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Transcript of the Testimony of **Harold Lilly**

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Case:

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CONFIDENTIAL STATEMENT UNDER OATH
OF
HAROLD LILLY

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Tuesday, August 24, 2010, beginning at 9:06 a.m.

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MS. FERGUSON:

Good morning, Mr. Lilly.

MR. LILLY:

How are you?

MS. FERGUSON:

My name is Dana Ferguson. Today is August 24th, 2010. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is Erik Sherer, an accident investigator with the Mine Safety and Health Administration, MSHA, which is an agency of the U.S. Department of Labor. Also present are several people from the State of West Virginia. I would ask that they state their appearance for the record at this time.

MR. FARLEY:

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

MR. KOERBER:

And I'm Barry Koerber, Assistant Attorney General assigned to represent the West Virginia Office of Miners' Health, Safety and Training.

MS. MONFORTON:

And I'm Celeste Monforton with the

1 Governor's independent team.

2 MS. FERGUSON:

3 You want to swear the witness?

4 -----

5 HAROLD LILLY, HAVING FIRST BEEN DULY SWORN, TESTIFIED

6 AS FOLLOWS:

7 -----

8 MS. FERGUSON:

9 Okay. Barry?

10 ATTORNEY KOERBER:

11 Sir, would you please state your full

12 name for the record and spell your last name?

13 A. Harold Kenneth, K-E-N-N-E-T-H, Lilly, L-I-L-L-Y,

14 II.

15 ATTORNEY KOERBER:

16 And would you state your address and

17 telephone number, please?

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

19 (b) (7)(C)

20 ATTORNEY KOERBER:

21 And your telephone number?

22 A. Oh, (b) (7)(C)

23 ATTORNEY KOERBER:

24 And do you have an attorney or personal

25 representative with you here today?

1 A. Yes, I do.

2 ATTORNEY KOERBER:

3 And would you point him out, please?

4 A. To my left.

5 ATTORNEY KOERBER:

6 Mr. McCuskey, would you identify yourself

7 and your firm for the record?

8 ATTORNEY MCCUSKEY:

9 Yes. My name is John McCuskey, I'm with

10 the law firm of Shuman, McCuskey & Slicer in

11 Charleston, West Virginia, and I am representing Mr.

12 Harold Lilly.

13 ATTORNEY KOERBER:

14 Is Mr. Lilly your client?

15 ATTORNEY MCCUSKIE:

16 He is my client; that is correct.

17 ATTORNEY KOERBER:

18 Okay. Now, I see we have another lawyer

19 in the room. Would you please state your name for the

20 record?

21 ATTORNEY HARDY:

22 Yes.

23 ATTORNEY KOERBER:

24 And your affiliation.

25 ATTORNEY HARDY:

1 Yes, Barry. I am David J. Hardy with
2 Allen Guthrie & Thomas, and I'm here representing
3 Performance Coal.

4 ATTORNEY KOERBER:

5 Mr. Lilly, would you just state your job
6 title for the record, also?

7 A. Longwall Foreman.

8 ATTORNEY KOERBER:

9 Are you here today, Mr. Lilly, as a
10 result of receiving a subpoena?

11 A. Yes.

12 ATTORNEY KOERBER:

13 This is a copy of that subpoena and a
14 copy of the return receipt card that was signed ---

15 A. Uh-huh (yes).

16 ATTORNEY KOERBER:

17 --- on 8/16, and I'm going to ask that
18 this be marked as Exhibit One and this be marked as
19 Exhibit Two.

20 (Exhibits H. Lilly One and Two marked for
21 identification.)

22 ATTORNEY KORBER:

23 Okay? Mr. Lilly, the statute that
24 authorizes the director to issue subpoenas compelling
25 witnesses' appearances at interviews such as this also

1 requires the director to offer to each witness a \$40
2 per day witness fee, together with roundtrip mileage,
3 so long as you've driven in your personal vehicle, at
4 the rate of 15 cents a mile, together with
5 reimbursement for any tolls you might have passed on
6 your way here or back. In order to receive that
7 money, I have two forms that need to be filled out,
8 one of which is an IRS form W-9, which is a request
9 for your Social Security number.

10 It is my understanding that the \$40
11 witness fee is considered income to which you will
12 receive a 1099 miscellaneous at some later point in
13 time. I have those forms with me. We can fill those
14 forms out at the end of the interview, if you would
15 like, or if you are a person that chooses not to
16 provide Social Security numbers to people, I am not
17 forcing you to provide me your Social Security number,
18 but if you do not, you can't get the money. So you'll
19 have to either accept the money and fill out the forms
20 at the end or decline on the record now, please.

21 A. I'll decline, because I don't need the money.

22 ATTORNEY KOERBER:

23 Okay. Thank you.

24 ATTORNEY MCCUSKEY:

25 Or the aggravation. You did a good job

1 of talking him out of that. I don't think I'd want it
2 either.

3 MS. FERGUSON:

4 All members of the Mine Safety and Health
5 Accident Investigation Team and all members of the
6 State of West Virginia Accident Investigation Team
7 participating in the investigation of the Upper Big
8 Branch Mine explosion shall keep confidential all
9 information that is gathered from each witness who
10 provides a statement until the witness statements are
11 officially released.

12 A. Okay.

13 MS. FERGUSON:

14 MSHA and the State of West Virginia shall
15 keep this information confidential so that other
16 ongoing enforcement activities are not prejudiced or
17 jeopardized by a premature release of information.
18 This confidentiality requirement shall not preclude
19 investigation team members from sharing information
20 with each other or with other law enforcement
21 officials.

22 Government investigators and specialists
23 have been assigned to investigate the conditions,
24 events and circumstances surrounding the fatalities
25 that occurred at Upper Big Branch Mine-South on April

1 5th, 2010. The investigation is being conducted by
2 MSHA under Section 103(a) of the Federal Mine Safety
3 and Health Act and the West Virginia Office of Miners'
4 Health, Safety and Training. We certainly appreciate
5 your assistance in this investigation.

6 You've identified Mr. McCuskey as your
7 personal attorney during the taking of this statement.
8 Since this is not an adversarial proceeding, formal
9 Cross Examination will not be permitted. However,
10 your personal representative may ask clarifying
11 questions as appropriate.

12 Your identity and the content of this
13 conversation will be made public at the conclusion of
14 the interview process and may be included in the
15 public report of the accident, unless you request that
16 your identity remain confidential or your information
17 would otherwise jeopardize a potential criminal
18 investigation. If you request us to keep your
19 identity confidential, we will do so to the extent
20 permitted by law.

21 That means that if a judge orders us to
22 reveal your name or if another law requires us to
23 reveal your name or if we need to reveal your name for
24 other law enforcement purposes, we may choose to do
25 so. Also, there may be a need to use the information

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

4 A. Okay.

5 MS. FERGUSON:

6 Do you understand?

7 A. Yes.

8 MS. FERGUSON:

9 Do you have any questions?

10 A. Yes. Well, you said ---. I mean when I read the
11 papers every day, there are a lot of stuff published.
12 I mean I don't want my name in the paper and ---.

13 MS. FERGUSON:

14 That's what this means, ---

15 A. Right.

16 MS. FERGUSON:

17 --- that your name wouldn't be in the
18 paper. There would be no information about you
19 personally ---

20 A. Right.

21 MS. FERGUSON:

22 --- until there's a public report issued
23 by MSHA ---

24 A. Yeah; right.

25 MS. FERGUSON:

1 --- or at the close of the interview
2 process if the agencies determine they're going to
3 release the transcript. Do you understand this?

4 A. Uh-huh (yes).

5 MS. FERGUSON:

6 Okay.

7 A. Yeah.

8 MS. FERGUSON:

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

19 A court reporter will record your
20 interview. Please speak loudly and clearly. If you
21 do not understand a question asked, please ask that
22 the question be rephrased. Please answer each
23 questions as fully as you can, including any
24 information you've learned from someone else. And I
25 will tell you the court reporter's sitting to your

1 right, and if you could speak out loud and say yes or
2 no, respond to her --- respond to the questions
3 verbally instead of shaking your head or uh-huh or
4 uh-uh.

5 A. Okay.

6 MS. FERGUSON:

7 That's hard to read in the transcript.

8 I'd like to thank you in advance for your appearance
9 here. We appreciate your assistance and your
10 cooperation is critical in making the nation's mines
11 safer.

