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Transcript of the Testimony of **Johnny Neely**

Date: July 19, 2010

Case:

Printed On: July 26, 2010

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CONFIDENTIAL STATEMENT UNDER OATH

OF

JOHNNY NEELY

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 Monday, July 19, 2010, beginning at 1:05 p.m.

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I N D E X

1		
2	OPENING STATEMENT	
3	By Attorney Hampton	6 - 11
4	STATEMENT	
5	By Mr. Farley	11 - 12
6	DISCUSSION AMONG PARTIES	12 - 19
7	WITNESS: JOHNNY NEELY	
8	EXAMINATION	
9	By Mr. Sherer	19 - 63
10	EXAMINATION	
11	By Mr. Farley	63 - 72
12	EXAMINATION	
13	By Mr. McGinley	72 - 89
14	EXAMINATION	
15	By Attorney Sears	90 - 92
16	RE-EXAMINATION	
17	By Mr. Farley	92 - 97
18	RE-EXAMINATION	
19	By Mr. McGinley	97 - 101
20	RE-EXAMINATION	
21	By Mr. Farley	101 - 103
22	CLOSING STATEMENT	
23	By Attorney Hampton	103
24	DISCUSSION AMONG PARTIES	103 - 104
25	CERTIFICATE	105

1		EXHIBIT PAGE	
2			PAGE
3	NUMBER	DESCRIPTION	IDENTIFIED
4	One	Map	24*

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

* Exhibit not attached

P R O C E E D I N G S

ATTORNEY HAMPTON:

My name is Polly Hampton. Today is July 19th, 2010. And I am with the Office of the Solicitor, the 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 United States Department of Labor. Also present are several people here from the State of West Virginia, and I ask that they now state their appearance for the record.

MR. FARLEY:

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

MR. O'BRIEN:

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

MR. MCGINLEY:

Patrick McGinley, with the Governor's independent investigation team.

ATTORNEY HAMPTON:

There are also several members of the accident investigation teams in the room with us today. Mr. Sherer will be conducting the initial

1 portion of the interviewing today.

2 All members of the Mine Safety and Health

3 Accident Investigation Team and all members of the

4 State of West Virginia Accident Investigation Team

5 participating in the investigation of the Upper Big

6 Branch Mine explosion shall keep confidential all

7 information that is gathered from each witness who

8 voluntarily provides a statement until the witness

9 statements are officially released. MSHA and the

10 State of West Virginia will keep this information

11 confidential so that other ongoing enforcement

12 activities are not prejudiced or jeopardized by a

13 premature release of information. This

14 confidentiality requirement shall not preclude

15 investigation team members from sharing information

16 with each other or with other law enforcement

17 officials. Your participation in this interview

18 constitutes your agreement to keep this information

19 confidential.

20 Government investigators and specialists

21 have been assigned to investigate the conditions,

22 events and circumstances surrounding the fatalities

23 that occurred at the Upper Big Branch Mine-South on

24 April 5th, 2010. The investigation is being conducted

25 by MSHA under Section 103(a) of the Federal Mine

1 Safety and Health Act and the West Virginia Office of
2 Miners' Health, Safety and Training. We appreciate
3 your assistance in this investigation.

4 You may have a personal attorney present
5 during the taking of the statement, and you may
6 consult with this attorney at any time. Your
7 statement is completely voluntary. You may refuse to
8 ask any --- to answer any question, and you may
9 terminate your interview at any time or request a
10 break at any time. Since this is not an adversarial
11 proceeding, formal Cross Examination will not be
12 permitted. However, your attorney may ask clarifying
13 questions as appropriate. So the record is clear, do
14 you have an attorney here with you today?

15 MR. NEELY:

16 Yes.

17 ATTORNEY HAMPTON:

18 Your identity and the content of this
19 conversation will be made public at the conclusion of
20 the interview process and may be included in the
21 public report of the accident, unless you request that
22 your identity remain confidential or your information
23 would otherwise jeopardize a potential criminal
24 investigation. If you request us to keep your
25 identity confidential, we will do so to the extent

1 permitted by law. That means if a judge orders us to
2 reveal your name or if another law requires us to
3 reveal your name or if we need to reveal your name for
4 other law enforcement purposes, we may do so. Also,
5 there may be a need to use the information you provide
6 to us or other information we may ask you to provide
7 in the future in other investigations into and
8 hearings about the explosion. Do you understand this?

9 MR. NEELY:

10 Yes.

11 ATTORNEY HAMPTON:

12 And would you like to make a request
13 regarding the confidential nature of the information
14 that you provide to us?

15 MR. NEELY:

16 Yes.

17 ATTORNEY HAMPTON:

18 And what is that request?

19 MR. NEELY:

20 That it be held confidential.

21 ATTORNEY HAMPTON:

22 Okay. So you would like ---

23 MR. NEELY:

24 Yes.

25 ATTORNEY HAMPTON:

1 --- this information to be held
2 confidential? Okay. After the investigation is
3 complete, MSHA will issue a public report detailing
4 the nature and causes of the fatalities in the hope
5 that greater awareness about the causes of accidents
6 can reduce their occurrence in the future.

7 Information obtained through witness interviews is
8 frequently included in these reports. Since we will
9 be interviewing other individuals, we request that you
10 not discuss your testimony with any person aside from
11 your personal representative or Counsel.

12 A court reporter will record your
13 interview. Please speak loudly and clearly. If you
14 do not understand a question, please ask the
15 questioner to rephrase it. Please answer each
16 question as fully as you can, including any
17 information you've learned from someone else. I'd
18 like to thank you in advance for your appearance here.
19 We appreciate your assistance in this investigation.
20 Your cooperation is critical in making the nation's
21 mines safer.

22 After we have finished asking questions,
23 you will have an opportunity to make a statement and
24 provide us with any other information you think is
25 important. If at any time after the interview you

1 recall any additional information that you believe
2 might be useful, please have your attorney contact
3 Norman Page at the telephone number or e-mail address
4 provided to you.

5 Any statements given by miner witnesses
6 to MSHA are considered to be exercise of statutory
7 rights and protected activity under Section 105(c) of
8 the Mine Act. If you believe any discharge,
9 discrimination or other adverse action is taken
10 against you as a result of your cooperation with this
11 investigation, you are encouraged to immediately
12 contact MSHA and file a complaint under Section 105(c)
13 of the Act.

14 MR. FARLEY:

15 Mr. Neely, on behalf of the Office of
16 Miners' Health, Safety and Training, I want to advise
17 you that the West Virginia Mine Health and Safety
18 Regulations also provide protection for miners against
19 potential discrimination who participate in these type
20 interviews. I'm going to pass along some contact
21 information for you which provides the address for the
22 West Virginia Board of Appeals, which hears complaints
23 regarding discrimination against coal miners. Also,
24 the memorandum includes my phone number and a phone
25 number for Mr. Bill Tucker, who is our lead

1 underground investigator. Should you have any
2 problems, you can give either of us a call. Also, we
3 advise you if you have a problem with discrimination
4 and you need to file a complaint, you need to do so
5 within 30 days of the time it occurs.

6 MR. NEELY:

7 Thank you.

8 ATTORNEY HAMPTON:

9 Okay. Now, because you have indicated
10 that you have an attorney with you today, I have some
11 questions that I need to ask you about that. First of
12 all, could you please state your full name and address
13 for the record?

14 MR. NEELY:

15 My name is Johnny Lee Neely. I live at

16 (b) (7)(C) ,

17 (b) (7)(C) .

18 ATTORNEY HAMPTON:

19 And could your attorney please introduce
20 himself?

21 ATTORNEY SEARS:

22 My name is Chris Sears. I'm an attorney
23 with the law firm of Shuman, McCuskey & Slicer.

24 ATTORNEY HAMPTON:

25 Did you voluntarily choose to have this

1 individual as your attorney today?

2 MR. NEELY:

3 Yes.

4 ATTORNEY HAMPTON:

5 Do you feel like you had a choice in the
6 matter?

7 MR. NEELY:

8 Yes. I called the company and they gave
9 me their name. And so I thought with me, in my
10 situation, that I should have somebody with me on
11 account of my post-traumatic ---.

12 ATTORNEY HAMPTON:

13 Okay. And by called the company, do you
14 mean Massey?

15 MR. NEELY:

16 Yeah. I didn't --- you know, I didn't
17 know what to do, so ---.

18 ATTORNEY HAMPTON:

19 So you have consented to having Mr. Sears
20 here as your attorney?

21 MR. NEELY:

22 Yes.

23 ATTORNEY HAMPTON:

24 Do you understand that Massey Energy, its
25 affiliates or its officers or directors or attorneys

1 may not represent or direct you in this matter?

2 MR. NEELY:

3 Yes.

4 ATTORNEY HAMPTON:

5 And are you legally representing the
6 witness in this matter?

7 ATTORNEY SEARS:

8 I am.

9 ATTORNEY HAMPTON:

10 And do you understand that you may not
11 communicate with Massey Energy, its affiliates or its
12 officers or directors or attorneys concerning the
13 substance of this representation?

14 ATTORNEY SEARS:

15 I understand that I am governed by the
16 West Virginia Rules of Professional conduct, and I
17 agree to be bound by those.

18 ATTORNEY HAMPTON:

19 Okay. So are you going to answer that
20 question?

21 ATTORNEY SEARS:

22 No. That's my answer.

23 ATTORNEY HAMPTON:

24 Okay. Are you being paid by a third
25 party to provide such representation?

1 ATTORNEY SEARS:

2 And with that, with all due respect to
3 the board members and to this forum, I decline to be
4 the subject of inquiry on anything other than the fact
5 that I'm representing Mr. Neely.

6 ATTORNEY HAMPTON:

7 Okay. So are you refusing to answer this
8 question?

9 ATTORNEY SEARS:

10 I'm not going to answer any --- I'm not
11 going to be the subject of inquiry, so I'm not --- I
12 think I told you everything you need to know about who
13 I am and why I'm here today, ---

14 ATTORNEY HAMPTON:

15 Okay.

16 ATTORNEY SEARS:

17 --- and therefore I'm not going to answer
18 any more questions.

19 ATTORNEY HAMPTON:

20 Okay. I still need to go through my
21 questions.

22 ATTORNEY SEARS:

23 If you'd like to answer them, I'll say
24 ditto, if that's okay, or the same response for every
25 question.

1 ATTORNEY HAMPTON:

2 Could you confirm that you have the
3 witness' informed consent in writing, which reflects
4 that you have explained in person the risks and
5 advantages of this representation, including any real
6 or potential conflicts of interest?

7 ATTORNEY SEARS:

8 Same answer.

9 ATTORNEY HAMPTON:

10 The answer is that you're not going to
11 answer that question?

12 ATTORNEY SEARS:

13 That's correct. Well, no. I answered
14 that question by giving you my statement.

15 MR. MCGINLEY;

16 Basically what he said is that he's bound
17 by the Rules ---.

18 ATTORNEY HAMPTON:

19 Yeah, I understand. Could you confirm
20 that this written consent reflects that the witness
21 has been given a reasonable opportunity to consider
22 the risks and reasonably available alternative of such
23 representation and to raise questions and concerns
24 with you?

25 ATTORNEY SEARS:

1 Assumes facts not in evidence. I haven't
2 said that there was a written consent, so ---.

3 ATTORNEY HAMPTON:

4 Could you please confirm that the
5 third-party payer will not direct, regulate or
6 interfere with your professional judgment in
7 representing your client?

8 ATTORNEY SEARS:

9 You're assuming that there's a
10 third-party payer, which I have not acknowledged.

11 ATTORNEY HAMPTON:

12 Could you please confirm that there is no
13 current attorney/client relationship between you and
14 the third-party payer?

15 ATTORNEY SEARS:

16 I understand my ethical obligations.

17 ATTORNEY HAMPTON:

18 Could you please confirm that you are
19 prohibited from communicating with a third-party payer
20 conceding the substance of the representation of this
21 client?

