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Transcript of the Testimony of Ryan Powers

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STATEMENT UNDER OATH
OF
RYAN POWERS

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Beaver, West Virginia, on Tuesday, July 6, 2010, beginning at 4:06 p.m.

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BETH SPENCE

West Virginia Independent Investigation

(b) (7)(C)

(b) (7)(C)

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* Exhibit not attached

P R O C E E D I N G S

1
2 -----
3 ATTORNEY BABINGTON:

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

12 MS. SPENCE:

13 I'm Beth Spence with the Governor's
14 independent team.

15 MR. FARLEY:

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

18 ATTORNEY KOERBER:

19 I'm Barry Koerber with the Attorney
20 General's Office, assigned to represent the Office of
21 Miners' Health, Safety and Training.

22 ATTORNEY BABINGTON:

23 All right. There are several members of
24 the investigation team also present in the room today.
25 Terry Farley will be conducting initial questioning.

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

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

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

3 You may have your personal attorney
4 present during the taking of this statement or another
5 personal representative if MSHA has permitted it, and
6 you may consult with your attorney or representative
7 at any time. For the record, do you have a
8 representative or counsel with you today?

9 MR. POWERS:

10 No.

11 ATTORNEY BABINGTON:

12 All right. Your identity and the content
13 of this conversation will be made public at the
14 conclusion of the interview process and may be
15 included in the public report of the accident unless
16 you request that your identity remain confidential or
17 your information would otherwise jeopardize a
18 potential criminal investigation.

19 If you request us to keep your identity
20 confidential, we will do so to the extent permitted by
21 law. That means that if a judge orders us to reveal
22 your name or if another law requires us to reveal your
23 name or if we need to reveal your name for other law
24 enforcement purposes, we may do so.

25 Also, there may be a need to use the

1 information you provide to us or other information we
2 may ask you to provide in the future in other
3 investigations into and hearings about the explosion.

4 Do you understand?

5 MR. POWERS:

6 I understand.

7 ATTORNEY BABINGTON:

8 Do you have any questions?

9 MR. POWERS:

10 No.

11 ATTORNEY BABINGTON:

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

22 A court reporter will record your
23 interview. Please speak loudly and clearly. If you
24 do not understand a question asked, please ask the
25 interviewer to rephrase it. Please answer each

1 question as fully as you can, including any
2 information you've learned from someone else.

3 I'd like to thank you in advance for your
4 appearance here. We appreciate your assistance in
5 this investigation. Your cooperation is critical in
6 making the nation's mines safer.

7 After we've finished asking questions,
8 you'll have an opportunity to make a statement,
9 provide us with any other information that you believe
10 to be important. If at any time after the interview
11 you recall any additional information that you believe
12 might be useful, please contact any of us or Norman
13 Page at the contact information provided in that
14 letter.

15 Finally, any statements given by miner
16 witnesses to MSHA are considered to be an exercise of
17 statutory rights and protected activity under Section
18 105(c) of the Mine Act. If you believe any discharge,
19 discrimination or other adverse action is taken
20 against you as a result of your cooperation with this
21 investigation, you are encouraged to immediately
22 contact MSHA and file a complaint under Section 105(c)
23 of the Act.

24 ATTORNEY KOERBER:

25 Would you swear in the witness, please?

1 -----

2 RYAN POWERS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
3 AS FOLLOWS:

4 -----

5 ATTORNEY KOERBER:

6 Mr. Powers, would you please state your
7 name for the record and spell your last name?

8 A. Ryan Carter Powers, P-O-W-E-R-S.

9 ATTORNEY KOERBER:

10 And what is your address?

11 A. It's (b) (7)(C) now. I just
12 changed it.

13 ATTORNEY KOERBER:

14 Okay. Where's your mail going?

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

16 ATTORNEY KOERBER:

17 Okay.

18 A. Or (b) , I'm sorry.

19 ATTORNEY KOERBER:

20 (b) (7)(C)

21 A. I think it's (b) . It's (b) , yeah.

22 ATTORNEY KOERBER:

23 (b) (7)(C)

24 A. Yeah.

25 ATTORNEY KOERBER:

1 And what's the city and state?

2 A. It's (b)(7)(C)

3 ATTORNEY KOERBER:

4 Okay. You were served with a subpoena
5 compelling you to appear; correct?

6 A. Yes.

7 ATTORNEY KOERBER:

8 Take a look at this, please. I believe
9 that's a copy of the subpoena.

10 A. Yes.

11 ATTORNEY KOERBER:

12 Okay. I'd like this marked as Exhibit
13 One.

14 (Powers Exhibit One marked for
15 identification.)

16 ATTORNEY KOERBER:

17 That subpoena compels your appearance for
18 June 30th, 2010; correct?

19 A. Yes.

20 ATTORNEY KOERBER:

21 But based on two or three telephone
22 conversations that you and I had together, we mutually
23 agreed to change that to today; correct?

24 A. Yes.

25 ATTORNEY KOERBER:

1 Okay. This is a copy of the return of
2 service that you did not see, but it was put out by
3 the Sheriff's office after they served you with the
4 subpoena. Do you want to look at that? And then
5 behind that and attached to it is another copy of the
6 same subpoena. Okay?

7 A. Thank you.

8 ATTORNEY KOERBER:

9 And I'd like that to be marked as Exhibit
10 Two.

11 (Powers Exhibit Two marked for
12 identification.)

13 ATTORNEY KOERBER:

14 And you have no attorney here today;
15 correct?

16 A. No.

17 ATTORNEY KOERBER:

18 As a subpoenaed witness, you're entitled
19 to a \$40 witness fee for appearing here, together with
20 40 and a half cents per mile for the mileage you
21 traveled, plus tolls. Do you know what your roundtrip
22 mileage will be from home ---? Well, first of all,
23 did you drive in a personal vehicle ---

24 A. Yes.

25 ATTORNEY KOERBER:

1 --- of you or your girlfriend's?

2 A. Yes.

3 ATTORNEY KOERBER:

4 Do you know what the roundtrip mileage
5 will be?

6 A. Well, one way it was 168 miles, so ---.

7 ATTORNEY KOERBER:

8 168 miles one way?

9 A. Yes.

10 ATTORNEY KOERBER:

11 Okay. Hold on here. 160 --- be 336
12 roundtrip miles. Does that sound reasonable?

13 A. Yes.

14 ATTORNEY KOERBER:

15 Okay. And that will equal out to be,
16 according to my calculator, \$136.08. Now, did you
17 pass through any toll booths on the way down?

18 A. Yes, I passed through two. I have receipts.

19 ATTORNEY KOERBER:

20 Okay. I appreciate the receipts but I
21 don't think I'll need the receipts because you're
22 under oath.

23 A. Okay.

24 ATTORNEY KOERBER:

25 Two down, two back; correct?

1 A. Yes.

2 ATTORNEY KOERBER:

3 And they're \$2 apiece, so that would be
4 \$8 total, round trip; correct?

5 A. Yes.

6 ATTORNEY KOERBER:

7 The total amount that I have calculated,
8 which includes \$40 for the witness fee, \$136.08 for
9 the mileage and \$8 for tolls is a grand total of
10 \$184.08. I'd like you to take a look at this and make
11 sure that you're comfortable with my math. This is
12 the witness fee, this is the mileage, this is the
13 tolls and this is the total.

14 Feel free to look at that as long as you
15 need to. Once you've finished looking at it, I need
16 you to assert your Social Security number here and
17 sign your name here and put the date beside of it, and
18 it's 7/6/10, in order for you to get paid.

19 A. 7/6/10.

20 ATTORNEY KOERBER:

21 Uh-huh (yes). And the check will be
22 probably about three weeks down the road and it will
23 come to(b)(7)(C) . If you find out that's
24 not the right address, give me a call; okay?

25 A. Okay.

1 ATTORNEY KOERBER:

2 I'm finished.

3 MR. FARLEY:

4 Are you?

5 ATTORNEY KOERBER:

6 Yes.

7 MR. FARLEY:

8 Mr. Powers, one other little thing here

9 pretty quickly. I want to advise you that the West
10 Virginia Coal Mine Health and Safety regulations also
11 protect miners against any potential discrimination
12 for participating in these type of interviews. I'll
13 give you some contact information, should you
14 experience any such treatment for being here, along
15 with a business card for myself and Mr. Bill Tucker,
16 who's our lead underground investigator. And I would
17 also caution you that should any type of
18 discrimination occur, you need to file a complaint
19 within 30 days of the time it happens.

20 A. All right.

21 MR. FARLEY:

22 All right?

23 EXAMINATION

24 BY MR. FARLEY:

25 Q. Let's start with where are you currently employed?

1 A. I'm not.

2 Q. Okay. Are you laid off or injured or what's going
3 on?

4 A. I went back to work for approximately three weeks
5 after the explosion. Well, we were off for two and we
6 got paid for that two.

7 Q. Uh-huh (yes).

8 A. And then I was moved to Marfork, but it was real
9 low and I just plain old didn't like it there. And so
10 I was moved to Ruby, another Massey mine out closer to
11 the house, because I requested to be closer to the
12 house. And my first night under there another
13 accident almost happened. I was riding on a stinger
14 and a mantrip came barreling over the slope and we had
15 to jump off the stinger and the mantrip slammed the
16 --- slammed the stinger and threw it up into the rib.
17 And I started having a panic attack and I was like I'm
18 done for a little.

19 So I started seeing a (b) (7)(C) , and the
20 (b) (7)(C) gave me two months. She said, you
21 definitely have (b) (7)(C) . I'm pretty
22 sure that was the term that she used. And so I took
23 two months. And I called Jason McAllen over there and
24 tried to get the two months of Workmen's Comp and they
25 denied me. They said that since (b) (7)(C)

1 (b) (7)(C) didn't count.

