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Statement Under Oath of Robert Hardman

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STATEMENT UNDER OATH

OF

ROBERT HARDMAN

taken pursuant to Notice by Brett Steele, 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 Thursday, May 27, 2010, beginning at 8:10 a.m.

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18 Richard Stoltz - MSHA

19 Agent Wilson - MSHA

20 Thomas Morley - MSHA

21 Dana Ferguson, Esquire - Office of the Solicitor

22 Clete Stephan - MSHA

23 Suzanne Weise - McAteer independent team

24 Norman Page - MSHA

25 John Godsey - MSHA

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EXHIBIT PAGE

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DESCRIPTION

IDENTIFIED

One

Bandytown fan map

82*

*exhibit not attached

P R O C E E D I N G S

ATTORNEY BABINGTON:

My name is Matt Babington. Today is May 27th, 2010. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is Tim Watkins, an accident investigator with the Mine Safety and Health Administration, an agency of the U.S. Department of Labor. Also present are several people from the State of West Virginia. I ask that they state their appearance for the record.

MR. FARLEY:

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

MR. KINDER:

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

ATTORNEY BABINGTON:

There are several members of the investigation team also present in the room today. Tim Watkins will be conducting initial questioning. All members of the Mine Safety and Health Accident Investigation Team and all members of the State of West Virginia Accident Investigation Team participating in the investigation of the Upper Big

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

15 OFF RECORD DISCUSSION

16 ATTORNEY BABINGTON:

17 Back on the record. A member from the
18 independent state team just appeared. Would you state
19 your name for the record?

20 MR. MCGINLEY:

21 Patrick C. McGinley.

22 ATTORNEY BABINGTON:

23 Okay. And you're part of Davitt's team?

24 MR. MCGINLEY:

25 Part of Davitt's independent

1 investigation team. Correct.

2 ATTORNEY BABINGTON:

3 Okay. Government investigators and

4 specialists have been assigned to investigate the

5 conditions, events and circumstances surrounding the

6 fatalities that occurred at the Upper Big Branch Mine-

7 South on April 5th, 2010. The investigation is being

8 conducted by MSHA under Section 103(a) of the Federal

9 Mine Safety and Health Act and the West Virginia

10 Office of Miners' Health, Safety and Training. We

11 appreciate your assistance in this investigation.

12 After the investigation is complete, MSHA

13 will issue a public report detailing the nature and

14 causes of the fatalities in the hope that greater

15 awareness about the causes of accidents can reduce

16 their occurrence in the future. Information obtained

17 through witness interviews is frequently included in

18 these reports. You should know that if you request

19 confidentiality, confidentiality will only be granted

20 on a case-by-case basis. Your statement may also be

21 used in other proceedings.

22 You may have a personal representative

23 present during the taking of the statement and you may

24 consult with the representative at any time. Do you

25 have a representative here today?

1 MR. HARDMAN:

2 I don't.

3 ATTORNEY BABINGTON:

4 Thank you. Your statement is completely

5 voluntary. You may refuse to answer any question.

6 You may terminate your interview at any time or

7 request a break at any time. Since this is not an

8 adversarial proceeding, formal Cross Examination will

9 not be permitted. However, in this case you may ask

10 clarifying questions as appropriate.

11 A court reporter will record your

12 interview. Please speak loudly and clearly. If you

13 do not understand a question asked, please ask me to

14 rephrase it. Please answer each question as fully as

15 you can, including any information you may have

16 learned from someone else.

17 I'd like to thank you in advance for your

18 appearance here. We appreciate your assistance in

19 this investigation. Your cooperation is critical in

20 making the nation's mines safer.

21 After we've finished asking questions,

22 you'll have an opportunity to make a statement and

23 provide us with any information that you believe to be

24 important. If at any time after the interview you

25 recall any additional information you believe that

1 might be useful, please contact Norman Page at the
2 contact information previously provided.

3 I'd like to note for the record before we
4 start that Mr. Hardman has requested a written copy of
5 his transcript and, if available, an audio copy as
6 well. Mr. Hardman?

7 -----

8 ROBERT HARDMAN, HAVING FIRST BEEN DULY SWORN,
9 TESTIFIED AS FOLLOWS:

10 -----

11 EXAMINATION

12 BY MR. WATKINS:

13 Q. Okay. Good morning, Bob.

14 A. Hi, Tim.

15 Q. We appreciate you coming here this morning, now.

16 A. Not a problem.

17 Q. I got some preliminary questioning. I just need
18 to get --- formalities to get out of the way. Could
19 you please state your full name and spell your last
20 name, please?