22 ATTORNEY SEARS:

23 I understand my ethical obligations.

24 ATTORNEY HAMPTON:

25 Could you please confirm that it is your

1 understanding that the third-party payer shall process
2 and pay all such invoices within the regular course of
3 its business, consistent with manner, speed and
4 frequency it pays its own counsel?

5 ATTORNEY SEARS:

6 Say that again.

7 ATTORNEY HAMPTON:

8 Could you confirm that it is your
9 understanding that the third-party payer shall process
10 and pay all such invoices within the regular course of
11 its business, consistent with manner, speed and
12 frequency it pays its own counsel?

13 ATTORNEY SEARS:

14 I don't know what obligations any
15 third-party payer, assuming that there is one, has, so
16 I can't answer that.

17 ATTORNEY HAMPTON:

18 Could you confirm that it is your
19 understanding that once the third-party payer
20 committed to pay for your representation, the
21 third-party payer shall not be relieved of its
22 continuing obligations to pay without leave of MSHA or
23 a court brought on prior written notice to the lawyer
24 and the client?

25 ATTORNEY SEARS:

1 That's an normative statement. I don't
2 know that I can agree that that's --- I know what my
3 ethical obligations are. I don't know what the duties
4 of other people are, so ---.

5 ATTORNEY HAMPTON:

6 Having heard the answers given by Mr.

7 Sears, can you confirm that you still want him to be
8 your personal attorney?

9 MR. NEELY:

10 Yes.

11 ATTORNEY HAMPTON:

12 Could you please swear in the witness?

13 -----

14 JOHNNY NEELY, HAVING FIRST BEEN DULY SWORN, TESTIFIED
15 AS FOLLOWS:

16 -----

17 ATTORNEY HAMPTON:

18 Okay. Mr. Sherer?

19 EXAMINATION

20 BY MR. SHERER:

21 Q. First of all, I really want to thank you for
22 coming down here this afternoon, Mr. Neely. This is
23 something that is painful for all of us, and it's very
24 important because we want to prevent this sort of
25 thing in the future. So again, I want to thank you.

1 Are you appearing here today voluntarily?

2 A. Yes, sir.

3 Q. How many years of mining experience do you have?

4 A. Sixteen (16), 16 and a half.

5 Q. Okay. Could you give me just a rough outline of
6 what that experience is?

7 A. I worked at --- started in the mines in '74. I
8 was surveying for Ranger Fuel. Then left there in
9 '77. I went to Ranger Fuel --- or excuse me, Coal
10 King Corporation. I went there for two years,
11 surveying underground, working outside. I then went
12 to the Highway Department, here in Raleigh County. I
13 worked there for 18 years and seven months. And when
14 the big boom in the coal picked up, I decided I was
15 going to try to get a few more years in the coal
16 mines. I had a hard time with the State making
17 layoffs. It was getting pretty tight or --- excuse
18 me. Let me back up before I went to the Highway
19 Department. I went to work at Beckley Coal for nine
20 years. I worked there and got certified, and I worked
21 there for nine years. Then I went to the Highway
22 Department and worked there for 18 years and seven
23 months. And started with Massey November 18th of
24 2008.

25 Q. And what mines did you work at for Massey?

1 A. At UBB.

2 Q. Just strictly UBB?

3 A. Yes, sir.

4 Q. So you've been there since 2008?

5 A. Since 2008, yes, sir.

6 Q. Okay. Now, you say you got certified. What
7 Federal and State certificates do you have?

8 A. Mine foreman and fire boss.

9 Q. Do you have any others?

10 A. No, sir, ---

11 Q. Okay. Thank you.

12 A. --- other than a miner's card.

13 Q. Okay. Sure. What were your normal duties at UBB?

14 A. My main duties were fire boss belts. I fire
15 bossed --- well, right there, prior to the explosion,
16 I was in this area of Headgate 22, Tailgate 22.

17 Q. Okay.

18 A. And I also had a pump over here at the Glory Hole.

19 I had a room here, a room here.

20 ATTORNEY HAMPTON:

21 When you're saying here, can you describe

22 where you're pointing on the map?

23 A. 140 Break, north mains, 145 north mains, and north
24 mains face itself.

25 BY MR. SHERER:

1 Q. And those rooms in the faces, I assume that they
2 were driven more than 20 feet?

3 A. Yes, sir. Some of them maybe not that far, but
4 they still had the curtain hanging in them,
5 ventilated.

6 Q. So you did weekly exams on those rooms?

7 A. Yes.

8 Q. Okay. Can I ask you to take a marker and just
9 mark up the areas that you did examine?

10 ATTORNEY HAMPTON:

11 I'm handing the witness a blue marker.

12 Would you like a magnifying ---?

13 A. Yeah, I think I can see it. There's a room in
14 this area right here. I'm not --- this map, it's not
15 --- I don't think it's right, correct.

16 ATTORNEY SEARS:

17 What area is that?

18 A. Right here.

19 ATTORNEY SEARS:

20 You can identify it?

21 BY MR. SHERER:

22 Q. Just draw it ---

23 A. I think it's this room right here.

24 Q. --- wherever you think it is.

25 WITNESS COMPLIES

1 BY MR. SHERER:

2 Q. Okay.

3 ATTORNEY HAMPTON:

4 Okay.

5 A. And this one.

6 ATTORNEY HAMPTON:

7 Could you ---?

8 A. 145 --- 140 --- 138 Break.

9 ATTORNEY HAMPTON:

10 Could you label the two areas on the map

11 that you have just circled in blue marker?

12 A. Could I do what?

13 ATTORNEY HAMPTON:

14 Label them.

15 BY MR. SHERER:

16 Q. Just write ---.

17 ATTORNEY SEARS:

18 Like a one and a two?

19 ATTORNEY HAMPTON:

20 Yeah.

21 A. Okay. And I had ---

22 ATTORNEY HAMPTON:

23 Okay.

24 A. --- and I had two here. And I guess I can do

25 this ---.

1 BY MR. SHERER:

2 Q. However you want to do it.

3 A. I would walk down to that pump first, so I'm going
4 to make it three. And I'll go four. Make this five,
5 six, seven, eight. That face is --- even across
6 there, it's not drove yet.

7 ATTORNEY HAMPTON:

8 Okay. The witness has just marked eight

9 different locations on what I am marking now as
10 Exhibit Number One, Neely, 7/19/10, which is the
11 longwall map scale 1 to 200.

12 (Neely Exhibit One marked for
13 identification.)

14 BY MR. SHERER:

15 Q. Okay. So you got these eight rooms and faces on
16 your weeklies?

17 A. Daily.

18 Q. Oh, dailies?

19 A. We done it on a daily basis, and then they finally
20 changed it. Maybe a month, a couple months before
21 this accident, they put panels in each one of those
22 faces, and then they changed it over to a weekly
23 examination.

24 Q. Okay.

25 A. They had one in this one at 138 Break. They had a

1 panel in it, but they hadn't put one in --- actually,
2 it's 147 Break, yeah.

3 Q. So you were getting --- were you still getting
4 these daily or just doing them weekly?

5 A. These were getting done weekly. That one was done
6 daily.

7 Q. Okay.

8 A. 147 was done daily.

9 Q. Okay. Thank you.

10 A. This one here had one in it.

11 Q. You done that weekly. Now, the section belts, did
12 you do those?

13 A. I done those daily.

14 Q. Would you mark those with a different color
15 marker, please?

16 ATTORNEY HAMPTON:

17 I'm handing the witness a pink marker.

18 WITNESS COMPLIES

19 A. Sometimes I would have to get Seven North belt,
20 too.

21 BY MR. SHERER:

22 Q. Why don't you just put a dash along that?

23 A. What, sir?

24 Q. A dashed line.

25 A. Oh, okay.

1 ATTORNEY SEARS:

2 Instead of a solid line.

3 A. Like this?

4 BY MR. SHERER:

5 Q. Yeah. That will help.

6 A. It depends on who --- it depends on who was off.

7 If they had two --- you know, a fire boss off, then
8 you had a little bit more area to cover.

9 Q. Sure. Okay.

10 MR. SHERER:

11 So the witness has marked in pink the
12 Headgate 22 section belt, the Tailgate 22 section
13 belt, the crossover belt that he did on a daily basis,
14 and the Number Seven belt that he did occasionally as
15 needed.

16 A. Yes, sir.

17 BY MR. SHERER:

18 Q. Did you have any other areas that you were
19 responsible for fire bossing?

20 A. Basically every day that was my --- that's where I
21 --- basically the job. I took care of that belt head,
22 this belt head, this discharge.

23 ATTORNEY HAMPTON:

24 Okay. When you're saying that and this,
25 can you ---?

1 A. Okay. I took care of Headgate 22 belt head,
2 Tailgate 22 belt head and the belts and --- all the
3 belts and occasionally Seven North belt.

4 BY MR. SHERER:

5 Q. Thank you.

6 ATTORNEY SEARS:

7 Can I make a notation for the record?

8 MR. SHERER:

9 Sure.

10 ATTORNEY SEARS:

11 It appears that where he used the pink,
12 the pink and the yellow combined to make orange, and
13 so there's not a solid pink line.

14 ATTORNEY HAMPTON:

15 Maybe he can darken it.

16 MR. FARLEY:

17 I've noticed that, too.

18 ATTORNEY SEARS:

19 So based on the testimony, it will appear
20 that maybe there's a break in the section, and I don't
21 believe that's ---.

22 A. Want me to go on the outside of it?

23 BY MR. SHERER:

24 Q. Sure.

25 ATTORNEY HAMPTON:

1 Yeah.

2 BY MR. SHERER:

3 Q. Just make a big, ugly line.

4 WITNESS COMPLIES

5 BY MR. SHERER:

6 Q. There you go. That will work. That's a good one.

7 Okay. Did you have to do any of the pre-shifts for
8 the section?

9 A. Yes, occasionally, not every day.

10 Q. Okay.

11 A. I was on dayshift the day before the explosion. I
12 just had switched off of dayshift and put on --- which
13 I think I worked Saturday. I got switched off
14 Saturday and put on evening shift, which was 6:00 in
15 the evening --- six o'clock of the evening on Sunday
16 until six o'clock in the morning on Monday.

17 Q. Okay.

18 A. And I had been flip-flopped back around, you know,
19 several times since I've been there.

20 Q. Sure. Let me ask you just an opinion, Mr. Neely.
21 Do you feel like you were able to take care of these
22 belts? Do you think that was too much for you or ---?

23 A. I think --- I think it was too much.

24 Q. Okay. What else did you have to do? You said you
25 had to take care of the belts and the discharges and

1 such. Did you have to shovel belt?

2 A. You cleaned the belts. You rock dusted, rock
3 dusted the belts. You took care of all the guards
4 around the belt heads. You greased the belt heads.
5 You're talking a pretty good job for --- at times I
6 had more than that. Sometimes I had all of this, you
7 know. It just depends on the situation, if somebody
8 was off.

9 Q. Sure.

10 A. So it was a pretty good job. I mean, I weighed
11 160 pounds when I started. I lost 20, 25 pound in no
12 time, so --- there's obviously a lot of walking and
13 stuff.

14 Q. Sure. That would take a lot out of you. What
15 about spills, did you have many spills on these belts?

16 A. No, sir, not on these here.

17 Q. Okay.

18 A. I had some, very little, right here, Headgate 22.
19 Had some spillage on the tailpiece on Tailgate 22, but
20 it wasn't a whole lot. It was --- you know, I could
21 walk by it sometimes and clean it up in a few minutes,
22 you know. A lot of things you could do in a few
23 minutes. A lot of things you couldn't.

24 Q. Sure. Were there any trickle dusters on these
25 belts?

1 A. Yes, sir.

2 Q. Where were those, please? I mean, ---.

3 A. Well, let's see. There was a --- okay.

4 Q. We'll get you to take a green marker.

5 A. I think there was a trickle duster sitting right
6 here.

7 Q. Just draw a circle.

8 ATTORNEY SEARS:

9 Identify it for the record, please.

10 A. Okay.

11 BY MR. SHERER:

12 Q. Well, just take your time.

13 A. I'm just trying to figure out which one of these
14 it is. I'm thinking it was sitting right here.

15 Q. Okay.

16 ATTORNEY HAMPTON:

17 Could you draw a line out into the margin
18 and write duster?

19 WITNESS COMPLIES

20 BY MR. SHERER:

21 Q. Okay. So you've got a trickle duster about the
22 discharge of the Number Seven belt. Were there any
23 more trickle dusters up in this area?

