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**Transcript of the Testimony of Patrick Hilbert**

**Date:** July 10, 2010

**Case:**

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Phone: 814-536-8908

Fax: 814-536-4968

Email: [schedule@sargents.com](mailto:schedule@sargents.com)

Internet: [www.sargents.com](http://www.sargents.com)

CONFIDENTIAL STATEMENT UNDER OATH

OF

PATRICK HILBERT

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Saturday, July 10, 2010, beginning at 1:17 p.m.

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A P P E A R A N C E S

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

ERIK SHERER  
Mine Safety and Health Administration  
1100 Wilson Boulevard  
Arlington, VA 22209-3939

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

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

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25

BILL TUCKER  
West Virginia Office of Miners' Health,  
Safety and Training  
Welch Regional Office  
891 Stewart Street  
Welch, WV 24801-2311

CELESTE MONFORTON, MPH, DRPH  
West Virginia Independent Investigation  
2100 M. Street, NW  
Suite 203  
Washington, DC 20037

CHRISTOPHER J. SEARS, ESQUIRE  
Shuman, McCuskey & Slicer, PLLC  
1411 Virginia Street East  
Suite 200  
P.O. Box 3953  
Charleston, WV 25339

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P R O C E E D I N G S

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ATTORNEY BABINGTON:

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

MS. MONFORTON:

Celeste Monforton, with Governor Manchin's special team.

MR. FARLEY:

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

MR. TUCKER:

Bill Tucker, West Virginia Office of Miners' Health, Safety and Training.

ATTORNEY BABINGTON:

There are several members of the investigation team also present in the room today. Erik Sherer will be conducting initial questioning. All members of the Mine Safety and Health

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

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

1 your assistance in this investigation.

2 You may have your personal attorney

3 present during the taking of this statement or another

4 personal representative, if MSHA has permitted it, and

5 you may consult with your attorney or representative

6 at any time. Your statement is completely voluntary.

7 You may refuse to answer any question and you may

8 terminate your interview at any time or request a

9 break at any time. Since this is not an adversarial

10 proceeding, formal Cross Examination will not be

11 permitted. However, your personal legal

12 representative may ask clarifying questions if

13 appropriate.

14 Your identity and the content of this

15 conversation will be made public at the conclusion of

16 the interview process and may be included in a public

17 report of the accident, unless you request that your

18 identity remain confidential or your information would

19 otherwise jeopardize a potential criminal

20 investigation. If you request us to keep your

21 identity confidential, we will do so to the extent

22 permitted by law. That means that if a judge orders

23 us to reveal your name or if another law requires us

24 to reveal your name or if we need to reveal your name

25 for other law enforcement purposes, we may do so.

1       Also, there may be a need to use the information you  
2       provide to us or other information we may ask you to  
3       provide in the future in other investigations into and  
4       hearings about the explosion. Do you understand?

5       MR. HILBERT:

6       Yes.

7       ATTORNEY BABINGTON:

8       Do you have any questions?

9       MR. HILBERT:

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

1 information you've learned from someone else. I'd  
2 like to thank you in advance for your appearance here.  
3 We appreciate your assistance in this investigation.  
4 Your cooperation is critical in making the nation's  
5 mines safer.

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

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're encouraged to immediately  
22 contact MSHA and file a complaint under Section 105(c)  
23 of the Act. Terry?

24 MR. FARLEY:

25 Mr. Hilbert, I'd like to advise you that

1 the West Virginia Coal Miners' Health and Safety  
2 Regulations also protect miners against potential  
3 discrimination resulting from participation in these  
4 type of investigative interviews, and I'd like to pass  
5 along some contact information to you in the event  
6 that you should suffer any such discrimination. The  
7 contact information refers specifically to West  
8 Virginia Code Chapter 22A, Article 1, Section 22 and  
9 contains a mailing address for the West Virginia Board  
10 of Appeals, which hears complaints. And I also have a  
11 business card from myself and one from Mr. Tucker  
12 here, who is our lead underground investigator. And  
13 you can certainly call us if you should have any  
14 issues. We would advise you that, you know, should  
15 you have a complaint, it must be filed within 30 days  
16 of the occurrence of the problem.

17 -----  
18 PATRICK HILBERT, HAVING FIRST BEEN DULY SWORN,  
19 TESTIFIED AS FOLLOWS:

20 -----  
21 ATTORNEY BABINGTON:

22 Please state your full name, address and  
23 phone number for the record, please.

24 A. Patrick Ray Hilbert, (b) (7)(C)

1 ATTORNEY BABINGTON:

2 Do you have a personal legal  
3 representative with you today?

4 A. Yes, I do.

5 ATTORNEY BABINGTON:

6 Will your personal legal representative  
7 please identify himself?

8 ATTORNEY SEARS:

9 My name is Christopher J. Sears. I'm  
10 with the law firm of Shuman, McCuskey & Slicer in  
11 Charleston.

12 ATTORNEY BABINGTON:

13 Can we have your address, business  
14 address and telephone number, please?

15 ATTORNEY SEARS:

16 1411 Virginia Street East, Charleston,  
17 West Virginia, I think it's Suite 200 (25301), and  
18 telephone number is (304) 345-1400.

19 ATTORNEY BABINGTON:

20 Mr. Hilbert, did you voluntary choose to  
21 have this individual as your personal legal  
22 representative?

23 A. Yes, I did.

24 ATTORNEY BABINGTON:

25 Did you feel like you had a choice in the

1 matter?

2 A. Yes, I did.

3 ATTORNEY BABINGTON:

4 Do you consent now to having this  
5 individual as your personal representative?

6 A. Yes, I do.

7 ATTORNEY BABINGTON:

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

11 A. Yes, I do.

12 ATTORNEY BABINGTON:

13 Are you legally representing the witness  
14 in this matter?

15 ATTORNEY SEARS:

16 I am.

17 ATTORNEY BABINGTON:

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

22 ATTORNEY SEARS:

23 I don't know the rules of conduct that  
24 you're referring to, but I will agree to be bound by  
25 the West Virginia Rules of Professional Conduct in

1           that regard.

2   ATTORNEY BABINGTON:

3   I think the rule would be referring to,

4           that if you have an attorney/client privilege with  
5           this individual, you cannot discuss that information  
6           with other individuals.

7   ATTORNEY SEARS:

8   Are you talking about the attorney/client  
9           privilege?

10   ATTORNEY BABINGTON:

11   Yes.

12   ATTORNEY SEARS:

13   Well, that's a matter with the client  
14           with regard to --- to the extent of that privilege.  
15           I'm aware of my obligations, professional obligations.  
16           Are you telling me that you're prohibiting me from  
17           discussing anything with anyone else? I don't --- I  
18           mean, I don't know that you have the authority to tell  
19           me what to do. I will tell you that my conduct will  
20           abide with my rules of --- with the rules of my  
21           profession.

22   ATTORNEY BABINGTON:

23   Yeah. I don't think I'm --- I don't  
24           think I'm asking you to do anything that you're not  
25           already required to do, ---

1 ATTORNEY SEARS:

2 That's right.

3 ATTORNEY BABINGTON:

4 --- but I think the Rules ---.

5 ATTORNEY SEARS:

6 I know the Rules that govern my conduct,

7 if that's the question, ---

8 ATTORNEY BABINGTON:

9 Okay.

10 ATTORNEY SEARS:

11 --- and I will abide by those rules that

12 govern my conduct.

13 ATTORNEY BABINGTON:

14 Are you being paid by a third party to

15 provide such representation?

16 ATTORNEY SEARS:

17 I'm not going to answer that.

18 ATTORNEY BABINGTON:

19 You won't --- so you won't ---?

20 ATTORNEY SEARS:

21 I'm not answering that.

22 ATTORNEY BABINGTON:

23 You're not answering the question?

24 ATTORNEY SEARS:

25 No.

1 ATTORNEY BABINGTON:

2 So I'd like to note for the record that  
3 when your firm has represented witnesses in the past,  
4 it was noted that Massey was paying for that  
5 representation.

6 ATTORNEY SEARS:

7 That's your representation. I don't  
8 know. I mean, witnesses in the past ---.

9 ATTORNEY BABINGTON:

10 Witnesses represented by your firm.

11 ATTORNEY SEARS:

12 We've represented a lot of witnesses in  
13 the past, but ---.

14 ATTORNEY BABINGTON:

15 In this investigation context.

16 ATTORNEY SEARS:

17 You're making that representation to me.

18 I wasn't here. I don't know, so ---.

19 ATTORNEY BABINGTON:

20 Please confirm that you have the witness'  
21 informed consent in writing which reflects that you  
22 have explained in person the risks and advantages of  
23 such representation, including any real or potential  
24 conflict of interest.

25 ATTORNEY SEARS:

1 My communication with my client is  
2 privileged, so I'm not going to confirm or deny  
3 anything --- the content of our conversations.

4 ATTORNEY BABINGTON:

5 Including whether you notified him of any  
6 potential conflict of interest?

7 ATTORNEY SEARS:

8 If you want to ask him whether or not he  
9 has met with me, has talked with me, not the substance  
10 of the discussion, or if he has any concerns ---. You  
11 know, obviously, I've abided by the rules of  
12 professional conduct in accepting representation in  
13 this regard, and I have complied with those ---

14 ATTORNEY BABINGTON:

15 But if you're ---.

16 ATTORNEY SEARS:

17 --- as in dealing with conflicts of  
18 interest. I've abided by the Rules of Professional  
19 Conduct as with regard to conflict of interest.

20 ATTORNEY BABINGTON:

21 Please confirm that this written consent  
22 reflects that the witness has been given reasonable  
23 opportunity to consider the risks and reasonably  
24 available alternatives to such representation and to  
25 raise questions and concerns with you.

1 ATTORNEY SEARS:

2 Well, you're asking about a document that

3 I haven't acknowledged exists, so I can't answer that.

4 ATTORNEY BABINGTON:

5 Please confirm that the third-party payer

6 will not direct, regulate or interfere with your

7 professional judgment in representing your client.

8 ATTORNEY SEARS:

9 Again, you're assuming something that I

10 haven't disclosed to you, so I can't answer that

11 either. You're assuming that there's a third-party

12 payer, which I have not ---.

13 ATTORNEY BABINGTON:

14 Well, you haven't denied that there's a

15 third-party payer.

16 ATTORNEY SEARS:

17 Okay. But you're asking me to concede

18 that there was a third-party payer, and I haven't

19 conceded that. So I'm not going to answer any of

20 those questions.

21 A. I chose this attorney. Okay? We have talked

22 about the conflict of interest, the dangers, and we've

23 talked about everything. This is the attorney that I

24 did choose myself.

25 ATTORNEY BABINGTON:

1 Okay. I just have a few more.

2 A. Okay.

3 ATTORNEY BABINGTON:

4 Please confirm that there is no current

5 attorney/client relationship between you and --- well,

6 I guess you're not confirming that there's any

7 third-party payer?

8 ATTORNEY SEARS:

9 That's right.

10 ATTORNEY BABINGTON:

11 So you wouldn't confirm whether there

12 would be ---

13 ATTORNEY SEARS:

14 That's correct.

15 ATTORNEY BABINGTON:

16 --- a relationship there?

17 ATTORNEY SEARS:

18 That's correct.

19 ATTORNEY BABINGTON:

20 Mr. Hilbert, having heard these

21 representations, do you still want this person as your

22 personal legal representative today?

23 A. Yes, I do.

24 MS. MONFORTON:

25 May I ask a question?

1 ATTORNEY BABINGTON:

2 Yes, Celeste.

3 MS. MONFORTON:

4 Would you be able to confirm whether  
5 other attorneys with your firm are representing  
6 individuals who are employed by or officers for Massey  
7 Energy?

8 ATTORNEY SEARS:

9 That are employed by or officers of --- I  
10 mean, I think the record speaks for itself what we  
11 have done. I don't have a file list in front of me to  
12 be able to tell --- I do believe that John McCuskey,  
13 who is a member of our firm, appeared before this  
14 board before with regard to another employee. That's  
15 the extent of my knowledge.

16 MS. MONFORTON:

17 Okay. Okay. Thank you.

18 ATTORNEY BABINGTON:

19 I guess have you represented Massey in  
20 any other ---?

21 ATTORNEY SEARS:

22 I'm sorry. He agreed to be here  
23 voluntarily for questioning. Go ahead.

24 ATTORNEY BABINGTON:

25 Have you represented or your firm

1 represented Massey in any matter?

2 ATTORNEY SEARS:

3 I'm not going to answer that. Listen,

4 I'm not going to answer any more of your questions.

5 Okay? If he has the right under oath to not answer  
6 any questions, I have the right certainly, being here,  
7 representing him, not to be the subject of the  
8 inquisition. Okay? So go ahead and ask him some  
9 questions.

10 ATTORNEY BABINGTON:

11 Celeste, do you have anything further?

12 MS. MONFORTON:

13 No. I just want to make it clear for the  
14 record what your relationship is with him, and so I  
15 think that, you know, we've done that thoroughly  
16 through the questions that Mr. Babington has asked. I  
17 just think it's important for the record.

18 ATTORNEY SEARS:

19 I appreciate that. I think it was very  
20 clear at the very beginning when Mr. Hilbert indicated  
21 that I was his attorney and that he was my client, and  
22 that's really where the inquiry should end.

23 ATTORNEY BABINGTON:

24 Well, it's not always as simple as that,  
25 but your point is taken.

1 ATTORNEY SEARS:

2 Okay. Thank you.

3 ATTORNEY BABINGTON:

4 Mr. Farley, do you have anything?

5 MR. FARLEY:

6 Yeah, just --- I'm not an attorney, and

7 I'm not even going to pretend that I am. I'm going to

8 say this. I'm going to proceed under the assumption

9 that Mr. Hilbert's representative is being paid by Mr.

10 Hilbert's employer, which would be Massey Energy.

11 ATTORNEY BABINGTON:

12 Okay. Erik?

13 EXAMINATION

14 BY MR. SHERER:

15 Q. First of all, I want to thank you for coming down

16 here, Mr. Hilbert. We're really trying to meet two

17 general goals with this investigation. The first one

18 is we want to determine what happened that led up to

19 this explosion so we can hopefully prevent it in the

20 future. Twenty-nine (29) miners died in this

21 explosion. And we also owe the families some closure

22 on this, so that's the second goal that we're trying

23 to meet, to explain what happened to their loved ones.