2 Q. Now, who is Jason?

3 A. Jason McAllen is a human resources contact over at
4 Ruby. And he told me I needed to call Jason Bussey
5 over at Performance, and Jason Bussey basically said
6 the same thing. Since (b) (7)(C) ,

7 (b) (7)(C) , we can't give you Workmen's
8 Comp. So I just haven't been working since then.

9 Q. Okay. Did you file a claim with the District?

10 A. No.

11 Q. I don't want to become your adviser here, but
12 you ---

13 A. Right.

14 Q. --- might want to consider that, because I think
15 actually it's not Massey's decision as to who does or
16 does not receive Workers' Comp.

17 A. Well, I originally called BrickStreet and they
18 said that I needed to call Massey, because Massey was
19 their own insurance provider or something like that.
20 I mean, I don't remember who it was that I talked to
21 over at BrickStreet, and I don't even think it was the
22 main office in Charleston. I'm pretty sure it was the
23 --- well, I'm positive I called the office ---. I
24 think there's an office in Logan.

25 Q. I don't know, but just --- again, not to get into

1 advising here, but you may want to contact them again.

2 How long were you --- were you employed at the
3 Performance Coal Upper Big Branch Mine on April
4 5th ---

5 A. Yes.

6 Q. --- this year?

7 A. Yes.

8 Q. Okay. How long had you been employed there prior
9 to April 5th?

10 A. Approximately four months.

11 Q. Okay. So did you start there December?

12 A. Yeah, it was right at the end of December whenever
13 I was hired.

14 Q. Okay. What was your normal shift at UBB?

15 A. Evening shift on One section on ---

16 Q. Okay.

17 A. --- Patrick Hobert's crew.

18 Q. Patrick ---?

19 A. Hobert, I believe is his last name.

20 Q. Is it Hobert or Hilbert?

21 A. Hobert.

22 Q. Okay.

23 A. Hilbert, Hobert, I don't ---.

24 Q. When you say One section, is that in the south
25 part of the mine or ---?

1 A. It's in the regular miner section out past the
2 Glory Hole ---

3 Q. Okay.

4 A. --- where (b)(7)(C) crew was killed.

5 Q. Okay. That would be the 22 Headgate section.

6 A. Twenty-two (22) Headgate, yeah.

7 Q. All right. I got you. I know where you are now.
8 Patrick Hobert was your supervisor?

9 A. Yes.

10 Q. Okay. Now, how long did you work on that
11 particular section?

12 A. Three months.

13 Q. Okay. What was your job there on the section?

14 A. Scoop operator.

15 Q. Okay. Did you work straight evenings or did you
16 rotate shifts?

17 A. We were straight evening.

18 Q. Okay.

19 A. B crew was.

20 Q. Okay. Did you have any job duties other than
21 running scoop?

22 A. Just all that it entails. I mean, doing stoppings
23 and loading the bolters.

24 Q. Okay.

25 A. Getting supplies, putting oil in the miner.

1 Q. Okay. Did you operate any other equipment besides
2 the scoop?

3 A. A buggy every once in a while.

4 Q. Okay. Now, was Patrick your foreman for the
5 entire three months?

6 A. Yes.

7 Q. Okay.

8 A. I got on that crew --- he'd only --- he had only
9 been a boss for two weeks before I came on that crew.

10 Q. Okay.

11 A. Because the old boss, Smurf, I guess was (b)(7)
12 (b)(7)(C) and then quit.

13 Q. Did Smurf have a --- I assume Smurf's a nickname?

14 A. Yeah, Smurf's a --- I don't know, sir. I never
15 --- I never did work under him.

16 Q. Okay. All right. Now, a couple other things
17 before we move on. What West Virginia coal miner
18 certifications do you have?

19 A. Just the 06, Class 06, Underground Coal Miner.

20 Q. That's ---

21 A. Black hat.

22 Q. --- black hat; correct?

23 A. Yes.

24 Q. Okay. Now, before this interview today, have you
25 been interviewed by any other individual regarding the

1 Upper Big Branch explosion?

2 A. Yes.

3 Q. Who were you interviewed by?

4 A. I don't remember his name, but he was a lawyer for
5 Performance Coal Company, and whenever I went to go
6 get my last check for Marfork because I was getting
7 transferred and get all my stuff out of the team
8 house, because I was staying in the team house up
9 there, and they went ahead and interviewed me right
10 then and there.

11 Q. How long did the interview last?

12 A. Probably 45 minutes.

13 Q. Okay.

14 A. Approximately 45 minutes.

15 Q. What did they ask you during the interview?

16 A. They asked me questions that --- like, did I know
17 anything about books being changed or, like, fire boss
18 reports or --- that was one of the main things that he
19 kept coming back to. Of course I wouldn't know
20 anything about that. I didn't fill out any kind of
21 paperwork ---

22 Q. Okay.

23 A. --- or do any kind of fire bossing.

24 Q. Okay. So you didn't have --- you don't or did not
25 have any knowledge of anyone changing or altering ---

1 A. No.

2 Q. --- the boss, fire boss books?

3 A. No.

4 Q. Okay. All right. What else did they ask you?

5 Anything in particular?

6 A. They asked me about the air on the face, asked me

7 about was I wearing my gas detector every day? It's

8 been a while ago. I mean, that was right after that

9 happened, so I mean I don't remember.

10 Q. You said gas detector.

11 A. Uh-huh (yes).

12 Q. Did you have a gas detector assigned to you?

13 A. No.

14 Q. Okay. Did anyone on the section, on your section

15 other than the section foreman have a gas detector ---

16 A. Uh-huh (yes).

17 Q. --- assigned to them?

18 A. Really I think --- I'm pretty sure every equipment

19 operator is supposed to have a spotter; aren't they,

20 for the gas?

21 Q. It varies a little bit. Now, during the time that

22 you worked on 22 Headgate section, ---

23 A. Uh-huh (yes).

24 Q. --- did you ever travel the conveyor belt, the

25 section belt from one end to the other?

1 A. Yes.

2 Q. Okay. Prior to April 5th, when was the last time
3 you traveled the 22 Headgate section belt from one end
4 to the other?

5 A. Are you talking all the way out of the mine?

6 Q. No, no.

7 A. Just the ---

8 Q. Just the section belt.

9 A. --- section belt where the ---?

10 Q. Section belt.

11 A. Right. Twenty-two (22) Headgate or down to the
12 Glory Hole, pretty much; right?

13 Q. Yeah, from one end to the other.

14 A. I did that quite a few times, because you know, if
15 the belt's --- if we had to make a splice or
16 something, I'd go down and hit the take-up or
17 something like that, you know, so ---

18 Q. Okay.

19 A. --- really I walked it quite a few times, really.

20 Q. All right. Now ---.

21 A. And I walked with my boss once or twice as he was
22 fire bossing down through there.

23 Q. Okay. Now, when was the last shift you actually
24 worked at UBB?

25 A. The last shift I actually worked, we were on our

1 three off because we worked six on, three off.

2 Q. Uh-huh (yes).

3 A. April 5th was our first day back, so three days
4 before that, so it was ---.

5 Q. Would that be Thursday, April 1st?

6 A. Yeah, right. Exactly. It was the last --- was
7 the last shift I worked.

8 Q. Okay. Now, can you recall the actual last time
9 that you've traveled the 22 Headgate section belt
10 prior to April 1st or on April 1st if it happened to
11 be that day?

12 A. No. No, I don't recall.

13 Q. Okay.

14 Q. Okay. Well, let's say this. The last time when
15 you traveled the 22 Headgate section belt, what did it
16 look like in terms of quality of rock dusting?

17 A. It could be better.

18 Q. Okay.

19 A. You know, I mean, we always try to make --- we
20 always try to do pretty good about rock dusting.

21 Q. Okay.

22 A. That was one of the things.

23 Q. All right. That's okay. Now, if April 1st was
24 the last shift you worked, ---

25 A. Uh-huh (yes).

1 Q. --- did you travel across the last open crosscut
2 on the 22 Headgate section that day?

3 A. Yes, yes, several times.

4 Q. Okay. During your last shift there ---

5 A. Uh-huh (yes).

6 Q. --- on April 1st, are you aware of anyone
7 detecting any methane at any time?

8 A. I'm not aware of it.

9 Q. Okay.

10 A. That's not saying that there wasn't any methane
11 detected there.

12 Q. Okay. In other words, did anyone tell you they
13 had detected any methane?

14 A. No.

15 Q. Did you see anyone's detector that was showing ---

16 A. No.

17 Q. --- any methane finding?

18 A. No.

19 Q. Was methane routinely detected on the 22 Headgate
20 section while you were working there this year?

21 A. Yes. That was kind of a gassy mine anyway,
22 so ---.

23 Q. Okay. Now, what is the highest concentration of
24 methane that you recall being detected on the 22
25 Headgate section?

1 A. I really don't know, because they would always ---
2 you know what I mean? We need to run out here and get
3 this curtain put up to get this methane out of here
4 before we continued, you know?

5 Q. Okay. Now, would this be coming from a section
6 foreman or the equipment operators?

7 A. Well, the equipment operator would say and then
8 the foreman would come down and we would take care of
9 the problem before anybody really went back to work or
10 anything.

11 Q. Okay. Now, how often would that happen?

12 A. That only happened, like, once while I was up
13 there.

14 Q. Okay.

15 A. So ---.

16 Q. Do you recall about when that was?

17 A. That was probably right before we got that (d)
18 order, probably three weeks before the explosion.

19 Q. Okay. Now, why did you get the (d) order?

20 A. There wasn't enough air up on the face.

21 Q. Now, would that --- when you say the face, you
22 mean the 22 Headgate section?

23 A. Uh-huh (yes).

24 Q. Okay.

25 MS. SPENCE:

1 Was that yes?

2 A. Yes.

3 BY MR. FARLEY:

4 Q. Okay. Was that (d) order issued during your
5 shift?

6 A. No, it was ordered on Dino's shift, first shift.

7 Q. Okay.

8 A. And then we came in --- I think, like, as MSHA was
9 in there, we came into work, and then they called Pat
10 in there. And then we hung out for probably three
11 hours and they just told us to go on to the house.