12 After we have finished asking questions,
13 you will have an opportunity to make a statement or
14 provide us with any additional information you believe
15 to be important. If at any time after the interview
16 you recall any additional information you believe
17 might be useful, please contact Norman Page at the
18 telephone number in the letter provided to you. Thank
19 you, Mr. Lilly.

20 ATTORNEY MCCUSKEY:

21 Terry, are you getting ready to start the
22 questioning?

23 MR. FARLEY:

24 No, actually I was going to cover a
25 little ---

1 ATTORNEY MCCUSKEY:

2 Oh, okay. I just had one clarifying ---.

3 And maybe the ---.

4 MR. FARLEY:

5 --- housekeeping thing.

6 ATTORNEY MCCUSKEY:

7 Okay. Go ahead, and then I'll do ---

8 MR. FARLEY:

9 Sure.

10 ATTORNEY MCCUSKEY:

11 --- my little thing.

12 MR. FARLEY:

13 Mr. Lilly, I want to advise you, inform

14 you that the West Virginia Code, Chapter 22A, Article

15 1, Section 22 also provides protection against

16 discrimination for coal miners who participate in

17 these type interviews. Now, should you experience any

18 problems and you need to file a complaint, you should

19 contact the West Virginia Board of Appeals, which is

20 charged with hearing such complaints.

21 I want to pass along a brief memo with

22 the Board's address. Also, we advise you that should

23 you have a problem with discrimination and need to

24 file a complaint, you need to do so within 30 days of

25 when the event occurs. Thank you.

1 MS. FERGUSON:

2 John, did you have something you wanted

3 ---?

4 ATTORNEY MCCUSKEY:

5 Yes, just one, two clarifying issues.

6 One, Mr. Lilly has been under a doctor's care since
7 this accident. It's a very --- I mean it's emotional
8 for everybody, but it's been particularly so for him,
9 and he's one of the few miner's I've met that actually
10 is still under continuous doctor's care and has not
11 gone back to work, hasn't been authorized to go back
12 to work. And so I know you are very sensitive to
13 these kinds of things, but this is a particular,
14 particular case, and he may need to take a break ---

15 MR. SHERER:

16 Sure.

17 ATTORNEY MCCUSKEY:

18 --- occasionally if the question gets,
19 you know, very --- if it upsets him. And it might not
20 be rationally upsetting him. I mean you might not be
21 asking an inappropriate question. It's just that
22 certain things trigger those memories and ---

23 MS. FERGUSON:

24 Sure.

25 ATTORNEY MCCUSKEY:

1 --- so it's been very difficult. So I
2 ask you ---

3 MS. FERGUSON:

4 We understand.

5 ATTORNEY MCCUSKEY:

6 --- to be sensitive to that, and I ---

7 MS. FERGUSON:

8 Sure.

9 ATTORNEY MCCUSKEY:

10 --- figured you would be, anyway. And
11 secondly, Mr. Lilly had been making the request at the
12 end of hearing ---. I talked to him ahead of time if
13 he wanted to review his testimony today for accuracy,
14 so he's going to do --- and he said he did. I'd like
15 him to officially on the record request a copy of the
16 transcript for his review as soon as it's available
17 from the court reporter. So you should make that
18 request if I'm correct, if that's what you want.

19 MS. FERGUSON:

20 If I could clarify, we are --- when the
21 transcripts are available, we are setting times for
22 the witnesses to come and review their transcripts
23 upstairs or at a location in the facility. We're
24 setting aside that time and that opportunity for you
25 to do that, so that should not be a problem.

1 ATTORNEY MCCUSKEY:

2 But I think he needs to request it.

3 MS. FERGUSON:

4 Yes.

5 ATTORNEY MCCUSKEY:

6 And I want to make sure he ---.

7 A. I want to request the notes I get to review.

8 MS. FERGUSON:

9 That's not a problem.

10 MR. SHERER:

11 Okay?

12 MS. FERGUSON:

13 Okay, Erik.

14 MR. SHERER:

15 Any time you want to take a break, Mr.

16 Lilly, just let us know.

17 A. I think I can get through it.

18 MR. SHERER:

19 Okay.

20 ATTORNEY MCCUSKEY:

21 By the way, they do have water over there

22 in that fridge. Did you say you wanted water?

23 A. No, I'm fine.

24 ATTORNEY MCCUSKEY:

25 Okay.

1 MR. SHERER:

2 Actually, we're out of water right now.

3 I apologize for that.

4 ATTORNEY MCCUSKEY:

5 Oh, excuse me. Low mileage, no water? I

6 mean, what kind of operation you got going here?

7 MR. SHERER:

8 A government operation.

9 EXAMINATION

10 BY MR. SHERER:

11 Q. Okay. We asked you down here to basically help us
12 out with this explosion. We're doing it for two
13 reasons. The families and the friends and coworkers
14 of these miners deserve some closure. And we're also
15 doing it because we want to prevent these explosions
16 in the future. So any information you can give us
17 that'll help us determine the cause and the conditions
18 and such of the explosion is gratefully appreciated.
19 Roughly, how many years of mining experience do you
20 have, Mr. Lilly?

21 A. Be 39 years in January.

22 Q. Okay. When did you start in the Massey
23 organization?

24 A. 1996.

25 Q. Okay. When did you become involved at Upper Big

1 Branch?

2 A. 1996.

3 Q. Okay. And you've been there since 1996?

4 A. Yes.

5 Q. Okay.

6 A. Well, now, when we moved the longwall up to
7 Logan's Fork, we went down to Logan's Fork for about
8 three years.

9 Q. Okay. And I guess you came back when the wall
10 came back?

11 A. Yes.

12 Q. Approximately when was that?

13 A. I can't remember.

14 Q. Okay. On the map it's noted that the wall started
15 production in September. Would you have come back
16 prior to the actual ---?

17 A. Yes, I would've been there before September.

18 Q. Okay. Were you involved in planning the current
19 longwall panel?

20 A. Not really. I helped with ---. You know, I
21 helped set, finished setting it up and just whatever
22 they needed me to do. If I need to help build
23 stoppings or take a crew and build this, build that,
24 but ---.

25 Q. Okay. So you got involved with the setup and

1 then, of course, the operation of the longwall?

2 A. Right. Yes.

3 Q. Okay. Do you know who planned the current panel?

4 A. Well, I know Eric Lilly was one of the engineers.

5 Q. Uh-huh (yes).

6 A. He helped with, I think the ventilation and the

7 maps. And then Chris Blanchard did most of the

8 planning.

9 Q. Okay.

10 A. He did most of everything.

11 Q. Okay. Okay. Thank you. One little bit of
12 housekeeping, and excuse me for this. Did you state
13 your address for the record?

14 A. Uh-huh (yes).

15 Q. Okay. Just wanted to make sure. Now, what's your
16 current --- or what was your position at the time of
17 the explosion?

18 A. Longwall foreman.

19 Q. Longwall foreman. What did that entail? What was
20 your normal duties?

21 A. Almost everything pertained to the longwall. I
22 road the mantrip in with the men. I'd help with outby
23 work. I'd go on the face and look things over and
24 report back to my supervisor, really just anything
25 they needed done.

1 Q. Okay.

2 A. It's, you know, not really specific.

3 Q. Okay. So did you plan work for the longwall?

4 A. Yes.

5 Q. Did you assign duties?

6 A. Yes.

7 Q. Did you have the ability to hire and fire?

8 A. No.

9 Q. Okay. Who had that?

10 A. I guess the HR Department. I mean, I could
11 suspend people probably, but as far as discharging
12 someone or --- you had to go through channels.

13 Q. Okay, sure. Did you have the ability to buy
14 supplies and equipment?

15 A. No.

16 Q. Did you have the ability to requisition supplies
17 and equipment?

18 A. Yes.

19 Q. Okay. Who did you report to?

20 A. Jack Roles.

21 Q. And what was his title?

22 A. He's the longwall coordinator.

23 Q. Okay. Did you have a specific shift you worked
24 or ---?

25 A. I was on the dayshift.

1 Q. Dayshift.

2 A. Well, at the time of all this I was on the
3 dayshift. I'd worked the third shift, and then during
4 longwall moves I worked the evening shift.