24 So we appreciate your help.

25 A. Uh-huh (yes).

1 Q. Are you appearing here today voluntarily?

2 A. Yes, I am.

3 Q. Thank you. Have you previously been interviewed  
4 about this accident?

5 A. Yes, I have.

6 Q. Who did that interview, please?

7 A. I can't remember his name. His card is at home in  
8 my gun cabinet. It was two Federal investigators.

9 Q. Okay. Thank you. Anyone else?

10 A. (Indicates no).

11 ATTORNEY SEARS:

12 You mean other than his attorney?

13 MR. SHERER:

14 Yes.

15 A. No.

16 BY MR. SHERER:

17 Q. Okay. Thank you. How many years of mining  
18 experience do you have?

19 A. Four years, seven months.

20 Q. Can you give me just a rough idea of what that  
21 consists of? Who did you work for and what did you  
22 do?

23 A. I've been with Massey my entire career. I started  
24 out low, as a supply man at Slip Ridge. Transferred  
25 to Marsh Fork Mine, which is --- both of them mines

1 were Marfork.

2 Q. Sure.

3 A. Then I transferred to White Queen, and that's when  
4 I learned to bolt, scoop, run a miner. So I pretty  
5 much have experience doing everything in the mines.  
6 Then I transferred to Performance, went into the  
7 foreman's program and got my foreman's paper ---  
8 assistant foreman's paper, I'm sorry.

9 Q. When did you get your papers?

10 A. February the 1st of this year.

11 Q. When did you --- are you currently employed?

12 A. Yes.

13 Q. Where is that, please?

14 A. I just transferred to Elk Run Coal Company.

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

17 A. Federal or State ---?

18 Q. Federal or State mining certification?

19 A. Can you ---?

20 Q. One of them would be your foreman's papers.

21 A. Yes.

22 Q. Do you have any other certifications?

23 A. I have an EMTM.

24 Q. Okay.

25 A. I have a dust sampler's card and a MINN number.

1 Q. Okay.

2 A. And that's it.

3 Q. Okay. Thank you. What position did you have at  
4 Upper big Branch prior to the explosion?

5 A. I ran a miner for a year, so I was a continuous  
6 miner operator. Then I received my papers February  
7 the 1st, and I think, if I'm not mistaken, I took a  
8 position as a production foreman on Headgate 22,  
9 approximately a week-and-a-half to two weeks after I  
10 got my papers, so around the 15th.

11 Q. Okay. About the middle of February ---

12 A. Yeah.

13 Q. --- you started being a foreman? Had you been a  
14 foreman in any other section than Headgate 22?

15 A. No.

16 Q. When you were running the miner, was that on  
17 Headgate 22 also?

18 A. No.

19 Q. Where was that at?

20 A. That was --- I ran it in this area right here,  
21 which is the old Four section, at the closest point of  
22 the mines, right there.

23 Q. Okay.

24 A. I ran on the old Two section, ---

25 Q. Okay.

1 A. --- which was right here, right at the Headgate  
2 One North outby it probably ten breaks, in that area.

3 Q. Okay.

4 MR. SHERER:

5 And the witness is pointing to the rooms  
6 developed between the Six North belt and the headgate  
7 and tailgate of the longwall on the outby side.

8 BY MR. SHERER:

9 Q. Okay. Who was the previous boss on Headgate 22;  
10 do you know?

11 A. I can't think of his real name. They called him  
12 Smurf. I can't remember his real name.

13 Q. Okay. Do you know why Mr. Smurf left the  
14 organization?

15 A. No, I don't.

16 Q. Okay. Oh, was it a gentleman by the name of  
17 Hutchens?

18 A. Yes, Richard Hutchens.

19 Q. Richard Hutchens.

20 A. That's him.

21 Q. What shift did you normally work?

22 A. Evening.

23 Q. When did that shift start?

24 A. Can you be more specific? When I was a foreman or  
25 when I was running a miner, because it was different?

1 Q. Okay. When you were a foreman.

2 A. A foreman, my shift started at 3:00 p.m.

3 Q. 3:00 p.m. And when did it end?

4 A. At 1:00 p.m. --- or 1:00 a.m. I'm sorry.

5 Q. Okay. Sure. Who was on your crew; do you recall?

6 A. Yes. I had Stanley Stewart. He was a continuous  
7 miner operator. Morris Hulligan, continuous miner  
8 operator. Brent Racer, shuttle car operator. Greg  
9 Sprouse, shuttle car operator. Derrick Williams, roof  
10 bolt operator. Jason Dancey, roof bolt operator. I  
11 believe it was Adam Farley I think was his last name.  
12 he was a roof bolter operator. And the scoop man was  
13 --- I can't remember his name. He was only with me  
14 for a few days. I've got it wrote down somewhere.

15 Q. That's okay.

16 A. And the electrician was Larry Richmond.

17 Q. Okay. So that's what, nine individuals?

18 A. Uh-huh (yes).

19 Q. What sort of ventilation were you running on that  
20 section?

21 A. Sweep.

22 Q. Sweep, okay. Did you ever run split ventilation?

23 A. On that section?

24 Q. Uh-huh (yes).

25 A. No.

1 Q. Okay. Thank you. Who was your immediate  
2 supervisor?

3 A. That would be Terry Moore and Everett Hager.

4 Q. Do you recall what their titles were?

5 A. Terry Moore was the mine foreman. Everett Hager  
6 was the superintendent.

7 Q. Okay. Have you ever been injured at Upper Big  
8 Branch?

9 A. No.

10 Q. Are you familiar with the St. Francis Pain Clinic  
11 in Charleston?

12 A. Yes.

13 Q. Do you recall having a conversation in early March  
14 2010 with Mr. Silbert Osborne, former mine foreman at  
15 AEP Central Appalachian Coal?

16 A. Uh-huh (yes).

17 Q. Do you recall what you talked about?

18 A. No, I don't.

19 Q. Okay. Did you travel through any equipment doors  
20 getting to that section?

21 A. Just the airlock doors on the track, yes, several.

22 Q. Several of them. What condition were those doors  
23 in?

24 A. Most, pretty good. They --- there was some on  
25 the --- let's see. There was two at the portal, there

1 was two here at --- right past 78 Break, and then  
2 there was two down here, at the mouth of Headgate 22.

3 Q. Did you ever come up and notice any of those doors  
4 being open?

5 A. On one occasion, yes, I did.

6 Q. Can you explain that to us, please?

7 A. I started the shift. It was probably two days,  
8 three days after I had the section to myself, and my  
9 air at the --- in the intake wasn't what it was  
10 supposed to be, so I shut the section down, which we  
11 hadn't really started. I just --- we stopped. I  
12 called outside, told them what was going on, and then  
13 I had to start working my way back down, seeing where  
14 my air was.

15 Q. Sure.

16 A. And I went down and I found that door open at the  
17 mouth of Headgate 22, and I checked the stopping line  
18 all the way up. And probably about --- I was down  
19 probably two-and-a-half, three hours, before I started  
20 production again.

21 Q. So when you closed the door, you got your air?

22 A. Yes.

23 Q. Thank you. Do you recall about when that was?

24 You say it was a couple --- two or three days after  
25 you started your ---?

1 A. After I took the section myself.

2 Q. So ---

3 A. Probably ---.

4 Q. --- mid-February or so?

5 A. Yeah.

6 Q. Thank you. Could you please describe what your  
7 general duties were during a typical shift, what did  
8 you start out with and just take us through that?

9 A. Well, I would start just --- from the time I got  
10 to the mines or the time I was underground?

11 A. From the time you got changed out and started your  
12 general work.

13 Q. Okay. The first thing I would do, I would show up  
14 at work. I would take a fire boss report from the  
15 boss that was on the section and took pre-shift. Then  
16 I would go to the section. You know, you'd have to  
17 run your faces ---

18 Q. Sure.

19 A. --- and check your air in your last open break,  
20 check your returns, which are done twice a shift,  
21 check your faces every two hours, put up center lines,  
22 make sure that there was air in the faces. And then  
23 around 11 o'clock I would call out pre-shift to the  
24 oncoming shift. Then when the shift was over, I would  
25 go outside, fill the rest of my books out, sign them

1 and go home.

2 Q. So you would take a pre-shift from the prior  
3 section foreman?

4 A. Uh-huh (yes).

5 Q. And then you would basically go in, run coal. You  
6 made several examinations during the shift, and then  
7 you would call out the pre-shift for the next shift?

8 A. Yes, pre-shift.

9 Q. The on-shift examinations, did you fill those out  
10 after you got out of the mine?

11 A. Yes.

12 Q. Do you know why you filled out the pre-shift and  
13 on-shift? Do you know why you did those?

14 A. Because that way there would be dangers recorded  
15 in the book, what was done, what action was taken.  
16 The pre-shift was to know what I was coming into, the  
17 dangers and anything like that.

18 Q. Sure. Did you ever countersign those pre-shifts  
19 or on-shifts?

20 A. Countersign them? You mean as far as for another  
21 boss?

22 Q. Uh-huh (yes).

23 A. Yes.

24 Q. Okay.

25 A. I did it probably a day or two after I got my

1 papers.

2 Q. Okay. Did anyone have to --- did anyone further  
3 up the management chain have to countersign those  
4 books for you? Do you recall?

5 A. I don't recall.

6 Q. Okay.

7 A. Well, I mean, you know, the mine foreman and  
8 superintendent always signs the books after I was, you  
9 know --- they would go over the book.

10 Q. So they would review what you entered into the  
11 book?

12 A. They would look at it and they --- well, there's a  
13 place on the book. I'm sure everybody here knows  
14 that, you know, there's a place for the mine foreman  
15 and the superintendent both to sign.

16 Q. Sure. Have you ever been questioned about  
17 something you entered into a book by one of those  
18 individuals?

19 A. Actually I was questioned about something I didn't  
20 enter in one of the books.

21 Q. Okay. Would you care to explain that?

22 A. The day that I had an air problem, you know, the  
23 air problem I was talking about before, ---

24 Q. Sure.

25 A. --- I didn't enter it in my on-shift. And I was

1 questioned why I didn't --- asked why I didn't. I  
2 guess ignorance is no excuse, but at that point I had  
3 been a boss about two days, and I was still trying to  
4 learn everything and just didn't know to do it.

5 Q. Okay. Sure. Everybody has to learn.

6 A. Yeah.

7 Q. Do you recall having to take various readings of  
8 air quantities and methane levels and oxygen levels  
9 during those examinations?

10 A. Uh-huh (yes).

11 Q. Did you record those in the on-shift books?

12 A. Yes.

13 Q. How would you describe the roof, rib and floor on  
14 Headgate 22 section?

15 A. The roof was good, solid sandstone. The ribs  
16 were --- they were fairly good, too. I didn't really  
17 never see a whole lot of evidence of ribs rolling out.  
18 We put a few bolts in here and there if we needed  
19 them, you know, spot bolt them. The floor, we had ---  
20 we had some soft bottom. It busted some, but we were  
21 taking bottom, you know, for the height. So it was  
22 hard until, you know, it got down about 18 inches.

23 Q. Okay. How much bottom were you taking? Do you  
24 recall?

25 A. I'm guessing here. I would say right at the end I

1 was probably taking 26 to 28 inches of bottom.

2 Q. And so it got hard after about 18 inches?

3 A. No. The first 18 inches were hard. It was a  
4 little softer underneath that.

5 Q. Excuse me. I misunderstood you. Was it sandier  
6 on top or ---?

7 A. Pardon?

8 Q. Was the floor sandier in that first 18 inches?

9 A. Like a sandstone?

10 Q. Uh-huh (yes).

11 A. It looked to me like --- it looked to me like it  
12 was a streak. It had sand rock and shale in it.

13 Q. Intermittent sandy shale.

14 A. That's what it looked like to me.

15 Q. And once you got through that 18 inches or so, was  
16 it more clay or ---?

17 A. Yeah.

18 Q. Okay.

19 A. It was kind of a --- just real soft --- if your  
20 miners would spin, it would be hung up.

21 Q. Okay. When you say it was cracking up, did it  
22 crack up immediately after the miner finished his cut  
23 or did it crack up a few breaks outby; do you recall?

24 A. Most of the time it was a few breaks outby, but we  
25 had some instances where it would crack up underneath

1 the miner as it was mining.

2 Q. Okay. The outby cracking, did you ever have to go  
3 back and grade that down?

4 A. Most of the time it was taken care of with a  
5 scoop.

6 Q. Okay. How was the section laid out? Could you  
7 describe --- first of all, when you'd move the --- how  
8 often did you move the belt up?

9 A. It wasn't very often because we didn't run a whole  
10 lot. Twenty (20) foot cut plans, you know. I would  
11 say they might have moved once a week.

12 Q. Okay. And where was the --- did you call the  
13 Number One entry the left-hand entry?

14 A. Yes.

15 Q. Where was the belt at?

16 A. The belt was in the Number One entry.

17 Q. The belt was in the Number One. What was in  
18 Number Two?

19 A. The intake power and track.

20 Q. And was Number Three your return?

21 A. Yes, it was.

22 Q. Okay. And what was the typical --- first of all,  
23 did you lay out the cut sequence?

24 A. For the men?

25 Q. For the --- yeah, for advancing the section?

1 A. Yes.

2 Q. Okay. How would you typically do that? Would you  
3 try to lead with one side or the other?

4 A. Basically what they had showed me was to try to  
5 connect the blocks, not to cut into the air. So you  
6 know, there was instances when you would have to  
7 drive --- you would have to drive One right over and  
8 then punch into it with Two. And then Three you would  
9 drive up and punch Two right into Three. So basically  
10 just try to cut what you can because, you know,  
11 there's three entries. You don't have a whole lot of  
12 places to go, but not to cut into your air.

13 Q. Were you always able to use both shuttle cars?

14 A. Excuse me.

15 Q. Do you want some water?

16 A. Please.

17 MS. MONFORTON:

18 Here you go.

19 A. Thank you. A lot of times I wasn't able to use  
20 both shuttle cars.

21 BY MR. SHERER:

22 Q. Do you recall what the minimum ventilation  
23 quantities were in the approved ventilation plan?

24 A. The last open break, I believe it was 12,000, but  
25 Massey --- Massey's requirement for that was 20,000 in

1 the last open break.

2 Q. Okay. What about the minimum quantity on the  
3 miner?

4 A. On the miner, I believe it was 7,000 behind the  
5 curtain and --- see, I'm learning a whole new plan  
6 again, so please ---.