21 A. My full name is Robert, middle initial is G.,
22 Hardman, H-A-R-D-M-A-N.

23 Q. And could you please state your address and your
24 telephone number, please?

25 A. My home address?

1 Q. Yes.

2 A. (b) (7)(C)

3 --- (b) (7)(C)

4 Q. Okay. And are you appearing here today
5 voluntarily?

6 A. Yes.

7 Q. Okay. What was your current duty station?

8 A. My current duty station's Mount Hope, West
9 Virginia, District 4.

10 Q. How long you been there?

11 A. I been --- I been there most of my career in
12 District 4, and in Mount Hope specifically as district
13 manager since August the 7th, 2006, acting up through
14 October and then as the DM since that period of time
15 to current.

16 Q. Okay. Could you just give me a brief --- a brief
17 history of your work experience and where you worked
18 at, where you started at?

19 A. Yes. I worked in the industry until I was 30, 37.
20 I came in the agency in 1988. I worked in the coal
21 industry, underground mining, certified mine foreman
22 up until I came in the agency.

23 Q. Okay. And when did you come into the agency?

24 A. I came in the agency in the spring of 1988.

25 Q. Okay.

1 A. July 18th, I believe, was the --- was the date.

2 Q. Where'd you start at when you first came in?

3 A. I started initially in District 4, in training in
4 Logan, in the Logan Field Office. I transferred to
5 Pineville Field Office in District 4. From there they
6 transferred me to Mount Hope. In the district, I went
7 from District 4 to District 6 for a few years and then
8 came back again August of 2006.

9 Q. You mentioned you had a --- you're a certified
10 mine foreman. Do you have any other certificates or
11 certifications?

12 A. I'm an electrician also. And, you know, I mean, I
13 have the normal certifications that you would have in
14 the agency, impoundment, impoundment certification,
15 you know, dust, all of those.

16 Q. Okay. You stated your current position is
17 district manager, District 4.

18 A. That's correct.

19 Q. Okay. With that title, what are your
20 responsibilities?

21 A. Well, I'm responsible for the entire district, the
22 technical programs, enforcement program, throughout
23 the entire district. It's comprised of seven field
24 offices and about --- it'll average 209, 210, 209, 210
25 people in the total program.

1 Q. Okay. And how many mines are you responsible for?

2 A. That varies from a high of about 406 down to mid-
3 300. It fluctuates quite a bit up and down, but it'll
4 average somewhere in the neighborhood of 370, 375,
5 would be a good average.

6 Q. And that number includes both surface and
7 underground ---

8 A. Yes ---

9 Q. --- facilities, everything?

10 A. Surface mine facilities and underground mines.

11 Q. Okay. How many underground mines, active
12 underground mines, approximately, do you have in the
13 district?

14 A. Oh, it'll run somewhere probably 170. I'd have
15 --- I'd have to ---. I'd have to look at that exact
16 figure ---

17 Q. Yeah.

18 A. --- today.

19 Q. I know it --- I know it fluctuates a little bit,
20 but ---.

21 A. Yeah.

22 Q. Okay. And the UBB mine was assigned to which
23 field office?

24 A. UBB --- UBB Mine is assigned to the Mount Hope
25 Field Office in the District Office.

1 Q. Okay.

2 BRIEF INTERRUPTION

3 A. Just a second. I'll turn this thing off. Okay.

4 Go ahead.

5 BY MR. WATKINS:

6 Q. Okay. You were stating that the UBB Mine was

7 assigned to the Mount Hope Field Office.

8 A. Uh-huh (yes).

9 Q. About how many mines are assigned to that field
10 office? Do you know?

11 A. That's a good question, probably somewhere in
12 the ---. You know, I really --- I'd have to research
13 that, Tim ---

14 Q. Okay.

15 A. --- to get --- to get you an exact number.

16 Q. Okay. Do you have a ballpark number?

17 A. Maybe 70.

18 Q. Seventy (70)?

19 A. It would be somewhere a ballpark in my mind. I
20 could get that for you.

21 Q. Okay. That's surface and underground or ---?

22 A. That's all.

23 Q. Okay.

24 A. Uh-huh (yes).

25 Q. Okay. And do you know about how many inspectors

1 you have out of that field office?

2 A. Can't tell you the exact number. Our work groups
3 will --- will usually average about --- about ten.
4 And that office will probably average --- right now,
5 since we ramped up, somewhere in the neighborhood of
6 20, total.