12 Q. Okay. Where did you hang out?

13 A. In the bath house there.

14 Q. Okay. So you didn't enter the mine?

15 A. No, we didn't enter the mine.

16 Q. Okay. And you said ---?

17 A. The bosses did, though. I mean, they went in
18 there with MSHA. I guess they were trying to get it
19 fixed, you know.

20 Q. Okay. Now, as best you can tell, this was about
21 three weeks prior to the explosion?

22 A. It was actually two weeks prior to the explosion
23 that that happened.

24 Q. Okay.

25 A. Around about two weeks, three weeks, two weeks,

1 somewhere. It was in that week's span, I'm pretty
2 sure.

3 Q. Okay. Did Pat or anyone explain to you in detail
4 why the order had been issued?

5 A. Just nothing other than there --- we didn't have
6 enough air up on the face, and they went in there and
7 I guess did a big change or something like that.

8 Q. Okay.

9 A. They did an air change and ---.

10 Q. Okay.

11 A. Then after that we were pretty much had enough air
12 up on the face. Pat, you know, made that one of his
13 pet peeves to make sure we did have enough air.

14 Q. Okay.

15 A. You know, it's miserable whenever you don't have
16 enough air up on the face. It's hot.

17 Q. So again, this is two or three weeks prior to the
18 explosion?

19 A. Uh-huh (yes).

20 Q. Now, and do I understand you correctly, that you
21 feel like your ventilation on 22 Headgate section
22 improved ---

23 A. Yes.

24 Q. --- after the change?

25 A. Yes. On 22 Headgate it did, yes.

1 Q. Okay.

2 A. Because they had been fighting with the air up
3 there for a while before that. I mean, that wasn't
4 the first time. That was just the first time since I
5 had been there, you know?

6 Q. Okay. Now, prior to this change, ---

7 A. Uh-huh (yes).

8 Q. --- was it common to have situations on the 22
9 Headgate section where you didn't have sufficient air
10 quantity in your faces?

11 A. Well, that really wasn't discussed with me, but
12 I mean, that was --- you know what I mean? You could
13 tell that there wasn't because it was hot and, you
14 know, my --- Morris, our left miner man, he was always
15 mad because there was no air up here.

16 Q. Okay.

17 A. So I mean, that was just ---

18 Q. All right.

19 A. --- often, you know.

20 Q. Is it fair to say that it was common knowledge
21 among your crew that there were ventilation problems
22 on 22 Headgate?

23 A. It's fair to say.

24 Q. Okay. Now, after this change that you mentioned,
25 you've indicated things got a little better.

1 A. Uh-huh (yes).

2 Q. Now, were things still better as of April 1st, the
3 last shift you worked there?

4 A. Yes, I mean, as far as to my knowledge. I mean,
5 yeah. I was on the mantrip going in, you know.

6 Q. Yeah.

7 A. It surprised me ---

8 Q. Okay.

9 A. --- as much as anybody else. We really didn't
10 even think it was an explosion, really. We thought it
11 was a big fall.

12 Q. Okay. We'll get to that in just a minute, but let
13 me finish on the ventilation first.

14 A. Okay.

15 Q. Now, as of April 1st, the last shift that you
16 worked on the 22 Headgate section, ---

17 A. Uh-huh (yes).

18 Q. --- did --- what was the miner operator's name,
19 Morris?

20 A. Morris.

21 Q. Did Morris or anyone at anytime complain that
22 there was not enough air?

23 A. No.

24 Q. Okay.

25 A. Not to my knowledge.

1 Q. Okay.

2 A. I didn't hear him complain or anything like that.

3 Q. All right. Now, if I understand you correctly
4 here, your ventilation on 22 Headgate is noticeably
5 better on April 1st than it was two or three weeks
6 before?

7 A. Yes.

8 Q. That's fair?

9 A. Yes.

10 Q. Okay.

11 A. Noticeably. I mean ---.

12 Q. I mean, you didn't take air readings; ---

13 A. No.

14 Q. --- is that correct?

15 A. No, but I mean, whenever you're driving a scoop,
16 say, down the belt entry; right?

17 Q. Uh-huh (yes).

18 A. Before as you were driving down through there,
19 you're looking --- you're sitting in the scoop
20 sideways and you're looking --- and you're headed
21 towards the air.

22 Q. Uh-huh (yes).

23 A. It wasn't blowing in my face. After that air
24 change, it was --- I had to, I mean, always wear my
25 glasses. They said always wear your glasses, but

1 sometimes it's --- but I was always wearing my glasses
2 because the dirt would be hitting me in the face a lot
3 more.

4 Q. All right.

5 A. The dust from the tires.

6 Q. Al right. Now, were you anywhere around in the
7 belt, in the 22 Headgate belt entry on your last shift
8 there around April 1st?

9 A. Yes.

10 Q. Okay.

11 A. All over. I mean ---.

12 Q. Now, on April 1st, the air current on the 22
13 Headgate belt, in which direction was it traveling?
14 Was it moving inby toward the face or outby away from
15 the face?

16 A. In the belt entry?

17 Q. Yes, sir. Now, when I say the belt entry, I mean
18 the area outby the feeder.

19 A. Outby the feeder?

20 Q. Yes, sir. On the conveyer belt, along the
21 conveyer belt itself.

22 A. I didn't feel it pulling. I mean, I don't really
23 recall, but ---

24 Q. Okay.

25 A. --- if I would have noticed anything feeling

1 weird, I mean, I would ---.

2 Q. Okay.

3 A. I'm sure I would have said something.

4 Q. Did you notice --- did you notice a --- what was
5 called a box check curtain hanging near the section
6 tailpiece on the 22 Headgate section belt?

7 A. Yes, on the last day that I worked. Yes.

8 Q. Okay. Now ---

9 A. I mean ---.

10 Q. --- was this curtain blowing in one direction or
11 the other or was it just simply hanging limp? Can you
12 describe it?

13 A. If I had to. There was so much curtain there that
14 it was really --- it was really tough to say, ---

15 Q. Okay.

16 A. --- you know, because I mean sometimes it was just
17 all bunched up and you got too big of a piece of
18 curtain hanging there.

19 Q. That's fine. If you don't know ---.

20 A. I don't know. I mean, that's ---.

21 Q. Did Patrick, your section foreman, ---

22 A. Uh-huh (yes).

23 Q. --- during the three months or so that you worked
24 on the 22 Headgate section, did he ever order
25 production to cease or shut down his section because

1 of ventilation problems? I mean, did he ever say,
2 hey, guys. We just don't have enough air to run.
3 We're going to stop and take time to fix it?

4 A. No, not while I was up there, not because of air.
5 I mean, he did --- he kind of made us stop that time
6 the methane was high. Like I said, I don't remember,
7 really remember what ---

8 Q. Okay. Now ---

9 A. --- the percent was.

10 Q. --- the time that the methane was high, can you
11 narrow that down a little bit for me as to when that
12 might have been?

13 A. Like I said, a little bit before --- a little bit
14 before the (d) order.

15 Q. Okay.

16 A. Like, we had to have enough air to get it out of
17 there even.

18 Q. Okay. Now, the (d) order, if I got you right, was
19 made two or three weeks before the explosion?

20 A. Right.

21 Q. Okay. And then the methane problem would have
22 been a little before that?

23 A. A little bit before that, yeah.

24 Q. Okay. Were there any methane problems after the
25 (d) order and the ventilation change?

1 A. Not to my knowledge.

2 Q. Okay. Now, the methane problem that you're
3 talking about, do you know what anyone might have read
4 with a detector as to actual quantity?

5 A. No, I sure don't.

6 Q. Okay. About how long did it take to make some
7 changes to make the methane problems go away then?

8 A. Thirty-five (35), 45 minutes, something like that.

9 Q. Okay.

10 A. And then we were --- well, I mean they were still
11 kind of up there, but he told me to go back to the
12 supply hole and get some supplies, ---

13 Q. Okay.

14 A. --- so that's what I did.

15 Q. All right. Now, in order to fix the methane
16 problem, do you know if anybody came outby and off the
17 section to adjust a regulator or anything like that?

18 A. No, I mean, I don't believe so. No.

19 Q. Okay.

20 A. No, I don't know nothing about that.

21 Q. Okay. Now, during the three months or so that you
22 worked on the 22 Headgate section, ---

23 A. Uh-huh (yes).

24 Q. --- did you observe any floor hooving or what some
25 folks call heaving or hooving on the mine floor?

1 A. No.

2 Q. Any cracks in the floor did you notice?

3 A. Uh-uh (no). I mean, it was --- sometimes there
4 was big ledges and stuff like that, but never any ---
5 I never noticed any huge cracks or anything.

6 Q. Okay. All right. Now, did you report to work on
7 April 5th, 2010 at UBB?

8 A. Yes.

9 Q. Okay. Where did you normally portal?

10 A. At Ellis Portal.

11 Q. Okay. What time did you arrive at Ellis Portal on
12 April 5th of this year?

13 A. 2:30.

14 Q. About 2:30?

15 A. Uh-huh (yes).

16 Q. Okay. Will you take me through what you did and
17 what you experienced up to the time the explosion
18 occurred?

19 A. I just came in, came to the locker room as always,
20 started getting my stuff on, started talking to
21 everybody, asked them how Easter was, just normal
22 stuff, put my stuff on, went outside, hung out with
23 Pat for a little bit. We did our normal, went and
24 smoked a cigarette before we went underground and then
25 got ready and headed to the, headed to the mantrip.