7 Q. Sure. I understand.

8 A. I'm pretty sure that it was 7,060 main, ---

9 Q. Okay. Sure.

10 A. --- I think.

11 Q. Sure. What about the bolter, do you remember?

12 A. I'm wanting to say 4,500.

13 Q. Did you have a requirement for idle faces?

14 A. 3,000.

15 Q. 3,000. Okay. Thank you. In general, how was the  
16 ventilation on this section?

17 A. In general, the ventilation was good.

18 Q. Ventilation was good. Did you ever hear anybody  
19 joking about having no or low air on the 22 Headgate?

20 A. I've heard of some people having trouble, but  
21 that's just --- you know, that's just speculation.  
22 It's a rumor, and I don't really know what they were  
23 talking about. I had that trouble one time, and I  
24 corrected it and I tried to stay on top of it. So for  
25 myself, that would be the only time I had any

1 ventilation trouble.

2 Q. Okay. So you always had 20,000 in the last open?

3 A. I always had close to 20,000. I always had above  
4 12,000. Sometimes I might fall a couple hundred short  
5 of 20,000.

6 Q. Okay. Did you have it for both miners?

7 A. In the last open break I had 20,000.

8 Q. Did you have to --- to get your 7,000 in the  
9 miner, did you have to do anything special? Do  
10 diagonal curtains or something?

11 A. Sometimes I had to do diagonals and shut one of  
12 the buggies down, yes.

13 Q. Did you ever notice any air fluctuations on that  
14 section?

15 A. Probably about two weeks before the explosion I  
16 noticed the air got incredibly --- a lot better.

17 Q. Okay.

18 A. I had more.

19 Q. Do you know what may have been the reason for  
20 that?

21 A. No.

22 Q. Did anybody inform you of any ventilation changes?

23 A. We had done a ventilation change on the longwall  
24 not too long after I started bossing. The only reason  
25 I know is because I come into it and they sent my men

1 home and kept me to help. I don't really know what  
2 the whole situation was. I just know we changed the  
3 ventilation. But after that, I don't recall any  
4 ventilation change after that.

5 Q. Do you recall if there was a sign over the power  
6 center?

7 A. Yes, there was, a high voltage sign.

8 Q. Okay. Was that sign always flapping about the  
9 same amount?

10 A. Most of the time, yes.

11 Q. Okay. Thank you. So one time you got up to the  
12 section and there was very little air. Was that in  
13 the pre-shift books? Do you recall?

14 A. No, it wasn't.

15 Q. Okay.

16 A. I don't know if possibly after we shut the door it  
17 came back open or somebody came in behind us and  
18 didn't shut it. I don't know.

19 Q. Sure. What's the maximum amount of methane that  
20 you've seen on that section?

21 A. The maximum amount?

22 Q. Uh-huh (yes).

23 A. This is another time that I got in trouble over my  
24 book, too. I seen 1.5 one time. What had happened  
25 was a buggy had tore a curtain down and the miner man

1 didn't see it, and the miner got to 1.5, and we shut  
2 it down and hung that piece of curtain back and let it  
3 clear out. But as far as an average amount of methane  
4 I seen, I seen .2, .3 at the most at all times.

5 Q. Now, was that on the --- methane monitor on the  
6 miner?

7 A. No. That was on my Solaris spotter.

8 Q. Okay. Where were you at when you saw those  
9 methane quantities as far as the reading of the  
10 Solaris?

11 A. In the face, holding the Solaris towards the top.

12 Q. Okay. And that was a bolted face, obviously?

13 A. Absolutely.

14 Q. This conversation you had with Mr. Osborne, did he  
15 seem like a reasonable gentleman?

16 A. He did.

17 Q. Do you recall what his qualifications were?

18 A. No. Actually, I don't. I know I just spoke to  
19 him gently. I had a doctor's appointment that  
20 morning, and we were talking.

21 Q. Do you know he was a mine foreman?

22 A. Yes, I did. I do remember him mentioning that.

23 Q. Okay. Do you recall saying that you had a miner  
24 that gassed off three times during the week of March  
25 the 15th?

1 A. No. No. He's misconstrued what was said.

2 Q. Okay.

3 A. I took a mine tour at ICG, was thinking about  
4 going to ICG instead of Massey, and I run a miner ---  
5 I run a miner for ten foot on the curtain side, and  
6 the miner gassed off five times.

7 Q. Okay.

8 A. I've not seen a miner gas off --- I've not seen  
9 one gas off completely at UBB at all.

10 Q. Okay.

11 A. I just seen that one instance where my miner man  
12 shut the miner off. I'm not for sure what he said.  
13 He said it was between 1.2 and 1.5, and he just quit  
14 and he went and looked to see what was wrong. He knew  
15 something was wrong. He noticed it. We hung a  
16 curtain back. He stepped back, we waited for it to  
17 clear up, I went up and took, you know, a gas reading,  
18 and he went back to mining.

19 Q. Okay. So you were up at ICG looking for a job?

20 A. I was thinking. And this has been several years  
21 ago. I was still running the miner at the time.

22 Q. Okay. Do you recall who you had that interview  
23 with?

24 A. I don't think I actually ever had an interview. I  
25 think I just went underground. A friend of mine works

1       there, a friend that I went to church with. Him and  
2       his brother both worked there, and they've been  
3       aggravating me, telling me I need to come there  
4       because it was so close to my house. I mean, I can  
5       hear their fan from my back door.

6       Q. Okay. Which mine was that?

7       A. Huh?

8       Q. Which mine is that?

9       A. The Beckley Mine.

10      Q. The Beckley Mine?

11      A. Uh-huh (yes).

12      Q. And do you recall which section that was?

13      A. What section was that? They called it The Mains.  
14      at the time then they only had two sections. I don't  
15      remember which section it was, to be honest with you.

16      Q. Thank you. What about rock dust? Was rock dust  
17      adequate on that section?

18      A. Yes.

19      Q. Have you ever walked your beltline?

20      A. Yes.

21      Q. Was the rock dust adequate on that beltline?

22      A. For the most part, yes. They had gotten one  
23      violation in the past that probably --- I'm not  
24      exactly sure when, that it wasn't dusted enough after  
25      a belt move, so we implemented a trickle duster hose

1 through a stopping, connected to the power center, and  
2 dust blowing the beltline 24 hours a day.

3 Q. Do you recall, roughly, where that trickle duster  
4 was located?

5 A. It stayed moved up with the belt moves, so it was  
6 one break behind the power center.

7 Q. Did you have a box check on your beltline?

8 A. You had --- you know, I guess you would call it a  
9 box check. It was a piece of curtain at the  
10 tailpiece.

11 Q. Yes. Different terminology at different places.

12 A. Yeah.

13 Q. Did you ever get off the main haulage routes or  
14 the beltlines coming into this northern part of the  
15 mine near the Glory Hole?

16 A. You mean have I been around any of this ---

17 Q. Yes.

18 A. --- right here? Yes.

19 Q. Do you recall what sort of shape that area was in  
20 as far as rock dust?

21 A. The best I can remember, it was pretty good.

22 We --- I think we were actually cutting a belt channel  
23 out somewhere in this area right here for the new

24 Glory Hole. I didn't really do anything because ---

25 I'm trying to remember exactly the event of what

1 happened there. We started the shift. My section was  
2 moving, and they needed somebody that could run a  
3 miner just to move it back out of the way.

4 Q. Oh, dear.

5 A. So I went up there, we moved it. And I was doing  
6 a little spot bolting, that was it, and something  
7 happened. We had a fall, and it took the high line  
8 out that day. So as far as that area in there, I  
9 didn't see a whole lot of it because after about three  
10 hours I was over here dangering off the fall and, you  
11 know, getting everything ready for --- to see what  
12 they were going to do about the cleanup.

13 Q. Sure. What about the ---?

14 A. Actually, it was right there.

15 ATTORNEY SEARS:

16 I'm confused about what time period  
17 you're talking about at this point.

18 MR. SHERER:

19 I'm just asking in general.

20 ATTORNEY SEARS:

21 Well, maybe, just for clarification on  
22 the record, when you're talking about this is when you  
23 were there, maybe talk about what time that was ---

24 A. Okay.

25 ATTORNEY SEARS:

1 --- so there's no confusion where you  
2 were working.

3 A. That was right after the 1st of February because I  
4 had my papers then.

5 BY MR. SHERER:

6 Q. Okay. And the fall you referred to is in the  
7 connector between the 22 Tailgate and 22 Headgate?

8 A. Uh-huh (yes).

9 Q. Just in general, the older areas of the mine that  
10 aren't being actively maintained, what sort of  
11 condition, just in general, would you say those areas  
12 were in?

13 A. I didn't see a whole lot of them.

14 Q. Okay. Did you notice any slack rock falling in  
15 one of those areas that you did see?

16 A. No, nothing significant. Maybe --- you know, I  
17 might have seen a piece of two as big as that business  
18 card, ---

19 Q. Sure.

20 A. --- you know, but nothing significant. Most of  
21 the time, like I said, I didn't see a whole lot of  
22 outby areas because, you know, like I said, when my  
23 section was moving, there was always somebody off on  
24 another section for a miner job or whatever. So most  
25 of the time they sent me straight to run a miner.

1 They kept me in the face as much as they could.

2 Q. Okay. Sure. Were you ever sent home or told not  
3 to show up for work due to ventilation problems? I  
4 think you mentioned one earlier incident.

5 A. Yes. When I was still running a miner on old Four  
6 section, we got sent home. I don't know if it  
7 was ---.

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

9 A. Last summer, the middle of summer, because it was  
10 hot. I remember I went home and rode my motorcycle.

11 Q. Okay.

12 A. And then one time when they actually cut the shaft  
13 fan through --- when they actually cut the shaft  
14 through, they withdrew all of us from the mines then.

15 Q. That's the Bandytown ---

16 A. Yes.

17 Q. --- fan? Okay. Are you aware of any problem with  
18 methane outbursts or methane inundations at this mine?

19 A. I mean, I've heard rumors of --- a long time ago  
20 of them having a lot of methane coming out of the  
21 bottom, but ---.

22 Q. That was prior to your ---?

23 A. Before I was ever there. When the longwall was  
24 there the first time, which I don't exactly know when  
25 that was.

1 Q. What shift did you work immediately prior to the  
2 explosion?

3 A. I worked that day.

4 Q. You were working on the 5th?

5 A. Yes. I was starting my shift, actually.

6 Q. Okay. Did you work Sunday night?

7 A. No. I was off. I was off Friday, Saturday and  
8 Sunday and came back on Monday. I was on a six  
9 on/three off schedule.

10 Q. So Thursday would have been your last shift?

11 A. Yes.

12 Q. Are you aware of any changes to the ventilation  
13 that occurred immediately prior to the explosion?

14 A. The event that ---?

15 Q. Within, say, that immediate --- that week  
16 immediately preceding the explosion.

17 A. That Saturday night after the explosion, yes, I  
18 went in with --- which we were approved by MSHA, of  
19 course. We went in and we built some controls, just  
20 temporary wood controls with curtain and foam to try  
21 to move the air up this way. I believe some of them  
22 were here.

23 Q. Okay.

24 A. There were some back further down in, but that  
25 would be the only change that I would be aware of.

1 Q. And that was after the explosion?

2 A. After the explosion, yes.

3 Q. Are you aware of any changes immediately before  
4 the explosion?

5 A. No, not that I'm aware of.

6 Q. Do you know if water was a problem at this mine?

7 A. There was some water on the upper end, yes.

8 Q. By upper end, what portion of the mine are you  
9 talking about?

10 A. Up here in this area right in here.

11 Q. That's the currently sealed area?

12 A. No, that can't be right then.

13 Q. Excuse me.

14 A. I know I worked a vacation, and we was behind the  
15 longwall.

16 Q. Here's the longwall.

17 A. We was up behind the longwall and there was some  
18 water in here. That is sealed, you're correct.

19 Q. So you're talking the current headgate and its  
20 extension out to the Bandytown fan?

21 A. Yes.

22 Q. And you say you were immediately behind it, so you  
23 were somewhere --- were you roughly at ---?

24 A. In this area. But if I'm not mistaken, you know,  
25 it was further back down than this. It wasn't every

1 entry, but you could go around it and get up to the  
2 fan.

3 Q. Were any of these entries roofed?

4 A. No.

5 Q. Okay. They were all ---?

6 A. Probably waist deep.

7 Q. Waist deep, okay.

8 MR. SHERER:

9 And the witness was pointing to the area  
10 of roughly 95 Break through about 105 Break.

11 BY MR. SHERER:

12 Q. Does that sound ---? Just in general.

13 A. I wasn't real familiar with that area. I don't  
14 want to say that.

15 Q. Okay.

16 A. I just know that we worked --- I worked through a  
17 vacation. And they were actually doing an air change  
18 in that vacation, which was Christmas vacation last  
19 year. And I know I went in behind the longwall  
20 because we had to set some jacks.

21 Q. So since it was behind the longwall, it was  
22 somewhere between the setup of the wall and the  
23 Bandytown fan, somewhere around there?

24 A. I'm trying to think. Let me look here because ---  
25 let's see. This is where the shearer was in the

1 December area. I know I went a pretty good ways from  
2 here, but there was some water a little bit further  
3 than the shearer. I remember seeing haulers back here  
4 hauling the jacks to us in this area. And I know  
5 there was some water up through here. So it was  
6 probably between 55 and 90, ---

7 Q. Okay.

8 A. --- if I had to ---.

9 Q. Okay.

10 A. See, like I said, I wasn't real familiar with the  
11 longwall, so I'm not sure.

12 Q. Just the general area.

13 A. I just know that it was new and I was nervous  
14 because, you know, we were setting jacks where the top  
15 was kind of bad right there in that area, and I don't  
16 guess I really paid real close attention to where I  
17 was.

18 Q. I can understand that.

19 A. The longwall was kind --- the signs that they had  
20 up, it wasn't like it was at 55 Break. It was a lot  
21 different. It was, you know, 40 plus 100 or --- you  
22 know, it was a lot different than anything I had ever  
23 been around.

24 Q. Sure. You say that you're setting jacks because  
25 the roof was giving problems back through there?

1 A. Uh-huh (yes).

2 Q. Any falls that you recall or were you just trying  
3 to prevent falls?

4 A. There was a few small falls, but we were trying to  
5 prevent big falls.

6 Q. What were the floor and ribs like back there; do  
7 you recall?

8 A. The ribs were good. The floor was --- the bottom  
9 was fine. It wasn't hooving or busting anywhere that  
10 I seen, unless it had been wet.

11 Q. So some potential roof problems and some  
12 waist-deep water?

13 A. Yeah.

14 Q. Do you recall if there were any pumps back there?

15 A. Yes.

16 Q. Were they electric or air pumps?

17 A. There was some electric and some air.

18 Q. Okay.

19 A. I don't remember how many, but I know there were  
20 several air pumps back there.

21 Q. Okay. Sure. And you say that was around  
22 Christmas?

23 A. Christmas vacation.

24 Q. 2009?

25 A. Yes, sir.

1 Q. Thank you. Were you ever aware that MSHA or state  
2 inspectors were coming underground before they  
3 actually got there?