7 Q. Okay. Last, last couple years we've had an
8 increase of hiring. We've hired some mine inspectors.
9 What would you say in --- throughout the district,
10 what would be the average experience of your
11 workforce?

12 A. I'd say our average experience throughout the
13 district is probably somewhere in the neighborhood of
14 three years.

15 Q. Okay. So you had a large influx of new
16 inspectors?

17 A. Yes.

18 Q. Okay.

19 A. We have.

20 Q. Okay. Let's talk a bit about --- about the plans.
21 Do you have a standard operating procedure for when a
22 company brings in a plan, submits a plan to the
23 district for approval?

24 A. Yes.

25 Q. Could you --- could you walk me through that,

1 please?

2 A. Sure. When they bring a plan in, into the office
3 or we receive it in the office, the first thing that
4 happens is it's date stamped. And then if it's a ---
5 if it's a plan with any degree of complexity, you
6 know, we may discuss it beforehand, but in general.
7 And then it's routed to the appropriate tech
8 department to begin the review process. And then,
9 again, depending on complexity of the plan itself,
10 there may be discussions between the technical
11 specialists, the supervisor of the department, the
12 pertinent department and the tech ADM, myself, as it
13 progresses through the review for approval or
14 disapproval.

15 The plan, after the --- that process, if they feel
16 that it's --- the review is completed, then they
17 recommend either approval or disapproval through the
18 department specialist and then the department
19 supervisor. And then at that point in time the CMI in
20 the field office and the CMI assigned to the mine,
21 they discuss the plan with them and solicit their
22 comments.

23 Then it comes back and it's routed through the
24 enforcement ADM that's assigned the mine, the
25 responsible division. And we have two divisions in

1 District 4, Division One, Division Two. Then it's
2 routed through the technical ADM, and then it comes to
3 me for my review, either approval or disapproval.

4 Q. Okay. You mentioned you had two --- two
5 divisions, and which has the ADM for each division?

6 A. Yes.

7 Q. Who are the two ADMs and which division are they
8 assigned?

9 A. Division One is Lincoln Selfe, and that ---
10 Division Two is Luther Marrs.

11 Q. Okay. And UBB would fall under which, which one
12 of those ADMs?

13 A. Division One, Lincoln Selfe.

14 Q. Okay. Let's just talk --- focus on the UBB Mine
15 now. I know you got a lot --- lot of mines in the
16 district, but let's just concentrate on this one. Do
17 you know who normally brings in the plans for Massey
18 in regards to the UBB Mine?

19 A. The only thing I can tell you, Tim, is they have a
20 group called Route 3 Engineering. And normally those
21 folks from that engineering department bring those
22 plans in to Mount Hope.

23 Q. Route 3, is that a Massey affiliate or are they a
24 contractor or how does that ---?

25 A. They're A.T. Massey employees. They're a

1 division. They're not --- they're not an independent
2 contractor. They do not have an MSHA independent
3 contractor ID.

4 Q. Okay.

5 A. But they're a separate entity of A.T. Massey in my
6 district.

7 Q. Okay. Do they service other mines besides,
8 besides UBB?

9 A. Yes.

10 Q. Okay. Do you know who the engineers are?

11 A. You know, there are several --- several engineers.
12 They have an engineer, his name's Matt Walker.
13 There's an engineer that I can't even pronounce his
14 name. They call him Reddy.

15 Q. Okay.

16 A. He's of Indian descent.

17 Q. Okay.

18 A. But those --- those are the ones that I can
19 recall. I don't deal directly with those engineers a
20 lot, ---

21 Q. Yeah.

22 A. --- you know. I deal --- I deal primarily with
23 management, if it comes to my level and we have a
24 meeting, ---

25 Q. Okay.

1 A. --- and not directly with the engineers.

2 Q. Okay. Looking through some of the plans, there's
3 an engineer named Eric Lilly. Do you know ---?

4 A. He submits, yes. Eric is also an engineer.

5 Q. Is he part of Route 3 or is he ---?

6 A. That's a good question. I can't answer that
7 honestly. I know he's affiliated with A. --- A.T.
8 Massey for certain. And Tim, I don't know whether
9 officially he's assigned to this mine as an engineer
10 or whether he's officially part of the Route 3
11 Engineering group.