24 A. There was one --- there was one right here I think
25 at the overcast. There was one right here.

1 Q. Just draw another circle and then label it also.

2 WITNESS COMPLIES

3 MR. SHERER:

4 Okay. And the witness has indicated a

5 duster about one break back from the mouth of the 22

6 Headgate.

7 BY MR. SHERER:

8 Q. Any more up here, please?

9 A. That's the only two that's up here, in that area.

10 Q. Okay. This duster at the head of the --- or the
11 mouth of 22 Headgate, when you were working dayshift,
12 about how much rock dust were you putting out?

13 A. Usually probably eight bags.

14 Q. Okay. And that's over the course of the shift?

15 A. Yes, sir. It would run all shift, yes.

16 Q. Would it hold eight bags or did you have to go
17 back and top it up?

18 A. It would just depend on what the other shifts
19 would --- you know, each shift would start up fire
20 bosses. Sometimes you'd have to fill them all the way
21 up, sometimes you wouldn't. Sometimes you'd have to
22 put three or four bags to top it off, you know.

23 Q. But if it was empty, you could put eight bags in?

24 A. Right, I think about eight bags.

25 Q. Okay. When you were working the dayshift, was it

1 --- and you came up to it near the beginning of the
2 shift, was it generally empty?

3 A. Yeah. Most of the time I --- yes, sir. Most of
4 the time I had to put rock dust in it. It might not
5 have been plum empty, but I had to put rock dust in to
6 top it off.

7 Q. Okay. Now, the --- you indicated that you worked
8 Sunday night on the nightshift, I guess?

9 A. Yes, sir.

10 Q. Do you recall if it was empty when you came on
11 that shift?

12 A. I don't recall.

13 Q. Okay. Do you recall if you filled it up during
14 that shift?

15 A. I don't recall if I did or not.

16 Q. Okay. Do you have any idea roughly how long a
17 distance you normally had to walk to do this?

18 ATTORNEY SEARS:

19 To do what?

20 MR. SHERER:

21 To do --- fire boss the belts.

22 A. Cover the whole area?

23 BY MR. SHERER:

24 Q. Just a good guess.

25 A. A couple hours.

1 Q. A couple hours of walking. That's --- okay. Kind
2 of an unrelated question for you. We're showing this
3 22 Headgate to be stopped at roughly 29 Breaks. Does
4 that seem about right?

5 A. I think so.

6 Q. Okay. We've had a couple people that thought it
7 was driven a little further.

8 A. Yeah, it could have been driven a little bit
9 further because I remember when I come off the
10 section, I'd walk back down the track entry and it
11 seemed like I would walk for a little ways before I
12 got to 20 Break, so ---

13 Q. Okay.

14 A. --- it's 29 to, I'd say, maybe 30 something, 33,
15 34 maybe.

16 Q. Okay.

17 A. But I'm not positive.

18 Q. That's good enough.

19 A. It's close. I know it's close.

20 Q. Sure. Okay. That helps quite a bit. We
21 appreciate that. What about the tailgate section,
22 it's driven in about six or seven breaks?

23 A. Yeah.

24 Q. Is that about right?

25 A. Yes, sir.

1 Q. Okay. Thank you. Now, the --- what --- do you
2 recall what size belts these were?

3 A. Four foot.

4 Q. Were all of them four foot?

5 A. Yeah. These are all small belts here, these ---
6 except, yeah, the Seven North and Six North.

7 Q. Okay.

8 A. Six North and so on.

9 MR. MCGINLEY:

10 So just for the record, the question was
11 how wide these belts were here. And you're talking
12 about the Headgate 22?

13 A. Yes, sir.

14 BY MR. SHERER:

15 Q. And the section belts were four foot?

16 A. Yes, sir.

17 Q. And this main belt went up to six foot?

18 A. Yes, sir.

19 MR. MCGINLEY:

20 Okay. Thank you.

21 BY MR. SHERER:

22 Q. And it was four feet wide up until it intersected
23 Seven North?

24 A. Yes, sir. Seven North was six feet.

25 Q. Okay. Thank you. When you were working dayshift,

1 do you recall how many fire bosses were on the
2 dayshift, on average?

3 A. Three.

4 Q. Three. Okay. How about the evening shift?

5 A. Usually three.

6 Q. Okay. Three. Thank you. What if you had a major
7 spill or one of the drives were gobbled out, what would
8 you do?

9 A. I would call the section and have the crews come
10 down and clean it up, help clean it up.

11 Q. Okay.

12 A. Or if my fire --- if I'd get a hold of fire bosses
13 and they weren't busy, to come help clean it up.

14 Q. Okay.

15 A. Most of the time the section was good about coming
16 down. I had occasion where when they drove up the
17 panel for the longwall, we had quite a bit of trouble
18 with that gobbing out, but the section crew was right
19 there, cleaning it up, just like that.

20 Q. Oh, that's good. Now, when you had a gob-out like
21 that, would you put that in your book?

22 A. Yeah. If it was cleaned up, I wouldn't put it in
23 the book. I mean, there was obviously no sense of
24 putting it in the book if it was cleaned up.

25 Q. Sure. Did you have any electrical installations

1 you had to examine?

2 A. Yes, sir. We had power centers that I had to fire
3 boss.

4 Q. Do you recall how many you had?

5 A. Let's see.

6 Q. Just make an X where you think --- about where you
7 think it is.

8 A. Okay.

9 ATTORNEY SEARS:

10 An X in green?

11 MR. SHERER:

12 An X in green, yes.

13 A. I'm trying to find --- this got a legend on it?

14 BY MR. SHERER:

15 Q. No, it doesn't.

16 A. I'm looking for the track entry. It's got to be
17 this one. Maybe it's this one.

18 Q. The track entries aren't shown on here. I'm not
19 sure.

20 ATTORNEY SEARS:

21 Johnny?

22 A. Yes, sir.

23 BY MR. SHERER:

24 Q. Tell you what, instead of trying to locate it
25 exactly, just tell me roughly where do you think the

1 power center ---?

2 A. I had one power center at the mouth of the One
3 section.

4 Q. And by One section, is that Headgate 22 or
5 Tailgate 22?

6 A. Headgate 22.

7 Q. Okay. So one power center near the mouth of
8 Headgate 22?

9 A. Yes, sir. I had two power centers at the Headgate
10 22 drive. One was for Two section and one was outside
11 the stopping. There was one on the inside of the
12 stopping for One section.

13 Q. So you got three power centers. Did you have any
14 more that you had to make?

15 A. During this construction right here, I had a D box
16 one break outby Headgate 22 Switch.

17 Q. Okay. So you had a D box down there. Any other
18 electrical installations?

19 A. I also had a power center straight across from the
20 Headgate 22 Switch going to the portal. It was going
21 to the section.

22 Q. Okay. So you had four power centers and one D
23 box?

24 A. Yeah, back there. Did you have any electrical
25 pumps you had to make?

1 A. Had a little pump I had to make near the Number
2 Four mains --- excuse me --- yeah, near the D box. D
3 box was back here at 159 Break.

4 Q. Okay.

5 A. Right here is 159. Yeah, I had several breaks
6 down there.

7 Q. Any other pumps?

8 A. Yes, sir. I had one here at the Glory Hole.

9 Q. Okay.

10 A. I had one break in behind the Glory Hole.

11 Q. Okay. So we've got two pumps. Any more?

12 A. I had another one at 137 Break.

13 Q. And that would be ---?

14 A. And had a pump here at 137 Break.

15 Q. Can you recall any more?

16 A. Sir?

17 Q. Can you recall any more pumps?

18 A. Not in that area that I know of.

19 Q. Did you have to do any changing stations for
20 scoops?

21 A. Yes, sir.

22 Q. Where were those at roughly?

23 A. Okay. I had Headgate 22, had a scoop charger
24 about I would say 128 Break.

25 Q. Okay.

1 A. That was one. And they had a forklift charger,
2 Headgate 22, but I'm not for sure what break that was.
3 It was about halfway up, I think.

4 Q. That's good.

5 A. Halfway up in that area.

6 Q. Halfway up.

7 A. These entries weren't numbered we were trying to
8 get in.

9 Q. Sure. So you had a scoop charger and a forklift
10 charger?

11 A. Forklift charger. Had a --- one break, let's see,
12 two breaks outby Headgate 22 drive, we had two
13 chargers there.

14 Q. Scoop chargers?

15 A. Yeah. They were out past the overcasts, yeah.

16 Q. Okay.

17 A. Two breaks outby Headgate 22 drive.

18 Q. Okay. Any more chargers you had to make?

19 A. No, I think that's all.

20 Q. Okay. Any more electrical installations?

21 A. Let's see. Excuse me. I'm sorry. We had the
22 tailpiece on Headgate 22 and Number One belt and had a
23 power center there.

24 Q. Okay. So you had five power centers?

25 A. Yes, sir.

1 Q. That's a lot of stuff to examine.

2 A. I also had two chargers back right here.

3 Q. Okay. So two more chargers?

4 A. Two more chargers across from --- across from
5 Tailgate Number One tailpiece ---

6 Q. Okay.

7 A. --- breakthrough to the left, looking at the ---
8 looking --- facing the tailpiece.

9 Q. Okay. So you had six chargers ---

10 A. Yeah.

11 Q. --- you had to keep up with? Anything else?

12 A. I think that's about it.

13 Q. Okay. Thank you. Did you carry a methane
14 detector?

15 A. Yes, sir.

16 Q. What type; do you remember?

17 A. Polaris.

18 Q. Solaris?

19 A. Solaris I mean.

20 Q. That's okay. Did you carry that home with you?

21 A. Yes. I took it home, yes, sir, and I charged it
22 at home.

23 Q. Where did you calibrate it at?

24 A. At work.

25 Q. Did you do the bump test every day?

1 A. Yes, sir.

2 Q. Thank you. What sort of methane levels do you
3 recall along these belts?

4 A. I never picked up anything on the beltlines.

5 Q. Okay. Did you ever notice the reading? Was there
6 any methane showing up at all?

7 A. No, sir. Like I said, I never picked up any
8 methane on the beltlines.

9 Q. Okay. What about the ventilation on those
10 beltlines?

11 A. Excuse me?

12 Q. How was the air along those beltlines? Did you
13 have enough air?

14 A. Yeah, it seemed adequate.

15 Q. Did you notice if the air was moving in the same
16 direction every time you examined it?

17 A. Yes, sir.

18 Q. Okay. Which direction was the air moving on the
19 tailgate; do you recall?

20 A. Toward the --- on the Tailgate 22 belt?

21 Q. Sure.

22 A. Number One belt was moving toward the tailgate.

23 Q. Okay. How about from the face of the section,
24 which direction was it moving? Was it moving outby or
25 inby?

1 A. I don't recall ---

2 Q. Okay.

3 A. --- on the tailgate -- on the tail end.

4 Q. How about on the Headgate 22, which direction was
5 the air moving; do you recall?

6 A. Yes, sir, toward the section.

7 Q. Toward the section, okay. did you --- do you
8 recall if there was signs over the power centers?

9 A. High voltage?

10 Q. Uh-huh (yes).

11 A. Yes, sir, there was signs over the power center.

12 Q. Do you recall if those signs were moving around?
13 Were they flopping back and forth?

14 A. No, sir.

15 Q. They were just hanging stiff?

16 A. Stiff, yes.

17 Q. Okay. Thank you. Did you ever get off in the
18 side entries up here around the Glory Hole or up
19 toward the north mains?