4 A. Most of the time, yes, because they would tell you  
5 they were coming with you when you were outside. They  
6 would be there when you were there.

7 Q. Okay.

8 A. Do you mean like as far as a blitz? I've never  
9 seen that in the mining history on my behalf. I mean,  
10 I've heard of other people talking about it. But as  
11 far as them just showing up, I've not seen that, no.

12 Q. Okay. Ever anybody call in over the mine phone  
13 saying you got company coming?

14 A. No. Like I said, most of the time they were  
15 there, that I can recall. I didn't see a whole lot of  
16 inspectors on the evening shift ---

17 Q. Sure.

18 A. --- on Four section when I was running a miner.  
19 And to be perfectly honest with you, I never had an  
20 inspector on my section with me when I was the foreman  
21 at Headgate 22. I don't know how it fell out to where  
22 they were all always with the other boss, but they  
23 were, you know, so I can't say ---. But no, I never  
24 been called and told that an inspector was coming.

25 Q. Okay. Do you think the ventilation was adequate

1 in this mine at all times?

2 A. If it wasn't, we weren't running.

3 Q. Were you aware of ventilation changes being made  
4 while miners were underground?

5 A. Never.

6 Q. Okay.

7 A. Not unless they were working on the change.

8 Q. Yeah. So the people required for the change?

9 A. Yes.

10 Q. Were you aware of mining ever taking place without  
11 ventilation curtains in place?

12 A. No.

13 Q. Were methane monitors ever bridged out, covered up  
14 or otherwise interfered with?

15 A. No.

16 Q. You say you were a continuous miner operator. Was  
17 there some way to operate the miner even though the  
18 power had been knocked by the methane monitor?

19 A. I've got a methane monitor override, but that's  
20 just to back it out of a cut.

21 Q. How does that work?

22 A. You have to hold the methane monitor to the  
23 methane monitor position, engage the start button, and  
24 then you have to hold it at all times, but the heads  
25 will not start.

1 Q. Okay. So you have to go through a certain  
2 sequence and you could override the tram?

3 A. Yeah, just to back out, and it was just --- if I'm  
4 not mistaken, it was just low tram. It wouldn't back  
5 out in high tram.

6 Q. Would it go forward?

7 A. I don't know. I never tried. I've never tried to  
8 go forward when it was --- you know, ---.

9 Q. Sure. Thank you. Do you feel like this was a  
10 safe mine?

11 A. I believed it to be a safe mine.

12 Q. Do you have any idea what could have caused this  
13 explosion?

14 A. I have no idea. You know, you hear rumors, but  
15 you don't know what's true. And I just --- I don't  
16 know.

17 Q. Unfortunately, we have to look for the truth in  
18 this matter.

19 A. Yeah.

20 Q. Is there anything that you would recommend that we  
21 look at?

22 A. I would say --- if it was me, I would say stick to  
23 the longwall face.

24 Q. Okay.

25 A. Because you know, I mean --- this is just

1 information from what I seen when I went in and when  
2 we was working on them controls. I mean, I could see  
3 debris blown that way, you know.

4 Q. You're pointing to the north?

5 A. Yes. Like to me, which I'm not an expert. I'm  
6 not an explosion expert here. I'm just speculating.  
7 But in my opinion, it came from the longwall.

8 Q. Okay. We certainly respect your opinion and  
9 observations. Do you know if miners were ever  
10 subjected to retaliation or threats for reporting  
11 safety issues or safety concerns?

12 A. No.

13 Q. Where were you when the explosion occurred, do you  
14 recall?

15 A. I was 300 feet underground.

16 Q. So you were just coming on the shift?

17 A. Just starting going to the mantrip.

18 Q. Were you in the mantrip?

19 A. No. Close to it.

20 Q. To the mantrip. Do you recall what you  
21 experienced when the explosion took place?

22 A. Yes, I do.

23 Q. Would you describe that to us, please?

24 A. Yes, I can. It was about three --- well, like I  
25 said, exactly three o'clock. I was starting in the

1 portal. I passed the vice-president. He was on his  
2 way out. We was about a break in then when I passed  
3 him. We spoke, and then the power knocked.

4 Q. Who was that vice-president?

5 A. Wayne Persinger.

6 Q. Okay.

7 A. The power knocked, and I said, Wayne, we just lost  
8 power. He stopped and listened and he said, well, the  
9 belts is still going, so you still got fan, so you'll  
10 be okay. He turned. As he turned and I turned, I  
11 started walking on, and then the wind and the dust and  
12 the debris hit me in the face. I was trying to back  
13 my way out, and I turned and I seen Wayne, he flew  
14 across the parking lot. He was a real tiny guy  
15 anyway, so ---. But I got pushed into an H beam, I  
16 guess it's --- or I beam for the portal, that ---

17 Q. Sure.

18 A. --- goes under the portal there. And we made it  
19 out and, you know, everybody that was going to the  
20 mantrip, which was my crew, the longwall crew, had  
21 retreated back outside.

22 Q. Did you notice any unusual smells or anything  
23 associated with that?

24 A. Nothing.

25 Q. Was there any heat?

1 A. No.

2 Q. Just wind?

3 A. Just wind and dust and, you know, like plaster  
4 buckets and, you know, little things like that. I  
5 mean, at that point, we hadn't even really known what  
6 had happened. We didn't know that --- what we was  
7 about to go through.

8 Q. Sure. Were you involved in the rescue and  
9 recovery effort?

10 A. Well, not the --- not with the mine rescue teams.

11 Q. I know you mentioned you worked putting in some  
12 temporary controls.

13 A. Yeah, I did do that immediately after the blast,  
14 which at this point we still thought, you know --- we  
15 thought if it was just wind ---. We had no bad air  
16 coming. We had no gas coming out of the portals,  
17 nothing, so we thought we might have had a major fall  
18 in the intake and it was knocking overcasts and  
19 throwed some air out the portals or something like  
20 that.

21 Q. Okay.

22 A. So myself, Chris Blanchard, Jason Whitehead, Jack  
23 Roles, Everett Hager and Wayne Persinger, after they  
24 --- probably 20 minutes after it happened and  
25 everybody was outside and another mantrip that was

1 working in the new area, the new setup right outside  
2 the portal had tried --- they portalled on the other  
3 side, so they were going up when it happened, and it  
4 pushed their mantrip back. So they worked their way  
5 back out that portal. They had gotten out also. So  
6 it was about 20 to 25 minutes afterwards we got on the  
7 mantrip and we started in.

8 Q. All right. Now, let me stop you there. You said  
9 there was a crew that had just come out?

10 A. They were going out the other portal. They were  
11 coming back up to --- let's see. It's not on this  
12 map. They were coming back up to the Ellis Switch  
13 area ---

14 Q. Uh-huh (yes).

15 A. --- and was going to come back out the other  
16 portal. Well, they got stopped before the Ellis  
17 Switch, so they worked their way back out the Ellis  
18 Portal.

19 Q. Did you talk to any of those people?

20 A. Yes.

21 Q. What did they say?

22 A. They said they didn't --- they had no idea what  
23 had happened.

24 Q. Did they mention that they had problems with  
25 oxygen or carbon monoxide?

1 A. Some of them had their rescuers donned. Not all  
2 of them, but some of them did. They said that they  
3 had a little bit of CO on the boss' spotter that I can  
4 recall, and they just come out.

5 Q. Okay. So you're with a group that were fixing to  
6 go in the mine. Do you recall who the responsible  
7 person was?

8 A. That would have been Chris Blanchard or Jason  
9 Whitehead.

10 Q. Okay. And were they directing the evacuation?

11 A. Well, at that point we didn't know it was an  
12 evacuation. We were trying to get --- we had lost  
13 touch with --- you know, when we lost power and phone,  
14 we lost touch with the longwall, my section, which is  
15 Headgate 22, and Tailgate 22's crew.

16 Q. So you lost phone communication?

17 A. Uh-huh (yes).

18 Q. Was there any --- did anybody check the CO  
19 monitors? Do you recall?

20 A. Yes, they did.

21 Q. What was happening there?

22 A. I don't recall. I don't remember hearing anybody  
23 say anything about it.

24 Q. Okay. So I guess this crew started underground.  
25 Did you go underground with them?

1 A. Yes, I did.

2 Q. Could you take us through that, if you would?

3 A. We started in and we got to the first overcast,  
4 and we had to stop. There was block on the track.  
5 The whole time, you know, every one of us had Solaris  
6 spotters, for the entire time. You know, we didn't  
7 know what we had, so we was just trying to be careful  
8 and watch exactly everything as we went. We cleared  
9 the block off the track. We proceeded. Got to Ellis  
10 Switch. I believe it was Wayne Persinger called  
11 outside, told them where we were at, that we were  
12 proceeding on. We had no bad air. And I was driving  
13 the mantrip and they were looking as we --- you know,  
14 if we'd come to debris on the track, they would stop  
15 and we would throw it off and keep going. Or you  
16 know, they were also watching beside us to see if  
17 there were any damaged stoppings and, you know, things  
18 like that.

19 Q. Sure. So you were going pretty slow, I would  
20 imagine?

21 A. Yeah. We weren't going very fast. It took us a  
22 little longer, actually, to get to Ellis Switch than  
23 what it normally did, you know, and then we went on  
24 from there, from Ellis Switch, then we got to 42  
25 break. At 42 Break we seen a single light walking

1 towards us, and it was Timmy Blake.

2 Q. Okay.

3 A. Chris Blanchard then asked Timmy what was going  
4 on, what has happened, you know, what have we got, and  
5 that's when I first learned that we had an explosion.

6 Q. Okay. Now, who is Timmy Blake?

7 A. He's the one person that got his rescuer on on  
8 Steve Harrah's crew.

9 Q. Do you recall what he did?

10 A. Yeah. He sat down in front of the mantrip and he  
11 told us that his whole crew was down about 20 breaks  
12 away. He said that he stayed with them as long as he  
13 could, put rescuers on them and tried to keep them  
14 breathing until he knew he had to go get some help.  
15 He said he tried to call on the radio. He pushed the  
16 button on the tracking device to try to get help, and  
17 nobody ever came. He said he was with them about 45  
18 minutes. So they leave me there with Timmy because  
19 I'm an EMT.

20 Q. Sure.

21 A. Just a minute.

22 Q. Sure.

23 ATTORNEY BABINGTON:

24 Would you like to take a quick break?

25 MR. SHERER:

1 Let's go off the record, please.

2 SHORT BREAK TAKEN

3 ATTORNEY BABINGTON:

4 Back on.

5 BY MR. SHERER:

6 Q. Just take your time.

7 A. It's hard. That's a crew that I worked with for a  
8 long time.

9 Q. Sure. We certainly sympathize.

10 A. Okay. They leave me with Timmy and they go on on  
11 foot. They leave us at the mantrip. They took two  
12 caches of rescuers off the mantrip to take with them.  
13 So I'm sitting there with Timmy, and Timmy said,  
14 that's all my friends. I said, I know, Timmy, mine,  
15 too. He said, what can we do? I said, Timmy, all we  
16 can do is pray. So we stopped right there in the dark  
17 and prayed. And about ten minutes later we seen a  
18 light coming back. It was coming fast. So Jack Roles  
19 was on his way back and he was running. And he said,  
20 they need the mantrip up there. He said, I'll stay  
21 with Timmy. I said, is the air clear, Jack? He said,  
22 yeah, the air is clear. Everything is fine. And I  
23 pulled into --- I just left with the mantrip and went  
24 that way. And I got to between 66 and 67 Break on  
25 Five North belt, and I started seeing lights. That's

1 when I started seeing the flash from Steve. Steve's  
2 Solaris was still going off. That's when I kind of  
3 paused to myself and looked down, you know, grabbed  
4 mine to look to see. You know, everything was clear.  
5 Everything was good, so I kept going. And then I  
6 pulled into just all of them laying there beside the  
7 track. And the next thing I know we was loading them  
8 up and taking them out. And it took probably three or  
9 four minutes to load them up. (b) (7)(C)

15 Q. Okay.

16 A. Got down the track about two or three breaks and  
17 Gary May was walking towards us. And Wayne hollered  
18 for me to stop. And Berman Cornett was with him also.  
19 He told Berman to get in with Bill. (b) (7)(C)

And I guess that Chris Blanchard and  
22 Everett and Jason Whitehead loaded the other ones up  
23 in the other mantrip because they were all out, I  
24 believe, but one, trying to get rescuers on. (b) (7)  
(C)

1 (b) (7)(C)

14 Q. Sure.

15 A. And then that's when, you know, the other mantrip  
16 pulled out right behind us. It wasn't very long  
17 behind. We were just doing CPR on all of them. And  
18 we had, I think it was only one ambulance crew there  
19 at the time. They were all on their way, but they  
20 were going around with an AED and seeing if they could  
21 help anybody.

22 Q. Your friend Timmy, did he mention anything about  
23 what he may have been doing? Was he --- do you recall  
24 where he was at on the mantrip? Did he mention  
25 any ---?

1 A. (b) (7)(C)

3 Q. Where was that on the mantrip? Do you recall?

4 A. I haven't worked with him in so long, I just --- I  
5 don't remember.

6 Q. Okay. Sure.

7 A. He said everything was just as normal, which  
8 everything was as normal to me, too. I mean, when I  
9 took my fire boss report, there wasn't anything  
10 different of any other day. He said they were cutting  
11 up, laughing and carrying on, then all of a sudden he  
12 felt some heat and then he heard Jason Atkins, I  
13 believe is what he said, he heard Jason Atkins and  
14 everybody start screaming put your rescuer on. That's  
15 the last I heard Timmy talk because after that he went  
16 to the hospital, and I haven't spoken to him since it  
17 happened.

18 Q. Sure. Do you know if the other people on the  
19 mantrip were in the process of donning their SCSRs  
20 or ---?

21 A. Now, this is what Timmy told me.

22 Q. Okay.

23 A. None of them got them on. They were trying. None  
24 of them did. And Timmy stayed 45 minutes and put a  
25 rescuer on every one of them except one. That's

1 because he couldn't find his.

2 Q. Okay. Do you have any clue of why Timmy was able  
3 to don his SCSR?

4 A. I have no idea.

5 Q. Okay.

6 A. (b) (7)(C)

12 Q. Maybe so. And these were the CSE type SCSRs?

13 A. Uh-huh (yes).

14 Q. Do you recall when the last SCSR training was that  
15 you had prior to the explosion?

16 A. Less than a month. A lot less than a month  
17 because we had annual retraining.

18 Q. Did everybody go through it?

19 A. Oh, yeah.

20 Q. Did you do it in smoke or was it just ---?

21 A. Dark.

22 Q. Dark?

23 A. Uh-huh (yes). The explosion was April 5th. I  
24 would say the end of February we had the annual  
25 retraining, so yeah.