1 Q. Uh-huh (yes).

2 A. Got a cable splice and a couple boxes of rope
3 hangers and started walking in.

4 Q. Okay. What time did you start walking in? Do you
5 recall?

6 A. About 2:55.

7 Q. Okay. Where did you walk to when you walked in?

8 A. We walked to the mantrip.

9 Q. Okay. How far underground was the mantrip?

10 A. I want to say 80 yards, parked back there at the
11 charger and ---.

12 Q. Okay. All right.

13 A. Maybe a little bit less. You know, it was
14 probably two breaks up underground.

15 Q. Were you in the mantrip when something --- when it
16 began to happen?

17 A. No, I was beside the mantrip.

18 Q. Okay.

19 A. I was going to the boss phone to pick it up to get
20 us the road.

21 Q. Okay. Can you describe what happened, what you
22 felt, what you experienced? What did you see? What
23 did you feel?

24 A. It was pretty clean cut. I was standing next to
25 the mantrip. Wayne Persinger just walked by, the

1 vice-president. And I went to go pick up the phone
2 and the power goes out.

3 Q. Okay.

4 A. And we all start looking at each other like I
5 don't know what's going on. Wayne turns around and
6 looks and yells at Pat and says are the belts still
7 running? Yeah, the belts are still running. And at
8 that time, that's whenever the air started pushing.
9 It didn't start pushing like --- it wasn't full
10 strength, like, just at first. It started pushing
11 slowly ---

12 Q. Uh-huh (yes).

13 A. --- what it felt like. And then as it came hard,
14 that's whenever all the dust --- my hardhat flew off.
15 Empty drill came up and hit me in the head and that's
16 whenever we started trying to make our way out.
17 Everybody had a mouthful of dirt and ---.

18 Q. Okay. Did it knock you down or did it knock
19 anyone down?

20 A. Not that I know. I couldn't see. I mean, ---

21 Q. Okay.

22 A. --- I passed ---. Pat was in front of me. I
23 passed him up somewhere in it, you know.

24 Q. Sure.

25 A. I was wide open.

1 Q. Sure. That's understandable.

2 A. But even after I got out, I mean, it was still
3 blowing. It blew for --- I want to say, like, a
4 minute, 30 seconds. I mean, it blew for a long time,
5 because Racer and --- Racer and Greg were still on the
6 mantrip and we were kind of wondering where they were
7 at, and they were still on the mantrip, trying to wait
8 it out. And finally they come out because, you know,
9 we didn't know ---. They're sitting in there, you
10 know, and then they come out and it was --- I think it
11 just stopped blowing at that point.

12 Q. Okay. All right. Did it occur to you that ---
13 what might've happened? What was your sense of what
14 had happened?

15 A. Oh, of course. I mean, I --- you know, I
16 automatically thought that, but then you got Goose
17 who's been in the mines for ---. I think he had ---
18 what did he say --- like, 34 years in or 24? He only
19 was going to work another 14 months and he was done.
20 He said he's never seen anything like it, so at that
21 point ---. And then we couldn't get a --- and then
22 they were trying to get a hold of everybody and
23 couldn't get ahold of anybody, and at that point,
24 that's whenever it became pretty realistic, you know.
25 You know, this was something bad.

1 Q. Okay. Now, after you came out, what happened
2 then? Did anyone enter the mine then?

3 A. Wayne Persinger and --- Wayne Persinger and
4 probably somebody else, I think, might've went back in
5 there a little bit, but they weren't in there long.
6 They came out.

7 Q. Okay.

8 A. And then they went around to the side. I don't
9 know why they went around over there. I think they
10 went --- I think they might've turned the fan off and
11 then back on again or something, but I don't know. I
12 heard somebody say something about the fans. They
13 turned the fans off, but then I heard somebody say,
14 no, they didn't turn the fans off, so I don't know. I
15 mean they were running around trying to get ahold of
16 everybody and ---.

17 Q. Okay.

18 A. But no, Wayne went in there for a little bit and
19 then he came right back out.

20 Q. Okay. Now, after you came back outside, were you
21 instructed to do anything in particular?

22 A. The only thing I did was, well, we hung out for a
23 little bit and then somebody came, and I can't
24 remember his name. I'm pretty sure he was the one
25 that did the annual retraining. And he made me right

1 down a statement on just a regular piece of paper.

2 Q. Okay. Was he a Performance or UBB employee?

3 A. Uh-huh (yes). Yeah, I believe so.

4 Q. Would he be one of the --- would he have been one
5 of their safety people?

6 A. Yeah, yeah.

7 Q. Okay. What did you do then? Were you assigned to
8 do anything after you did your statement?

9 A. No. We just hung out and then one mantrip come
10 out and someone --- it was from the other side. And
11 they said they were up at Ellis Switch whenever it
12 happened, said that it pushed mantrip back, like, six
13 breaks, and they were moving forward.

14 And two of them had donned their rescuer and then
15 --- or three of them or something like that. They
16 might've all done it, but some of them guys just threw
17 their stuff down and said we won't be back and then
18 got in the truck and went to the other side and I
19 guess got a ride out. And then not too long after
20 that the mantrip came out that had the two live people
21 and the three dead people, and that's whenever I left.
22 I said, that's enough for me.

23 Q. Do you recall what time you left?

24 A. No, I don't.

25 Q. Okay. The mantrip that brought the two survivors

1 out, was it separate from the mantrip with bodies?

2 A. Yes.

3 Q. Okay.

4 A. And I don't know what the time difference was,
5 either. I just know it was --- it all kind of just
6 happened.

7 Q. Okay. Now, the mantrip that was carrying the two
8 survivors, do you know who was operating that mantrip?

9 A. Uh-uh (no).

10 Q. Okay.

11 A. I don't even know if they were from Ellis, the
12 Ellis side.

13 Q. Okay. All right. Now, the mantrip with the
14 bodies ---?

15 A. Uh-huh (yes).

16 Q. Which mantrip came out first?

17 A. The mantrip --- everybody was alive on it.

18 Q. Okay.

19 A. And you know, there wasn't anybody, I don't think,
20 really injured on it or anything like that.

21 Q. The mantrip with the deceased, do you know who
22 brought that mantrip out?

23 A. No. I don't know either one, you know?

24 Q. Okay. Do you know how many deceased miners were
25 on this --- on the mantrip?

1 A. No, I just heard there was three, you know. I
2 just kind of saw them.

3 Q. Okay.

4 A. I'm not even going over there. I'm gone.

5 Q. Okay. Okay. And you left?

6 A. Yes.

7 Q. You indicated that you were asked to write a
8 statement. Was everyone else asked to write a
9 statement, too?

10 A. Yeah, I'm pretty sure that everybody wrote one. I
11 was the first one to write mine, because he said I'm
12 going to get you all to do this, and I was like, I'm
13 going to go ahead and get mine over with so I can keep
14 --- so I can talk.

15 Q. Okay. Let me back up.

16 A. But everybody just kind of passed that book around
17 and wrote down what they experienced.

18 Q. Okay. Let me bring it back up to 22 Headgate
19 section. During the three months that you worked on
20 the 22 Headgate section, did you ever experience any
21 incidents where the ventilation reversed or may have
22 been traveling in the wrong direction at any time,
23 meaning the air current coming to and/or from the
24 section?

25 A. Not to my knowledge.

1 Q. Okay.

2 A. Not to my knowledge.

3 Q. Did you hear of anything like that?

4 A. Yeah, I think I heard something like that, but I
5 mean, I don't --- I didn't feel anything like that or
6 anything.

7 Q. Okay. In the two to three weeks or so preceding
8 the explosion, did you hear a problem like that on the
9 other miner section known as the 22 Tailgate section,
10 an instance where the air might've been traveling in
11 the reverse of what the way it should've been going?

12 A. I think I did hear something like that, but I
13 mean, I don't know for sure, you know? I couldn't
14 really ---

15 Q. Okay.

16 A. --- say for sure or not.

17 Q. Okay. When you arrived outside at the Ellis
18 Portal after the explosion --- you were 80 feet
19 underground. You come back out.

20 A. Uh-huh (yes).

21 Q. What management people did you see on the surface?

22 A. Wayne Persinger was the first one, and then it
23 wasn't too long after that I ---. I don't know if
24 Everett was still there, but and then Everett was
25 there.

1 Q. You mean Everett --- do you mean Everett Hager?

2 A. Everett Hager, yeah.

3 Q. Okay.

4 A. And I believe Wayne's about the --- is the first
5 one that I saw as management, the one that, you know,
6 I mean, is sticking out the most, because he was
7 running around scared to death, you know? He was the
8 main one that I remember seeing there. I don't know
9 what actual mine foreman was there. I believe it was
10 Everett.

11 Q. Do you know the company president?

12 A. No, I don't know him.

13 Q. Do you know who he was at the time?

14 A. I don't remember his name, but yeah, I remembered
15 it at the time.

16 Q. Would it have been Chris Blanchard?

17 A. Yeah, that was it. Yeah, Chris Blanchard.

18 Q. Did you see him at Ellis Portal?

19 A. No.

20 Q. Okay.

21 A. No, I didn't see him after I came out.

22 MR. FARLEY:

23 Okay. Erik?

24 MR. SHERER:

25 Sure.

1 EXAMINATION

2 BY MR. SHERER:

3 Q. Okay. Mr. Powers, you stated that you worked at
4 Upper Big Branch for approximately four months.

5 A. Uh-huh (yes).

6 Q. Did you have any other coal mining experience
7 prior to that?

8 A. Yes.

9 Q. What is that, please? Just roughly.

10 A. I worked --- you mean all the time?

11 Q. Yeah.

12 A. About two years altogether.

13 Q. About two years. Was it all with Massey?

14 A. No. Well, I mean, the first mine that I worked at
15 was a Massey mine. I worked at Aracoma, but it was
16 through Freelin Workman, Blue Ridge Contracting.

