 rock dust there.

23 Q. Okay. But it wasn't as bad. Does that
24 mean that you couldn't be sure that that rock dust

1 that you saw would meet the regulatory
2 requirements?

3 A. No, I can't say that would meet the
4 requirements. I can't say that.

5 Q. You can't say that it would meet the
6 requirements?

7 A. No.

8 MR. McCUSKEY: Pardon me. Let me
9 interrupt just to ask for a clarification.

10 I thought I heard Mr. Semenske say he
11 didn't know if it wouldn't meet the requirements,
12 and you said he said it would meet. I'm not sure
13 what he actually said.

14 MR. MCGINLEY: Let me clarify that. I
15 appreciate that.

16 BY MR. MCGINLEY:

17 Q. When you said that the rock dusting inby
18 the tailgate entry wasn't as bad, you're referring
19 to wasn't as bad as what area? You were comparing
20 it to another area.

21 A. You had asked me about another area, but I
22 don't -- I don't remember which area it was before
23 that.

24 MR. GODSEY: Outby the tailgate 78

1 crosscut.

2 Q. Out by the tailgate 78 crosscut, you said
3 that the -- inby by the tailgate entry wasn't as
4 bad as that area. Do you recall that?

5 A. Yes, sir.

6 Q. I'm just trying to understand what you
7 meant when you said it wasn't as bad. You said it
8 wasn't as bad. When you looked at it, you could
9 not tell whether it was adequately rock dusted to
10 meet the regulatory requirements; is that correct?

11 A. It was white, but as far as being --
12 meeting requirements, I can't say.

13 Q. Okay. It's possible it did not?

14 A. Pardon?

15 Q. It's possible it did not meet the
16 regulatory requirements?

17 A. It's possible.

18 Q. Whose responsibility was it to --
19 throughout the mine to report inadequate rock
20 dusting?

21 A. It was mine.

22 Q. Yours and others?

23 A. If I did airways, and anybody else that
24 did airways.

1 Q. So a number of people in the mine --

2 A. Right.

3 Q. -- had responsibility with regard to
4 identifying rock dusting problems?

5 A. Right.

6 MR. MCGINLEY: That's all the questions.

7 Thank you, sir.

8 MR. KOERBER: Anything else?

9 MR. FARLEY: No.

10 MR. KOERBER: I think Ms. Hampton wanted
11 to identify a letter, so please do that now.

12 MS. HAMPTON: Yes, sir.

13 I just wanted to put on the record that
14 before we started the interview process I handed
15 you a letter.

16 THE WITNESS: Yes, ma'am.

17 MS. HAMPTON: And you reviewed that
18 letter?

19 THE WITNESS: Yes, ma'am.

20 MS. HAMPTON: Do you have any questions
21 for me about that letter?

22 THE WITNESS: I don't reckon.

23 MS. HAMPTON: Just so you know, the
24 contact information for Norman Page, who was

1 actually here in the audience today, is in that
2 letter. If after you leave here today you have
3 anything additional that you would like to share
4 with the teams, please feel free to contact him if
5 there is anything else that you would like to say.

6 Also, at this point if there is anything
7 else that you would like to say to us or any of the
8 answers that you have given that you would like to
9 clarify, you may do so at this point.

10 THE WITNESS: I would say it's probably
11 been all said. I don't have nothing to say.

12 MS. HAMPTON: Okay. Thank you.

13 MR. McCUSKEY: I have one clarification
14 comment. Barry, I appreciate that you have made a
15 representation as to a new method that certainly is
16 a lot less unconstitutional and oppressive than the
17 previous method that MSHA was suggesting for
18 reviewing transcripts.

19 But I want to reiterate Mr. Semenske's
20 request is for him to receive from Jackson &
21 Associates, Liz -- I think it's Liz or Elizabeth --
22 a copy of the transcript for his review at his home
23 at the address that was given here.

24 I understand that that's something that

1 you at this point haven't been willing to do, but I
2 made that request to the head of the West Virginia
3 Office of Mine Health, Safety and Training, and so
4 I'm reiterating that request here rather than the
5 record perhaps reflecting that we're agreeable to
6 the process you have set forward.

7 So I'm making a request that the court
8 reporter, certified court reporter, send a copy of
9 this transcript when she has it prepared, the rough
10 draft, to Mr. Semenske for his review.

11 MR. KOERBER: You can make that request on
12 the record. You will not get a copy until after
13 the interviews are completed and the interview
14 transcripts are released, but you are -- and I want
15 to stress this. There is a three-day turnaround.
16 So three days from now is through Friday. So come
17 Monday morning, you and Mr. Semenske or
18 Mr. Semenske by himself can call and schedule a
19 time to go to -- and call Johnny Jackson &
20 Associates, do not call me, call Johnny Jackson &
21 Associates and schedule a time to go to their
22 conference room.

23 And you and your client or the client
24 himself may read the transcript, may make any

1 corrections he deems fit, necessary, on an errata
2 sheet, and that will be appended to the original.