1 Q. Okay. Do you feel like the SCSR training is  
2 effective? Do you feel comfortable with SCSR donning?

3 A. Yes.

4 Q. Have you done the annual training with the SCSR  
5 simulator?

6 A. Oh, yes. The canister which you ---?

7 Q. Yes.

8 A. Yes. Yes, I have. We done that that day also.

9 Q. Okay. Do you think that helps?

10 A. I think it lets you know what you're going to be  
11 breathing like.

12 Q. Okay. So the victims were out of the mine and  
13 eventually loaded up in the ambulances, I guess?

14 A. Not for a while.

15 Q. Not for a while. What did you do after that, do  
16 you recall?

17 A. Just helped. You know, anything I could do. We  
18 --- I guess after the medical examiner pronounced them  
19 there on the spot, those nine men --- or seven men, we  
20 moved them over and covered them up, and I just done  
21 some things with HR to try to help out, anything I  
22 could. And then Jason's dad was down at the bottom of  
23 the hill, probably about to go to jail because he said  
24 he wasn't leaving without his son's belongings.

25 Nobody could find his locker. You know, I knew where

1 it was, so I just --- I went with HR to get his stuff  
2 out of his locker. Just things like that, that's all  
3 I did. And I did monitor the portals. We took turns.  
4 We'd monitor the portals, see what kind of air was  
5 coming out, see if it had any CO, methane, anything  
6 like that. We done that in rounds. Probably I done  
7 that --- I think they had us doing it every 15  
8 minutes. And I done that maybe 10 or 12 times.

9 Q. Do you recall any unusual concentrations?

10 A. No, no concentrations of gases or anything. You  
11 know, the air was coming out at this point, and it  
12 shouldn't have been. The air should have been going  
13 in, so that was the only thing that was different.

14 Q. How long did you stay up in the mine that night?

15 A. 1:30, two o'clock in the morning.

16 Q. Did you come back and do anything during the  
17 recovery effort?

18 A. Yeah, where --- I was a salary --- I'm salary, so  
19 you know, they kind of --- they wouldn't let me sit at  
20 home, so they just kind of had me, you know, answer  
21 phones, take out trash, you know, just things like  
22 that. I come back the next day and they sent me home  
23 and said they'd call me when they needed me. And a  
24 couple days after that I got a call and they wanted me  
25 to start like a four on/three off kind of thing, 12-

1 hour shifts, 7:00 in the evening, 7:00 in the morning.  
2 And basically that's all I did was take out trash and  
3 stuff until that Saturday. That Saturday I went in  
4 and helped with these controls.

5 Q. Okay. Is there anything you'd recommend that we  
6 do or the industry does to prevent this sort of  
7 explosion in the future?

8 A. I don't know of anything you can do different. I  
9 mean, we all take very careful precautions every day.  
10 I mean, I don't know of anybody that does anything the  
11 wrong way and don't check for methane. You know, I  
12 mean, everybody tries to do the right thing, do it  
13 right. I mean, we knew there was a little gas there,  
14 I mean, so we tried to --- I can't think of anything.  
15 I think we just need to be more cautious.

16 Q. Okay.

17 MR. SHERER:

18 That's all the questions I've got.

19 ATTORNEY BABINGTON:

20 Terry?

21 MR. FARLEY:

22 Yeah, I have several. Would you like to  
23 take a quick break?

24 A. Can we?

25 MR. FARLEY:

1 Sure?

2 SHORT BREAK TAKEN

3 ATTORNEY BABINGTON:

4 Back on the record. Terry?

5 EXAMINATION

6 BY MR. FARLEY:

7 Q. Mr. Hilbert, I'm going to be asking some  
8 clarifying questions. I may sort of be working  
9 backwards here, so ---

10 A. Okay.

11 Q. --- just bear with me and be patient. Now, when  
12 you arrived at UBB on April the 5th, you portalled at  
13 Ellis; is that correct?

14 A. Correct.

15 Q. What time did you arrive at the Ellis Portal on  
16 April 5th?

17 A. Most of the time 2:15.

18 Q. What time did you arrive on April the 5th?

19 A. April the 5th, normal time, probably 2:15.

20 Q. Okay. Now, did you routinely receive a pre-shift  
21 report called out from underground?

22 A. Yes.

23 Q. Did you receive on the phone a pre-shift report  
24 called out from the Headgate 22 section on April 5th?

25 A. Yes, I did.

1 Q. Who called it out to you?

2 A. Dean Jones.

3 Q. What time did Mr. Jones call it out?

4 A. I'm wanting to say 15 until 3:00.

5 Q. Do you know Mr. Jones' location at the time he  
6 called?

7 A. At the feeder on the section, Headgate 22.

8 Q. Were they still producing at the time?

9 A. Let's see. Yes. Probably until three o'clock,  
10 and then he would start his way out.

11 Q. Okay. Now, as best you can recall, try to give me  
12 Mr. Jones' exact words and everything he said to you  
13 during that phone conversation, to the best of your  
14 recollection.

15 A. I believe that he said he was mining --- let's  
16 see. I don't remember what entry. I had it wrote  
17 down and I do not know what happened to it.

18 Q. When you say you had it wrote down, where did you  
19 write it down?

20 A. I had it on a piece of --- I always wrote it on a  
21 piece of paper for myself, then I would record it in  
22 the book, and then I would take the paper with me.  
23 That way I would have a record with me of what --- you  
24 know, what I was going to and, you know, I'd tell the  
25 miner men where they were mining, the bolt men where

1 they were bolting, you know.

2 Q. All right. Why don't you continue with what Mr.  
3 Jones said, and then we'll talk about the paper.

4 A. Okay. He didn't say anything unusual from any  
5 other day. It was the methane wasn't high. If I'm  
6 not mistaken, it was .2, .3 across all faces. The  
7 last open break was zero percent CH<sub>4</sub> that I can  
8 recall.

9 Q. Okay.

10 A. The air --- the air he --- it was above --- it was  
11 20, I believe, right above 20, 20,100 I believe,  
12 somewhere right around in that area, you know. It's  
13 been three months without the book. I mean, I  
14 wouldn't be able to give you exact ---.

15 Q. Would you like to look at the book?

16 A. Yes.

17 Q. Don't we have that in 22 Headgate? Open it up.

18 MS. MONFORTON:

19 Or maybe some of the pages before.

20 A. This is it right here. Number one, he had .3 CHR,  
21 20.8 O<sub>2</sub>, wrote needs dusted. Action taken, reported,  
22 One Right. What I was going to say was he was mining  
23 the scrap cut, .3, 20.8 O<sub>2</sub>. Reflectors hung. Number  
24 two was part bolted. .2 CHR, 20.8 oxygen. Reflectors  
25 hung. And Number Three was part bolted, .3 CHR.

1 BY MR. FARLEY:

2 Q. Okay. And you signed that document; right?

3 A. Yes.

4 Q. And as best you recall, you wrote down exactly  
5 what ---

6 A. Exactly.

7 Q. --- Mr. Jones told you?

8 A. Every day, exactly what he told me.

9 Q. Okay. What else did Mr. Jones say during your  
10 conversation?

11 A. I asked if we were moving belt because, you know,  
12 I was just coming back. And I believe he had told me  
13 that they just had moved, you know, because I had been  
14 off three days. He said everything else was okay, you  
15 know, haulage ways, travelways, intake phone, shelter.  
16 Everything was fine. That's all I can remember that  
17 he said. And we didn't --- you know, he was always  
18 short. He told me what he needed to tell me, and you  
19 know, if I needed to know something he'd tell me, and  
20 then, you know, he was ready --- after he took his  
21 report, he was going to get his men, get them on a  
22 mantrip, get the scoop on charge, you know, everything  
23 to come outside, you know, so ---.

24 Q. Now, I know you didn't enter a time that he called  
25 you on it?

1 A. I didn't, did I?

2 Q. But I think you said that he called you about 15  
3 'til 3:00?

4 A. Yes.

5 Q. You're pretty certain of that?

6 A. Yeah, I'm pretty certain.

7 Q. Did you take any other calls from anyone  
8 underground?

9 A. No.

10 Q. Okay.

11 A. I heard another call, but it was just Tailgate 22  
12 section just calling for the road at 78 Break, ---

13 Q. Okay.

14 A. --- right around --- or from the section. And  
15 then right before I went underground I heard them  
16 holler for the road from 78.

17 Q. Okay. What time did you first hear them call for  
18 the road, Tailgate 22?

19 A. I believe it was about 2:15.

20 Q. Okay.

21 A. Roughly right after I got there because there was  
22 a phone in the bath house also.

23 Q. Okay.

24 A. I was getting dressed.

25 Q. And you heard them call again?

1 A. Right before I went underground.

2 Q. Okay. Did you happen to hear any pre-shift report  
3 called by the 22 Tailgate crew?

4 A. No.

5 Q. Okay. Now, while you were in the office and you  
6 took your pre-shift report from 22 Headgate about  
7 2:45, did you hear any call made from the longwall?

8 A. No.

9 Q. No?

10 A. I didn't hear anything, no.

11 Q. Okay. All right. Would the longwall crew  
12 typically have reported pre-shift report to the Ellis  
13 Portal?

14 A. Yeah. But they had a phone in the other office.  
15 At that point I was probably --- because they didn't  
16 have to do it as fast because I think they kept  
17 running between until the other crew got there.

18 Q. Okay.

19 A. But I'm sure they had --- see, once again, I don't  
20 know a lot about that longwall, so I don't know  
21 what ---

22 Q. That's okay.

23 A. --- their procedures were, but I never heard a  
24 pre-shift report from the longwall, no.

25 Q. All I'm asking for is just what you know.

1 A. Yeah.

2 Q. Who was the evening shift longwall foreman that  
3 day and was he on site and did he arrive at the same  
4 time you did or about the same time you did?

5 A. Yes. Yes, he did. I can't remember which one it  
6 was. I believe it was Kevin Medley.

7 Q. Okay.

8 A. I believe. I'm not sure. I'm not a hundred  
9 percent sure on that.

10 Q. Okay.

11 A. But he was actually --- yeah, I think he was  
12 actually there before me most of the time.

13 Q. Okay.

14 A. Probably 20 minutes ahead of me maybe. I'm trying  
15 to remember. Let's see. Rick Lane was on dayshift.  
16 It would have had to have been Kevin, I believe.

17 Q. Okay. Now, were you present in the same room with  
18 Kevin at any time?

19 A. Just walking to the portal.

20 Q. Okay. All right. So you didn't hear any call  
21 from the longwall to Kevin or anyone else ---

22 A. Uh-uh (no).

23 Q. --- prior to your departure to go underground on  
24 April 5th?

25 A. No.

1 Q. Now, if I understood you correctly, just to  
2 summarize what you said about the conversation with  
3 Dean Jones, he did not report anything to you that  
4 suggested that they were in danger; is that correct?

5 A. Correct. Nothing at all.

6 Q. Okay.

7 A. Like I said, I mean, I wrote down every day  
8 exactly what he told me.

9 Q. Now, on these --- this piece of paper that you  
10 made notes about what Mr. Jones called you about, do  
11 you still have that piece of paper?

12 A. I looked for it. I cannot find it. I've looked  
13 through all my little --- you know, my notebooks.  
14 Most of the time I took a piece of paper just like  
15 this, a blank paper, and folded it in half because it  
16 went straight on the front of my clipboard, and I  
17 would --- you know, I'd look at it when we got off the  
18 mantrip. And like I said, I'd tell the bolt crew  
19 where they were bolting. I'd tell the miner men where  
20 they were mining. I do remember one thing. I don't  
21 remember which place it was, but he --- it's not  
22 really relevant, but he told me that one of these  
23 places would have been completely bolted when we got  
24 there. I believe it was Number Three. They were  
25 about done with it, I think.

1 Q. Okay. Now, do you have any notes that you made at  
2 any other time after the explosion on April 5th, on  
3 that day?

4 A. Yes, I do.

5 Q. Okay.

6 A. Just something --- like I said, again, I had been  
7 bossing not very long at all, and one of the  
8 superintendents told me, he said, you need to get you  
9 a piece of paper and you need to sit down and you need  
10 to write this out exactly. That way you'll remember  
11 everything. It's fresh in your memory. You can  
12 remember everything down right now what happened, and  
13 that way you'll have it.

14 Q. Okay. Do you still have those notes that you  
15 made?

16 A. Yes. Well, MSHA took them at one point when they  
17 first visited me at my home. They made copies, and  
18 they mailed them back. So I do have it, but it's at  
19 the house.

20 Q. Okay.

21 A. I forgot to bring it.

22 Q. Can I impose on you to provide this group with a  
23 copy of those notes, please?

24 A. Absolutely.

25 ATTORNEY SEARS:

1 Do you want to give those to me and I'll

2 forward them on to you all?

3 MR. FARLEY:

4 That will be fine.

5 A. I'll have to --- well, no, I'm sure they're at  
6 home in an envelope because they mailed them back to  
7 me. I thought I had them on my clipboard, but I don't  
8 believe I do, which is --- it's basically pretty much  
9 the exact same thing I told you from the time I got  
10 there, started in, brought the men out, and that's  
11 pretty much about where it ended.

12 BY MR. FARLEY:

13 Q. Okay. Now, let me back up on some other things  
14 here now. At the beginning of the interview, Erik  
15 asked you if you had been interviewed by anyone else  
16 regarding this explosion, and I think you said you  
17 talked to two Federal investigators.

18 A. Yes.

19 Q. Do you mean two MSHA investigators?

20 A. They were both from the office of MSHA, yes.

21 Q. Now, have you been interviewed by anyone else?

22 A. Yes, I have.

23 Q. Okay.

24 A. I forgot that, and I apologize. I had to go to  
25 Elk Run one day after work, and I was interviewed by

1 Massey attorneys.

2 Q. Okay. do you recall the names of those two  
3 attorneys?

4 A. No, I don't.

5 Q. Do you recall when that interview took place?

6 A. Let's see. I transferred to Hunter Peerless about  
7 two weeks after the explosion. And about maybe two  
8 weeks after that --- probably --- maybe a month after  
9 the explosion maybe.