17 Well, now it's Aracoma Contracting, but ---. And then
18 I worked through him again after that, because my son
19 was sick, and so Massey was about to hire my company
20 there. And then I couldn't because I had to go to
21 Cincinnati for my son, Ryland. And after that I went
22 to Argus Energy.

23 Q. Okay.

24 A. It's in Wayne County. It's a Jim Booth mine.

25 Q. Sure.

1 A. And was laid off from there, and then after that,
2 that's ---. Then I went to Performance.

3 Q. Okay. Approximately, how much of your time of
4 those two years were you working for Massey or its
5 subsidiaries? Half?

6 A. Just the --- just the four months

7 Q. Just the --- so you were hired in with Massey and
8 immediately went to UBB?

9 A. Uh-huh (yes).

10 Q. Okay.

11 A. Yes.

12 Q. And prior to that, you'd been working as
13 contractor?

14 A. Right.

15 Q. Okay. Good enough. Do you have any Federal or
16 State mining certifications?

17 A. No.

18 Q. On the section you mentioned, you operated the
19 scoop. And you were talking about the air where it
20 would blow the dust up into your face and such.

21 A. Heading back towards 22 Headgate, coming away from
22 the face ---

23 Q. Okay.

24 A. --- is when air would do it. I mean, that was ---
25 you know, it was clear that that's what was happening

1 because, of course, I was getting a mouthful of it.

2 Q. Sure. Uh-huh (yes). Do you notice any days when
3 that didn't happen?

4 A. No, not really.

5 Q. It was pretty constant?

6 A. Right. But I mean, it wasn't every day that I was
7 in the belt entry, either, going down there with the
8 scoop.

9 Q. Sure. Did you do any rock dusting with the scoop?

10 A. Yes.

11 Q. How often did you do that?

12 A. I bolt dusted --- are you talking about bulk
13 dusting or just ---?

14 Q. Yeah.

15 A. In the three months that I worked up there I bulk
16 dusted probably only three times myself.

17 Q. Okay.

18 A. That's not to say that they weren't doing that on
19 other shifts, though.

20 Q. Sure. How did you know when to bulk dust or ---?

21 A. The boss would tell me.

22 Q. Boss would tell you.

23 A. Yeah. It was kind of like --- seemed like we'd do
24 it if I had time ---

25 Q. Okay.

1 A. --- you know.

2 Q. When you did it, did the section really need it or
3 was there float dust or was the dust getting gray?

4 A. Well, I was really pretty good myself. I was
5 really pretty good about hand dusting a lot.

6 Q. Okay.

7 A. You know, every time a cut was made, I would go in
8 there and hand dust. And then on my way back if I had
9 any rock dust and I saw any black spots or anything,
10 I'd always hit that ---

11 Q. Okay.

12 A. --- myself, but that was something that wasn't
13 told to me. I just, you know ---. Myself, I can
14 honestly say that I did my job as far as dusting goes.

15 Q. Okay. Great. What about when you first got on
16 the section? Did you ever notice any places that
17 needed dusting?

18 A. Well, yeah.

19 Q. Was that regular?

20 A. Yeah, usually by the end of the shift the buggies
21 bumped into the walls or something like that, so I
22 mean there's going to be some black spots or
23 something, so I would go back and rock dust.

24 Q. Okay.

25 A. But in defense, I mean, the guy that was up there

1 running the scoop before, that's why they pulled him
2 off and sent me up there, was because he wasn't
3 getting it done.

4 Q. Okay. What about within the 40 foot of the faces,
5 keeping the dusting upright? A lot of times the
6 dayshift really tries to run coal and sometimes things
7 like rock dust and ventilation curtains, things like
8 that, suffer because of that. When you got there on
9 the evening shift, was everything generally okay, or
10 did you need to catch up?

11 A. Well, there were a lot of times I would be
12 catching up, but we always ran more coal than first
13 shift every night.

14 Q. You guys are just better.

15 A. Uh-uh (yes). Seriously. I mean, that's no joke.
16 We ran more coal than first shift just about every
17 single night.

18 Q. Plus, doing some of the catch-up?

19 A. Plus doing some of the catch-up. It seemed like
20 first shift didn't do nothing. That's honest, you
21 know? Loading --- I'm having to load one bolter and
22 then go back and having to load the other bolter, too,
23 and rock dust and we're running more coal than them
24 and we're moving the rescue chamber up and we're, you
25 know what I mean, doing power move, too, at the same

1 time?

2 Q. You're doing a lot of work.

3 A. Yeah. So I mean our crew really did run really
4 well.

5 Q. That's great.

6 A. But everybody helped everybody do anything. I
7 never built a stopping by myself.

8 Q. Okay.

9 A. Even the miner men would come over and help build
10 a stopping, and we generally did that whenever the
11 belts --- because you know, the belts usually would go
12 down, like, you know, on an average, probably two
13 times a night.

14 Q. Uh-huh (yes). That's good. And you ran a lot of
15 coal. I'm impressed.

16 A. Yeah. Yeah, we really did. We really did,
17 because that was --- Pat brought pizza in two or three
18 times, because you know, we was always breaking over
19 our quotas that we expected to run that night.

20 Q. Sounds like a good crew. The air on the section,
21 you mentioned after a (d) order, the ventilation was
22 better. Did you ever notice any fluctuations in that
23 ventilations? The curtains would blow out and then
24 come back or anything like that happen while you were
25 on the section?

1 A. Not that I recall. I mean, the curtains usually
2 stayed in the direction that they were supposed to be,
3 because you know, I always had to mess with them
4 things all the time.

5 Q. Sure. Uh-huh (yes).

6 A. That's one of the worst things about it, so ---.

7 Q. Just a lot of work.

8 A. No, I didn't notice.

9 Q. Okay. What about the --- was there a sign over
10 the power center?

11 A. Yeah. And it did --- it was blowing.

12 Q. Did it always flap about the same amount?

13 A. Yeah, I believe so. And the sign that I remember
14 flapping the most was the stop signs at the end of the
15 track.

16 Q. Sure, okay.

17 A. That was the one that really flapped the most, and
18 every day it was always pretty much flapping the same
19 amount, especially after the (d) order. Now, before
20 the (d) order it --- you know, it'd move a little bit,
21 but it wasn't nothing, you know, because Pat was, you
22 know, kind of bragging about that, look how much that
23 sign's moving, you know what I mean, after it.

24 Q. Uh-huh (yes). Sure.

25 A. We got air now.

1 Q. That's good. Do you know what happened after the
2 (d) order to improve the ventilation? Anybody say
3 anything about that?

4 A. Said something about they moved, did something
5 about --- the air was blowing behind the gob or
6 something over on the longwall and that's how we had
7 air. And somebody else was complaining about it. I
8 don't know exactly what happened other than what I
9 heard.

10 Q. Okay, sure. Do you have a trickle duster on the
11 section?

12 A. Uh-huh (yes). Actually we, me and Patrick,
13 probably a week and a half before the explosion went
14 down and got it and moved it and hooked it up and
15 everything.

16 Q. Yeah.

17 A. So ---.

18 Q. And where was that located, do you recall?

19 A. Whenever we put it in, it was right behind the
20 power center, and so probably a week after that it was
21 probably --- you know, it was probably five or six
22 breaks behind the power center ---

23 Q. Sure.

24 A. --- because we was moving that.

25 Q. Yeah. Do you recall if it was moved up

1 immediately prior to the explosion?

2 A. No.

3 Q. Oh, so it was still five or six breaks behind the
4 section?

5 A. It was probably five or six breaks outby.

6 Q. Did you run that trickle duster all the time that
7 the section was operating?

8 A. I don't know if we ran --- no, probably not the
9 whole time the section was operated. No.

10 Q. Well, I was just ---.

11 A. But I was the only one that filled it up, so ---.

12 Q. Okay. So you filled it up basically and it ran
13 until it ran out of dust?

14 A. Yeah.

15 Q. When you came on shift, did it look like it had
16 been run previously?

17 A. Not most of the time, no. It seemed like I was
18 the one that really pulled that trickle duster the
19 most, and that was just another thing on top of me so
20 I kind of complained about it a little bit.

21 Q. Sure, sure. You deserve to for running all of
22 that coal and doing all of that other stuff. Still
23 loading up the trickle duster.

24 A. Uh-huh (yes).

25 Q. Yeah, it's a lot of work to keep up with the

1 trickle dust. You ever hear anybody complain about
2 the ventilation, not just on this section but anywhere
3 in the mine?

4 A. No, not before I went up on the section, you know?
5 And really, the only time I heard anybody complain
6 about it was the day that we got shut down and the
7 MSHA guys were out there talking to us and telling us,
8 you know, don't be afraid to come to me and say, you
9 know, there's no air on 22. He said, your name won't
10 be talked about or anything like that. He said, your
11 name will never come up.

12 And then that's when Morris said, well, we never
13 got air. We never had air up there before. And you
14 know, he was kind of --- he was the one that was
15 really complaining about it the most. Morris was a
16 loud mouth anyways, so ---. So he was the one that
17 really complained about the air the most. You'd think
18 it'd be the bolters, but ---.

19 Q. Yeah. Sometimes people eat dust and sometimes
20 people don't eat dust and complain about everything.

21 A. Uh-huh (yes).

22 Q. Yeah. Do you feel like there was any retaliation
23 for that guy speaking up?

24 A. No, no. Him and Everett are real --- I guess they
25 were real good buddies away from work, because

1 everybody ---

2 Q. Okay.

3 A. --- gave them a hard time about it anyway.

4 Q. Oh, okay.

5 A. And I guess they hung out away from work and stuff
6 like that. And Everett just --- you wouldn't think of
7 him having any friends, because people say he's crazy.
8 He was pretty rough, you know? I mean, he never
9 really got onto me or anything, but I watched him chew
10 a few people out, and so ---.