3 So I want to make that clear. And that
4 will be Mr. Semenske's and your responsibility.
5 Certainly, you don't have to do it on Monday, but
6 you need to do it within a reasonable time after
7 Monday, like a couple, three weeks.

8 MR. McCUSKEY: Now, Mr. Semenske works for
9 a living for Upper Big Branch, and he is, you know,
10 employed and he works during the day shift now.

11 So I don't know if Jackson & Associates is
12 going to make that -- is going to pay him for his
13 time to travel --

14 MR. KOERBER: No.

15 MR. McCUSKEY: -- to their -- or the State
16 is going to -- and you're saying, no, they will not
17 pay him for his time to travel?

18 MR. KOERBER: True.

19 MR. McCUSKEY: And they will not pay him
20 to replace his time while working?

21 MR. KOERBER: No.

22 MR. McCUSKEY: Am I also correct that you
23 will not make it available on Saturdays or after
24 working hours?

1 MR. KOERBER: That will be up to Johnny
2 Jackson & Associates as to what their hours are.

3 MR. McCUSKEY: Are your hours after 5:00
4 or evenings or Saturdays or Sundays, or do you
5 know?

6 THE COURT REPORTER: I haven't been
7 involved in this. Typically, we're not open after
8 5:00.

9 MR. McCUSKEY: Again, let the record
10 reflect then that that is not an acceptable way to
11 review this transcript, and we do object. I
12 appreciate that, and I think it's an obligation of
13 Jackson & Associates or the State to notify
14 Mr. Semenske when the transcript is ready for
15 review, not to have him have to call and find out
16 when it's ready.

17 MR. KOERBER: The transcript will be ready
18 for review come Monday.

19 MR. McCUSKEY: Okay. But you're not
20 willing to send that to Mr. Semenske?

21 MR. KOERBER: Correct.

22 MR. McCUSKEY: Okay.

23 THE WITNESS: I do have something to say.

24 MS. HAMPTON: Okay.

1 THE WITNESS: Right before vacation last
2 year I had a federal inspector walk all that with
3 me, and he never had anything to say about the rock
4 dust. So, I mean, if a federal inspector is not
5 going to say nothing, you know, who am I to go say
6 it needs dusted?

7 MS. HAMPTON: When you said "vacation,"
8 what do you mean? What time period?

9 THE WITNESS: Summer vacation. Miners'
10 vacation in August.

11 MS. HAMPTON: August of 2009?

12 THE WITNESS: Right.

13 MR. MCGINLEY: I have a question, follow-
14 up question.

15 EXAMINATION

16 BY MR. MCGINLEY:

17 Q. Mr. Semenske, are you saying that unless a
18 federal inspector or a state inspector identified
19 inadequate rock dust then you wouldn't report it?

20 A. No, I'm not saying that.

21 Q. So what's the significance of having --

22 A. Well I'm saying that a federal inspector,
23 I have had them walk with me a lot of places, be
24 things wrong, and they don't say nothing.

1 Q. You're not saying that on any other day
2 other than the day that you recall around the time
3 of vacation that the rock dusting was adequate
4 everywhere you walked. You're just saying on that
5 day the inspector didn't identify any inadequate
6 rock dusting. Is that correct?

7 A. Yes.

8 MR. MCGINLEY: Thank you.

9 MR. McCUSKEY: For the record, you said a
10 federal inspector. Are you talking about an MSHA
11 inspector?

12 THE WITNESS: Yes.

13 MR. McCUSKEY: Not a state inspector?

14 THE WITNESS: No.

15 MR. KOERBER: Do you want to add anything
16 else, Mr. Semenske?

17 THE WITNESS: No, sir.

18 MR. KOERBER: With that being said, we
19 will go off the record and close this interview.

20 (The interview of CHARLES EDWARD

21 SEMENSKE concluded at 9:43 a.m.)
22
23
24

1 STATE OF WEST VIRGINIA, To-wit:

2 I, Elizabeth A. Howd, a Notary Public,
3 Registered Diplomate Reporter, and Certified
4 Realtime Reporter, within and for the State
5 aforesaid, duly commissioned and qualified, do
6 hereby certify that the interview of CHARLES EDWARD
7 SEMENSKE was duly taken by me and before me at the
8 time and place specified in the caption hereof.

9 I do further certify that said proceedings
10 were correctly taken by me in stenotype notes, that
11 the same were accurately transcribed out in full
12 and true record of the testimony given by said
13 witness.

14 I further certify that I am neither
15 attorney or counsel for, nor related to or employed
16 by, any of the parties to the action in which these
17 proceedings were had, and further I am not a
18 relative or employee of any attorney or counsel
19 employed by the parties hereto or financially
20 interested in the action.

21 My commission expires the 5th day of July,
22 2012.

23 Given under my hand and seal this 27th day of
24 October, 2010.

Elizabeth A. Howd, Notary Public
Registered Diplomate Reporter
Certified Realtime Reporter