10 Q. Okay. How long ---?

11 A. Maybe less. I'm not real sure.

12 Q. I'm sorry. I didn't mean to interrupt. How long  
13 did that interview last?

14 A. Not very long, maybe 45 minuets to an hour.

15 Q. Okay. Can you give me a summary of the substance  
16 of that interview, what you talked about?

17 A. Basically they just wanted to know if anyone had  
18 tried to make me do anything illegal from upper  
19 management. Basically that's pretty much --- and then  
20 they wanted to know what happened that day. Pretty  
21 much the same thing I told you guys just a little bit  
22 ago.

23 Q. And they asked you if anyone at upper management  
24 tried to make you do anything illegal?

25 A. Uh-huh (yes).

1 Q. Did anyone from upper management make you try to  
2 do anything that might have been considered illegal?

3 A. No, never. Actually, you know, on the occasion of  
4 where, you know, I had the low air that day, they  
5 actually --- you know, they sent --- somebody actually  
6 sent a person up to help me figure it out. And the  
7 next day Chris Blanchard and Jason Whitehead both, you  
8 know, congratulated me, well, you know, said, you  
9 know, you done the right thing. You done what you was  
10 supposed to do, about shutting the section down and  
11 trying to make everything --- get your air back and  
12 check everything, see what the problem was. So no,  
13 nobody ever pushed me to run without air or, you know,  
14 anything like that.

15 Q. Okay. So to make sure I understood you, they  
16 didn't actually congratulate you?

17 A. No. They just said, you done a good job. I mean,  
18 you know, you done the right thing.

19 Q. Now, if I understood you correctly, this scenario  
20 --- this situation where you had a problem with the  
21 air and it resulted in having to close the door, that  
22 was two or three days after you took over as section  
23 boss ---

24 A. Uh-huh (yes).

25 Q. --- on 22 Headgate?

1 A. Yes.

2 Q. Okay. Now, you also said earlier that you were  
3 once questioned about not entering an air problem in  
4 your on-shift report during the first two or three  
5 days after becoming a foreman.

6 A. A methane problem --- or the air problem first,  
7 which was just a couple days after that, and then I  
8 had that miner man who had the methane monitor on the  
9 back of the miner spike up. I'm not exactly sure what  
10 it was. And they weren't really questions. They were  
11 just telling me, hey, look, you know, I know you're  
12 new at this, they said, but when you have something  
13 like that you got to record this in your on-shift  
14 report.

15 Q. Now, who told you that?

16 A. My superintendent and vice-president.

17 Q. And would that have been Mr. Persinger?

18 A. Uh-huh (yes).

19 Q. And who else would that have been?

20 A. Wayne Persinger and Everett Hager.

21 Q. And again, that would have been two or three days  
22 after you took over as section foreman on Headgate 22?

23 A. For the air, yes, as far as --- which it was in my  
24 production report also. I don't know if you all have  
25 copies of that, but it was in my production report. I

1 don't remember what day it was. Like I said, the air  
2 was two days, and the methane was probably a week,  
3 week-and-a-half. But it was just something that they  
4 informed me that I needed to make sure that when  
5 something like that happened, I needed to record it in  
6 the on-shift.

7 Q. I think you testified that it was Massey policy or  
8 company rule that continuous miner sections maintain a  
9 minimum of 20,000 cubic feet of air in the last open  
10 crosscut; is that correct?

11 A. Correct.

12 Q. Okay. Was that an ironclad, steadfast rule or  
13 simply a suggestion?

14 A. It was supposed to be an ironclad rule, but they  
15 knew that on that section, which this is what I was  
16 told, they knew that sometimes it was hard to keep it  
17 up at that high. You know, they never wanted you to  
18 lie. Their report is so --- like your paperwork for  
19 your production and stuff, it asks --- you got a list  
20 of 43 things, you know. Is your last open air reading  
21 above 20. They said that. You know, as long as  
22 you're legal by the state to run, you can run, they  
23 said, but we want to try to be as close or above 20 as  
24 we can get it. I wouldn't --- I don't know how to say  
25 --- the right way to say it. They wanted it to be

1       like that, but they knew sometimes I couldn't get it  
2       up there.

3       Q. Okay. Now, again, if I got you right, you started  
4       fire bossing on the 22 Headgate around mid --- middle  
5       of February?

6       A. Yes.

7       Q. Now, between the middle of February and April 5th,  
8       did you work full time? Did you take any time off?

9       A. I worked full time.

10      Q. Now, during that period of time, from the middle  
11      of February up to around April the 5th, how many times  
12      did you produce coal on 22 Headgate when the air  
13      reading in the last open crosscut was less than 20,000  
14      CFM?

15      A. Maybe three.

16      Q. Three times?

17      A. Yes.

18      Q. Would the pre-shift exam book for that period of  
19      time reflect what the last open crosscut areas would  
20      have been?

21      A. It should.

22      Q. Okay.

23      ATTORNEY SEARS:

24      I'm sorry. What time are you talking  
25      about?

1 MR. FARLEY:

2 From the period of the middle of February  
3 through April 5th of this year.

4 ATTORNEY SEARS:

5 And you say the last book?

6 MR. FARLEY:

7 I said the pre-shift exam book, would it  
8 reflect air readings for the last open crosscut.

9 A. See, here's one on April the 1st.

10 BY MR. FARLEY:

11 Q. Uh-huh (yes).

12 A. 20,750.

13 Q. Okay.

14 A. I don't exactly know what happened on this last  
15 day, but I don't have --- I don't have my air in  
16 there. I believe it's something --- you know, I  
17 always double checked it when I come back outside to  
18 make sure everything is complete. And Dino, where I  
19 was new, he tried to watch over me, too. If I forgot  
20 something on this right here, he would take care of  
21 it, you know, check it and let me know what I've  
22 missed. I don't know what's happened there, why I  
23 don't have an air reading in this book or the times.

24 Q. Okay. Now, I think you testified earlier that, in  
25 general, the ventilation on the Headgate 22 section

1 was good.

2 A. In general, yes.

3 Q. And you also said that in the two weeks before the  
4 explosion the ventilation on 22 Headgate got much  
5 better.

6 A. It seemed to.

7 Q. Can you explain that? Can you elaborate on that?  
8 Why did it get much better?

9 A. I have no idea. It just seemed instead of having  
10 21,000, I had 24,000 to 25,000 most of the time.

11 Q. Okay. Did you personally make any adjustments to  
12 any ventilated controls that might have improved your  
13 quantity of air?

14 A. No. Personally, no. The only thing I would have  
15 changed is maybe something on the section, not  
16 anything outby or any control. You know, like I said,  
17 I'd hang a diagonal in Two to push the air to One or,  
18 you know, just stuff like that.

19 Q. Okay. Now, do you recall a problem on the  
20 Tailgate 22 section involving a ventilation issue  
21 about --- within two or three weeks preceding the  
22 explosion on April 5th?

23 A. I don't know because I didn't work on that  
24 section. I didn't really --- they portalled on the  
25 other side, and I didn't hear a lot from them.

1 Q. Did you hear anything about an instance where the  
2 intake air or the air traveling inby to the 22  
3 Tailgate section --- in one instance the air traveling  
4 up the conveyor belt to the 22 Tailgate section, the  
5 quantity greatly exceeded what they had coming up in  
6 their intake? Do you recall anything like that?

7 A. No. I don't remember --- wait a minute. I do  
8 remember hearing a miner man off that section say  
9 something like that, but you know, again, that's just  
10 what he had said. I don't know what was true and what  
11 wasn't.

12 Q. Do you remember who that miner man was?

13 A. I don't remember his name.

14 Q. Okay. Do you recall being sent home because of a  
15 ventilation problem during the first week or ten days  
16 in March 2010?

17 A. I don't remember. I know there was just --- like  
18 I said, just a couple instances --- a couple times  
19 that the men were sent, but I wouldn't remember it  
20 significantly because, of course, I had to stay.

21 Q. All right. Do you recall any type of enforcement  
22 action taken on the longwall section around that time  
23 relating to a ventilation problem?

24 A. It might have been around that time, I believe. I  
25 believe that's when I was talking about before, about

1 the change and there might --- I think there was an  
2 order on the mines for that change. The inspectors  
3 had come in and they had found something and made them  
4 change it, but I'm not exactly sure what it was. I  
5 was just there to be --- you know, just muscle. I was  
6 just doing what they told me to do.

7 Q. Now, during your daily conversations with Dean  
8 Jones ---

9 A. Uh-huh (yes).

10 Q. --- from the time you became the evening shift  
11 foreman on Headgate 22 until the time of the explosion  
12 on April 5th, did Mr. Jones ever say to you at any  
13 time that his ventilation on 22 Headgate was not  
14 sufficient?

15 A. No.

16 Q. Never?

17 A. (Indicates no).

18 Q. He never complained at any time? Did you ever  
19 hear him complain to anyone else about the ventilation  
20 on the 22 Headgate during that same period of time?

21 A. No, I never heard Dino complain about air at all.

22 Q. Did he complain about anything else?

23 A. Not that I've heard. No, I mean, I never --- he  
24 was one that just --- he wouldn't complain about  
25 nothing.

1 Q. Okay. I think you indicated that the individual  
2 that you replaced was known as Smurf or Mr. Hutchens.

3 A. Richard Hutchens, yes.

4 Q. Hutchens. And do you know why Mr. Hutchens left  
5 his employment at UBB?

6 A. Not really. I mean, I've talked to him. He was a  
7 really nice person. I know he was (b) (7)(C)

8 (b) (7)(C) It was kind of tough. He didn't want a  
9 salary job anymore. And that would be the only reason  
10 I could think of him leaving. You know, there was  
11 guys that worked for me after that --- again, this is  
12 just rumor and speculation, but you know, they said  
13 that he just --- he was having a hard time (b) (7)(C)

14 (b) (7)(C) . It was not going in his favor at all. He  
15 was making too much money, and he just had to leave.

16 Q. Okay. So he took a lesser-paying job, was  
17 that ---?

18 A. No, I'm not saying --- I'm just saying it just ---  
19 the drive --- he went to speed mining, and he --- just  
20 everything was wrong. I mean, ---

21 Q. Okay.

22 A. --- he --- not that he took --- because he was a  
23 boss at Speed, too. I mean, I'm not saying that.

24 It's just the drive. The gas was killing him. He  
25 wasn't --- he was having to pay so much money, and he

1 just took a closer job.

2 Q. Did you ever hear anything about Mr. Hutchens  
3 complaining about ventilation problems on the 22  
4 Headgate section?

5 A. I heard him one time, yes.

6 Q. Do you recall what he said?

7 A. He had shut the section down one time, I believe.  
8 The same reason, not enough air. And for --- I don't  
9 know how long he had it down. At that point I was  
10 still working on Two section, and he had just had it  
11 down and was trying to --- he walked from the start of  
12 the section --- the mouth of the section up to where  
13 the face was checking all these controls, checking  
14 everything and trying to get the air back up.

15 Q. Okay. While you were section boss on 22 Headgate  
16 this year, from the middle of February through April  
17 5th, did you ever run the continuous mining machine?  
18 Ever operate it yourself?

19 A. On Headgate 22?

20 Q. Yes.

21 A. Yeah, I believe I run maybe five or six buggies  
22 for one of the miner men so they could go to the  
23 restroom, the bathroom.

24 Q. Was that just one time?

25 A. I might have --- maybe a couple times for ---

1 maybe once for him and a couple times for the other  
2 one, but ---

3 Q. Okay.

4 A. --- you know, just a few times, not very much.

5 Q. Okay. Did you have a battery charger for your  
6 scoop or any other battery-powered equipment on the 22  
7 Headgate section in the days preceding the explosion  
8 on April 5th?

9 A. You mean ---?

10 Q. Was there a battery charger for the scoop on the  
11 22 Headgate section?

12 A. Inby the power center or outby?

13 Q. Anywhere.

14 A. Yeah, we had chargers. They were right outby.  
15 Say the power center was --- it's not even marked.  
16 Say the power center was there. You had one there,  
17 one there in these two crosscuts in front of  
18 stoppings.

19 Q. So ---?

20 A. And your shelter was normally over here.

21 Q. They would have been within four or five crosscuts  
22 of the face; is that accurate?

23 A. Yeah, probably.

24 Q. In the week prior to the explosion, did you notice  
25 any strong smell around the battery --- the scoop

1 battery charger?

2 A. No.

3 Q. Anything unusual?

4 A. No.

5 Q. Any irritation of your eyes or stinging sensation  
6 when you were around the scoop charger?

7 A. No.

8 Q. Okay. Could you move the book there for me,  
9 please? I think if I understood you correctly earlier  
10 you operated a continuous miner on this section, which  
11 was immediately outby the mouth of the longwall at one  
12 time; is that correct?

13 A. Yeah. We started probably --- we started probably  
14 about right here, because they had started the section  
15 and they pulled them --- they stopped them from  
16 producing on this section and put them somewhere else.

17 Q. When you say right here are you talking about ---  
18 that would be west of Number Five and ---?

19 A. Spad number probably 24 --- 24364, I'd say,  
20 roughly. And that's a guess. I'm not exactly sure  
21 where it was. Like I said, at that time I was just  
22 running a miner. I didn't ---.

23 Q. Did you encounter any methane when you were mining  
24 in that area?

25 A. No.

1 Q. Okay.

2 A. Personally, no, I didn't.

3 Q. Okay. Did anyone else that you know of?

4 A. Not that I know of. Because I know when we  
5 started they said we only had about five or six breaks  
6 to finish that up and then they were going to move  
7 them to Tailgate 22. Well, they decided either  
8 Tailgate 22 or --- which one was it? It was in  
9 between Headgate 17 --- right at Headgate 17 or  
10 something like that there was a panel they were going  
11 to drive to, which there was another section there  
12 afterwards.

13 Q. Okay.

14 EXAMINATION

15 BY MS. MONFORTON:

16 Q. I just have a couple of questions.

17 A. Okay.

18 Q. Can you explain a little bit about what the  
19 process is for training to become an assistant mine  
20 foreman?

21 A. You go through --- I mean, I guess --- I'm not  
22 sure. Bill can correct me if I'm wrong here. I don't  
23 think you have to have any school. You just got to be  
24 able to pass a test; correct?

25 MR. TUCKER:

1 Right.

2 A. But Massey put me through a school. I went to  
3 school two days a week in place of work for three or  
4 four weeks, and then I went and took a test.

5 BY MS. MONFORTON:

6 Q. You took a test, and you got your papers then?

7 A. Uh-huh (yes).

8 Q. And was there any specialized training or  
9 instruction you got from Massey in terms of what their  
10 expectations were for a foreman?

11 A. They put me with another boss for a couple days,  
12 but --- just to kind of show me a little bit about the  
13 books and the paperwork. But as far as, you know,  
14 knowing how the section runs, you know, I ran a miner  
15 for a pretty good while, so I pretty much knew, you  
16 know, how to --- what P2, their production cycle they  
17 wanted to be, and S1, you know, safety first, and all  
18 that stuff, so ---.