11 Q. So he was good at it?

12 A. Yeah, he was good at it, but I liked Everett, and
13 really he was the one that made sure I got up there on
14 the section after I came and he kicked that other guy
15 off.

16 Q. Uh-huh (yes).

17 A. You know, the poor guy came in drunk after that
18 and got fired, but ---.

19 Q. Oh, jeez.

20 A. Yeah.

21 Q. Do you feel like Everett tried to take care of the
22 stuff he needed to in the mine?

23 A. Yeah.

24 Q. The ventilation, rock dust?

25 A. Yes.

1 Q. Roof ribs?

2 A. I feel like Everett was a good superintendent. I
3 really do. I wouldn't say so much for Terry Moore.

4 Q. For who?

5 A. Terry Moore.

6 Q. And who is Terry Moore?

7 A. Well, he was the other, I guess the assistant mine
8 foreman.

9 Q. Did he not keep up with things too good?

10 A. I just never seen him do anything really ---

11 Q. Oh, okay.

12 A. --- other than laying on a rib, to be honest with
13 you.

14 Q. Well, ---

15 A. He walked ---.

16 Q. --- supporting ribs is important.

17 A. Yeah, I hear you, holding them up. But I mean ---
18 but he was involved in ---. Whenever we first got
19 there we built some overcasts and stuff like that, and
20 he was kind of moseying around there a little bit.
21 And then I guess he had to go up to the section once
22 or twice. I remember him getting mad as --- well, I'm
23 not walking all the way over there again, you know?

24 So ---.

25 Q. Okay. What about the --- did you go through any

1 equipment doors going to that section?

2 A. Yes. Equipment doors or ---?

3 Q. We call them equipment doors.

4 A. --- double doors?

5 Q. Double doors.

6 A. Yeah, double doors, track doors. Yeah, there was
7 two as soon as you come in the mine that weren't
8 closed all the time. And it was hit and miss whenever
9 you had to open those up. But then there was ---
10 you'd come off of Ellis Switch and go around, and then
11 you make a right at 78 Break.

12 Q. Uh-huh (yes).

13 A. And then you go through two there. You got to
14 open and close, and then there's another double set
15 right there, and then you get down to where you go
16 over to 22 Headgate, and then you have to go through
17 another set of double doors. And before I went up on
18 the section, I'm the one that moved them double doors
19 at 22 Headgate five times, and we was only moving
20 them, like, three foot at --- you know?

21 A. Three foot?

22 Q. Yeah, it was like we'd have to build them here and
23 then the next day they'd say tear them down and move
24 them right down here, and it was --- you know? So I
25 don't know what they were doing with the doors. I

1 don't know if they were trying to get air up on the
2 face with them or what, what the deal was there. But
3 then we also built another set of double doors headed
4 over to, I guess the 22 Tailgate that you were talking
5 about.

6 Q. Uh-huh (yes), sure.

7 A. And we put them --- I put them doors up, too, or
8 helped put them doors up. I didn't up them up by
9 myself, but ---. And so I guess I'm not --- I don't
10 know a lot about ventilation, so ---.

11 Q. We got a map here. Could you locate on this map
12 where you kept moving those doors?

13 A. Where's the Glory Hole at?

14 Q. The Glory Hole is right here.

15 A. Okay. So the Glory Hole is right here, so then
16 you come up and then you go up to the regular miner
17 section; right?

18 Q. Uh-huh (yes), yeah. This was ---

19 A. Okay.

20 Q. --- your section.

21 A. So probably --- the first set of double doors was
22 right here not even a break inside where you make that
23 little left to go up to the miner section; right?

24 ATTORNEY BABINGTON:

25 Sorry to interrupt. Do you mind marking

1 that with this pink highlighter, please?

2 A. Okay. So right here is the Glory Hole, right,
3 coming --- and this is where you make a left to go up
4 to the regular miner section?

5 BY MR. SHERER:

6 Q. Sure. Uh-huh (yes).

7 A. This is your intake; right?

8 Q. Yes.

9 A. So where's the first break at?

10 Q. The first break would be right here.

11 A. Okay. So them double doors is probably right in
12 here somewhere, you know what I mean? Kind of right
13 as you come --- right as you come around the corner,
14 that was, like, right in the ---.

15 Q. Okay. Now, these are where we think the doors
16 were?

17 A. Oh, okay. Well, then yeah, that's probably about
18 right, then. You come around the curve and then
19 automatically stopping on the curve you pretty much
20 had to open up the doors.

21 Q. Okay.

22 A. I didn't know how far your little scale was right
23 here.

24 Q. Sure.

25 A. So that's probably a door right there and then

1 there's another double door right there, right after
2 that.

3 Q. Okay.

4 ATTORNEY BABINGTON:

5 Would you mind circling that area that
6 you just marked up?

7 WITNESS COMPLIES

8 BY MR. SHERER:

9 Q. Now, are these the doors that you had to move
10 several times?

11 A. Yeah, those are the ones that we moved probably
12 four or five times.

13 Q. Oh, jeez. Roughly what ---?

14 A. And then we built that overcast right down here.

15 Q. Oh, okay. This, there's an overcast right here.

16 A. Yeah, and that was about the same time that we was
17 building that overcast, too. We was building them
18 doors back and forth, back and forth.

19 Q. Roughly when was that, do you recall?

20 A. That was about a month --- that was right as I
21 first started, because we were putting in that
22 flow-through right here.

23 Q. Okay.

24 A. You know how there's a flow-through here, right
25 here on ---

1 Q. Uh-huh (yes).

2 A. --- right in here. And so as we were --- because
3 we were kind of doing it all, you know what I mean?
4 Putting in the flow-through and then we would drop
5 back and we'd put these doors up and build that
6 overcast or whatever, and so all of that was kind of
7 going on, and for the first month that I worked there,
8 that's where I was, was at the Glory Hole every day.
9 Yeah, doing all that stuff?

10 Q. Who ---?

11 ATTORNEY BABINGTON:

12 Sorry. Real quick. Sir, just to clarify
13 for the record, the areas you were talking about are
14 all basically right at the --- like, the initial
15 entryways of Headgate 22 and right around the switch
16 from, I guess Seven North Belt?

17 A. Right.

18 ATTORNEY BABINGTON:

19 Okay.

20 BY MR. SHERER:

21 Q. Right at the mouth of the section?

22 A. Right

23 Q. Who was directing the moving of the doors, do you
24 know?

25 A. Well, I was on Marvin's crew. And I guess it was

1 coming straight down from Everett, but then one time
2 whenever we had to move them, Terry Moore was the one
3 that said to move them. And then I guess Terry was
4 wrong, so Everett came down there and got mad and made
5 us move them back to where he had them originally.

6 Q. Okay.

7 A. And then I think again after that we moved them up
8 to where they originally --- and then I think ---.
9 And this was after they'd been plastered and
10 everything, so you can imagine what was being said.
11 So then they got moved up to where they stayed.

12 Q. Okay. So it was like something's not right, so
13 we'll move the doors and ---?

14 A. I told them ---

15 Q. Something's still not right so we'll move them
16 back.

17 A. I guess. I don't know. I just did as I was told,
18 you know?

19 Q. Sure. That's what you got to do. When you were
20 working on these doors, did anybody come around that
21 --- like any of the people you didn't normally see in
22 the mine?

23 A. Wayne Persinger made an appearance up there once
24 or twice. You know, he never really came back there
25 or whatever.

1 Q. Okay.

2 A. Or we only saw him --- I only saw him twice up
3 there in the month that I was working doing that, so I
4 mean really that was kind of ---.

5 Q. Okay.

6 A. The vice-president being up there, of course
7 everybody's going to --- put your glasses on real
8 quick and you know.

9 Q. Sure. Those must've been real famous doors.

10 A. They were, they were. And we had them put up one
11 time and then the scoop man for --- I think it was
12 probably a guy on Dino's crew --- come through there
13 hauling and knocked them down one day, so he was real
14 popular with all of us for a little while, too, so
15 ---. Yeah, them doors were quite a pain for me.

16 Q. I can imagine.

17 A. And then, like, you know, right after that I got
18 put up on the section.

19 Q. Well, you're almost adopted, staying out there all
20 the time.

21 A. Uh-huh (yes). Uh-huh (yes).

22 Q. What about the condition of all those doors? Did
23 you ever see them bent up or banged up?

24 A. I think we had to go --- after that scoop man hit
25 that one set of doors, we had to go find another set

1 of doors to put up because he did bend the ones he
2 hit, but other than that, I mean they were in pretty
3 good shape. I mean you could tell they'd been put up
4 before, but I mean, as far as closing, we got them
5 pretty good.

6 Q. Okay. What about the other doors further outby?
7 Were they in good shape?

8 A. All of them?

9 Q. Correct.

10 A. No. Them things wasn't never in good shape. They
11 was pretty bent up and there was one set that kind of
12 got the ghost award and come back open as you drive
13 off and so ---. But those things were supposed to be
14 --- I guess those were on a button at one time and you
15 would just --- you would just hit the button and they
16 open up automatically, but ---.

17 Q. Somebody ran over the button, probably.

18 A. Well, I always try to get on the back of the
19 mantrip on the way in and the other side on the way
20 out so I didn't have to get out.

21 Q. Did you ever come up and both the doors would be
22 open?

23 A. The only time that that would happen would be is
24 if, you know, we were on a walkie with somebody and we
25 were following them out, but most of the time they

1 really tried to make sure them doors stayed closed.