12 Q. Okay.

13 A. I can't honestly answer that question.

14 Q. You mentioned that you had meetings, occasionally
15 had meetings regarding plans, submittals.

16 A. Uh-huh (yes).

17 Q. Do you remember having any meetings regarding UBB
18 ventilation plans?

19 A. I can't recall a specific meeting relative to the
20 ventilation plan for this mine. I'm familiar with
21 some of the issues that we've had with the mine and
22 how they progressed through the ventilation
23 department, but as far as specific meetings on
24 ventilation at this mine, ---

25 Q. Okay.

1 A. --- I'd have to look.

2 Q. Okay.

3 A. And I have with me --- I have with me a record of
4 the meetings that I have had, Tim. I just have to ---
5 I'd have to research that, but I can't recall any
6 major meetings relative to the ventilation plan itself
7 at this mine.

8 Q. Okay. And we may take a look at those a little
9 bit later, but you mentioned that you were familiar
10 with the issues at UBB. What would those issues be?

11 A. The issue that really stands out and that there
12 was a lot of --- lot of discussion, the ventilation
13 for Headgate 22 area, Tailgate 22 area, which is on
14 this map, Headgate 22, Tailgate 22.

15 Q. Okay.

16 A. That used to flow through the Number Three entry.
17 It was a dedicated return on the longwall headgate.
18 And they had --- they had issues in this area, ground
19 control issues, and water issues. And you can see the
20 water between Break 70 and 75 of the longwall
21 headgate. And our folks --- our folks went in the
22 mine. We cited 'em for that.

23 And there was a lot of discussion relative to
24 this, this return. And the end product was that the
25 return was routed out Headgate One North across

1 overcasts and it comes down on the outside of the
2 tailgate entry, on the solid side of the tailgate
3 entry and back to Bandytown fan.

4 Q. Okay.

5 ATTORNEY BABINGTON:

6 To clarify with this, when the air ---
7 when it returned, it traveled down Headgate One North,
8 did it then travel down the crossover entries?

9 A. That's the end product.

10 ATTORNEY BABINGTON:

11 Okay.

12 A. Initially --- initially this Number Three entry of
13 the current One North Headgate was the return airway,
14 which they were having ground control issues and water
15 issues in that entry. And there was a lot of
16 discussion back and forth between the company and our
17 ventilation department to resolve this, but the end
18 product was that they submitted us a plan to change
19 this and bring it across the overcast on the cut-
20 through and over into tailgate One North back to
21 Bandytown fan. That's how --- that's how they elected
22 to resolve that.

23 BY MR. WATKINS:

24 Q. Do you remember when that was?

25 A. I can tell you ---

1 Q. Okay.

2 A. --- when it was, but it'll take me a second. I
3 have to dig in here, but I do have somewhere here a
4 --- probably the date on that.

5 Q. The discussions for that started in December of
6 2009. And that would've been --- that would've been
7 the 3rd of December 2009, and it was the submittal.
8 We denied that submittal because it had problems with
9 not meeting the requirements of the regulation and
10 policy. On the 4th of December, we received a plan.
11 I sent a denial letter out. Then the 9th of December,
12 the company made a submittal which was denied.

13 The 18th of December they submitted a plan
14 addressing the total issue, and it was approved. I
15 approved it. And the biggest issue on the submittals
16 that I've discussed so far was belt air.

17 Then on January the 22nd, I approved their
18 submitted plan to change the intake air on Headgate
19 One North return air for Tailgate 22.

20 No, excuse me, that --- strike that one. Those
21 were the dates.

22 BRIEF INTERRUPTION

23 A. Excuse me just a second.

24 BY MR. WATKINS:

25 Q. Uh-huh (yes).

1 A. Okay. Let me take this call.

2 Q. Okay.

3 ATTORNEY BABINGTON:

4 Go off the record.

5 BRIEF INTERRUPTION

6 ATTORNEY BABINGTON:

7 Back on the record.

8 BY MR. WATKINS:

9 Q. Okay.

10 A. But those were the discussions and the prompt of
11 the order that I have, Tim.

12 Q. Okay. So basically it started around December the
13 3rd and went to the 18th on the first submittal for
14 the --- for rerouting the return air off the other two
15 sections?

16 A. Yeah, this was in --- it began in December and
17 extended --- extended up through January.

18 Q. Now, you also mentioned that --- was there any
19 discussions with company people at this time? I
20 believe you said you may have some notes where you had
21 some meetings with the company folks? Did you
22 have ---?