5 Q. Okay. Who was your --- did you have an equivalent
6 longwall foreman on the other shifts?

7 A. No, I was over them.

8 Q. Okay.

9 A. Like, if needed to be. Like, if Jack Roles give
10 me a work order ---.

11 Q. Uh-huh (yes).

12 A. See, I worked the weekends, like Saturdays and
13 Sundays, so I'd be in charge on Saturdays and Sundays
14 while he was off. So he would leave me what he wanted
15 done.

16 Q. Sure.

17 A. And then I made sure that was done.

18 Q. Okay. Sounds like you were the Number Two man on
19 the longwall.

20 A. Yes.

21 Q. Okay. Now, we also understand that the longwall
22 in this mine was --- how can I say it? It was almost
23 a separate operation. Did the longwall report to the
24 mine foreman or the mine superintendent?

25 A. We did. I don't know how to describe that. They

1 kind of was not over the longwall.

2 Q. Okay.

3 A. The longwall miner sections were separate.

4 Q. Okay.

5 A. To my knowledge, they didn't do any planning for
6 the longwall. They just, you know, drove the miner
7 sections up for the longwall.

8 Q. Okay. Did you guys communicate back and forth?

9 I'm sure there was things that would affect the miner
10 sections and the longwall ---

11 A. Yes.

12 Q. --- or vice-versa.

13 A. Yes.

14 Q. Okay. Who did you normally communicate with in
15 the regular mine management structure?

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

17 Q. Uh-huh (yes).

18 A. I talked to him some.

19 Q. Sure.

20 A. And then usually the superintendent. Me and him
21 had a pretty good relationship. If I needed help or
22 he needed help ---. I'm trying to think. His
23 nickname, we call him Dick. I'm trying to think of
24 his name. Since all this happened, I just have ---.

25 Q. Sure.

1 A. Names just ---.

2 Q. It wouldn't be ---

3 A. I mean ---.

4 Q. --- Mr. Hager, would it?

5 A. Yes, Everett Hager.

6 Q. Okay.

7 A. I think. Everett Hager.

8 Q. Okay. Thank you. Have you been back in the mine
9 since the explosion?

10 A. Yes. No, no, I've not been in Performance.

11 Q. Okay.

12 A. I've been outside, doing outside work.

13 Q. Okay.

14 A. I mean they went in, started in after I had talked
15 to a doctor and seeked some help, just to ---.

16 Q. Okay, sure. Just wondering. Some people have
17 been back down the face; some people haven't.

18 A. Right.

19 Q. Okay. Let's talk about some general conditions
20 prior to the explosion. The last month or so prior to
21 the explosion, had you noticed any changes in the
22 ventilation on the longwall?

23 A. Yes.

24 Q. Can you please describe that?

25 A. From when we started out, as we went gradually

1 outby, the air was less.

2 Q. Okay. Had you noticed any distinctive changes in
3 that last month or so or was it just a gradual
4 process?

5 A. We had had ventilation changes. Like, our
6 engineer would draw up a map and we'd have to send it
7 in to MSHA or State or whoever. And I'm not, you
8 know, real familiar with that, what they do there.
9 But then they'd send us a map and we'd have to ---
10 like discerning the belt air. You couldn't have air
11 coming up the belt, so that ---

12 Q. Sure.

13 A. --- hurt your face air a little.

14 Q. Uh-huh (yes), sure. Now, did you work with the
15 engineer --- I think you mentioned Mr. Lilly --- about
16 those ventilation plan changes?

17 A. No, really Jack Roles, my supervisor, took care of
18 that.

19 Q. Okay.

20 A. And then he would just give me a map and mark
21 certain things we need to do.

22 Q. Uh-huh (yes). So you got to do the hard part of
23 it?

24 A. Right; I done the manual ---. I rode the mantrip
25 in and the mantrip out every day. I done the manual

1 part of it.

2 Q. Done the real work.

3 A. Yes, it's tough work.

4 Q. It is. Now, you say that you rode the mantrip in
5 and out every day.

6 A. Now, I said sometimes I would ride out with a
7 different crew.

8 Q. Oh, okay. Sure. But you were on the face on a
9 regular basis?

10 A. Yes, on and off the face.

11 Q. Okay. Did you normally wear a jacket when you
12 went on the face?

13 A. Not regularly, no. Sometimes when we first
14 started, I did, because it was kind of cold.

15 Q. Sure, uh-huh (yes). Had you noticed any
16 significant change in temperature on the face that
17 last few weeks, maybe leaving your jacket off or ---?

18 A. Yeah, I didn't use my jacket across the face
19 because, I mean, once you walk 1,000 feet, you
20 don't ---.

21 Q. Get a little warm?

22 A. Yeah, and the jacket's just more to carry.

23 Q. Sure, okay. Had you noticed that the ventilation
24 quantity had gone down significantly during the month
25 of March?

1 A. I'm not sure, because it kind of leveled out. I
2 mean, like I say, the biggest drop was when we had to
3 take this air off this belt.

4 Q. And do you recall about when you made changes to
5 take the air off the belt?

6 A. No, I couldn't give you a date or time, but I
7 think they'd changed the law, like, in December, that
8 you couldn't use belt air anymore or something to that
9 nature. Like, I didn't keep up with that a lot. I
10 just ---.

11 Q. Sure.

12 A. They told me to go build stoppings on the belt or
13 this or that. That's what --- they gave me a map,
14 told me where.

15 Q. Yeah, sure. And just for the record, we're
16 talking about the longwall belt, ---

17 A. Right, the longwall belt.

18 Q. --- the belt on the longwall?

19 A. Yes.

20 Q. Let me ask you about --- there's a couple doors
21 build on the track going into the mouth of the
22 longwall, and we understand those were built roughly
23 two to four weeks prior to the explosion. And we know
24 that those doors --- they seemed to have been part
25 door and part regulator. Are you familiar with those

1 doors?

2 A. Yes.

3 Q. Did you direct building those doors?

4 A. No, but I did observe the building the doors ---

5 Q. Okay.

6 A. --- because we had to go through there, you know,
7 every day.

8 Q. Do you know who was in --- who directed the
9 building of those doors?

10 A. I don't think there was a foreman with them when
11 they was building them. You know, I can't really say
12 I know who told them to build them, because you
13 got ---

14 Q. Sure.

15 A. --- two or three different people.

16 Q. Sure.

17 A. I mean I don't want to ---. I didn't hear him
18 say, build these doors a certain way, so I don't want
19 to say ---

20 Q. Oh, yeah.

21 A. --- yes, I saw him tell them to do that ---

22 Q. Okay.

23 A. --- because I did not see that or hear it.

24 Q. Yeah, I understand that. Let me ask you this. Do
25 you recall who was building the doors?

1 A. Mike Kiblinger and Dennis Sims, I think, was the
2 two that were building them.

3 Q. Okay. Thank you. And you know, I don't think
4 there's any particular problem with the doors. We're
5 just trying to understand exactly when they were built
6 and what their function was. Did you notice any
7 significant changes in the ventilation on the longwall
8 after those doors were built?

9 A. No, not really, nothing that would disturb me. I
10 mean, because I took air readings, you know, daily,
11 and I didn't --- nothing that bothered me, ---

12 Q. Okay.

13 A. --- you know, where it changed one way or the
14 other.

15 Q. Okay. Were those air readings fairly consistent?

16 A. Yes.

17 Q. Okay. Let me ask you about the curtain near the
18 --- probably tied to the first shield of the wall. Do
19 you recall how that curtain was the last time you were
20 on the wall?

21 A. The last time I was up there, it was from the
22 corner to about right around Number One or Number Two
23 Shield, diagonal.

24 Q. Uh-huh (yes). Was it tight?

25 A. Probably not. I mean ---.

1 Q. Okay. Have you ever seen that curtain flapping
2 around much?

3 A. Yes.

4 Q. When was that?

5 A. I guess you're familiar with longwall mining.

6 Q. Sure.

7 A. Well, every time you'd advance, you'd have a rock
8 fall or something and it'll blow it out and then ---.

9 Q. Okay.

10 A. You know what I mean.

11 Q. Just normal ---

12 A. Normal, yeah, yeah.

13 Q. --- things going on the gob.

14 A. Yeah. It was a tough curtain sometimes to keep up
15 all the time without leaks because of the rock
16 falls ---

17 Q. Sure.

18 A. --- pushing it out.

19 Q. Okay. Did you have a good cave on that wall?

20 A. On the tail sometimes it didn't fall all the way
21 in, but most of the way, yes.

22 Q. Okay. We understand you were cutting a fair
23 amount of sandstone on the tail. Do you think that
24 was why it was hanging up?