19 Q. Do you believe that in terms of the kind of  
20 on-the-job training for being an assistant mine  
21 foreman, do you feel like it was adequate?

22 A. I probably could have used a little bit more help  
23 with the books, I'd say. I had a hard time with the  
24 books for a while. But other than that, you know,  
25 everything else was okay. You know, the paperwork and

1 stuff wasn't a problem, but ---.

2 Q. And in terms of the books, what was the  
3 procedure --- you would fill out the book and then  
4 there was kind of a check --- someone was supposed to  
5 check to make sure that it was accurate? How did that  
6 work?

7 A. Well, like I was saying before, you know, if I  
8 would forget to write something down, which was  
9 something that he already gave me, he would let me  
10 know and I would put it in the book that night when I  
11 got outside, because he would have to sign it when he  
12 come outside. He'd have to sign his pre-shift that he  
13 called out to me, and he would tell me and I would  
14 make sure I took --- you know, took care of it.

15 Q. So that's a little bit of on-the-job training  
16 when ---

17 A. Uh-huh (yes).

18 Q. --- they were kind of helping you if you missed  
19 something?

20 A. Oh, yeah. Yeah.

21 Q. Were there production bonuses that were offered to  
22 the salary employees?

23 A. No.

24 Q. Okay.

25 A. Not that I'm aware of. I never received one.

1 Q. Okay. In terms of at the start of your shift,  
2 what procedures did you have to alert your crew to  
3 what they could expect for the shift or any special  
4 problems that you knew about in the mine?

5 A. From the pre-shift he called out. You know, I  
6 would --- we'd get to the end of the mantrip or the  
7 end of the track, getting off the mantrip to go on the  
8 section or before we even got on the mantrip, if the  
9 longwall was in front of us, holding us up, we'd, you  
10 know, just basically say, hey, you're --- we got this  
11 going on or, you know, you're mining here, you're  
12 bolting here, you know, just stuff like that, just ---  
13 and it's basically all from his pre-shift.

14 Q. And the pre-shift that you would report to your  
15 crew was for your particular section?

16 A. Yes.

17 Q. Did you --- what about things that maybe were  
18 going on in other sections that may potentially  
19 effect, you know, your crew?

20 A. I had really no idea about any of that. I guess  
21 that would be someone's job, you know, higher up to  
22 call and let us know that. I mean, I didn't really  
23 have now ay of knowing that.

24 Q. So that wasn't kind of part of --- you didn't know  
25 that, so you couldn't relay that to your crew?

1 A. Yes.

2 Q. Are you aware of the number and the types of  
3 violations that both the Federal and State inspectors  
4 were finding at the mine?

5 A. I heard of several, yes. I don't guess I really  
6 know exactly how many there is or the type of every  
7 one of them, but you know, I knew they wrote several.

8 Q. As an assistant mine foreman, what was the  
9 procedure for the higher-up management to let you know  
10 about those types of violations?

11 A. Basically if it was on my shift and it was like  
12 maybe --- let's say --- let's just say it was, you  
13 know, that one of the belts needed a little bit of  
14 dust, if it was close to me or the other foreman or  
15 whatever, they would say, hey, we need to get this  
16 dusted or, you know, just things like that. They  
17 wouldn't really tell me a whole lot about the  
18 violation. They'd just say, we got a violation on  
19 this and we need to take care of it.

20 Q. So that would be if it was something on your  
21 section, ---

22 A. Yes.

23 Q. --- something maybe that you had to take care of.  
24 But what about other things in the mine, you know,  
25 serious problems with ventilation maybe that wasn't

1 directly on your section but would potentially --- how  
2 did they let you know about that?

3 A. I never heard anything like that, really, you  
4 know. If something like that was to happen, I'm sure  
5 they would have called and pulled us off the section  
6 to fix it. But you know, as far as --- they  
7 wouldn't --- you know, like I said, we come in that  
8 one time and there was an air change, and you know,  
9 nobody was allowed to work except for the people that  
10 were there to work on the problem, you know, to fix  
11 the problem, so ---.

12 Q. What procedures were there in place for miners to  
13 express concerns about safety? What were the  
14 procedures there at the mine?

15 A. Well, if they didn't feel comfortable talking to  
16 their immediate supervisor, there was a 1-800 number  
17 that they could call. But if anybody --- you know, if  
18 anybody ever felt unsafe, they would pretty much just  
19 tell you. In my opinion, I would if it would have  
20 been me, you know, running a miner. I would tell ---  
21 I would tell them and then we'd go from there. If  
22 they didn't --- you know, you'd work your way up. And  
23 if that didn't work, then you could call the 800  
24 number.

25 Q. What happens when you call the 800 --- do you know

1 anybody that ever called it?

2 A. I know a guy that called it at Elk Run one time,  
3 but they just brought the foreman, all the mine  
4 foremen, the superintendents and everybody into a  
5 meeting, and they wanted to know --- they wanted to  
6 get to the bottom of it immediately and take care of  
7 it.

8 Q. Did that 800 number go to Massey headquarters  
9 or ---?

10 A. I don't know who it goes to. I don't even --- I  
11 don't even know wit actually. I've got it hung up on  
12 a refrigerator somewhere. I've never used it.

13 MS. MONFORTON:

14 No other questions.

15 RE-EXAMINATION

16 BY MR. SHERER:

17 Q. I have a few follow-up questions, Mr. Hilbert.

18 A. Okay.

19 Q. You mentioned just a bit of cracking of the floor  
20 at the Headgate 22 section.

21 A. Uh-huh (yes).

22 Q. Did you ever hear of floor hooving?

23 A. At the mines?

24 Q. Uh-huh (yes).

25 A. I've heard of it up in the upper end, up in that

1 area some that it would hoove some, but not really a  
2 lot of it. I mean, I didn't hear a whole lot about  
3 it. I just heard it hooved a time or two maybe.

4 Q. And you're pointing back in that area behind the  
5 longwall?

6 A. Yeah, behind the longwall.

7 Q. Okay. We talked about the equipment doors a bit,  
8 and you said most of them are in pretty good  
9 condition?

10 A. Uh-huh (yes).

11 Q. Ever notice them beat up or dented up?

12 A. I noticed one set bent up one time, like a mantrip  
13 had hit it, but it was changed very quickly.

14 Q. We were talking about the methane on Headgate 22,  
15 and you mentioned that you had had a few readings that  
16 were a little on the high side and one that was 1.8  
17 percent, I think you mentioned?

18 A. Between 1.3 and 1.5. I don't think he told me  
19 exactly.

20 Q. So one reading up in the immediate action range?

21 A. Yes.

22 Q. Do you recall what sort of methane detector you  
23 had?

24 A. A Solaris.

25 Q. A Solaris?

1 A. Uh-huh (yes).

2 Q. Did you keep that Solaris --- did you take that  
3 Solaris home with you?

4 A. Yes.

5 Q. And you charged it?

6 A. Yes.

7 Q. How did you calibrate that Solaris?

8 A. With the calibration machine at the mines.

9 Q. Did you not test it every day?

10 A. Not every day.

11 Q. Okay. Did you change that meter out occasionally?

12 A. Well, I just had had it probably a  
13 month-and-a-half. I mean, it was brand new, so ---.

14 Q. Okay. So you had had the same meter virtually the  
15 entire time you had been a section foreman?

16 A. Uh-huh (yes).

17 Q. Ever notice that meter going into alarm?

18 A. A couple times, yes. I had --- I believe it was  
19 .5 maybe two or three times in the Number One entry.

20 Q. It would alarm at .5?

21 A. Uh-huh (yes). That's the low alarm level, .5 CHR.

22 Q. Did you reset the alarm level?

23 A. What do you mean? Push the reset button?

24 Q. Yeah.

25 A. Yes.

1 Q. The day of the explosion you mentioned that  
2 your --- you went in pretty soon after the explosion.

3 A. Uh-huh (yes).

4 Q. And you mentioned several times that you checked  
5 your Solaris. Do you recall any alarms going off?

6 A. None.

7 Q. None?

8 A. No.

9 Q. None of the carbon monoxide alarms ever went off?

10 A. No, all the way up to those men it was clear even  
11 where they were laying.

12 Q. And do you know what happened to your --- have you  
13 still got the Solaris?

14 A. Uh-uh (no). I had to turn it in when they  
15 transferred me to Elk Run because MSHA wanted it to  
16 run tests on it, I think.

17 Q. Okay. Are you aware that the Solaris records all  
18 of the data ---

19 A. Yes.

20 Q. --- for a given period of time?

21 A. Yes.

22 MR. SHERER:

23 That's all the questions I've got.

24 ATTORNEY BABINGTON:

25 Terry?

1 RE-EXAMINATION

2 BY MR. FARLEY:

3 Q. I've got a handful more, if you will just bear  
4 with me. I think you said that after the explosion,  
5 in the days after the explosion, you were underground  
6 at some point to assist in installing some temporary  
7 ventilation controls; is that correct?

8 A. Yes.

9 Q. Can you identify on the map the locations where  
10 you helped to install those ventilation controls?

11 A. Well, I know of a few of them, but a couple of  
12 them I just --- because we got in there and, you know,  
13 it's pretty black, you know, of soot. It was hard to  
14 identify. But I do know, if I'm not mistaken, that  
15 we --- it was in this area, and I think that we put  
16 two right in here.

17 Q. Okay. Why don't you just mark that area. Just  
18 circle it if you think that's where you might have  
19 installed some.

20 A. I think we might have put some there. And if I'm  
21 not mistaken, there might have been some back here on  
22 --- I just know that --- let's see. Let me --- got  
23 off the mantrip at 78 Break. We walked up to here.

24 Q. Why don't you just trace your path --- the path  
25 you took on the map. Just mark the map. We've got

1 plenty of them.

2 A. All right. I got off the mantrip. We started up  
3 through where the doors were, and there was timbers  
4 laid off through here. And I know that we had to  
5 carry them a pretty good ways, so I don't remember  
6 exactly where they were or where we picked them up,  
7 and we carried them all the way down through here  
8 until we found --- they have permissible rides down  
9 there and trailers, so we carried one load and then we  
10 hauled a load, and we built some controls there and  
11 --- I'm not exactly sure where the other ones were  
12 because everything was --- I was so turned around. I  
13 was with, you know, 15, 20 people. We were going  
14 everywhere. And then there was mine rescue going by  
15 you.

16 Q. Okay.

17 A. But if I'm not mistaken, I know --- I'm pretty  
18 sure we built some right in here, in these  
19 punch-throughs.

20 Q. Now, when you're in that area ---?

21 A. There might have been some right here, too, ---

22 Q. Okay.

23 A. --- maybe.

24 Q. I think earlier, when you answered one of Erik's  
25 questions, you indicated that you saw debris blown to

1 the north when you were in that area installing  
2 temporary controls; is that correct?

3 A. Yeah, but I was further down.

4 Q. When you say further down, do you mean closer to  
5 the longwall panel itself?

6 A. Yes.

7 Q. Now, when you say you saw debris blown to the  
8 north, do you mean to the north on the map; is that  
9 correct?

10 A. Yes.

11 Q. Which would mean that the debris would have been  
12 blown toward the One North Headgate entries; is that  
13 correct?

14 A. Yes.

15 Q. To the north?

16 A. Yes.

17 Q. Okay. Now, did you --- I think you --- did you  
18 surmise at that point that explosive forces might have  
19 come and moved in that direction?

20 A. Yeah.

21 Q. What was your take on that?

22 A. Well, I knew I was behind the longwall, so I  
23 thought --- and I thought I remembered hearing  
24 somebody say that the tail was close --- the shearer  
25 was close to the tail. I don't know for sure. I

1 thought that if it exploded there, it could have  
2 worked its way around and then over and then just  
3 dispersed from there. That's the only thing I could  
4 come up with.

5 Q. Okay. And you had that in mind a few days after  
6 the explosion, during the rescue and recovery  
7 operation; correct?

8 A. Correct.

9 Q. Did others who traveled with you share your view  
10 of ---?

11 A. They saw the way the debris blew. I mean, there  
12 was some that was there, which --- and to be quite  
13 honest with you, I don't know any of their names. A  
14 lot of them were presidents and vice-presidents from  
15 other Massey mines just there to help,  
16 superintendents, mine foremen, stuff like that. I  
17 mean, they said, man, look at the way this stuff is  
18 blown, you know, how far this has gone or how far  
19 that's gone, where --- and you know, they were asking  
20 questions, well, where was this at and, you know,  
21 where was that at, you know, things like that.

22 Q. Now, when you were interviewed later --- you said  
23 you were interviewed by Massey attorneys roughly a  
24 month later?

25 A. Probably --- now that I think about it, it

1 probably wasn't that long because I was interviewed  
2 with --- by the MSHA inspectors one day, the Massey  
3 attorneys the next. So it probably --- probably three  
4 weeks, yeah. It might be close to a month.

5 Q. Now, did you discuss what you saw in that area  
6 with the Massey attorneys?

7 A. No. They didn't ask. I had so much --- you know,  
8 it was very emotional and hard to talk about, but ---

9 Q. Sure.

10 A. --- they didn't ask me and I didn't ---.

11 Q. Bear with me. We'll be through here in just a few  
12 minutes. Were you interviewed by any Massey  
13 management person other than their attorneys ---

14 A. No.

15 Q. --- after the explosion?

16 A. No, not at all.

17 Q. Okay. We've asked a lot of questions about  
18 airlock doors on the track.

19 A. Okay.

20 Q. Now, did any of those doors --- were any of them  
21 equipped with smaller man doors in the side panel or  
22 in the door itself?

23 A. I think all of them were.

24 Q. All of them were?

25 A. I believe so. I think that's --- I think that's a

1 law. I think they have to have a man door in them.

2 Q. So it would have been possible for a man to go  
3 through a smaller door as opposed to opening the ---

4 A. Yes.

5 Q. --- larger door? Okay. All right. When you  
6 arrived on April 5th, prior to heading underground,  
7 did you hear any discussion or hear anything about the  
8 longwall being down --- when I say down, not  
9 operational, for some reason during the dayshift of  
10 April 5th?

11 A. No, I didn't hear anything about it at all.

12 Q. Okay. All right. Now, after the explosion, you  
13 went underground with Whitehead and Blanchard and  
14 Hager and so forth and Persinger. Now, if I  
15 understood you correctly, you were --- you and  
16 Persinger first --- when you found the 22 Tailgate  
17 crew, you and Persinger left first I think with four  
18 of the people who were ultimately deceased; is that  
19 correct?