23 A. Let me go back here and in that period of time and
24 let me take a look and see ---

25 Q. Okay.

1 A. --- what I actually --- actually have. All right.
2 Meeting. I was in a meeting with these folks on the
3 10th of December of 2009.

4 Q. While you're looking there, Bob, do you know who
5 you met with?

6 A. I don't have that list with me, Tim.

7 Q. Uh-huh (yes).

8 A. Wait a minute. Excuse me. Correct myself. I
9 believe I do. Hold on.

10 Q. Okay.

11 A. I do. Let me --- let me go through and find that.
12 All right. The listing for that meeting was myself;
13 Chris Blanchard, who was the president of Performance
14 Coal Company; Jamie Ferguson, who is the general
15 manager for Performance Coal Company; Matt Walker, who
16 is a mine engineer for Performance Coal Company; Jason
17 Whitehead, who's the president of the Revolution Mine,
18 which is Justice 1, Independence Coal Company; Rich
19 Kline, who's the technical assistant district manager
20 for District 4; Joe Mackowiak, who's the ventilation
21 supervisor for MSHA, District 4; and Pete Stone, who
22 is a ventilation specialist for MSHA in District 4,
23 were the people that were in that meeting.

24 Q. Okay. Do you know what the gist of that meeting
25 was?

1 A. I do. Let me --- let me get it. We talked about
2 use of belt air and the fresh air differentials and
3 the difficulty they were having with belt air. And
4 what we agreed to, that they would have a split point,
5 a floating point, and that was the way that it was
6 ultimately approved. Initially --- and I don't recall
7 without going back to the individual plan itself, the
8 exact location where the use of belt air would cease,
9 but if you need that, I can get that ---

10 Q. Uh-huh (yes).

11 A. --- from the plan in Mount Hope. We talked about
12 tailgate isolation prior, prior to mining the next
13 longwall panel. Meaning that their general operating
14 policy is to leave their tailgate open to the gob.
15 That was a discussion that we had. And my notations
16 state that they agreed verbally during that meeting
17 that the stopping line would be intact prior to mining
18 for the longwall on panel Number Two, which would be
19 the next panel up.

20 And the other thing that we talked about

21 specifically, there was a proposed borehole on that
22 particular map. And it was only proposed and they
23 said they were not going to drill it, and we asked it
24 to be taken off the map. And they had --- they had an
25 area where that they indicated pumps in a bleeder.

1 And we asked that a statement be shown on the map that
2 they would utilize permissible pumps if they were
3 going to be electric powered and to show the purpose
4 of those pumps on the map.

5 Now, those were the specific discussions that we
6 talked about during this particular --- this
7 particular meeting. The focus of this particular
8 meeting, the primary focus, was use of belt air.

9 Q. Okay.

10 A. They wanted to continue the use of belt air. They
11 had not provided us with a justification, an adequate
12 justification, in accordance with regulation and
13 policy. That was the focus of this particular
14 meeting.

15 A. Okay. You said use of belt air. Is that along
16 the longwall face or the sections or both or ---?

17 Q. The discussion was only on the use of belt air on
18 the longwall.

19 A. Okay.

20 Q. That was the discussion.

21 A. So I guess they had been using belt air prior to
22 December 3rd?

23 A. They were --- they were using belt air prior to
24 December the 10th. I can tell you that.

25 Q. Okay. Okay. And the plan that was approved on

1 the 18th, which is following the 10th meeting, ---

2 A. Right.

3 Q. --- is that one ---- did that plan require them to
4 quit using belt air at the face, on the longwall face?

5 A. Hold on just a second. That plan would've ---
6 that plan would have allowed them to continue to use
7 belt air to a certain point, and there was a --- a
8 certain point outby. And then they would revert to
9 mining without the use of belt air. And the reason
10 for that was the pressure differential, the way the
11 mine was set up. And, you know, the Bandytown fan is
12 an exhausting fan. This is the first longwall panel
13 and, you know, there's a lot of --- lot of negative
14 pressure. And it just was not feasible for them to
15 discontinue the use of a belt and the belt air until
16 they were outby. And, again, I can tell you that I
17 have to go back to Mount Hope and get that plan, but
18 there was a point that they had to continue ---
19 discontinue the use of belt air.

20 Q. Okay. I guess looking at the map, I'm talking
21 around December. I guess this shows a markup
22 somewhere probably about midway out, out of the panel?