20 A. The only time I got off in those side entries were
21 when I come up the track entry, I'd walk over two
22 breaks and check those rooms, as I said earlier. I'd
23 come back out, get back in the ride, go up check the
24 pump in the faces when we were checking the faces up
25 there until they put it on a weekly basis. I

1 didn't --- you know, I didn't have time to ---

2 Q. Sure.

3 A. --- do a whole lot of exploring. I mean, you're
4 taking care of all of this, ---

5 Q. Sure.

6 A. --- it's all you could do.

7 Q. Sure. Now, I assume a weekly examiner made these
8 entries?

9 A. A weekly exam, he made the intakes and returns.

10 Q. Do you recall what the condition of these side
11 entries when you did get back there looked like?

12 A. They were in good condition.

13 Q. Good condition, okay. What about the roof up in
14 the north mains, was it a good, solid roof or did it
15 tend to dribble out?

16 A. It dribbled out some.

17 Q. Okay. Was there much of the rock on the floor?
18 Do you recall?

19 A. No, not a whole lot of rock on the floor.

20 Q. Not much. How about the bolt heads, were the
21 bolts starting to work away from the roof?

22 A. Yeah, some of them.

23 Q. What about rock dust up through there, how did it
24 look?

25 A. I don't recall. I don't think it was real bad. I

1 don't recall.

2 Q. Okay. Sure.

3 ATTORNEY SEARS:

4 Can you clarify what section you guys are

5 talking about ---

6 MR. SHERER:

7 We're talking about the north mains.

8 ATTORNEY SEARS:

9 --- in the last few questions?

10 MR. SHERER:

11 Yeah. We're talking about the north

12 mains.

13 ATTORNEY SEARS:

14 North mains?

15 MR. SHERER:

16 Yes.

17 BY MR. SHERER:

18 Q. Okay.

19 ATTORNEY HAMPTON:

20 Before we leave this questioning, could

21 you maybe identify specific areas where you thought

22 that the roof bolts were starting to come away from

23 the roof, if you recall?

24 MR. SHERER:

25 We don't need that, Polly.

1 BY MR. SHERER:

2 Q. I was just asking about the conditions in general.
3 Now, the section belts that you walked every day, do
4 you recall if there was much mesh on the roof or
5 straps or J channels, anything like that?

6 A. No, sir. Had some mesh.

7 Q. Do you recall where that mesh was located,
8 roughly?

9 A. I'm not sure. There was some mesh, not much, on
10 that one belt.

11 Q. Okay.

12 A. I think in only one place, but I'm not sure.

13 Q. So it was just like a bad piece of roof ---

14 A. Yes.

15 Q. --- and they put a little mesh up?

16 A. Yes.

17 Q. Okay. What about the ribs, were they in good
18 shape or were they starting to get kind of ratty?

19 A. They were falling off and I had to --- by the
20 belts ---.

21 Q. Sure. Now, did they go back and clean those ribs
22 up?

23 A. Yes, sir, they did.

24 Q. Okay. Good. What about the general dust
25 condition in these beltlines, particularly the Sunday

1 evening shift that you worked, were they in good
2 shape?

3 A. This belt had been dusted just days or maybe a
4 week prior to the explosion.

5 Q. Okay.

6 ATTORNEY SEARS:

7 And you're saying the headgate ---?

8 A. Headgate 22. This belt hadn't been dusted.

9 BY MR. SHERER:

10 Q. The connector belt?

11 A. To connect Tailgate Number One.

12 Q. Okay.

13 A. I call it Tailgate Number One. I believe a few
14 days before the explosion Tailgate 22, section Number
15 Two belt had been --- it was dusted sometime prior to
16 that. You could tell it hadn't been dusted.

17 Q. Do you recall how they dusted these belts? Did
18 they bring a scoop over there or ---?

19 A. They had a duster with two --- on a flatcar with
20 two big pods on it, and they ran it on the track.

21 Q. Oh, a track-mounted duster. Did they have to take
22 the hoses over into the belt ---

23 A. Yes, sir.

24 Q. --- to get it?

25 A. Yes, they had to go through the stoppings.

1 Q. Do you recall roughly how many --- would they dust
2 through every break or would they do like every other
3 one?

4 A. They would usually go through the stopping and go
5 maybe two breaks to the left, two breaks to the right
6 and then they'd go up to the next door and go back
7 that way to connect it up and go back --- you know,
8 backwards and forwards, ---

9 Q. Okay.

10 A. --- keeping working their way, but they would
11 connect it all up.

12 Q. So they went through the man doors?

13 A. Yes, sir.

14 Q. Do you recall if there was any holes knocked in
15 the stoppings just to get the dust through?

16 A. No, sir.

17 Q. Okay. They just went through the man doors, okay.
18 Now, after they dusted the belts, do you recall
19 walking them? Was the dust fairly --- uniformly
20 distributed or was it ---?

21 A. Yes, sir.

22 Q. Okay.

23 A. Yes, sir, it was a good job.

24 Q. Okay. Good. Did they --- when they were dusting
25 the belts, did they get it all --- all the structure

1 of the belts? Did they get --- did they put dust on
2 the structure of the belt?

3 A. Yeah, it was everywhere, the roof, ribs.

4 Q. Okay. Good. So they basically --- it was all
5 white ---

6 A. Yes, sir.

7 Q. --- when they got through with it?

8 A. Yes, sir.

9 Q. Now, this connector belt, you said it had been a
10 while since that one had been dusted. Do you recall
11 what the color of the dust was?

12 A. No, sir, I wouldn't. No, sir, I don't.

13 Q. Okay. Did you have to go back and do any hand
14 dusting at times?

15 A. Yes, sir. On any belt that I walked, if there was
16 a bag of rock dust --- sometimes they used the bag
17 dust, you know, carried --- but if they didn't use
18 any, I'd spread it out. This belt here --- when the
19 headgate was driving up, I rock dusted the whole thing
20 by myself.

21 Q. And you're talking about the connector belt?

22 A. Yes. Well, yes, sir. That's when the longwall
23 had set up here and this was dumping on ---.

24 Q. Okay. So at one time the 22 Headgate --- the belt
25 went down the connector ---.

1 A. And dumped on the longwall belt.

2 Q. Oh, okay.

3 A. And I had dusted the whole belt by myself.

4 Q. By hand?

5 A. They would lay rock dust over in the track entry.

6 I'd go over and pick it up and carry it all the way

7 over there and dust it by hand.

8 Q. That's a lot of work.

9 A. Yeah. I did one time. I mean, I didn't --- it

10 wasn't --- because that's the only time the dust was

11 laying there, but I picked that up --- when there was

12 a bag of dust laying around, I throwed it down. There

13 was no sense having it wasted.

14 Q. Sure. That's good. Do you recall any float dust

15 anywhere along these beltways on the afternoon --- or

16 the evening prior to the explosion?

17 A. No, sir.

18 Q. Okay. How about the rollers, were they all in

19 good shape?

20 A. Most of them were in good shape. This one here,

21 we had a few drops out on this one, but the Headgate

22 22 belt was in pretty good shape.

23 Q. Okay. So you had dropped a few rollers off on the

24 connector belt?

25 A. Yes, sir. But you know, like I say, see, we

1 didn't --- yeah, we dropped them out of service
2 because they were either frozen or the bearings wore
3 out of them.

4 Q. Okay. Sure. Did you have a system when you had
5 to drop a roller? Did you put those in the belt books
6 or do you have another system?

7 A. Wrote them down and took them out and wrote them
8 on a board in the office.

9 Q. Oh, okay.

10 A. Usually the hoot owl crew would go in and take
11 care of them. If we done our --- you know, if we had
12 a chance and we had the rollers, we done it ourselves,
13 if the belts was down or something. Most of the time
14 the hoot owl crew took care of those rollers.

15 Q. Sure. Were they pretty good about getting those
16 rollers changed out?

17 A. Seemed to be, yeah. Seemed to be.

18 Q. If you wrote them up today, would they generally
19 get them by when you came on shift tomorrow?

20 A. Yes, sir, sometimes. Sometimes maybe not.

21 Q. Would they generally get all of them by the day
22 after tomorrow?

23 A. Usually, yeah, they would get them within a day or
24 two.

25 Q. Okay. Good time. Has any of the --- well, first

1 of all, who was your supervisor?

2 A. Everett Hager.

3 Q. Everett Hager. And he was the mine
4 superintendent?

5 A. Yes, sir.

6 Q. Did he ever walk these belts with you?

7 A. No, sir.

8 Q. Did he ever come up when you were working on the
9 belts?

10 A. Yes, sir.

11 Q. Once a month, once a week, on average?

12 A. I don't remember if there was any --- once a week
13 or once a month. I mean, he --- occasionally.

14 Q. So you'd see him every now and then?

15 A. Yeah, every now and then. Couldn't put days on it
16 or nothing, but he was up there quite a bit.

17 Q. Okay. Sure. How about the section foreman, did
18 they ever come down and talk to you about the belts?

19 A. No, sir, not unless there was a problem.

20 Q. Okay.

21 A. Most of the time this belt, ---

22 A. Okay.

23 Q. --- this one over here, being short, just got
24 started, had no problems with it.

25 BRIEF INTERRUPTION

1 A. I said not unless we had a problem with a belt.
2 Maybe the belt went off and I had to turn the belt off
3 for some reason or other. The section boss really
4 never had to come down.

5 BY MR. SHERER:

6 Q. Did they just come down occasionally to shoot the
7 bull with you?

8 A. Like I say, unless the belt went off and I
9 couldn't get ahold of him or something, he might have
10 walked down, but it wasn't very --- it was very, very
11 seldom it happened, but it has happened.

12 Q. Okay. Sure. Tell me about the construction here
13 on the end of the Headgate 22 belt where it dumps onto
14 the Number Seven belt. Do you recall much work going
15 on around this area?

16 A. A lot of work went on right there, yes, sir.

17 Q. Roughly when did that work, that construction
18 work, start; do you recall?

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

20 Q. Let me ask that a little differently. The week
21 before the explosion was there still much work going
22 on in this area?

23 A. They had some work to do there, but the belt was
24 running. They had all of that done. They had to ---
25 yeah, they had to put --- yeah, they were doing ---

1 still doing some work here, but I don't know --- they
2 had to put guard underneath all the belts and put
3 guards up around the drive there.

4 Q. Okay. Were they still constructing like overcasts
5 and stuff?

6 A. No. This was all open here.

7 Q. Oh, okay.

8 A. There was no overcast here.

9 Q. Did you ever get down in this area where the
10 Headgate 22 belt dumped on the Number Seven belt and
11 then see any problems with ventilation or notice any
12 problems with ventilation?

13 A. No, sir.

14 Q. Are you aware of any reversals of air along the
15 belt at the 22 Tailgate?

16 A. No, sir, I'm not.

17 Q. Okay. Did you ever get injured at this mine?

18 A. Yes, sir.

19 Q. Did you do light duty?

20 A. Light duty?

21 Q. Yeah.

22 A. No, sir. I was off with my back.

23 Q. Oh, okay. Were you offered light duty?

24 A. Offered light duty?

25 Q. Yeah.

1 A. No, sir.

2 Q. Okay. Do you know if ---?

3 A. Well, excuse me. Can I ---?

4 Q. Sure.

5 A. I had talked to the safety man. He may have said
6 something about light duty, but this pain I was in, I
7 probably couldn't have done anything anyway.

8 Q. Sure.

9 A. I done a pretty good number on my back when I was
10 changing out rollers.

11 Q. Oh, jeez.

12 A. We had talked about it, so ---. He did bring it.
13 I believe he did. I'm sorry.

14 Q. Just didn't feel like you could do it?

15 A. Right. I just ---.

16 Q. Those are big rollers?

17 A. Yeah. That was on the four-foot belts. The six
18 foot one ---.

19 Q. Hell, the six-footers, they'll beat anybody down.
20 Do you know if MSHA inspectors or State inspectors
21 were --- when they came on the property if that was
22 announced in the mine, called in on the mine phone?

23 A. I don't know.

24 Q. Don't recall that?

25 A. I don't recall that.

1 Q. Okay.

2 A. The only thing I recall, if I --- a lot of times
3 I'd have to walk out on the track and get rock dust or
4 something, and somebody would say we've got a mine
5 inspector or something, you know. I don't know.