25 A. Probably so, yes.

1 Q. Okay. When you're normally working on the wall,
2 cutting coal, what sort of methane readings would you
3 get on the methane monitors?

4 A. Really, I don't know, because I mean I had my
5 detector I carried with me and ever did I find --- you
6 might find one-tenth, something like ---. I never
7 found methane on the face.

8 Q. Okay.

9 A. Now ---.

10 Q. When you were going back around the shields and
11 such, did your personal detector ever alarm?

12 A. No.

13 Q. Okay. Do you know what the alarm level was set to
14 on that detector?

15 A. I think it was one percent.

16 Q. Okay. So you never detected ---

17 A. No.

18 Q. --- one percent?

19 A. No.

20 Q. Okay. Thank you. Now, did you do any of the
21 pre-shifts or on-shifts for the longwall?

22 A. Sometimes, like when I --- like, the fire boss was
23 running late, he'd call me to ask me to walk the belt
24 and the track entry, and I'd do that for him. And
25 like, sometimes the foreman's off. I'd ---

1 Q. Sure.

2 A. --- take his place.

3 Q. Just kind of fill in?

4 A. Right.

5 Q. Do you recall the last time you did a fire boss
6 run?

7 A. No, I'd have no idea. I mean it was --- I mean I
8 could walk the belt or track for them at any time.

9 Q. Sure, okay. Well, let me ask you a slightly
10 different question. Last time you were on the wall,
11 what was the conditions like?

12 A. Well, the faced looked pretty good. Like I say,
13 we had sandstone.

14 Q. Uh-huh (yes).

15 A. We had them straightening the line some.

16 Q. Okay.

17 A. But previously we had just cleaned up the track
18 entry --- you understand what I'm saying ---

19 Q. Sure.

20 A. --- from the mule train up.

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

22 A. From the mule train up, me and three of the boys
23 that deceased had cleaned that up and rock dusted
24 it ---

25 Q. Okay.

1 A. --- and, you know, checked the ribs. We assign a
2 man each day to walk from the mantrip to the face and
3 look for loose ribs.

4 Q. Sure.

5 A. And if he finds that or something, he would
6 always, just about always report to me and we'd take
7 care of it.

8 Q. Okay.

9 A. But we had just cleaned that up and rock dusted it
10 and had it looking real good.

11 Q. Uh-huh (yes). Sounds good. Do you remember if
12 the stage loader was tight up against the rib or
13 mid-entry or ---?

14 A. No, I think it was pretty good shape.

15 Q. Okay.

16 A. You know how it walks back ---

17 Q. Sure.

18 A. --- and forth some. It hadn't.

19 Q. So the alignment on the wall was pretty good
20 shape?

21 A. From what I can remember.

22 Q. Okay.

23 ATTORNEY MCCUSKEY:

24 Did you say the alignment?

25 MR. SHERER:

1 Yes.

2 ATTORNEY MCCUSKEY:

3 Okay.

4 BY MR. SHERER:

5 Q. What about the width of the longwall panel? Were
6 you having any trouble cutting out on the tail end?

7 A. Sometimes we would, yeah. Not real bad on this
8 panel, but we had a map we could look at and tell us
9 if it, like, was 1,005 feet to 1,010 feet to where we
10 could walk it one way or the other.

11 Q. Okay. What was the practical maximum width you
12 could handle with this particular longwall setup?

13 A. Probably --- we didn't have any trouble until,
14 like, we got 1,010 feet or something like that.

15 Q. Okay.

16 A. And I can't remember any knowledge --- I'm trying
17 to think --- of having anything real bad on the tail,
18 as far as cutting out.

19 Q. Okay. Now, we've gotten some testimony that they
20 got a little wide near the takeout point and maybe had
21 to come back and scale the rib off on the tailgate
22 side. Do you recall anything like that?

23 A. No, I can't remember ever going in the tail. I
24 was trying to think.

25 Q. It was probably the, I guess the Two section that

1 they mined these rooms at the end of the panel. We
2 understand maybe they had to go back and do that.

3 A. To my knowledge, nothing ---. I'm trying to
4 think, because we had timbers set down our tail entry
5 and ---

6 Q. Okay.

7 A. --- cribs where we needed them in the breaks.

8 Q. Uh-huh (yes).

9 A. I can't remember doing anything drastic in here
10 that I --- to my knowledge.

11 Q. Okay, sure.

12 A. Now, maybe in here. I don't know, because miner
13 sections ---.

14 Q. Uh-huh (yes).

15 A. In other words, every day I went straight to the
16 longwall.

17 Q. Yeah, sure. Yeah, they might've done it and just
18 never told you about it. Let me ask you a related but
19 different question. We've found some drill holes
20 along the tail side of the longwall panel. It looks
21 like they'd drilled in five, maybe ten feet at the
22 most. Were you aware of those drill holes?

23 A. No, I wasn't.

24 Q. Okay. Had you ever had to drill out like that
25 before?

1 A. I don't know. At Logan's Fork we did ---

2 Q. Uh-huh (yes).

3 A. --- because the centers were terrible. You
4 understand, see, the miner sections have to have good
5 centers ---

6 Q. Sure, uh-huh (yes).

7 A. --- to accommodate air centers.

8 Q. Sure.

9 A. But you know, I remember leaving coal stumps here,
10 but I can't remember ever having to drill and shoot on
11 this panel.

12 Q. Okay.

13 A. And it could've been on another shift that I
14 didn't know about, but I can't remember.

15 Q. Okay. Just wondering. Like I say, we mapped
16 those out a few weeks ago, and just wondering what
17 they were for. They may've just been a preventative
18 thing. We don't know.

19 A. Yeah, I don't know, either. I can't ---.

20 Q. Okay.

21 A. You say it was in this area?

22 Q. Yeah, it was near the existing tail corner.

23 A. See, they could've done that. See, I didn't work
24 Saturday, Sunday and Monday, and it's a possibility.

25 Q. Yeah. We think it was done at some point in the

1 more distant past, because there wasn't any --- we
2 didn't see any equipment or anything like that up
3 there, but again, we just don't know, so that's why
4 we're asking the question.

5 A. Yeah, to my knowledge, there are no equipment in
6 this area ---

7 Q. Yeah.

8 A. --- at all.

9 Q. Okay. Thank you. So to the best of your memory,
10 the wall looked pretty good prior to the explosion?

11 A. Yes, it did.

12 Q. Do you recall anything unusual the last few times
13 you were in there? Was anything just a little off?

14 A. No.

15 Q. Okay. Let me ask you kind of a strange question.
16 When you were down near the tail of the longwall, did
17 you ever smell anything that smelled like gasoline or
18 kerosene or anything like that?

19 A. No.

20 Q. Okay. What time did the dayshift normally leave
21 the face?

22 A. We started at 6:00. Probably anywhere from 15
23 'til 4:00 to 4:00 p.m.

24 Q. Okay. And I understand that at that same time
25 your crew for the evening shift would be coming on the

1 face?

2 A. Well, usually what they did is when they got to
3 this area, coming into the switch to the longwall,
4 they'd call and say they were coming up. And they
5 would switch out between here or, you know, coming up
6 the track entry. Or, like, if we had a breakdown or
7 something, like the face chain broke or something,
8 they came ---

9 Q. Okay. So you ---

10 A. --- straight to us.

11 Q. --- basically changed your crew out somewhere
12 around the mouth of the longwall?

13 A. Right. Well, usually at the end of the track at
14 the mule train or en route.

15 Q. Okay. So you wouldn't actually change out on the
16 face itself?

17 A. They probably have some, ---

18 Q. Sure.

19 A. --- but ---.

20 Q. It wasn't a regular practice?

21 A. No.

22 Q. Okay. Yeah, some --- different mines do it
23 differently.

24 A. Right.

25 Q. Some actually --- they won't quit running the

1 shear until the next shear operator's standing there.