23 A. About 50 Break there, according to the map.

24 Q. Yeah, at 50 Break. So when they was mining at 50
25 Break, they were using belt air; that correct?

1 A. I would say that's correct.

2 Q. Okay. And some distance after that we
3 discontinued using belt air, but you don't know when
4 that was?

5 A. I could tell you in just a sec. The discussion
6 started on belt air. The first submittal was November
7 the 20th, and that ---. We sent a denial letter out,
8 and that would've --- that was the first discussion
9 about belt air. Now, let me look. You asked me when
10 that --- that plan was approved. Let me tell you
11 that. That would've been the 23rd of December, 2009.
12 And my notes --- my notes show that that revision was
13 hand-delivered to the district by Bill Ross, who is a
14 ventilation specialist for Route 3 Engineering, A.T.
15 Massey, and Chris Adkins, who's the underground vice-
16 president of operations ---

17 Q. Uh-huh (yes).

18 A. --- for A.T Massey. And we had a --- we had a
19 prior plan that was approved on the 18th, a prior plan
20 approved. And they --- they were not successful in
21 the mine in implementing that plan to reverse the belt
22 air. And they proposed --- they proposed this change
23 on --- again, on December the 23rd, and --- because
24 they were having difficulty in implementing the
25 previously- approved plan in the mine, and they

1 brought this proposal in. And that's where --- that's
2 where we were at for that.

3 Q. Okay. The plan submitted on the 23rd, do you know
4 what the difference was, why the plan on the 18th
5 wouldn't work, but the one on the 23rd would?

6 A. I can't say that with a hundred percent, but it
7 --- the issue at hand was the pressure differential.
8 And I do recall during those meetings that I asked the
9 question, had they considered --- had they considered
10 an exhaust shaft outby in this mine, I mean a air
11 shaft with an exhausting fan. And I do recall --- I
12 do recall Chris Adkins' response to that. And he
13 said, we can do whatever it takes to correct this.
14 And that was his response.

15 Tim, I believe --- and, again, I won't say this
16 with a hundred percent certainty, because --- because
17 I wasn't part of Massey --- you know, I'm not
18 privy ---

19 Q. Uh-huh (yes).

20 A. --- to the actions that Massey took inside UBB to
21 try to implement this plan. But I do know that they
22 came back with this plan proposal on the 23rd of
23 December, and that --- that proposal was approved.
24 And to my knowledge, that was the one that was
25 implemented and the plan that they were operating ---

1 that revision they were operating under at the time of
2 the explosion.

3 Q. Okay. You mentioned an exhaust fan. You talked
4 about putting an exhaust fan in. That's in addition
5 to the one at Bandytown?

6 A. Yes. That discussion --- the discussion was
7 looking at the map in general. And I recall the
8 discussion was, you know, you have all this ---
9 Bandytown fan's an exhausting fan. You're sitting on
10 top of a fan on your first panel, and have you
11 considered an exhaust shaft outby or mining some
12 additional entries to the outside and --- and
13 establishing an exhausting circuit to either/or?

14 Q. Okay.

15 A. And I asked specifically, you know, did they ---
16 did they own the coal which would've been adjacent to
17 Six North belt, Five North belt to the outside, which
18 to the outside means coming out to the Ellis Portals,
19 that block of coal in there. And had they considered
20 --- had they considered driving some new entries to
21 the outside and establishing an exhausting circuit
22 there or drilling an air shaft and establishing
23 negative pressure?

24 Q. The sole purpose of that was to reverse the air on
25 the beltline?

1 A. Well, not --- well, not only that. Again, you
2 know, it was --- I asked him, had they considered
3 that? And also for future development of our gate
4 roads to the north, as I'm looking at this map,
5 looking at the left-hand side being west and the right
6 side being east, to help them, down the road,
7 ventilate --- ventilate those gate entries? And they
8 said that they would consider it. And that was Chris
9 Adkins' statement, he said. And basically the gist of
10 it, again, is, we'll do whatever it takes to provide
11 air in this mine.

12 But, again, let me stress that the topic of the
13 meeting was use of belt air on the longwall. And that
14 was the focus of the --- you know, of the
15 conversation, Tim.

16 Q. Okay. Massey's --- and I know you've heard it ---
17 said that they didn't agree with some of the plans
18 that was --- some of the changes to the plans that
19 MSHA required 'em to make. Do you know what he was
20 --- what they were referring to? Would it be this
21 belt air at the face? Would that be it, or is there
22 another --- do you have any idea what they're
23 referring to?

24 A. Well, that's a hard one to answer because ---
25 because the statement that ---. And you're referring

1 to the statements by Don Blankenship?