6 Q. Okay. But you never heard somebody say we've got
7 company or something like that?

8 A. No.

9 Q. Okay. Do you know if --- or do you think that the
10 ventilation in this mine was adequate?

11 A. From what I could tell, we had good ventilation on
12 most of these sections here. Like I say, I wasn't all
13 over the mine, but we had ---.

14 Q. Did you ever hear anybody complaining about
15 ventilation, saying we don't have enough air?

16 A. They had --- no, not on these two sections here,
17 but they did have ventilation ---.

18 MR. MCGINLEY:

19 Excuse me. For the record, could ---?

20 A. Headgate 22 they had --- I think they had some
21 problem with air there at one --- a couple months ---
22 a month before the explosion, but they got the air up
23 to par. I mean, it was in good shape after that.

24 BY MR. SHERER:

25 Q. Were you ever underground when ventilation changes

1 were being made; do you recall?

2 A. No. They were working on the ventilation, yes,
3 when I was underground, but I don't know what it
4 involved.

5 Q. Okay. Do you recall who was working on the
6 ventilation?

7 A. I think --- I know Terry Moore was the mine
8 foreman. He was talking about it, because I had
9 talked to him about it. He was talking about getting
10 air at Headgate 22. That's all I remember.

11 Q. Sure. And you say that 22 Headgate got good air a
12 month or so before the explosion?

13 A. They were working on it. Yeah, they had air up
14 there, but ---.

15 Q. Do you recall if that's about when you talked to
16 Mr. Moore about the air?

17 A. Yeah.

18 Q. So it was about ---?

19 A. They were working on it, yeah. They were working
20 on it. He came down to --- well, he walked into the
21 belt head there where I was working ---

22 Q. Sure.

23 A. --- and he was talking about it there.

24 ATTORNEY SEARS:

25 Just for clarification --- I'm a little

1 confused. You used the term good air. I don't know
2 that he ever said that there was bad air. There was
3 ventilation. I'm a little confused there, so can we
4 have some clarification as to what the testimony was?
5 You were talking about some problems with airflow on
6 Headgate 22. What do you mean by problems?

7 A. Getting enough volume. Getting enough cfm.

8 ATTORNEY SEARS:

9 What was the problem?

10 A. The day, I don't know. I don't know what --- they
11 evidently had some problems. I don't know exactly
12 what the problem was. Evidently, it was low air.
13 That's the only thing that I know of.

14 ATTORNEY SEARS:

15 I'm sorry for interrupting. I just
16 wanted to ---.

17 MR. SHERER:

18 That's a term of art.

19 ATTORNEY SEARS:

20 Should I wait to clarify later or while
21 it's present, because I don't want to mess up ---.

22 MR. SHERER:

23 However you want to do it.

24 A. Whatever their ventilation plan called for, that's
25 what they were after.

1 BY MR. SHERER:

2 Q. So they worked and they got the quantity up about
3 a month before?

4 A. It was over --- when I fire bossed it Monday
5 morning, it had somewhere between 18,000 and 20,000.

6 Q. Okay. So you did do the fire boss on Headgate 22
7 on Monday morning of the explosion?

8 A. Yes, sir.

9 Q. Did you also fire boss the tailgate section?

10 A. I can't remember if I did or not because there was
11 three of us coming up, and we split up. I'm not sure
12 if I did that or ---.

13 Q. Okay.

14 A. I just can't really remember.

15 Q. Okay. Do you know if mining ever took place
16 without ventilation curtains in place?

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

18 Q. Okay. Did you ever hear about a methane monitor
19 being bridged out?

20 A. No, sir, never heard anything about anything like
21 that.

22 Q. Did you ever hear of using some sort of blue glue
23 or other chemical to --- on a methane monitor?

24 A. No, sir, I haven't heard anything like that.

25 Q. How about putting a plastic bag over a methane

1 monitor?

2 A. No, I've never heard anything of that nature
3 either.

4 Q. Do you think the miners felt like if they had a
5 concern about a safety issue, do you think they could
6 freely approach management and talk about it or do you
7 think there would be some sort of retribution or
8 threat?

9 A. I don't know.

10 Q. Okay. Would you have felt comfortable saying,
11 look, I've got a problem?

12 A. Oh, yeah. If I've got a problem, yeah, I could
13 say, you know, I've got a problem and they would look
14 into it and take care of it.

15 Q. Would Mr. Hager be receptive to that sort of
16 conversation?

17 A. Yeah, as far as ---.

18 Q. Did you ever have a conversation like that with
19 him?

20 A. Most time I took care of --- I didn't have
21 anything to conversate, you know, with him about
22 anything major.

23 Q. Okay. You just took care of it?

24 A. If it happened, I tried to take care of what --- I
25 tried to take care of it.

1 Q. Okay. When you're doing your fire boss run and
2 you found a problem, did you feel like you had to fix
3 it?

4 A. Yes, sir. If it was --- if I felt it was a
5 hazard, I fixed it.

6 Q. What if you couldn't fix it?

7 A. I would report it to my supervisor.

8 Q. How would you report it to your supervisor?

9 A. I would call out on the mine phone and tell him
10 about it.

11 Q. Okay. Would you have put it in your ---?

12 A. And I would also write it down in the fire boss
13 book.

14 Q. Did you ever do that?

15 A. No, sir, I never had to do that.

16 Q. You never had a hazard?

17 A. I had a --- yeah, I did, too. I had a roof fall
18 right here.

19 ATTORNEY HAMPTON:

20 Where are you pointing?

21 A. At 138 Break, north mains. And I called --- I got
22 a hold of another fire boss that was outside and had
23 him call Everett.

24 BY MR. SHERER:

25 Q. Do you recall roughly when that occurred?

1 A. I'm not sure.

2 Q. Okay. Was it before Christmas of this year?

3 ATTORNEY SEARS:

4 This year being 2010?

5 MR. SHERER:

6 Yes. Or 2009.

7 ATTORNEY SEARS:

8 Okay.

9 A. I think it was --- yeah, it was before Christmas
10 2009.

11 BY MR. SHERER:

12 Q. Okay. You have a tremendous amount of knowledge
13 of this part of the mine, the headgate and tailgate of
14 22 panel. Is there any place you would recommend that
15 we look or anything you would recommend that we look
16 at as far as determining what happened in this
17 accident, any tips you'd give us?

18 A. No, sir. Like I said, you know, I was in shock
19 because I don't know --- I wouldn't have an idea ---

20 Q. Okay.

21 A. --- of what, you know --- I've never seen --- in
22 my areas that I was on, I never seen anything that
23 would even make me think they were clear. I mean,
24 it's just --- I'm thinking the longwall was still
25 running at that time. They switched shifts and, you

1 know --- because I think all the crews, I don't know
2 for sure, had left the sections or whatever.

3 Q. Yeah. The 22 Tailgate had left the section. The
4 22 Headgate was fixing to. And the mantrip I think
5 was about midsection. And there was three of the
6 bosses inby --- or three of the miners, including the
7 boss, inby. The entire crew was on the longwall and
8 the --- I think the tailgate crew had gone out to
9 about 60 Break.

10 A. Yeah, I heard down this way somewhere and up here.
11 I heard 76 Break, which would be ---

12 Q. Okay.

13 A. --- right there, but I'm not sure.

14 Q. Yeah, that's about right. I wasn't sure exactly
15 where it was. That last night you worked, Sunday
16 night, did you notice anything unusual?

17 A. (Indicates no).

18 Q. Did you notice anybody that normally wasn't in the
19 mine on that shift?

20 A. Excuse me?

21 Q. Did you notice anybody in the mine that night that
22 normally didn't --- that you normally didn't see?

23 A. Oh, no, sir. I didn't see anybody. Everything
24 seemed ---

25 Q. Okay.

1 A. --- normal to me. I mean, I didn't have any ---

2 Q. Sure.

3 A. --- problems at all.

4 Q. Did you notice anything unusual --- any sort of
5 unusual smell?

6 A. No, sir.

7 Q. Okay.

8 ATTORNEY HAMPTON:

9 We've been going a little over an hour,
10 so if we could take a quick break.

11 SHORT BREAK TAKEN

12 ATTORNEY HAMPTON:

13 Let's go back on the record.

14 EXAMINATION

15 BY MR. FARLEY:

16 Q. Mr. Neely, I want to try to clarify a few things
17 here just to make sure I understood correctly.

18 A. Yes, sir.

19 Q. Now, you --- on Exhibit One here I think you
20 showed the area that you examined on the 22 Tailgate,
21 22 Headgate and the crossover belt and some areas up
22 in Eight North. Now, there's some doors shown on this
23 map right here. I'm going to just draw a green circle
24 around them just for the record so we don't have to
25 try to explain where they are all day here. Were

1 those doors still there the last time you were in that
2 area, or do you know?

3 A. Yes, sir.

4 Q. What about these other doors right over here in
5 the same green circle, are they still there --- or
6 were they still there the last time you were in the
7 area?

8 A. I'm pretty sure they were.

9 Q. Okay. All right. Now, when you examined these
10 faces in Eight North, you indicated that you examined
11 them daily until they put the panels in.

12 A. Yes, sir.

13 Q. Now, by panels do you mean Kennedy stoppings?

14 A. Yes.

15 Q. Now, how deep were these faces? To what extent
16 were they driven past the corner there? How much of
17 an area did they have to ventilate in there in those
18 faces?

19 A. Some probably --- some probably 20 feet or so.
20 Some maybe less.

21 Q. Okay. Did you ever find any --- I guess they had
22 lien curtains in them when you were looking at them
23 daily?

24 A. That's what the Kennedy panels were for. They
25 used those as a line curtain.

1 Q. Okay.

2 A. But they had curtain in them before they put the
3 Kennedy stoppings.

4 Q. Okay. Well, either before or after they put the
5 Kennedies in, ever detect any methane in any of those
6 faces?

7 A. You might get from 0.05 to maybe 0.01. That's the
8 most I've ever got out of any of them.

9 Q. Okay. So you said one-tenth or less? 0.1 ---?

10 A. One hundredth of a tenth.

11 Q. Okay. All right. Now, the same thing for the
12 faces on the other side. As you're traveling north
13 and through Eight North, there's a couple of them on
14 the right over there that you identified. Ever find
15 any methane in either of those places?

16 A. Occasionally the same thing, ---

17 Q. Okay.

18 A. --- 0.05 maybe. Not every day, just on occasion.

19 Q. Now, in your travels in and out of the Eight North
20 area, the map indicates there's a gas well here in the
21 Eight North area. It shows API5-810D, I believe,
22 something like that. Were you ever in the vicinity of
23 that well?

24 A. No, sir.

25 Q. Did you ever detect any gas as you were passing

1 anywhere near it?

2 A. No.

3 Q. Okay. All right. The pre-shift and the
4 examinations you made for your belts, were they all
5 recorded in the same book?

6 A. Yes, sir.

7 Q. Okay. Was it --- well, how was that book labeled?

8 A. Headgate 22 --- gosh, I can't think about what
9 Headgate --- they were all put in one book, but I
10 can't remember right now.

11 Q. Well, I guess what my question is, how was the
12 book labeled? Did it say --- was there a book for
13 each section belt or were the books --- or did your
14 examinations for the two belts go in the same book?

15 A. Yeah, the belts went in the same book.

16 Q. Okay. Could it have been just the north belts,
17 something like that?

18 A. We would write down Headgate 22, Number One belt,
19 and Headgate --- Tailgate Number One, Tailgate Number
20 Two, ---

21 Q. Okay.

22 A. --- and so forth. They were all in the same book.

23 Q. All right. When you made your examinations, did
24 you routinely carry the examination outside or did you
25 call it out?

1 A. Most of the time I called it out.

2 Q. Okay. Would the person you called it out to enter
3 the time you made the exam or would you do that later?

4 A. No, sir. I'd tell them the time I made the exam.

5 Q. Okay. Now, whenever you went outside at the end
6 of your shift, did you review the book and sign off on
7 what you had called out?