2 A. Well, no, we used to do that, but where we had one
3 battery ride --- the state made us quit ---. In other
4 words if we floated out in the face, we had to have
5 two battery power rides ---

6 Q. Oh, okay.

7 A. --- for escapeway purposes.

8 Q. Sure; okay. Okay. If you don't mind, I want to
9 talk about April the 5th. And if anything makes you
10 uncomfortable, just let me know.

11 A. Just that date does.

12 Q. I understand that, sir. And you have my deepest
13 sympathies. We understand that when you work with a
14 crew of people like this, they feel like family.

15 A. Well, some of these guys I worked with 29 years.

16 Q. Oh, jeez, yeah.

17 A. Well, just one of them. Then three other guys I
18 worked with 25.

19 Q. We've heard a lot of good things about these guys.
20 And if you would, just bear with me, and if we need to
21 take a break, just let me know. On April the 5th,
22 when did you get to the mine that morning?

23 A. I was off that day.

24 Q. Okay. What's the last shift you worked prior to
25 that?

1 A. Friday.

2 Q. Friday; okay. Did anything seem unusual on
3 Friday?

4 A. I can't remember if it was Thursday or Friday.
5 Myself and Delbert Bailey come out --- was coming
6 outside, because usually we come out a little bit
7 early to line the other shifts out.

8 Q. Sure, uh-huh (yes).

9 A. When we come out to the Ellis Portal, that's where
10 the miners was driving a new beltline and stuff, where
11 they was going to try to set a longwall up, ---

12 Q. Sure, uh-huh (yes).

13 A. --- there was a lot of dust up there.

14 Q. Okay.

15 A. Like, 10 or 12 breaks of dust that you couldn't
16 hardly see to go through.

17 Q. Now, we understand they were cutting some
18 overcasts and some ---

19 A. Right.

20 Q. --- belt channels and such.

21 A. Right.

22 Q. Okay. Did you talk to anybody that may've been
23 working over the weekend about the longwall? Did
24 anybody call you ever?

25 A. Yeah. Well, me and one of my friends, one of my

1 maintenance foremans, Delbert Bailey, we had worked a
2 lot.

3 Q. Sure.

4 A. And my supervisor told me, he said --- he'd made
5 some changes. He said, you guys take Saturday, Sunday
6 and Monday off.

7 Q. Uh-huh (yes).

8 A. So Delbert had been wanting to go to --- he's from
9 (b)(7)(C) and we went trout fishing.

10 Q. Oh, okay.

11 A. So we just had a great day.

12 Q. That's good.

13 A. Had a great day.

14 Q. Uh-huh (yes).

15 A. Well, about three o'clock p.m. we left the river
16 and went to his --- he had a cabin and we was going to
17 cook some fish and ramps and potatoes and just having
18 a big time. Well, the power company had all his power
19 off, so we couldn't do that, so ---. Our cell phones
20 wouldn't work.

21 Q. Uh-huh (yes).

22 A. We was going towards Richwood in Summersville area
23 and my phone started working and I had a lot of calls.

24 Q. Uh-huh (yes).

25 A. And finally I got ahold of my daughter, and she

1 told me something bad had happened at the mines.

2 Well, I never dreamed I'd see anything like this.

3 Q. Sure.

4 A. And I called the mines, and by then State and
5 Federal officials had taken over, I guess,
6 communications and everything. You know more about
7 that than I do.

8 Q. Sure, uh-huh (yes).

9 A. But I did get to talk to the supply clerk, and he
10 told me that we had some men trapped. Well, we have
11 to call a report out every 30 minutes, so I could've
12 looked at that report and kind of told where the men
13 was at ---

14 Q. Sure.

15 A. --- on the longwall, probably, but they wouldn't
16 let me on the property 'til Tuesday morning, because
17 ---. And I'd asked if I could help with the rescue
18 team or anything like that, where I'm not rescue ---
19 I'm an EMT and First Aid, but you had to be rescue
20 certified.

21 Q. Okay. And who prevented you from going on the
22 property? Do you recall?

23 A. The security guards and State Police. I mean you
24 couldn't get ---.

25 Q. Okay. That's something we need to work on,

1 because a person with your experience obviously needs
2 to be in on it.

3 A. I needed to be there, I think.

4 Q. Yeah.

5 A. That's my personal opinion.

6 Q. Sure. And we agree with you. That'll be
7 something that we will work on.

8 A. Well, I think what the big thing was, you had
9 reporters ---

10 Q. Sure.

11 A. --- people trying to get in.

12 Q. Sure.

13 A. But we all have ID's, you know?

14 Q. Sure, yeah. And to be fair to the security
15 people, I'm sure they were overwhelmed ---

16 A. Absolutely.

17 Q. --- with everything.

18 A. Well, they had cars backed up for miles down Route
19 Three.

20 Q. Oh, sure. Okay. If you don't mind, let me tell
21 you what we know about what was going on on the
22 longwall. And I'm just going to ask your opinion, and
23 that's all --- all I want is just speculation, but
24 you're obviously very familiar with the operation.

25 That last day the longwall --- coming off the hoot

1 owl shift, we understand that it was in good shape.
2 The shearer was parked near the head. They had
3 changed the cowl blade that night and several flights
4 on the chain conveyor, just normal maintenance sorts
5 of things. The shift started off okay. They had
6 problems fairly early in the shift with the hinge pin.
7 I guess the hinge pin on the ranging arm.

8 A. Tail ranging arm?

9 Q. Yeah, it come loose. And I guess they were down
10 most of the day because of that hinge pin. The last
11 contact that Mr. Clay had, Greg Clay, with the
12 longwall was at 2:42 p.m., and they called out and
13 said that everything was fixed and they was going to
14 get back in the coal or start production. I can't
15 remember the exact words.

16 We know that the pan line was fairly empty of coal
17 near the head and near the tail. There was a little
18 bit of coal and some rock from about Shield 40 to
19 maybe Shield 110 or so. The shearer, of course, was
20 cut out at the tail. The high voltage disconnect had
21 been thrown on the shearer. The water on the shearer
22 had been turned off, also. Everything looks fairly
23 good up the face. Several of the shields have
24 collapsed, but we think that was after, or during the
25 explosion that that happened.

1 I think four of the victims were pretty much at
2 mid-face. Another three victims were scattered out up
3 toward the head, and then there --- I think there was
4 two more victims up around the stage loader. What
5 would you ---?

6 And if the explosion occurred at three o'clock, we
7 don't think that --- or a few minutes after three
8 o'clock, we don't think that the crew would've been
9 coming off because of the shift change. We also know
10 that the E-stop --- the last command that the JNA
11 unit, that we've been able to read, had was that an
12 E-stop was in effect, but that could either be
13 somebody hitting the E-stop or just walking out of
14 range with the remote.

15 We think that that was roughly five minutes or so
16 prior to the explosion, but because of the time
17 differences and such, we can't be exact with that.
18 What's your opinion of what was going on up in that
19 face when that explosion occurred?

20 A. The first thing what come to my mind, like, we was
21 talking about sandstone. Sometime that sandstone gets
22 in this britby.

23 Q. Uh-huh (yes).

24 A. The britby is what the cable and the water hose
25 --- and see, I don't know, because I've not got to

1 exam, see anything. Those guys being at mid-face,
2 maybe they pulled the britby into or stretched the
3 cable right in here and they was going to work on
4 that.

5 Q. Okay. And we actually have been checking that.
6 They have done a preliminary check of the britby and
7 the cable and it looks like they were in good shape.
8 There wasn't any big rocks under the britby. The
9 cable --- our electrical people want to do some
10 additional tests with a Megger.

11 A. Uh-huh (yes).

12 Q. But just putting a meter on the cable, it seems
13 like it was in fairly decent shape.

14 A. One of my friends told me the disconnects were
15 pulled.

16 Q. Uh-huh (yes).

17 A. And that was the first thing I would've thought
18 of, is ---. If somebody coming in said, Harold, said,
19 the longwall's down. I got the disconnects pulled. I
20 was thinking he's either working on a cable, because
21 the electrician was around mid-face.

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

23 A. Grover Skeens.

24 Q. Yeah, Grover was mid-face and the ---.

25 A. And the other electrician ---

1 Q. Yeah.

2 A. --- was right here at Number Two shield.

3 Q. Uh-huh (yes). Yeah.

4 A. I just don't know what --- because there was
5 nothing running.

6 Q. Uh-huh (yes).

7 A. I mean see, now, I don't know if the face chain
8 was running or not.

9 Q. We don't know, and we're hoping that --- I think
10 there's some other box that may have that information,
11 and I'm not sure if we'll be able to get it out of it
12 or not.