2 Q. That's correct.

3 A. Public statements by Don Blankenship?

4 Q. That's correct.

5 A. Well, let me make ---. Let me make a statement.

6 Then I'll attempt to answer your question.

7 Q. Okay.

8 A. A.T. Massey's made up of individuals no different
9 than you or I or, you know, a broad section of the
10 general public. And they have a crew of young
11 engineers. I can't say that they're entirely
12 different than other coal companies or corporations of
13 this day and age submitting plans. But the plans that
14 they do submit to us, and I'm talking about
15 specifically A.T. Massey now, very rarely do we have
16 one coming in to our district office that is
17 technically sound. And technically sound, from my
18 perspective, meaning that it meets the requirements of
19 our ventilation regulations and/or policy. Very
20 rarely do we have a plan come in that we will approve
21 on first blush.

22 Now, if I had to make a statement concerning Don
23 Blankenship's public statement relative to plans, then
24 it appears that he's talking about the ventilation of
25 Headgate 21, Headgate 22 and the use of belt air. And

1 that's what I --- that's what I would take that
2 statement to be, in general.

3 Now, from my perspective as a district manager
4 touching this and being part of this process for
5 approval/disapproval, number one, to abate this
6 condition, they could've simply went in the Number
7 Three entry of Headgate One North panel and corrected
8 their issues, the two issues that they had, number
9 one, the water issue, which they did put air pumps in
10 there and control the water. And the other one was
11 support.

12 And quite frankly, prudent engineering, you
13 would've done that, because them not abating those
14 conditions in there, that has to be a ---. If they're
15 going to use that current headgate at Headgate One
16 North as a tailgate for the next longwall, it has to
17 be a --- our regulations require a travelable tailgate
18 entry. And these condition --- these conditions were
19 such that it simply was deteriorating and certainly
20 affected travel at that time when the enforcement
21 issuances to address those were issued by --- by the
22 CMIs.

23 And not having this travelable return, a dedicated
24 return for Headgate 22, Tailgate 22 sections, then the
25 other option for them was to reroute --- reroute their

1 return down the cut-through, which they elected to do.
2 They could've fixed their conditions in the Number
3 Three entry, again, at Headgate One North, which was
4 the return airway for Headgate 22 and Tailgate 22.
5 That's one half of the issue.

6 The other half of the issue is, they did not
7 provide us with justification for the use of belt air,
8 which we have clear guidance on. We have the
9 regulation and then we have policy guidance on what's
10 acceptable, what would be acceptable for a
11 justification. And they didn't provide --- they
12 didn't provide that.

13 They never --- they never requested a formal ---
14 formal conference at any point in time concerning the
15 changing of the return from Number Three of the
16 Headgate One North to rerouting it through the cut-
17 through and back the tailgate. And that's part of the
18 formal process. But, again, that's the --- I believe
19 that's the focus of --- the prime focus of Mr.
20 Blankenship's public comments. Does that answer your
21 question?

22 Q. I think so.

23 A. Okay.

24 Q. You mentioned on the headgate at the current
25 longwall, you know, it deteriorated due to roof

1 conditions and I guess under water, I guess, to where
2 you couldn't travel it; is that correct?

3 A. Now, again, Tim, let me ---. Let me ---. Before
4 I say that's correct, let me go ---

5 Q. Uh-huh (yes).

6 A. --- back here and --- the issue ---. The issue in
7 there wasn't necessarily a main roof issue. It's my
8 understanding that it was --- it was ribs, rolling of
9 the ribs, you know, it wasn't a ---. It was a
10 convergence issue with the main roof setting down. It
11 wasn't --- it wasn't immediate roof support issue.

12 Q. Okay.

13 A. And but let me ---. Let me clarify that. Let me
14 go back in here and take a look at something before
15 --- before I totally answer that.

16 WITNESS REVIEWS DOCUMENTS

17 MR. WATKINS:

18 All right. Maybe we should just ---.

19 ATTORNEY BABINGTON:

20 Yeah. Let's take a quick break. Off the
21 record.

22 SHORT BREAK TAKEN

23 ATTORNEY BABINGTON:

24 Back on the record. Go ahead.

25 BY MR. WATKINS:

1 Q. All right. Go back on the record. So go ahead
2 and ---. I think when we --- after we broke there,
3 Bob, but I think we were talking about the water and
4 the roof and roof conditions deteriorating in the
5 headgate at the longwall. And you was trying to
6 specify a time, I guess, or kind of narrow down a time
7 when that --- when those conditions started to
8 deteriorate?