8 A. Yes, sir.

9 Q. Did you ever notice any changes made in what you
10 had called out?

11 A. No, sir.

12 Q. Okay. Now, I think you worked --- until Saturday,
13 April the 3rd, you were working 6:00 a.m. until 6:00
14 p.m.; is that about right?

15 A. Correct.

16 Q. Okay. When you made --- how many actual exams did
17 you make during that 12-hour shift?

18 A. Well, all this area that I have marked off here.

19 Q. But the belts that you identified as being in your
20 area of responsibility, did you make one examination
21 of those three belts in that 12-hour period?

22 A. I made --- started at 6:00 p.m. that evening. We
23 didn't have to examine the belts. There was no
24 production, so we didn't have to do that belt until
25 3:00 a.m. in the morning, before dayshift started.

1 Q. Okay. Let me back up. You may have misunderstood
2 my question. Now, when you were on the dayshift ---
3 you were on the dayshift ---

4 A. Oh, yeah, dayshift.

5 Q. --- 6:00 a.m. to 6:00 p.m. until Saturday, April
6 the 3rd.

7 A. Yeah, I got you.

8 Q. Now, when you were working on that dayshift, let's
9 say from 6:00 a.m. to 6:00 p.m., ---

10 Q. Correct.

11 Q. --- during that 12-hour period, how many times
12 would you examine these belts? Would it be one time
13 or two times?

14 A. One time.

15 Q. Okay. Now, the person who followed you would be
16 working from 6:00 p.m. then until 6:00 a.m. Now, how
17 many examinations ---?

18 A. He would have to do.

19 Q. He would do how many, two?

20 A. Two.

21 Q. He would do one for the evening and one for the
22 oncoming dayshift; is that correct?

23 A. Correct.

24 ATTORNEY SEARS:

25 If I can just clarify something. I think

1 you're speaking of a hypothetical right now because up
2 until Sunday he was the dayshift.

3 MR. FARLEY:

4 Well, that's what I'm asking about.

5 ATTORNEY SEARS:

6 Okay. Okay. When you were on the
7 dayshift. I got it messed up because I thought
8 you ---

9 MR. FARLEY:

10 No. I'm asking about ---.

11 ATTORNEY SEARS:

12 --- were doing it the other way.

13 MR. FARLEY:

14 I may ask about evening shift here in a
15 little bit, but I'm talking about the time he was on
16 the dayshift.

17 ATTORNEY SEARS:

18 I'll try to listen.

19 MR. FARLEY:

20 That's all right. You're doing fine.

21 BY MR. FARLEY:

22 Q. So your buddy on the next 12-hour shift would do
23 two exams?

24 A. Yes, sir.

25 Q. Okay. All right. In this area where the 22

1 Headgate belt dumps onto Seven North, in that area
2 there's a Mother --- we've been told there was a
3 Mother Drive construction project going on there.

4 A. That's this area right here.

5 Q. Okay.

6 ATTORNEY HAMPTON:

7 Okay. And you're pointing to --- do we
8 want to mark this?

9 MR. FARLEY:

10 He's pointing to an area inby the --- for
11 a couple, three crosscuts inby the 22 Headgate belt
12 head; is that about right?

13 A. Yeah. Uh-huh (yes).

14 BY MR. FARLEY:

15 Q. Okay. Did you notice --- as that work was going
16 on here, did you ever notice stoppings knocked out,
17 holes in stoppings, doors left open, things of that
18 nature?

19 A. No, sir. No, sir.

20 Q. The reason I ask that is, you know, one of the
21 bosses up on this section told us that he began having
22 --- that one of the things that led to some of the
23 ventilation problems he had was this Mother Drive
24 construction project, and I think he referred to doors
25 open and holes in stoppings and things of that nature.

1 A. The only construction that I know of at that time
2 would have been these two overcasts that they put in.

3 ATTORNEY SEARS:

4 Can you identify what he's referring to?

5 MR. FARLEY:

6 He's referring to overcasts where
7 the ---.

8 A. Let's see. Yeah, there was two on the beltline
9 and one --- yeah, up to here. So that's --- it's
10 about a break --- a break or two breaks outby the
11 mother. This is the Headgate 22 drive belt. This is
12 the discharge to that drive.

13 BY MR. FARLEY:

14 Q. Okay.

15 A. So you've got belt from here --- you got the
16 discharge roller and belt, then you've got your drive
17 motors pulling this belt.

18 Q. Okay. I was curious about that because we had
19 heard of it leading to some ventilation problems. And
20 to make sure I heard correctly here --- I don't want
21 to be redundant, but if I heard you correctly, you
22 indicated that you thought that the Headgate 22
23 conveyor belt had been rock dusted a week or so prior
24 to the explosion. Is that about what you said?

25 A. Yes.

1 Q. So did you --- to clarify even further, did it
2 appear that it had been machine dusted?

3 A. Yes, sir. I seen the machine dust.

4 Q. Okay. All right. I think you also said, if I
5 heard you correctly, that the Tailgate 22 belt was
6 dusted a few days prior to the explosion.

7 A. Somewhere in that vicinity, yes.

8 Q. Now, again, would it have been machine dusted?

9 A. No. This would have been hand dusted.

10 Q. Okay. All right.

11 A. I would assume this belt was hand dusted.

12 Q. And if I heard you correctly, the crossover belt
13 between the Headgate 22 belt and the Tailgate 22 belt
14 had not been rock dusted?

15 A. Correct.

16 MR. FARLEY:

17 Next?

18 EXAMINATION

19 BY MR. MCGINLEY:

20 Q. Mr. Neely, did you have a nickname?

21 A. No, sir.

22 Q. Lots of folks have nicknames.

23 A. No, I don't have any.

24 Q. Just checking. Okay.

25 A. Some people might have one for me. I don't know.

1 Q. When did you start working at UBB?

2 A. November 18th, 2008.

3 Q. 2008. Did anybody ever tell you that there had
4 been methane floor bursts a few years before, that
5 that caused the whole mine to be evacuated a couple
6 days?

7 A. I never heard nothing about that. Nobody ever
8 told me.

9 Q. You didn't receive any training about what to do
10 if there was some indication of such an event?

11 A. No, sir.

12 Q. I've read some public statements by one of the
13 Massey directors about safety problems at UBB during
14 2009 and 2010, and it's a written statement. It
15 discussed more than 40 (d) orders. Are you familiar
16 that (d) orders had been issued by MSHA to Performance
17 Mine at UBB in 2009 and then going on into 2010? Were
18 you aware that there was that level of violations
19 written at the mien during that period?

20 A. No, I wasn't aware until it came out, like you
21 said.

22 Q. The statement of a Massey director also said there
23 were two safety experts from outside UBB that were
24 brought in in late 2008 going into 2010 to address
25 whatever safety issues might be ---. In your --- I

1 assume you had a weekly or occasional fire boss
2 meetings. Was that ever mentioned?

3 A. I never had a fire boss meeting. They were
4 talking about --- you say having a fire boss in safety
5 meetings?

6 Q. Yes.

7 A. This is right before the explosion sometime. A
8 little bit --- a little time before the explosion.
9 But up to that point we never had --- I hadn't ever
10 been in any sections.

11 Q. I see. Did you --- did you learn --- you may not
12 have, that's fine, but did you learn that there were
13 some folks that were being given lists of violations
14 that were occurring in the mine and they were supposed
15 to go fix them, and they got the list from one of
16 these outside people that come in UBB? Did you ever
17 hear anything about that?

18 A. I don't recall anything like that.

19 Q. Did you ever see any engineers in the mine?

20 A. Yes, sir.

21 Q. Did you see them anytime let's say in 2010?

22 A. Yes, sir.

23 Q. Were they doing work anywhere near your assigned
24 areas?

25 A. Most of the time they were --- I would see them

1 going up the track entry going to a section or
2 whatever. I never actually seen them working,
3 actually doing their work, but I did --- I had seen
4 them come on on several different occasions.

5 Q. Would that have been in 2010?

6 A. Yes. I seen them come in one time. I know after
7 I fire bossed Headgate 22, they was up there. I seen
8 them up there.

9 Q. Up at Headgate 22 ---?

10 A. But I wasn't --- they were on the section. I just
11 walked the belt and turned around and come back out.

12 Q. I understand.

13 A. They were probably up in the faces.

14 Q. Okay. How frequently would you see the track
15 duster up in the area where you were working?

16 A. The track duster?

17 Q. Yeah.

18 A. That was the first time I had seen it in quite a
19 while. It had broke down before I had my injury
20 sometime in 2009. It had been down for a while. I
21 don't know how long, but that was the first time that
22 I had seen it.

23 Q. And that was right before the explosion?

24 A. What?

25 Q. It was fairly close to the explosion?

1 A. I can't remember. Yeah, that's --- I seen the
2 track duster just like three days a week before the
3 explosion when I dusted this belt, Headgate 22 belt.

4 Q. And how ---?

5 A. I know they had --- I'm not positive. I think
6 they had two dusters. I know --- I'm not for sure,
7 but I do know one of them was down for a while. But
8 that was last year.

9 Q. That was last year. When did you come back to
10 work after your injury?

11 A. I'm thinking February 18th.

12 Q. 2010?

13 A. Yeah.

14 Q. So what was it, a disc?

15 A. Yeah. I pulled and stretched all this up,
16 straightening my back out, my sciatic nerve. It gave
17 me a lot of problem. I couldn't hardly do nothing.

18 Q. I've had an operation on that. Can't sit down,
19 can't ---.

20 A. Yeah. Oh, the sitting will kill you.

21 Q. So from the time you came back to work in
22 mid-February 2010 until just about three days before
23 the explosion, you hadn't seen a track duster on the
24 Headgate --- 22 Headgate or anywhere where you worked?

25 A. No.

1 Q. Now, you had not seen it?

2 A. Had not until days before the explosion. It was
3 up there. I don't know that. It could have been down
4 in here, you know. I don't know that.

5 Q. When you say down ---?

6 A. I wasn't down in there, the area coming out of the
7 mine, these other belts, six-foot belts, because I
8 didn't work those belts.

9 Q. So that --- just for the record, can you identify
10 when you say down there ---?

11 A. Six North, Five North, Four North.

12 Q. But you were ---?

13 A. I don't know about that.

14 Q. But you were aware and we've heard other reports
15 that there was malfunctioning of that track duster?
16 You're aware of that?

17 A. Yeah, there was a malfunction of one of them. I
18 think they had two, but that's the only time that I
19 seen the one was up there.

20 Q. Do you recall what the malfunction was?

21 A. No, sir, I don't know what was wrong.

22 Q. If I said to you that the hoses were constantly
23 being clogged, would that --- does that sound
24 familiar?

25 A. I don't know. I just really don't know. I

1 couldn't ---.

2 Q. Did you see --- strike that.

3 Were you ever around that track duster when it was
4 malfunctioning?

5 A. No, sir.

6 Q. So it was just reported to you by someone that the
7 track duster was malfunctioning?

8 A. Yeah. I just heard it was broke down and that's
9 all I knew. I don't know what was broke on it or
10 anything like that.

11 Q. So that's the explanation for why the track duster
12 hadn't been up in that area for a long time; is that
13 right?

14 A. That's my assumption. I don't know that to be
15 true.

16 Q. From mid-February 2010, when you came back to
17 work, until the Easter weekend there before the
18 explosion, you were working dayshift that whole time
19 or not?

20 A. Up until the day before the explosion?

21 A. Right.

22 Q. And were you --- I know you had mentioned that you
23 took an air reading on Headgate 22 there on that last
24 shift?

25 A. Yes, sir.

1 Q. And had you done that on any other occasions when
2 you were working dayshift?

3 A. Yes, sir. I had --- I hadn't done it on --- I
4 occasionally done it on the tailgate maybe once,
5 twice, but that particular shift --- the morning of
6 that morning I can't remember if I was on this --- I
7 know there was another boss on this section, but I
8 can't remember if I fire bossed that section or if he
9 fire bossed it or one of the other fire bosses fire
10 bossed it, but I did fire boss Headgate 22, called my
11 report out to the section boss that was coming in on
12 dayshift.