13 A. I'm not sure. That's above my level. I mean we
14 got people that know every inch of that ---

15 Q. Sure.

16 A. --- that could look at it and tell y'all.

17 Q. Sure.

18 A. But I don't know if it'd --- if there a time
19 that'd say when the face chain went down. Like I say,
20 that's above my training.

21 Q. Sure, yeah. And we're looking into that right
22 now, and I'm sorry, but I just don't know what that
23 status was.

24 A. I just don't --- you know, if it was running coal,
25 your shearer operators and jacksetters would be right

1 there. I just don't understand why they would be ---.
2 Something's happened to have them, you know, to walk
3 off of there.

4 Q. Okay. Now, let me ask you about the fire hoses,
5 the fire protection on the wall. Was there a fire
6 valve at mid-face?

7 A. I'm not going to tell you exactly where, but I
8 know there are fire valves there and I know there are
9 fire valves down the monorail, because I put them
10 there ---

11 Q. Okay.

12 A. --- myself.

13 Q. Where did you guys normally keep the fire hose on
14 the face, if anywhere?

15 A. We kept it right here on the stage loader.

16 Q. Okay. So you didn't have any down the face?

17 A. I had put some down the face at one time at the
18 fire valves, but I can't just picture in my mind the
19 hose being there. But I know this should've been a
20 hose on the stage loader, because of them brand new
21 boxes ---

22 Q. Okay.

23 A. --- because I put it there myself.

24 Q. Okay. Do you recall if the hoses had a nozzle
25 attached?

1 A. I know the one did at the stage loader, I'm pretty
2 sure. And at one time, and I can't remember, like I
3 say, I had the nozzles put on the cutoff valves on the
4 face. The nozzles were there at one time. I know. I
5 put them on myself.

6 Q. Okay.

7 A. The reason I know they was there.

8 Q. Okay.

9 A. And if I'm not mistaken, they're --- well, I know
10 each one of these fire hoses down the beltline ---

11 Q. Uh-huh (yes).

12 A. ---- that's on the monorail had fire nozzles on
13 them.

14 Q. Okay.

15 A. Because like I say, I put those on myself.

16 Q. Okay. If the shearer --- some reason there was a
17 fire on or around the shearer, how would you fight
18 that? How would you direct people to fight that?

19 A. Well, there's a fire outlet back on the tail.

20 Q. Okay.

21 A. And I can't remember if there was any fire hose.
22 Usually what we would do is take tools and disconnect
23 the shearer waterline.

24 Q. Okay.

25 A. It would be the fastest way, and while you were

1 doing that, I would send men here to get fire hose and
2 nozzles if there wasn't any on the face, because see,
3 you've got water hoses on your shields, too, that you
4 can turn those on to fight fire.

5 Q. Yeah, just wash down water.

6 A. Right. And it's pretty strong.

7 Q. Okay.

8 A. I mean it's hard to hold the hose, and you just
9 tell him to cut the water off of the shearer, but
10 leave it on the shields. See, they're separated. You
11 got different nozzles so you could be fighting it with
12 your wash down hoses while you're getting fire
13 extinguishers, whatever you need to fight that if you
14 had a fire here.

15 Q. Okay. Do you recall where the nearest fire
16 extinguisher to the tail end would've been?

17 A. Should've been on the tail.

18 Q. Okay.

19 A. Under the tail drive we've got cubby holes there.
20 We'll keep the pump there and fire extinguishers and
21 ---. But now, if there was one there that day, I have
22 no idea.

23 Q. Yeah. And we don't either. We're just trying to
24 go through anything that may've been going on, on that
25 wall.

1 A. If I was there ---.

2 Q. Uh-huh (yes).

3 A. And that's what's been bothering me. I'd like to
4 go up and look around.

5 Q. Okay.

6 A. But I'm hoping to do that the first of the month.

7 Q. Okay. We'd certainly like to work with you on
8 that.

9 A. Well, my problem is, with this is maybe people is
10 doing it that don't know ---

11 BY MR. SHERER:

12 Q. Sure. Yeah.

13 A. --- what they're talking about.

14 Q. We've got a lot of good people that have been
15 working on it, but we certainly don't have anybody
16 with the experience that you've got, sir, so that's
17 something we would be glad to work with you to try to
18 facilitate.

19 A. I mean I'm like you. I want to find out what just
20 happened. It's like every day I read the paper. I
21 try to keep up with it and my friends call me, ---

22 Q. Uh-huh (yes).

23 A. --- just like that incident with the miners in
24 Chile.

25 Q. Sure.

1 A. They're going to be there three --- you'd think
2 the industry would come up with a drill that'd drill
3 300 feet a minute or something.

4 MR. SHERER:

5 Yeah, that's some tough conditions down
6 there, I think. That's all the questions I've got for
7 right now. I appreciate talking to you. You want to
8 take a little break?

9 A. I'm fine.

10 MR. SHERER:

11 Okay.

12 MR. FARLEY:

13 Maybe take a fast break.

14 MR. SHERER:

15 Sure, uh-huh (yes).

16 SHORT BREAK TAKEN

17 EXAMINATION

18 BY MR. FARLEY:

19 Q. Mr. Lilly, I need to clarify a few things here.
20 Concerning the changes in the longwall ventilation at
21 UBB, based on my reading of the pre-shift/on-shift
22 book for the longwall, around the first of March the
23 intake air reading recorded in the book was around
24 115,000. Now, around March the 8th it drops to about
25 79,000 and it comes back up to about 116,0000 around

1 March 9th. And then from there on to the end of the
2 month it continues to just work its way down, where it
3 levels off in the mid 50s, 55,000 to 60,000 toward the
4 end of the month. Now, does that sound familiar?

5 A. Yes.

6 Q. Okay. Now, can you explain in any detail why that
7 occurs?

8 A. Well, usually, from my longwall experience, you
9 know, as you come out, you lose air. But I don't know
10 why. You know, where they made ventilation changes
11 for the miner sections, I don't know why it went down
12 drastic like that.

13 Q. Okay.

14 A. I mean that's pretty big from 116,000 to 50,000
15 and 60,000.

16 Q. Now, is it reasonable that the air changes may've
17 been made in an attempt to increase the ventilation on
18 the miner sections?

19 A. Yes. Now, when you're talking about this reading,
20 are you talking about the last open break or the main
21 intake?

22 Q. Main intake.

23 A. Okay.

24 Q. Okay. Now, Erik had asked about the doors that
25 had been installed in the headgate entries that

1 essentially functioned as regulators. When you were
2 underground, were you ever called by anyone and asked
3 to go to those doors and open or close or add or
4 remove blocks in an attempt to increase or decrease
5 airflow?

6 A. No.

7 Q. Okay. Did you ever see anyone make any
8 adjustments in those doors during a production shift?

9 A. No.

10 Q. Okay. You know, based on my understanding of the
11 mine map, it would be ---. Would it be possible to
12 essentially increase or decrease the longwall airflow
13 by doing that?

14 A. Yes. I don't think those doors are a big
15 difference, but you know yourself when you open and
16 close the doors, you can feel it. I mean you could
17 feel it all the way up on the longwall.

18 Q. But it's my understanding that the side panel was
19 constructed in such a manner as to where it was left
20 open?

21 A. Yes.

22 Q. Okay. Now, by adding or removing blocks from the
23 side panel, you could effectively regulate the air
24 coming to the longwall; is that correct?

25 A. That's possible. I'm not 100 percent sure about

1 those doors, why ---. I don't understand why they did
2 that, why that's happened.

3 Q. Okay. Now, I know Erik asked this, but do you
4 know as precisely as possibly when those doors were
5 constructed there?

6 A. No.

7 Q. I think you indicated that Kiblinger and Sims were
8 involved in building the doors, but who directed the
9 building of the doors? Do you know?