20 A. No. One of them --- one of them was --- two of  
21 them was still responsible when we first put them on  
22 the mantrip.

23 Q. Okay. And how many others besides those two?

24 A. Two that were deceased.

25 Q. Okay. And there were how many more inby at that

1 point, two or three?

2 A. Four.

3 Q. Okay. Now, the people inby at that point, if I  
4 understood you correctly, would have been Hager,  
5 Whitehead and Blanchard?

6 A. No. Are you talking about men that were deceased?

7 Q. Yes, sir.

8 A. (b) (7)(C)

10 Q. Okay. Now, who --- you and Persinger took the  
11 trip out. Now, if I understood you correctly, Hager,  
12 Blanchard and Whitehead remained; is that correct?

13 A. Yes.

14 Q. Now, did you --- as you were leaving, did you  
15 overhear any conversations between Hager and Blanchard  
16 and Whitehead?

17 A. Before I left, Blanchard said, Wayne --- yeah, he  
18 said, Wayne's with you. My spotter is dead. I need  
19 yours. I said, okay. He was my boss, so I gave him  
20 my spotter. But at that point, I guess they had  
21 loaded the other men up, and Everett was right behind  
22 me with him on the mantrip that they were already on.

23 Q. Did you hear at any point Mr. Hager call out to  
24 Blanchard and Whitehead or anyone else in a loud voice  
25 requesting assistance in loading the bodies?

1 A. No. I was pulling --- I was pulling the mantrip  
2 up and we was loading them. At one time they called  
3 out to me because --- at first they told me to stay in  
4 the mantrip and move it up to each person. And then  
5 when it come to Carl, he was a bigger fellow, they  
6 hollered at me to come and help them. But I never  
7 heard anybody holler --- heard Everett holler at  
8 anybody else.

9 Q. Okay. From the time you began as section foreman  
10 on the 22 Headgate section in the middle of February  
11 of this year until --- I think your last shift you  
12 worked up there would have been about April 1st, is  
13 that correct, ---

14 A. Uh-huh (yes).

15 Q. --- did any of the employees or miners on your  
16 section, 22 Headgate evening shift crew, did any of  
17 them ever, during that period of time, approach you at  
18 any time with concerns about the ventilation not being  
19 sufficient?

20 A. One time that first day. That's who had come to  
21 me first, was one of the miner men.

22 Q. Okay. Do you recall who that was?

23 A. Morris Hulligan.

24 Q. Now, what was the nature of his complaint? What  
25 did he have to say?

1 A. He said, I don't think we have enough air. And I  
2 said, I think you're right. And you know, I think one  
3 other time one of the buggies tore maybe a diagonal  
4 down, to. It's hard to remember, you know,  
5 everything, but --- tore it down, too, and he stopped  
6 and said, hey, something happened, you know, just  
7 little things like that. But the first time, he was  
8 the first one. He said, I don't think we have enough  
9 air, and I said, I believe you're right.

10 Q. Okay. Were you able to improve the situation  
11 after your conversation with him?

12 A. Yeah. That's the day I shut the section down and  
13 we went outby and checked the doors.

14 Q. That's the instance where the door was open outby?

15 A. Uh-huh (yes). And then, like I said, there might  
16 have been a time or two when a piece of curtain might  
17 have got torn down while he was mining and, you know,  
18 if something happened, he knew he didn't have enough  
19 air, he would stop and he would say, hey, look, we've  
20 got a little bit of a problem. But you know, as far  
21 as complaining a whole lot, no, nothing.

22 Q. But other than that, during that five or six-week  
23 period, no one ever said, hey, man, we don't have  
24 enough air up here or anything to that effect?

25 A. I had heard --- I'd hear the bolt men talk about

1       how hot they were, sweating and stuff like that. They  
2       would say that they didn't think we had enough. But  
3       you know what I'd always do, if somebody complained,  
4       I'd always do an air reading and show them, you know,  
5       look, this is what we got in the last open break. I'd  
6       take it right there with them standing beside me.

7       Q. So you were legal?

8       A. Yeah.

9       Q. Okay.

10      ATTORNEY BABINGTON:

11      I just wanted to note for the record the  
12       area marked by the witness --- from 78 Break you  
13       traveled inby along Six North belt?

14      A. On foot.

15      ATTORNEY BABINGTON:

16      On foot, yeah. And you've circled one  
17       area that's right at the split between Tailgate One  
18       North and the Six North belt?

19      A. Uh-huh (yes).

20      ATTORNEY BABINGTON:

21      Right around 85 Break on Six North and  
22       around Eight Break on Tailgate One. And then further  
23       inby Six North belt, you marked the area --- the inner  
24       section of Six North belt and the crossover at the  
25       mouth of the longwall; ---

1 A. Yeah.

2 ATTORNEY BABINGTON:

3 --- is that correct?

4 A. Correct, if I'm not mistaken. And like I said,  
5 it's been a few months, and I don't remember exactly  
6 where every one of them were, but I know we built some  
7 at this punch-through here, I believe, these  
8 punch-throughs here, and I think there was some back  
9 down through here.

10 ATTORNEY BABINGTON:

11 And when you say back down through here

12 you're referring to the --- I guess the crosscuts  
13 almost immediately outby the mouth of the longwall  
14 panel?

15 A. Yes, I believe.

16 RE-EXAMINATION

17 BY MR. SHERER:

18 Q. I've got a couple of minor questions. You  
19 mentioned that you took a mantrip out with some of the  
20 victims. Do you recall what Mr. Whitehead and  
21 Blanchard and Hager did? Did they come on out?

22 A. Everett Hager did.

23 Q. What did Mr. Blanchard and Whitehead do; do you  
24 recall?

25 A. They said they were trying --- they were going to

1 go proceed on slowly and try to see if there was  
2 anybody that needed help.

3 Q. And you also mentioned that you had given your  
4 Solaris to Mr. Whitehead?

5 A. Mr. Blanchard.

6 Q. Mr. Blanchard.

7 A. That's correct.

8 Q. Excuse me. Did you get it back from him?

9 A. Yes. Well, I got it back the next day.

10 Q. Okay. Did you don an SCSR at any time during that  
11 rescue attempt?

12 A. No.

13 Q. Okay. Thank you.

14 A. Uh-huh (yes).

15 ATTORNEY BABINGTON:

16 Terry, anything else?

17 MR. FARLEY:

18 I don't think so.

19 ATTORNEY BABINGTON:

20 Celeste?

21 MS. MONFORTON:

22 No.

23 ATTORNEY BABINGTON:

24 Okay. Just to note, we marked one map,  
25 and that will be labeled Hilbert One.

1 (Hilbert Exhibit One marked for  
2 identification.)

3 ATTORNEY SEARS:

4 Could I also request that the pre-shift  
5 report be marked as an exhibit since he referred to  
6 it?

7 ATTORNEY BABINGTON:

8 Yes, we can do that. So we'll make a ---  
9 do you want that specific one or just any copy of that  
10 particular page?

11 ATTORNEY SEARS:

12 Any copy of that particular page is fine.

13 ATTORNEY BABINGTON:

14 Okay. So that was the --- if I recall  
15 correctly, that was the pre-shift report that was  
16 called out at quarter 'til 3:00.

17 A. Yes, roughly.

18 MR. SHERER:

19 Let me get that page and ---.

20 ATTORNEY BABINGTON:

21 We'll just mark that one. Okay. And  
22 that will be marked as Hilbert Two. Let's just verify  
23 that real quick before we close out.

24 ATTORNEY SEARS:

25 While you're doing that --- is it okay if

1 we take a break?

2 ATTORNEY BABINGTON:

3 We're going to go off the record in a  
4 minute, but if you want to take a break before we  
5 do that ---.

6 ATTORNEY SEARS:

7 I don't want to end until I'm sure that I  
8 don't have any questions.

9 ATTORNEY BABINGTON:

10 Okay. Let's take a break.

11 ATTORNEY SEARS:

12 Thank you.

13 SHORT BREAK TAKEN

14 ATTORNEY BABINGTON:

15 So let's go back on the record. All  
16 right. So we'll mark this. We verified that this is  
17 the pre-shift report you were discussing, so we'll go  
18 ahead and mark this Hilbert Two.

19 (Hilbert Exhibit Two marked for  
20 identification.)

21 ATTORNEY BABINGTON:

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

1 we work to determine the cause of the accident.  
2 We request that you not discuss your  
3 testimony with any person aside from a personal  
4 representative. After questioning other witnesses, we  
5 may call you, through your representative, if we have  
6 any follow-up questions. If at any time you have  
7 additional information regarding the accident that  
8 you'd like to provide to us, please contact us through  
9 your representative at the contact information  
10 previously provided.

11 If you wish, you may now go back over any  
12 answer you've given during this interview and you may  
13 also make any statement that you'd like to make at  
14 this time.

15 ATTORNEY SEARS:

16 Do you have any statement?

17 A. I don't have anything, no.

18 ATTORNEY SEARS:

19 My only statement is I'd like for him to  
20 have the opportunity to read the transcript, make sure  
21 everything was taken down correctly. And the letter  
22 says we need to request it in writing, which we will.  
23 We would like a copy of the statement, but we'll ---  
24 I'm telling you that now, but we'll also request it in  
25 writing.

1 ATTORNEY BABINGTON:

2 We can treat --- we'll come back to the  
3 reading the transcript. We've been treating --- if  
4 you request on the record, then we've been treating  
5 that as the written request.

6 ATTORNEY SEARS:

7 Okay.

8 ATTORNEY BABINGTON:

9 So we'll make a note on the record that  
10 you're requesting and we can make sure that you get a  
11 copy of that. Terry, how have we been doing with  
12 requests for --- are you talking about requesting to  
13 read it at --- before it's released to the public or  
14 what are you ---?

15 ATTORNEY SEARS:

16 No. No, no. Basically along the lines  
17 of a deposition. You can read or waive. Since  
18 everything --- since this is sworn testimony and  
19 everything is being taken down, we'd like to have the  
20 opportunity to make sure that everything was taken  
21 down correctly, not change anything, but have him read  
22 over it and make sure that --- you know, it's a lot of  
23 mining terms, and you know, just make sure everything  
24 is taken correctly, just for the integrity of the  
25 record.

1 ATTORNEY BABINGTON:

2 I understand.

3 MR. FARLEY:

4 If I remember correctly, I think the  
5 positions taken by the other attorneys was that they  
6 would provide it at the conclusion of the  
7 investigation, around that time.

8 MS. MONFORTON:

9 Right, but before it's released to the  
10 public ---

11 MR. FARLEY:

12 Yes.

13 MS. MONFORTON:

14 --- so that the witnesses have an  
15 opportunity to review it and just make sure it's  
16 accurate before it's released to the public.

17 A. And also you had said something, too, about --- I  
18 really don't want my name mentioned in the public at  
19 all, you know, I mean, if at all possible.

20 ATTORNEY BABINGTON:

21 Well, we can ---.

22 ATTORNEY SEARS:

23 I think what he's making is a request for  
24 confidentiality.

25 A. Yeah, just ---.

1 ATTORNEY BABINGTON:

2 Right. Right.

3 ATTORNEY SEARS:

4 To the extent that you use his testimony

5 in any regard, sounds to me like he's making a request

6 to keep that confidential unless otherwise ordered by

7 a court order or something, as outlined in his letter.

8 MR. FARLEY:

9 Let me be frank from our standpoint. At

10 the end of the day, when our investigation is done and

11 the report is prepared, everything we've collected,

12 including all transcripts, will be available to

13 everyone who lives and breathes under the Freedom of

14 Information Act. Now, in the meantime, we have no

15 plans to go out and hold a press conference and quote

16 Mr. Hilbert. That's about as straight as I can give

17 it to you. But ultimately, it will be out there.

18 There will be no bringing it back.

19 ATTORNEY BABINGTON:

20 Right. With the confidentiality, as I

21 understand --- as I understand, our policy on it is

22 --- and of course, once the state gives it up, then

23 it's --- I mean, it's public at that point anyway, so

24 us holding onto it, MSHA, doesn't do much. But I

25 think the idea is we'll keep it private for as long as

1 possible, and the transcripts will not be publicly  
2 made available until a date later on in the future.  
3 But the confidentiality provision is limited.

4 A. Okay.

5 ATTORNEY BABINGTON:

6 But we can --- so like I said, we can  
7 provide an opportunity for you to --- we'll get you a  
8 copy of the transcript, I guess, prior to the public  
9 release is how we've been doing this. And at that  
10 point, if there are any --- I guess if there are any  
11 objections you have or errors or something, then you  
12 can let us know, and then when the public release  
13 happens, the it will reflect whatever necessary  
14 corrections there are. Do you have any other  
15 questions?

16 ATTORNEY SEARS:

17 Well, the only statement I'll put on the  
18 record is that Mr. Hilbert appeared today voluntarily.  
19 Before appearing, he was presented with a  
20 hand-delivered document that indicated specifically,  
21 your statement is completely voluntary and if you  
22 request us to keep your identity confidential, we will  
23 do so to the extent permitted by law. And to the  
24 extent that he was under that understanding and  
25 voluntarily giving his testimony today, we would

1 demand that the confidentiality of his --- that his  
2 identity be kept confidential to the highest extent  
3 possible. Okay.

4 MR. FARLEY:

5 Again, until the end of the  
6 investigation, then it's open season.

7 ATTORNEY BABINGTON:

8 But your point is noted. Okay. Well,  
9 again, I want to thank you for appearing and for your  
10 cooperation in this matter. Off the record.

11 \* \* \* \* \*

12 CONFIDENTIAL STATEMENT UNDER OATH

13 CONCLUDED AT 3:48 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*

WEST VIRGINIA  
MINE SAFETY AND HEALTH ADMINISTRATION

IN THE MATTER OF:

THE INVESTIGATION OF THE APRIL 5, 2010 MINE EXPLOSION  
AT UPPER BIG BRANCH MINE

ERRATA SHEET

I, **PATRICK HILBERT**, have read the foregoing pages of my deposition given on July 10, 2010, and wish to make the following, if any, amendments, additions, deletions, or corrections:

| PAGE/LINE | CORRECTION AND REASON FOR CORRECTION   |
|-----------|--|
| 63/20     | "Responsive" → Breathing   |
| 63/14     | "Responsive" → Breathing   |
|           | any and All "Responsive" was meant as Breathing  |
| 61/17     | "NOBODY ever came"... Because timothy Did not know that the tracking system was down due to the explosion. |
| 108/ 21   | "Responsible" should be "Responsive" which should be Breathing   |
| 57/ 13    | add, after the word immediately, "(six days)"  |
| 58/ 1     | the word outside should be corrected to "inby".  |