13 Q. But had you done that when you were working on
14 dayshift at all or was that just an unusual thing?

15 A. No, no, that was just --- that was just like
16 on --- like it wasn't every day on dayshift.

17 Q. I see.

18 A. I done it --- I had to do it that morning because
19 I went to a different shift. Dayshift, you've got
20 your dayshift mine --- or section boss, your evening
21 section boss calls to hoot owl, and then the hoot owl
22 calls out to dayshift. It just goes around in a
23 circle. I did it because I was up there Sunday
24 night, ---

25 Q. Right.

1 A. --- so it had to be fire bossed before dayshift
2 come in on Monday morning.

3 Q. So ---.

4 A. It was just occasionally I had to do these
5 sections, not every day.

6 Q. Right. Well, you said --- I think in answering
7 Mr. Sherer's questions you were talking about there's
8 at least one time on Headgate 22 where they were
9 trying to get enough air, they were working on the
10 air.

11 A. Yeah. I know they were working on some
12 ventilation.

13 Q. Do you have any just rough ballpark estimate of
14 how long it took to get that problem straightened out
15 of having enough air to meet the legal requirements?
16 And I'm thinking, you know, one shift, one week, one
17 month. Any help you can give us with that would be
18 appreciated.

19 A. I would say, I'm not sure, but it was pretty
20 quick.

21 ATTORNEY SEARS:

22 For clarification again, did you --- when
23 you're talking about the ventilation problems, did you
24 ever testify that they went below the legal
25 requirements?

1 MR. MCGINLEY:

2 I didn't ask him that.

3 ATTORNEY SEARS:

4 Well, you said the legal requirements.

5 MR. MCGINLEY:

6 He had mentioned that in his testimony.

7 ATTORNEY SEARS:

8 Right.

9 MR. MCGINLEY:

10 He said what they were trying to do was
11 make sure they had adequate air.

12 A. Increase the air.

13 ATTORNEY SEARS:

14 Right. And I don't know that adequate
15 was ever defined. And to the extent that you
16 understand that to mean that they went below the legal
17 requirements ---.

18 MR. MCGINLEY:

19 I don't understand it to mean that.

20 ATTORNEY SEARS:

21 Well, you just --- you just --- okay.

22 Your question ---.

23 MR. MCGINLEY:

24 I'm just asking questions to try to ---.

25 ATTORNEY SEARS:

1 Okay. I understand. I'm trying to
2 clarify.

3 MR. MCGINLEY:

4 I'm trying to get in his own words what
5 his understanding is.

6 ATTORNEY SEARS:

7 Right. And what I'm saying is I don't
8 know that the question that you had --- I think your
9 question is presuming words that he didn't use, and so
10 I just want to clarify because I think you said that
11 he had made reference to him testifying that the air
12 was below legal standards.

13 MR. MCGINLEY:

14 I didn't say that. That was not my
15 question.

16 ATTORNEY SEARS:

17 Okay. But to the extent I --- obviously,
18 the record will speak for itself, but ---

19 MR. MCGINLEY:

20 Sure.

21 ATTORNEY SEARS:

22 --- that is my understanding that's where
23 my clarification comes from.

24 MR. MCGINLEY:

25 Let me see if I can straighten that out.

1 ATTORNEY SEARS:

2 Sure.

3 MR. MCGINLEY:

4 And if I don't, you can pipe up again.

5 That's fine.

6 ATTORNEY SEARS:

7 Or pipe it down, as the case may be.

8 MR. MCGINLEY:

9 Whatever.

10 BY MR. MCGINLEY:

11 Q. So just to clarify, my notes indicate you said,
12 Mr. Neely, that they were working to get adequate air.
13 And by that I think my notes indicated that meant you
14 were trying to get it up to whatever the necessary
15 legal standard was.

16 A. Yes

17 Q. Is that ---?

18 A. Yes.

19 Q. And would you expect that whoever was doing the
20 pre-shift at that time, there'd be documentation that
21 there were air problems at the Headgate 22 section?

22 A. There should be.

23 Q. Okay. Did you see that track duster operating a
24 couple days before the explosion?

25 A. Yes, sir. Like I say, I walked the belt entry.

1 Matter of fact, I was making my fire boss run on the
2 belt and I came back down the track entry. No, they
3 were on the --- they were in the belt entry, rock
4 dusting, because I remember running to the belts now.

5 Q. Which way was the dust going; do you remember? If
6 you were walking, think about which way you were
7 walking there.

8 A. Yeah, I was going this way.

9 Q. So the dust was coming back in your face?

10 A. A little. Not much, but a little.

11 Q. Okay. You said you occasionally saw --- maybe
12 that's my --- you saw Everett Hager underground on
13 some occasions; is that correct?

14 A. Yes, sir.

15 Q. Was his presence usually in connection with some
16 downtime or problems that you were aware of?

17 A. I don't know. It just ---.

18 Q. It would vary?

19 A. Yeah, it probably --- it could be anything. He
20 was pretty good much about coming in the mines.

21 Q. And did he ever come ---?

22 A. When I seen him, yeah. A lot of times I was on a
23 belt and he might be in there, and I wouldn't know he
24 was in there.

25 Q. Sure. Would there ever come a time, for example,

1 when the belt was down that he would come in and he'd
2 talk to you about getting it up and running?

3 A. I never had that problem ---

4 Q. Okay.

5 A. --- with him at all having to come in there
6 to ---.

7 Q. Sure. You already told me you really weren't
8 aware of the various citations that MSHA was handing
9 out at UBB until after the explosion. There was some
10 media attention given to that; is that right?

11 A. Yeah.

12 Q. Did you hear at all that there was a time in the
13 six months or so preceding the explosion that there
14 had been reversed air for a couple of weeks that
15 ultimately was cited by MSHA?

16 A. No, I don't recall hearing anything about that.

17 Q. That would be a concern?

18 A. Yes, a very big concern, but I hadn't heard
19 anything about it.

20 Q. Do you have any sense of --- well, strike that.
21 You occasionally had to turn off the belt?

22 A. Yeah.

23 Q. If it was down, how long would it be down before
24 you would have to report it, or is that something you
25 would do at the time you shut it down?

1 A. It's usually --- like for instance, belt splices
2 had to be checked daily. You might have to trim off a
3 splice. It's a two-minute job, five-minute job, you
4 know, just ---. Usually they call pretty quick. If
5 the belt was down five minutes or so, ten minutes,
6 they would call, wanting to know what was wrong.

7 Q. We've heard that. Would you have to write that
8 down or would somebody else write it down if the belt
9 was down for more than five minutes?

10 A. A section boss usually wrote it down, I think so,
11 in his report, the belt was down such and such, so
12 many minutes, 30 minutes, whatever.

13 Q. Would he write it down in his production report?

14 A. He would usually put it down in his production
15 reports.

16 Q. You said there was a forklift down in that area
17 where you were working, near Headgate 22 or --- I'm
18 not exactly sure.

19 A. Yes, sir. Yes, this one here. I'm not exactly
20 sure what break it was in.

21 Q. Were there any other forklifts in the area where
22 you worked or was that the only one?

23 A. That's the only one that I seen.

24 Q. They used that for supplies?

25 A. They took supplies off of the flatcars and put

1 them on the scoop.

2 Q. Was that --- was that forklift permissible?

3 A. Yes, sir. Well, I don't know. I know they had it
4 sitting on the side of the track and used it to lead
5 supplies with on the commuter track. I guess --- I
6 presume it was permissible.

7 Q. Somebody had to check to make sure it was; right?

8 A. Yeah, electricians or ---. If it wasn't
9 permissible, I'm sure I don't think they would be
10 using it.

11 Q. Do you know how they were trying to get air on
12 Headgate 22 in that area that you were aware of in the
13 spring of 2010, what they were doing? Do you have any
14 sense of that?

15 A. I seen a couple guys patching stoppings along the
16 track entry going to the section, making sure,
17 checking for stoppings, patching, whatever they had to
18 do. Other than that, that's all I ---.

19 Q. Did you know anything about there being a time or
20 times on the Tailgate 22 section where they didn't
21 have enough air?

22 A. It always seemed to have plenty of air. Over
23 here?

24 Q. Yes.

25 A. Always seemed to have plenty of air on that

1 section.

2 Q. So you hadn't heard anything about inadequate air
3 there?

4 A. No.

5 Q. Was it hot up in that Tailgate 22 section in
6 February, March?

7 A. Was it what?

8 Q. Hot, you know, hotter than other places?

9 A. No. I don't remember. I don't recall. Of
10 course, with me doing all the walking I did, I was
11 sweaty anyway.

12 Q. How far do you think you walked in a day? I know
13 you said two hours.

14 A. Two or three miles a day.

15 MR. MCGINLEY:

16 Okay. That's all I have right now.

17 MR. SHERER:

18 That's all I've got.

19 BY MR. MCGINLEY:

20 Q. Let me --- if nobody is going to ask any
21 questions, let me ask you just to follow up, are you
22 familiar with the terms S1 and P2?

23 A. Yes.

24 Q. What do they mean?

25 A. I can't remember what P2 --- safety first, S1.

1 Q. Okay. And you don't remember what P2 is?

2 A. I can't remember what P2 ---.

3 Q. Is there an M3?

4 A. Sir?

5 Q. M3? Is there an M3? Do you remember?

6 A. I'm not sure.

7 Q. That's okay. So safety first --- S1, safety
8 first. What else did it mean? I mean, is there any
9 other thing you learned about S1 other than it
10 means ---?

11 A. That's all I know of.

12 Q. Is it sort of a slogan?

13 A. Yes.

14 Q. Was there something called an S1 manual that you
15 ever saw? Ever hear of such a thing?

16 A. I don't recall I've ever heard of that.

17 MR. MCGINLEY:

18 That's all the questions. Thank you,
19 sir.

20 ATTORNEY SEARS:

21 If there's no further questions, I'd like
22 to take a break to see if I need to do any follow-up.

23 ATTORNEY HAMPTON:

24 Okay.

25 ATTORNEY SEARS:

1 Okay. Thank you.

2 SHORT BREAK TAKEN

3 ATTORNEY HAMPTON:

4 Back on the record.

5 EXAMINATION

6 BY ATTORNEY SEARS:

7 Q. I have a question to clarify, and this comes from
8 Professor McGinley's questioning, because I don't
9 think he understood based on what I understood his
10 testimony to be earlier, so ---. It's about the ---
11 I'm going to ask you some questions about the airflow
12 in the Headgate 22. Okay. You were asked whether or
13 not they were working to get the airflow up to the
14 legal standard, and you had testified, yes, that they
15 were working to get it up to the legal standard. Do
16 you know what the legal standard is?

17 A. I believe the law says 9,000 cubic feet per
18 minute.

19 Q. Did you ever take a reading where it was below
20 9,000?

21 A. Yes.

22 Q. Did anyone ever tell you that it was below 9,000?

23 A. No.

24 Q. So it was below --- it was --- you had low
25 airflow; is that correct?

1 A. They --- I don't know exactly. I know they was
2 working on the ventilation, supposedly, to get more
3 ventilation.

4 Q. To get more airflow?

5 A. Yeah.

6 Q. Okay.

7 A. I never heard them say they had below the legal
8 limit.

9 Q. So when you say low airflow, is that in relation
10 to the legal standard as defined by law or the
11 standard as defined by Massey?

12 A. Both. I mean, ---

13 Q. Now I'm getting confused.

14 A. --- legal law says you have to have at least 9,000
15 cubic feet by law.

16 Q. Okay.

17 A. Massey's ventilation plan, they had a plan for
18 more. Their plan could have been 15,000 to 20,000.

19 Q. Okay.

20 A. They were --- like I say, that's the first time I
21 fire bossed that section until --- it was down here
22 and first got started.