10 A. I don't know, you know, because ---. I don't know
11 how to answer that, because I wasn't there when he
12 said, you go build these doors. I mean I know who's
13 in charge, ---

14 Q. Okay.

15 A. --- you know, instruct the people to do it.

16 Q. Okay. Who would that be?

17 A. That'd been Wayne Persinger ---

18 Q. Okay.

19 A. --- or --- see, sometime I just go blank.

20 Chris ---.

21 MS. MONFORTON:

22 Blanchard.

23 A. Blanchard.

24 BY MR. FARLEY:

25 Q. Okay. You indicated that on Thursday or Friday

1 prior to the --- in the week prior to the explosion
2 that you and Delbert Bailey were traveling toward the
3 Ellis Portal and you encountered a lot of dust for
4 roughly 10 to 12 crosscuts, where it was difficult to
5 see. Was that dust coming from a location near the
6 Ellis Portal while the mining machine was used to cut
7 an overcast?

8 A. Yes.

9 Q. Okay. Now, why was the dust moving inby at that
10 point?

11 A. Well, really it wasn't moving too much. It was
12 just like a fog.

13 Q. It was just hanging there?

14 A. Yeah.

15 Q Okay. Now, after you learned of the explosion on
16 April 5th, I think you indicated that you eventually
17 called the mine and spoke to a supply clerk. Who was
18 the supply clerk?

19 A. Why, Greg --- we just mentioned.

20 MS. MONFORTON:

21 Clay.

22 BY MR. FARLEY:

23 Q. Clay.

24 A. Greg Clay.

25 MR. FARLEY:

1 Okay.

2 EXAMINATION

3 BY MS. MONFORTON:

4 Q. Mr. Lilly, I just have a couple of clarifying
5 questions. Is it your recollection, then, your last
6 day working at UBB would've been Friday, April 2nd?

7 A. Yes.

8 Q. And would that have ---?

9 A. Friday --- let's see. Monday was the 10th.

10 Q. The 5th.

11 A. Good Friday was the last day I worked.

12 Q. Okay, Good Friday. And would that have been on
13 the dayshift?

14 A. Yes.

15 MS. MONFORTON:

16 That was the only question I had.

17 MR. SHERER:

18 Okay.

19 RE-EXAMINATION

20 BY MR. SHERER:

21 Q. I got a few follow-up questions and additional
22 questions, Mr. Lilly. We understand that there were
23 several incidents with water on this wall, quite a bit
24 of water. Do you recall one in --- seems like it was
25 late October, early November when the wall actually

1 had to shut down for a few days?

2 A. Yes, we had water on the face here. I guess
3 that's what you're talking about.

4 Q. Yeah.

5 A. Had to get it pumped out.

6 Q. Do you recall where that water was coming from?

7 Was it coming out of the face or the top or the gob or
8 ---?

9 A. It was coming out of the gob and some out of the
10 top. It was coming through like a rain storm, coming
11 through the shields.

12 Q. Okay.

13 A. Most of it was from the top.

14 Q. Okay. Now, we understand that some people thought
15 there had been cave-in to an upper mine that may've
16 had water in it. Do you know anything about that?

17 A. No.

18 Q. Okay. Did you ever have any occasion to travel
19 back, either in the headgate or tailgate from the
20 wall?

21 A. Yes.

22 Q. What were the conditions like back there?

23 A. Now, the bottom was hooved real bad.

24 Q. Uh-huh (yes).

25 A. Now, up in this area, the only time I was up in

1 here towards where the new face was set is, like, when
2 we was doing the first ventilation plan to start the
3 longwall. And I was up in --- I can't remember what.
4 We had something broke down or something and I had to
5 come up in here, and this bottom was hooved up real
6 bad.

7 Q. Okay.

8 A. Some of these entries you couldn't travel, because
9 some of them I had to crawl.

10 Q. Okay. And you're pointing on the tailgate from
11 roughly Break 80 inby?

12 A. Right. All of this, well, from where the face is
13 now, just about all of this up through here in Six and
14 Seven entries ---

15 Q. Uh-huh (yes).

16 A. --- Number Six and Number --- farthest places to
17 the right were hooved up real bad.

18 Q. Do you know if they were hooving up right when the
19 face went past a break or did it take a couple breaks
20 to hoove up?

21 A. Usually a couple breaks, but it hooved kind of
22 quick.

23 Q. Okay.

24 A. You know, most longwalls do have hooving bottoms.

25 Q. Oh, yeah. Sure.

1 A. This hooved up pretty bad.

2 Q. Okay. Did you ever have any occasion to go back
3 down the headgate side?

4 A. Yes.

5 Q. What were conditions like back there?

6 A. You had some bad top up in here, water. All the
7 way up you had water in certain places, like you had
8 water, like, in 74 Break. The last time I traveled
9 this --- it was Tuesday before the explosion --- 38
10 Break as far as I could get ---

11 Q. Okay.

12 A. --- because of water.

13 Q. Okay. Was the water roofed in any of the entries?

14 A. No, it wasn't roofed, but it was up to my chest
15 waders.

16 Q. Oh, okay. That's pretty high.

17 A. Now, in this --- like I say, water here and then
18 these areas has got hooved bottom, just like over in
19 this area.

20 Q. When you're in there at Break --- about Break 38,
21 did you still have good airflow?

22 A. Yes.

23 Q. Okay.

24 A. Had 50,000 ---

25 Q. Okay.

1 A. --- in that area.

2 Q. Okay. Thank you. Did you ever discuss any air
3 problems with Jack Roles or Erik Lilly?

4 A. No. I mean, I would tell Jack if the air went up
5 or down but nothing that disturbed me.

6 Q. Okay.

7 A. I mean we had the quantity of air we're supposed
8 to have.

9 Q. Okay. When was the last conversation you had with
10 Mr. Roles about ventilation? Do you recall?

11 A. No. I have no idea. I mean we talked daily.

12 Q. Okay, sure. Okay. Did you ever have any of the
13 people that worked on the longwall complain to you
14 about ventilation?

15 A. One time Delbert Bailey and Timmy Davis come to me
16 and said there was some dust coming on the longwall.

17 Q. Okay. Do you recall about when that was?

18 A. No. These time --- I'm just not good on these
19 time frames. Say, two or three weeks, maybe, before
20 the explosion, maybe longer than that, ---

21 Q. Okay.

22 A. --- because they had taken Timmy off production
23 and put him with me.

24 Q. Okay. Thank you. Now, we were talking about ---
25 you were over the other shifts on the longwall. Who

1 were the foremen on those other shifts? Do you recall?

2 A. Rick Lane.

3 Q. Which shift did he work?

4 A. Well, they switched shifts, like day and evening.

5 Now, the day of the explosion, as you know, he was on
6 the dayshift.

7 Q. Uh-huh (yes).

8 A. And Mikey Webb --- I'll say Michael Webb was the
9 other fellow.

10 Q. Okay. Was there a foreman over the hoot owl
11 shift?

12 A. Yes, that'd be Larry Brown and Keith Stanley.

13 Q. Okay.

14 A. They're twins. That's why --- he's got a twin
15 brother and you cannot tell them apart.

16 Q. Okay.

17 MS. MONFORTON:

18 We have seen them. Keith Stanley, Larry
19 Brown.

20 A. Larry Brown and Keith Stanley.

21 MR. SHERER:

22 Okay.

23 ATTORNEY MCCUSKEY:

24 Wait. You're not saying they're twins,
25 are you?

1 A. Those two are not, but the two --- one's a foreman
2 and one's a motorman, and you can't tell them apart.

3 ATTORNEY MCCUSKEY:

4 Okay.

5 BY MR. SHERER:

6 Q. We actually had them scheduled the same mornings.

7 A. Oh, boy.

8 Q. An we thought they were just playing with us.

9 A. No, the first shift this boy worked as a trainee,
10 I asked him, I said, what are you doing on the third
11 shift with a red hat on, because I thought it was his
12 --- I mean I've got twin grandsons that's identical.

13 Q. Sure, uh-huh (yes).

14 A. And you can't tell these boys apart.

15 Q. They do look very similar. Last few times you
16 were on or near the wall, what was the rock dust like?

17 A. It must've been up to standard, because I can't
18 remember getting a violation on --- it didn't bother
19 me, wasn't real black.