2 Q. What about the conditions up on the section? Was
3 the roof and ribs okay?

4 A. The top was pretty bad, especially --- well,
5 whenever we --- whenever I first go there the top was
6 pretty good. And then it seemed like the further we
7 went up, it was getting worse and worse and I was
8 getting 12, 14 foot high and not real good and then
9 Morris was complaining about every time. They'd just
10 keep falling and falling and falling and, you know,
11 the roof bolter would get aggravated because then it
12 was so high and ---.

13 Q. Sure.

14 A. But it was real high. Like, I want to say that
15 last day, you know what I mean, we was getting into,
16 like --- it was probably 16 foot high.

17 Q. Gees. That was all coal?

18 A. No, no. I think --- I don't think that was all
19 coal. I think we was --- I think it was just falling,
20 you know what I mean? It was bad top. You know, he'd
21 mine the coal and then ---

22 Q. Oh, okay.

23 A. --- as he'd pull out it would just keep falling,
24 you know?

25 Q. Okay. You ever notice any cracks in the floor,

1 any floor hooving?

2 A. Uh-uh (no). I never noticed any of that.

3 Q. Okay. What about water?

4 A. It was pretty watery up there.

5 Q. Was water coming out of the floor or out of the
6 roof? Do you remember?

7 A. You could actually hear the water sizzling out of
8 the coal.

9 Q. Okay.

10 WITNESS INDICATES SOUND

11 A. You know what I mean? You would think that was
12 gas, but it wasn't. It was the water. but yeah, it
13 got pretty wet up there, like, right --- you know,
14 right as we were --- where we were at whenever we
15 stopped. I really don't know other than that where
16 the water was coming from, but it got pretty muddy and
17 nasty.

18 BY MR. SHERER:

19 Q. The roof, you said it was pretty good, then it got
20 real bad. Was it a real sudden change?

21 A. It seemed like it was, you know? It wasn't ---.

22 Q. So you're going along at some height and all of a
23 sudden it just starts falling out?

24 A. Yeah, it just --- it just started getting taller
25 and taller.

1 Q. Okay.

2 A. Because I think that last --- the last stopping I
3 put up I believe was a Kennedy stopping, because of
4 where it was so tall.

5 Q. Uh-huh (yes). That's a big stopping.

6 A. Yeah. And then Kyle, the hoot owl boss, got mad
7 because we used his Kennedy stopping.

8 Q. Two or three of them, probably.

9 A. Yeah.

10 Q. When you were up on the section, did you know when
11 inspectors were on the property, either State or
12 Federal?

13 A. Yes.

14 Q. How did that work?

15 A. I think --- I mean, I never heard them ---. Pat
16 would always come and tell us we got inspectors on the
17 way up. I'm pretty sure the message was relayed from
18 the dispatch to Pat, because, you know, whenever Pat
19 would go hollering at his fire boss or whatever, and
20 I'd say that probably came from the guards at the
21 dispatch up to the section.

22 Q. Sure. What would you do when you learned that,
23 would you do anything different?

24 A. Well, depended what was wrong, you know? I mean
25 --- you know. Of course everybody would be running

1 around making sure everything was right, but I mean
2 there wasn't ever really a lot of changes that had to
3 be made or anything.

4 Q. Okay.

5 A. Our crew was really --- I mean, we were
6 really ---.

7 Q. That's good.

8 A. We tried to make sure everything was right, and
9 even before there was an inspector coming up.

10 Q. Just polishing the silverware?

11 A. Uh-huh (yes).

12 Q. What about the ventilation? Did you think it was
13 adequate at all time?

14 A. After the (d) order it was. I mean, you know, my
15 first little bit up there was --- it was pretty hot up
16 there, you know? And there wasn't enough air up
17 there, I don't think. Maybe some days there was. I
18 don't know how it would vary from day to day, but you
19 know, I guess it did.

20 Q. Okay. Do you think somebody was making changes to
21 the ventilation while you were on the section?

22 A. I don't know if there was still an outby crew
23 working down there or not, because after I got on the
24 section I was switched to evening shift. And I was on
25 Marvin's crew, you know, down there at the Glory Hole,

1 and I would imagine that that's what we were doing,
2 because we knocked a few stoppings and build some
3 stoppings. So I mean that was definitely ventilation
4 changes right there. But like I said, I'm not --- I
5 don't know ventilation well enough to really look at
6 the map and see exactly what we were doing. But I
7 don't know if Marvin's crew stayed down there working
8 or if they just kind of dispersed. They were talking
9 about moving them over to the other side, but I don't
10 know if that ever really happened, because I mean I
11 kind of lost ---

12 Q. Sure.

13 A. --- touch with Marvin's crew after I moved to
14 evening shift. And I'd see him on the way --- they'd
15 be coming out and I'd be going in, but ---.

16 Q. Uh-huh (yes). Did you ever hear of anybody just
17 changing the regulators around?

18 A. No. I mean, I'll tell you it's usually the bosses
19 that would do that and they never really told me about
20 it or anything, so ---.

21 Q. Okay. Do you think that the bosses did that?

22 A. I have no idea. I heard that there was talk at
23 one time about having a ventilation specialist team
24 come in there to fix the problem, because it was ---

25 Q. Okay.

1 A. --- the ventilation wasn't right, so ---.

2 Q. When did you hear that?

3 A. I heard that I think about the time we had the (d)
4 order, and we was all sitting out there talking.

5 Q. Do you know if they did anything like that?

6 A. No, I don't think that they did, but I'm pretty
7 sure not. But I was, like, kind of thinking, well, if
8 that's what you're going to do, it would be cheaper
9 for you to do that than keep getting these (d) orders
10 and getting shut down, because I think it's, like, a
11 crazy amount of money for every minute that the belts
12 are down or something like that.

13 Q. It's obvious that this mine was having problems
14 with ventilation in general.

15 A. In general, yeah.

16 Q. Do you have any idea what the reasons for that
17 were?

18 A. No. No, not really. I mean, I really didn't even
19 know that there --- I mean, other than that (d) order
20 that time before that, I really didn't know that there
21 really was a ventilation problem other than it was hot
22 up there on the face and they were complaining about
23 not having enough air, ---

24 Q. Okay.

25 A. --- because it's kind of uncommon sometimes to not

1 have enough air.

2 Q. Sure. Did you ever hear anybody talking about
3 getting a miner from the longwall gassed off?

4 A. Not on the miner section, but I never really --- I
5 never went over to the longwall section.

6 Q. Okay.

7 A. So ---.

8 Q. Did you ever hear of any little ignitions or
9 pop-offs?

10 A. Definitely not on the miner section.

11 Q. Did you ever hear of anybody mining without vent
12 curtains in place?

13 A. No.

14 Q. You guys are pretty good about keeping curtains
15 up?

16 A. Oh, yeah. Goose and Morris were both --- I mean
17 they were ---. Well, Goose had been in the mines for
18 34 years. He ain't wanting to --- he ain't wanting
19 anything to happen. He's getting ready to retire, and
20 Morris, he's like that. He was always real safe and
21 stuff, too.

22 Q. What about when you first got on the section?
23 What shape were the curtains in then?

24 A. They were still --- they were pretty good.

25 Q. Okay.

1 A. Pretty good.

2 Q. You ever hear of anybody monkeying with the
3 methane monitors?

4 A. Uh-uh (no). I never heard nothing like that.

5 Q. Putting bags over the sensors or doing something
6 else so they wouldn't read out?

7 A. Not that I know of.

8 Q. Did you ever hear of anybody complaining about
9 safety issues at this mine?

10 A. Not really. I mean, I thought --- I loved my job
11 up there, so I mean not that I know of.

12 Q. Why do you think the mine blew up? Do you have
13 any idea?

14 A. No. I mean, that's --- I have no idea on that.
15 You know, I would think it would have come from the
16 longwall, I mean, because I can't think of anything on
17 the miner section that --- but I mean, like I said, we
18 had three days off. I don't know what was ---.

19 Q. Sure.

20 A. I don't know what went on up there for three days
21 while we was gone.

22 Q. Have you heard of anything going on during that
23 long weekend? You heard of anybody making the changes
24 to the ventilation over that long weekend?

25 A. Uh-uh (no). No, I didn't hear anything like that.

1 And like I said, we had been gone for three days and
2 then hadn't been back, 30 minutes and then ---.

3 Q. That's a pretty trying way to start a shift.

4 A. Uh-huh (yes).

5 Q. What about when you were working outby? Did you
6 ever get off onto some of the old entries that people
7 don't go in too much, you know, not the track entry or
8 the belt entry but the entries over parallel to them?
9 Ever get back there?

10 A. Uh-huh (yes). No, I never really went back in
11 there. And like I said, whenever we was --- whenever
12 I first started working there I ---. I like to stay
13 busy, and I was always --- had my hands on something
14 in there, so I really wasn't going off taking a nap or
15 nothing.

16 Q. Yeah, didn't go back there just to check things
17 out?

18 A. No, I didn't really.

19 Q. Okay. You think if somebody made a safety-related
20 complaint at this mine, do you think they would have
21 had any retaliation or threats because of that?

22 A. I wouldn't think, but I don't know. I guess it
23 really just depended on where you're at, who you were
24 and --- you know. It's going to be different for
25 everybody, I'd say.

1 Q. Okay. Do you think the mine management encouraged
2 people to report safety issues?

3 A. Yeah, the safety director and them did it for us,
4 uh-huh (yes).

5 Q. I mean, do you remember who the safety director
6 was?

7 A. Oh, gosh. What was his name? I can't remember
8 his name off the top of my head.

9 Q. Well, was it Berman Cornett?

10 A. Yeah, that was Berman.

11 Q. That was the gentleman that got your statement?

12 A. No, it wasn't Berman.

13 Q. It wasn't Berman?

14 A. No. It had to be above him.

15 Q. Okay. Are you familiar with Jason Whitehead?

16 A. Uh-uh (no).

17 ATTORNEY BABINGTON:

18 Is that a yes or a no?

19 A. No, no. I'm sorry.

20 MR. SHERER:

21 Okay. That's all the questions I've got.

22 EXAMINATION

23 BY MS. SPENCE:

24 Q. Ryan, when you were outside on April 5th and the
25 management folks, Persinger and others, were out

1 front, did you hear them say anything about what was
2 going on?