23 Q. But suffice it to say, you never saw it below or
24 heard it was below ---?

25 A. I never saw it below, no.

1 Q. Let me finish my question. You never took a
2 reading or heard someone say that it was actually
3 below ---

4 A. No.

5 Q. --- the standard as required by law?

6 A. Correct.

7 MR. MCGINLEY:

8 I have a couple of follow-ups.

9 ATTORNEY SEARS:

10 Okay.

11 MR. FARLEY:

12 May I, please?

13 MR. MCGINLEY:

14 Sure.

15 RE-EXAMINATION

16 BY MR. FARLEY:

17 Q. I think you were just asked if you had taken a
18 reading, an air reading. Did you carry an anemometer?

19 A. Yes, sir.

20 Q. How often did you actually take an air reading?

21 A. Every time. Well, when I fire bossed the faces,
22 it wasn't every day.

23 Q. How often did you fire boss the faces? When you
24 say the faces, meaning 22 Headgate?

25 A. Well, when I come back from my injury I was on

1 dayshift, so I didn't have to do no faces working
2 dayshift because that was done by the hoot owl. I did
3 it that night because ---.

4 Q. When did you come back from your injury?

5 A. I came back on Sunday. I worked Saturday. I
6 think I worked Saturday. They switched me from
7 Saturday to Sunday.

8 Q. And when you say Saturday, you mean April 3rd?

9 A. Yes, sir.

10 Q. Okay.

11 A. April 4th --- I come out April 4th, on Sunday
12 evening, at 6:00 p.m. and I worked until 6:00 a.m.
13 Monday morning, which was April 5th.

14 Q. Okay. Now, did you examine any faces at all on
15 Sunday evening, April 4th?

16 A. That's the one I said I wasn't sure if I fire
17 bossed Headgate 22 or not because there was three of
18 us went in this direction to fire boss to work our way
19 out. And I'm not sure if I got that section or not.
20 There was a boss ---.

21 Q. Now, hold on. Let me --- when I say --- did you
22 examine any faces at all on Sunday evening, April 4th,
23 any working faces on either of the two mining
24 sections?

25 A. Headgate 22.

1 Q. Okay.

2 A. And I also got it on the morning of April 5th.

3 Q. Okay. Prior to arrival of the dayshift?

4 A. Prior to the arrival of dayshift.

5 Q. All right. Now, each time you examined these
6 faces and made this pre-shift exam on the Headgate 22
7 section, did you call the report out or carry it out?

8 A. Called it out.

9 Q. Now, when you went outside to sign the book, did
10 the report reflect what you had called out?

11 A. Yes.

12 Q. Okay. Now, when you made that examination of the
13 working faces on Headgate 22 prior to the dayshift on
14 April 5th, did you take an air reading at the end of
15 the line curtain in each working face?

16 A. I took an air reading at the last open crosscut.

17 Q. Okay. What was that air reading, as best you
18 recall?

19 A. What was it?

20 Q. Yes. Do you recall what it was?

21 A. I'm thinking it was somewhere between 18,000 and
22 20,000, somewhere in there. I'm not real positive
23 right offhand.

24 Q. Okay. But if I understood you correctly, you did
25 not take a reading in each ---

1 A. No.

2 Q. --- working face?

3 A. No, just the last open crosscut.

4 Q. Okay. Did you examine any other faces on the 22
5 Tailgate section?

6 A. I'm not --- that's the one I'm not sure if I was
7 over there. I can't remember if I was there.

8 Q. Was there another fire boss with you that --- on
9 the evening of April 4th?

10 A. Yes.

11 Q. Who else accompanied you in the area you fire
12 bossed? Do you recall?

13 A. Two other fire bosses accompanied me.

14 Q. Do you recall their names?

15 A. John Bickford and John Skaggs.

16 Q. Bickford and Skaggs. Do you remember which of the
17 three of you would have done an examination for the
18 longwall face on the evening of April 4th?

19 A. I think John Skaggs was going that direction.

20 Q. Were you with him at any point when he made his
21 examinations ---

22 A. No.

23 Q. --- of the longwall face? You indicated earlier
24 that there might have been a Massey rule or
25 requirement concerning quantity of air in the last

1 open crosscut on the miner sections. Would that
2 requirement have been 20,000 cfm?

3 A. Yeah, I think so. That's what Massey's
4 requirement was.

5 Q. Okay. One final thing. When you routinely
6 examined the 22 Headgate belt and when you would
7 travel --- I assume you would travel to the sections
8 at times; is that correct?

9 A. Yes.

10 Q. Did you ever have any conversations with the
11 section foreman or any of the men working on that
12 section?

13 A. Uh-huh (yes), just for briefly a minute, because I
14 didn't have time to ---.

15 Q. Okay. Now, was Dean Jones the section foreman on
16 22 Headgate ---

17 A. Yes, sir.

18 Q. --- when you traveled to the section?

19 A. Yes, sir.

20 Q. Did Mr. Jones ever make any comments to you about
21 his ventilation not being what he would like it to be?

22 A. No, sir.

23 Q. Okay.

24 A. He never said anything to me about it.

25 Q. Okay. What about any of the other miners on the

1 22 Headgate sections?

2 A. No, nobody came to me and said anything about it.

3 I don't recall.

4 Q. Okay.

5 RE-EXAMINATION

6 BY MR. MCGINLEY:

7 Q. You knew Dean Jones?

8 A. Sir?

9 Q. Did you know Dean Jones?

10 A. Yes, sir.

11 Q. Do you know what they called him?

12 A. Dino.

13 Q. That's what the folks called him, we've heard?

14 A. Right.

15 Q. Is he a credible person?

16 A. Yeah. Dino --- I liked Dino. He was a good man.

17 Q. So if he said there was adequate air in the
18 section you could count on it to be adequate?

19 A. Yes, I would.

20 Q. And if he said there was not adequate air ---

21 A. Yes.

22 Q. --- you would believe him?

23 A. Yes, I would.

24 Q. When I asked you questions about air changes, the
25 time that you had recalled maybe a month or so less

1 before the explosion, you assumed that the air changes
2 were made so that there would be compliance with
3 whatever the law required; is that correct?

4 A. Yes.

5 Q. You weren't saying that you knew of your own
6 knowledge that there was inadequate air; is that
7 correct?

8 A. Correct.

9 Q. You've taken anemometer readings as part of your
10 fire bossing; is that correct?

11 A. Yes, sir.

12 Q. How often does the 20,000 Massey standard --- how
13 often does the air meet that standard?

14 A. I'm not --- on this section here I think that's
15 what they required. And I don't know about back in
16 the --- I think on that Headgate 22 --- I know they
17 were working on getting the ventilation up to whatever
18 their standards were.

19 Q. Okay. Well, my question really is --- strike
20 that.

21 What is the 20,000 standard? Massey has standards
22 above what the law requires in terms of velocity of
23 airflow?

24 A. That's what I understood, yes.

25 Q. How do you know that?

1 A. The law says 9,000 cubic feet, so ---.

2 Q. But how do you know that Massey has higher
3 standards, so to speak? Word of mouth?

4 A. Sir?

5 Q. Word of mouth?

6 A. Word of mouth. Yeah, that's what they want to
7 have on it.

8 Q. So have you ever seen it written down?

9 A. No, I haven't.

10 ATTORNEY HAMPTON:

11 I might be able to clarify. Are you
12 talking about the standard that is identified in the
13 ventilation plan?

14 A. Yeah. They have ventilation plans.

15 ATTORNEY HAMPTON:

16 Would the 20,000 be something that was in
17 the ventilation plan?

18 MR. MCGINLEY:

19 No. I think what ---.

20 ATTORNEY HAMPTON:

21 Is that what you're talking about,
22 Massey's standard? Because you said something about
23 Massey's ventilation plan.

24 A. I think they --- that's what Massey required to
25 have. That was their own personal ---.

1 BY MR. MCGINLEY:

2 Q. Right. That's what ---.

3 ATTORNEY HAMPTON:

4 So this isn't the number that was in the
5 vent plan?

6 A. No.

7 ATTORNEY HAMPTON:

8 The number in the vent plan would have
9 been the 9,000?

10 A. The 9,000 is law. It's law to have at least 9,000
11 in working faces.

12 MR. MCGINLEY:

13 That's what I understood Mr. Neely to be
14 saying, so I just wanted to go a little further so I
15 can understand the legal requirement, the 9,000 versus
16 a higher Massey standard.

17 A. Right.

18 BY MR. MCGINLEY:

19 Q. So did you have any training on the higher Massey
20 standards of ---

21 A. No.

22 Q. --- airflow?

23 A. No, no.

24 Q. Do you know as a fact there is a higher Massey
25 standard of velocity of air?

1 A. Other than what I've heard, yes.

2 Q. Where did you hear that from, if you recall?

3 A. I heard one of the other fire bosses talking about
4 having --- he said something about 15,000 to 20,000 or
5 something like that, so I really don't know myself. I
6 just heard that that's what Massey wanted to have.

7 Q. So as a fire boss at UBB, whatever Massey's air
8 velocity standards were, you really didn't know
9 anything about them; is that correct?

10 A. Not a whole lot, no.

11 Q. The only thing you knew was you had heard one of
12 the bosses mention 15,000 or 20,000 once; is that
13 correct?

14 A. Yeah.

15 Q. Okay.

16 MR. MCGINLEY:

17 I don't have any other questions. Mr.
18 Farley?

19 RE-EXAMINATION

20 BY MR. FARLEY:

21 Q. You made a pre-shift examination on the 22
22 Headgate section before the dayshift on April 5th?

23 A. Yes, sir.

24 Q. Okay. You took an air reading at the last open
25 crosscut. Did you make a methane test in each working

1 face?

2 A. Yes.

3 Q. What do you recall finding in each face? Tell me
4 what you meant by that.

5 A. Yes, sir. I got somewhere between 0.1 and 0.3.

6 I'm not sure which entry ---

7 Q. Okay.

8 A. --- which is which. That's what I recall.

9 Q. Okay. Do you recall anything else during that
10 examination that strikes you, jumps out at you?

11 A. The section was rock dusted good. I do recall
12 that. The curtains were up. The checks were up. It
13 looked good as far as the section. I didn't see
14 anything out of the ordinary, you know, nothing. I
15 thought it looked good.

16 Q. Okay. Now, this examination, did you --- this
17 report, did you call it out that morning?

18 A. Yes, sir.

19 Q. Who did you talk to when you called it out?

20 A. I called it out to the section foreman, Dean
21 Jones.

22 Q. Okay. All right. Did he have anything to say
23 about the section or what ---

24 A. No.

25 Q. --- other than him taking your report?

1 A. No. I just gave him --- he took the report. He
2 said okay. That was it.

3 Q. Okay. All right.

4 ATTORNEY HAMPTON:

5 Okay. On behalf of MSHA and the Office
6 of Miners' Health, Safety and Training, we'd like to
7 thank you for appearing and answering questions today.
8 Your cooperation is very important to the
9 investigation as we work to determine the cause of the
10 accident. We do request that you not discuss your
11 testimony with any person aside from your attorney.
12 After questioning other witnesses, we may call you if
13 we have any follow-up questions. Or if at any time
14 you have any additional information regarding the
15 accident that you'd like to provide to us, please have
16 your attorney contact Norm Page at the contact
17 information that was provided to you. If you wish,
18 you may now go back over any answer that you've given
19 us or provide us with any additional information if
20 you think there is anything else that we should know
21 that we haven't already gone over. Is there anything
22 else you'd like to say?

23 A. I don't think so.

24 ATTORNEY HAMPTON:

25 Okay. Again, we'd like to thank you for

1 your cooperation.

2 ATTORNEY SEARS:

3 And also on the record, to the extent

4 that you all will permit it, he would like an

5 opportunity to read and sign.

6 ATTORNEY HAMPTON:

7 Okay. I think that at some point we will

8 be allowing that.

9 ATTORNEY SEARS:

10 Okay.

11 ATTORNEY HAMPTON:

12 And we'll mark that. Off the record.

13 * * * * *

14 CONFIDENTIAL STATEMENT UNDER OATH

15 CONCLUDED AT 3:15 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