20 Q. Okay.

21 A. And each time we moved power down we took a track
22 out and cleaned and rock dusted.

23 Q. Do you recall about when the last time you moved
24 the power down was?

25 A. No. I was trying --- I can't recall.

1 Q. Okay. When was the last time you went out on the
2 tailgate of the wall?

3 A. Probably Thursday or Friday.

4 Q. Do you recall anything unusual when you went down
5 on the tailgate?

6 A. No.

7 Q. What'd the rock dust look like?

8 A. I was trying to think. The rock dust wasn't bad
9 in the tail entry, I didn't think.

10 Q. Okay. Did you guys ever have any occasion to ---
11 you know, some people have, like, a pod duster on the
12 monorail and maybe pipe dust down the face.

13 A. No.

14 Q. You didn't?

15 A. No, we never had any of that.

16 Q. Okay. Who was in charge of dusting these entries
17 along the tail of the wall?

18 A. Well, they were already dusted when ---. The
19 miner sections had dusted them prior to the longwall.

20 Q. Okay. And do you know if anybody had come back
21 through there and put any more dust up through there?

22 A. No.

23 Q. Okay.

24 A. Not to my knowledge.

25 Q. Okay. Do you know if anybody had been making any

1 ventilation changes on the tail side of the wall in
2 the week or two prior to the explosion?

3 A. No.

4 Q. Okay. Now, we understand that there was a hole
5 knocked in the stopping just in front of the face. Do
6 you recall anything like that?

7 A. I know usually this stopping is out, where the air
8 will go up through here.

9 Q. Uh-huh (yes).

10 A. And then we're permitted to go from one break, you
11 know, to take her up through here behind the gob.

12 Q. Okay. So somebody periodically knocked out ---?

13 A. Right. We keep a stopping ---. Like, this
14 stopping's knocked for the ventilation now.

15 Q. Uh-huh (yes).

16 A. And we keep a sledgehammer right here at that
17 stopping, because where I'm getting older, I've
18 knocked some of those holes and it's tough ---

19 Q. Oh, yeah.

20 A. --- because they've got so much weight on them.

21 Q. Sure, uh-huh (yes).

22 A. But we keep --- on the stopping outby, we always
23 keep a sledge hammer there to knock, you know, so it
24 can go up through here.

25 MR. SHERER:

1 Okay. Okay. Do you have any more
2 questions?

3 MS. MONFORTON:

4 I have two more questions.

5 MR. SHERER:

6 Okay.

7 RE-EXAMINATION

8 BY MS. MONFORTON:

9 Q. Mr. Lilly, I think that you indicated it was the
10 Tuesday before April 5th when you were up by 38 Break?

11 A. Yes.

12 Q. And I just wanted to confirm it was the Tuesday?

13 A. Yes.

14 Q. Is there any particular reason you can remember it
15 was the Tuesday?

16 A. I do that once a week.

17 Q. Okay. And I have a copy of a citation from March
18 the 9th that was issued. It had to do with some
19 ventilation on the longwall, and we've heard testimony
20 from other witnesses that following that citation
21 there was quite a bit of work being done in the
22 tailgate, knocking and building stoppings. Do you
23 recall anything about that?

24 A. Yes, I traveled with this mine inspector that day.

25 Was it Greg Segman?

1 Q. The name is ---

2 A. Okay.

3 Q. --- blacked out.

4 A. Okay.

5 MR. SHERER:

6 Yeah, it probably was Greg.

7 A. It was Greg. Yeah, I was with him.

8 BY MS. MONFORTON:

9 Q. What's your recollection of that ---

10 A. Can I borrow your ---

11 Q. --- day?

12 MR. SHERER:

13 Sure.

14 A. --- pointer? Okay. When you come out the tail,
15 you're permitted to take the air one break, which is
16 usually 100 foot. Oh, okay. I'm sorry. Can you see?

17 ATTORNEY HARDY:

18 Yeah, I'm fine here.

19 A. And when Greg come down here indicating), he went
20 below this break. We'd checked air on the face.
21 Everything was fine. Last open break everything was
22 fine, but when we got below this break, we walked down
23 through here and the air was going the wrong way. It
24 was going outby instead of inby. Okay. Someone had
25 knocked 12 or 15 stoppings of these stoppings down

1 through there. And I can't remember if it was this
2 regulator or this regulator.

3 I think it was this one was --- somebody had
4 plastered it up solid, and that's why the air wasn't
5 going where it was supposed to go, because if you
6 knock holes in this regulator, that pushed the air up
7 these entries. Now, these entries over here had ---
8 air was going the right way. But like, Five, Six and
9 Seven it was kind of stagnant. Well, it was going
10 outby.

11 So we shut the whole longwall down and Greg called
12 whoever he needed to call in your department. And we
13 got a new --- revised it. We built all these
14 stoppings back and just the people in the ventilation
15 was permitted to work on this.

16 And we adjusted this. Now, I didn't adjust it.

17 Wayne Persinger and --- I don't know who else was with
18 him --- Jack Roles adjusted this air 'til we got it
19 right, but everything was completely shut down 'til we
20 fixed this.

21 BY MS. MONFORTON:

22 Q. And can you recall about how many days it took to
23 correct that?

24 A. We worked all day on the dayshift. Do you know
25 what day that was on, because I don't ---.

1 Q. The 9th of March.

2 A. Was that a Friday? I mean that's no big deal, but
3 we did everything MSHA, State, whoever told us to do
4 and got the air right, but then we had to wait 'til
5 approval. Like, our engineers had to draw a map up of
6 exactly what we did, and then MSHA and --- does the
7 State have to approve this, too? I'm not sure.

8 MR. FARLEY:

9 I don't know whether we were ---

10 A. Well, anyway ---

11 MR. FARLEY:

12 --- involved in that or not.

13 A. --- we got all the maps, sent them to MSHA, and
14 their inspectors come in and checked it, and then we
15 could run, but I think it was two days, because it was
16 on a weekend or something where we couldn't get
17 somebody in there to ---.

18 BY MS. MONFORTON:

19 Q. To check it again.

20 A. Right.

21 Q. Right, okay.

22 A. And the order or whatever couldn't be lifted 'til
23 this was all proven it was right again.

24 MS. MONFORTON:

25 Okay. Thank you, Mr. Lilly.

1 RE-EXAMINATION

2 BY MR. FARLEY:

3 Q. Any explanation that you're aware of as to how
4 thing got to that point where the order resulted?

5 A. No, I have no idea.

6 Q. Okay.

7 ATTORNEY HARDY:

8 Erik, I have just one clarifying
9 question.

10 MR. SHERER:

11 Sure, uh-huh (yes).

12 EXAMINATION

13 BY ATTORNEY HARDY:

14 Q. Mr. Lilly, when you saw that --- you and Delbert
15 saw that dust cloud that you said at was 10 to 12
16 Break, you said it was either on Thursday or Friday,
17 or I wasn't clear whether it was on Friday or
18 Thursday.

19 A. I'm not sure, either.

20 Q. Okay.

21 A. You'd have to talk to Dwlbert to see, because me
22 and him rode out together that day.

23 Q. Okay.

24 A. I'm not sure which day it was.

25 Q. It was either Thursday or Friday before the ---?

1 A. I think.

2 ATTORNEY HARDY:

3 Okay. That's all the questions I have.

4 MR. SHERER:

5 Sure.

6 ATTORNEY MCCUSKEY:

7 Okay? We're all done. Well, I think you

8 have to ---. Oh, yeah, you do read him his rights.

9 MS. FERGUSON:

10 Mr. Lilly, on behalf of MSHA and the

11 Office of Miners' Health, Safety and Training we want

12 to thank you for appearing and answering questions

13 today. Your cooperation is very important to the

14 investigation as we work to determine the cause of the

15 accident. We request that you not discuss your

16 testimony with any person aside from your personal

17 representative. After questioning other witnesses, we

18 may call you if we have any follow-up questions.

19 If at any time you have additional

20 information regarding the accident you would like to

21 provide to us, please contact us at the information

22 provided in the letter gave to you this morning. If

23 you wish, you may now go back over any answer you've

24 given. You may also make a statement if you would

25 like to do so at this time.

1 A. I'm fine. I think we've, you know, discussed what
2 --- I don't know how to say it. Yeah, I'm fine with
3 what we've did.

4 MS. FERGUSON:

5 Okay. We want to thank you very much for
6 coming in. We appreciate it.

7 ATTORNEY MCCUSKEY:

8 Thank you all for your sensitivity, too.
9 We appreciate it.

10 * * * * *

11 CONFIDENTIAL STATEMENT UNDER OATH

12 CONCLUDED AT 10:30 A.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