3 A. No, not really, other than they couldn't get ahold
4 of anybody on 22 Head. They couldn't get ahold of
5 anybody on the longwall or nothing. And that's
6 whenever it really --- because you know, we were all
7 kind of --- sorry, but we were kind of joking about,
8 you know. Oh, gosh, what's happened now, you know?
9 And then after that, that's whenever it became ---
10 everybody stopped and it was pretty serious at that
11 point.

12 Q. Did you hear them say anything at that point
13 when ---?

14 A. No, nothing other than they really couldn't get a
15 hold of anybody. And you know, Wayne Persinger wasn't
16 saying much. There really wasn't anybody saying much.

17 MS. SPENCE:

18 Okay. Thank you.

19 ATTORNEY BABINGTON:

20 Do you want to take a quick break?

21 MR. FARLEY:

22 If you like. I have a couple, three and
23 I should be finished.

24 ATTORNEY BABINGTON:

25 Go ahead, then.

1 RE-EXAMINATION

2 BY MR. FARLEY:

3 Q. Okay. On April 5th as you were walking to the
4 mantrip underground --- and I assume you were walking
5 up the track entry; is that correct?

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

7 Q. Which way was the air moving in the track entry
8 that day?

9 A. Gosh, I can't even recall. I mean, I wasn't
10 really paying attention, to be honest with you.

11 Q. Okay. Did it seem to be moving in the same
12 direction that it has been moving the last time you
13 traveled through there?

14 A. It didn't seem like anything was different, no.

15 Q. Okay. All right. And you indicated you passed
16 Wayne Persinger.

17 A. Uh-huh (yes).

18 Q. Which direction was he walking?

19 A. He was walking towards the portal outside.

20 Q. Okay. During the three months that you worked on
21 the 22 Headgate section, were there two continuous
22 mining machines on the section?

23 A. Yes.

24 Q. Was there ever an occasion when both continuous
25 mining machines were being operated at the same time?

1 A. No, I think there was always just one miner going
2 at one time.

3 Q. Okay. Now, you were a scoop operator?

4 A. Yes, sir.

5 Q. When you were preparing to clean a working face
6 and rock dusted, how did you usually go about that?
7 what steps did you usually take to do that?

8 A. First I usually walked to see what's going on, you
9 know, see what the best route to get across the
10 section is, and then drop back, hang the miner cable
11 if I needed to, to get by it. And you know, a lot of
12 times I didn't have to do anything in Three face, so
13 you know, that was really the one I kept cleanest the
14 most, because I did not have to come across there, but
15 usually it was already in the return, you know,
16 because that's where the supply hole was.

17 So then just, you know, you get with everybody and
18 you just move across the face, hang the curtain just
19 enough to where I can get under it and hop of, let the
20 curtain back down and get in there to clean it, rock
21 dust it and then wait until I can get back across the
22 section.

23 Q. Okay.

24 A. And usually I'd drop down and feed it and then
25 clean the feeder, too, most of the time whenever I was

1 already coming out that way.

2 Q. Okay. When you hung the curtain, how did you do
3 that?

4 A. I just would roll it up, just, and take a nail and
5 stick it in there just enough to get the --- just to
6 get the scoop through and then I'd come back and drop
7 it back down.

8 Q. Okay.

9 A. Unless the curtain was no longer needed and was
10 going to be moved anyway. Then I'd just take it down
11 and drag it on up and get ready to hang it back up in
12 the next break.

13 Q. All right.

14 A. And the fly pads and everything else, we always
15 kept them pretty well maintained and everything.

16 MR. FARLEY:

17 Okay.

18 RE-EXAMINATION

19 BY MR. SHERER:

20 Q. You mentioned that you picked up your last
21 paycheck and spoke to some lawyers up at Marfork.

22 A. Marfork, yeah.

23 Q. Do you recall what day that was?

24 A. Marfork. I had the two weeks off right after the
25 explosion and I only worked up there for like a week

1 and a half, so it was approximately three and a half
2 weeks after the explosion.

3 Q. Okay. So it's about the end of the month?

4 A. Uh-huh (yes).

5 Q. Okay.

6 A. Yes, sir.

7 Q. Okay. Thank you. What was the rock dust like
8 behind the box check on the belt? Do you recall?

9 A. It was already pretty well because the trickle,
10 the trickle from the trickle duster was right there.

11 Q. Okay. Do you recall your first shift in the mine,
12 what you did that shift?

13 A. The very first one?

14 Q. Uh-huh (yes).

15 A. We built a --- knocked a stopping, built a
16 stopping and then went over and started assembling
17 that flow-through, like the middle parts of it.

18 Q. Sure.

19 A. And that's pretty time consuming because it's big
20 and you got to use the forklift and get it right and
21 put the bolts through it and everything.

22 Q. Sure. Did you walk any escapeways?

23 A. No, not on the first day, not at Performance. I
24 did at Marfork, though.

25 Q. Okay. What about did you go to the longwall on

1 that first day?

2 A. No.

3 Q. Did you go to any of the production sections?

4 A. Uh-uh (no).

5 Q. So you just went in, worked on the outby stuff.

6 Okay.

7 A. Yes.

8 Q. Where was that ghost door you were talking about?

9 Do you recall?

10 A. The what door?

11 Q. The ghost door.

12 A. Oh, I believe that was the second. Like, if
13 you're going in, it was the second set of double doors
14 that you came to after you made a right at 78 Break.

15 Q. Okay. Could you locate that on this map, please?

16 A. Where's 78 Break at? Seventy-eight (78) Break's
17 right here, so you got, what, double doors right in
18 here somewhere. And you have double ---.

19 ATTORNEY BABINGTON:

20 There are a couple Ds marked on the map.

21 A. Yeah, double doors right there.

22 MR. SHERER:

23 Yeah.

24 A. Uh-huh (yes). So this set of double doors right
25 here.

1 ATTORNEY BABINGTON:

2 All right. Do you mind --- do you mind
3 circling that with the pink highlighter, please?

4 BY MR. SHERER:

5 Q. And write ghost door somewhere down there.

6 ATTORNEY BABINGTON:

7 Yeah, anywhere on the map is fine.

8 WITNESS COMPLIES

9 BY MR. SHERER:

10 Q. And by ghost doors, you meant doors that would
11 come open all by themselves?

12 A. Yeah. You'd close it and if you didn't --- if you
13 didn't stick that rubber flap in there right, it would
14 come in there. It would come open.

15 MR. SHERER:

16 Okay.

17 ATTORNEY BABINGTON:

18 Terry, anything else? I just have two
19 real quick ones, actually just one.

20 EXAMINATION

21 BY ATTORNEY BABINGTON:

22 Q. When you mention --- you mentioned that you had
23 discussion with Massey attorneys about --- they asked
24 you questions about anyone changing record or
25 pre-shift books.

1 A. Uh-huh (yes).

2 Q. Do you recall them asking about any specific time
3 periods or specific areas in the mine?

4 A. No, they were asking about after the explosion.

5 Did I know about anybody after the explosion going and
6 altering the books? And I'm like, no. Why would I
7 know that?

8 Q. So they were asking about changing the books for
9 that shift ---

10 A. Yeah.

11 Q. --- during when the explosion happened?

12 A. Yeah. Like, somebody would go in and alter the
13 books or something after the explosion or a period,
14 you know, even before that, but they even asked after
15 it. I guess that was probably the main question he
16 was asking, was do I know about altering paperwork
17 after the explosion? And no. Why would I know that?

18 ATTORNEY BABINGTON:

19 All right. Before we close up, we have

20 three exhibits for this interview. The first is the
21 copy of the subpoena, the second exhibit is the return
22 of service copy, and then the third exhibit will be
23 the Bandytown fan map which we --- which witness
24 marked.

25 (Powers Exhibit Three marked for

1 identification.)

2 ATTORNEY BABINGTON:

3 All right. On behalf of MSHA and the

4 Office of Miners' Health, Safety and Training, I want

5 to thank you for appearing and answering questions

6 today. Your cooperation is very important to the

7 investigation as we work to determine the cause of the

8 accident. We request that you not discuss your

9 testimony with any person aside from a personal

10 representative or Counsel. After questioning other

11 witnesses, we may call you if we have any follow-up

12 questions. If at any time you have additional

13 information regarding the accident that you'd like to

14 provide to us, please contact us at the contact

15 information previously provided.

16 If you wish, you may now go back over any

17 answer you've given during this interview. You may

18 also make any statement that you'd like to make at

19 this time.

20 A. No statement, other than, I mean, I thought it was

21 safe. I mean, this explosion, I believe, is really an

22 accident. I'm sorry that it happened, but if

23 Performance opens back up and calls me back to work

24 and it's my same crew, I probably will go back to work

25 there, because I felt like the --- I felt like

1 everything was operating all right. I mean, I'm sure
2 that whenever they figure out exactly what this was
3 that it was just something that ---. I mean, mining
4 is a --- it's a dangerous industry. Accidents are
5 going to happen, and you're never going to stop it.

6 ATTORNEY BABINGTON:

7 Okay. Well, again, I want to thank you
8 for your cooperation in this matter.

9 A. Sure.

10 * * * * *

11 STATEMENT UNDER OATH CONCLUDED AT 5:35 P.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Alison Salyards, 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.



Alison Salyards