9 A. Yes.

10 Q. Were you able to come up with any --- any time
11 frame?

12 A. Actually, yes. It would've been on 12/1. It
13 would've been December 1st of 2009. And a citation
14 was issued for crushing of stoppings in Break 54 of
15 Headgate One North and running numerically from 54 to
16 Break 68 of Headgate One North. And that would've
17 been 15 --- 15 stoppings that were being compromised
18 because of adverse roof conditions.

19 Q. Uh-huh (yes).

20 A. And consequently at those locations, the return
21 from One section, which is a company reference up in
22 the development of Headgate 22, Tailgate 22 return,
23 was not isolated, from the old works. There was no
24 isolation. It was not at that point in time a return
25 airway, distinct.

1 And then there was a --- the same date, December
2 the 1st, 2009, a citation was issued by the same CMI,
3 that the roof and the ribs in that Number One section
4 return, that isolated return that traveled down
5 Headgate One North, in an area between 68 and 68
6 Break, was inadequately supported to protect persons
7 from falls of the roof face, ribs or coal or rock
8 bursts. Those were where --- 12th and the 1st was
9 when those were issued.

10 And, additionally, on the same date, on the 12th
11 and the 1st, 2009, a citation was issued because that
12 return air course, meaning the return air course in
13 One section down Headgate One North, couldn't be
14 traveled in its entirety because of a roof fall
15 between the 68 and 69 Break. And that fall was
16 approximately 15 feet long, 16 feet wide and 3 foot
17 high.

18 And then in the body of that citation it also
19 couldn't be traveled because water had accumulated up
20 to 15 inches deep between the 60 Break and 69 Break of
21 Headgate One North in that return airway. So to
22 answer your question, 12/1/2009.

23 Q. Okay. There seems to be, I guess, quite a bit of
24 problems with that headgate entry going up --- going
25 up that way as far as roof condition and water and all

1 that. Do we know what caused the deterioration, you
2 know, why it was that bad?

3 A. No, I don't, you know.

4 Q. Okay.

5 A. I can only --- I can only say that the conditions
6 were present. You know, why I can't state. Again,
7 the operator elected not to abate those.

8 Q. Uh-huh (yes).

9 A. They did address the water. They elected not to
10 continue the dedicated isolated return and elected to
11 move it down through their longwall crossover.

12 Q. And you said they did address the water. Are you
13 talking about pumps or ---?

14 A. They put air pumps --- their air pumps in there.
15 And Tim, I don't know whether those pumps were
16 existing prior to the citation or as a condition of
17 abatement, but I do know that they --- they did take
18 care of the water, the pumping of the water, by air
19 pumps. And that's what I was informed. I mean, I
20 didn't personally see that.

21 Q. Uh-huh (yes). Do you know how they would travel
22 to get to those pumps?

23 A. I believe --- I don't know how they traveled to
24 get to those pumps, but I believe they were accessible
25 from the back end of the longwall, meaning from the

1 Bandytown side behind the --- behind the gob.

2 Q. Uh-huh (yes).

3 A. I believe.

4 Q. Was there ever any discussion about where that
5 water was coming from? Did it come from the seam
6 above or from the floor?

7 A. No. This whole area of the mine, the only thing
8 that I'm aware of, they do have a turbine pump back at
9 the Bandytown end of that system. And I didn't have
10 any indication, Tim, that it was coming from the mine
11 above.

12 Q. Okay.

13 A. Nothing was conveyed to me to indicate that.

14 Q. Okay.

15 A. And I'm not aware of --- of that.

16 Q. Do you know if once --- once the citation was
17 issued for the, I guess for the stoppings crushing
18 out, you know, was the floor hooving or top coming
19 down, or do you know what mechanism actually caused
20 the stoppings to crush?

21 A. I don't, and can't answer that with a hundred
22 percent certainty, Tim. All that I know is we had a
23 roof fall. We had a roof fall in there, but it was
24 conveyed to me that in general the immediate roof, it
25 could've been a weight issue ---

1 Q. Uh-huh (yes).

2 A. --- convergence issue, but I can't say that,
3 again, with certainty because I wasn't in that area.
4 I personally wasn't in that area.

5 Q. Do you know if your roof control department got
6 involved in the analysis of this area?

7 A. I can tell you that I had two mining engineers in
8 this area. I can't tell you that they were
9 necessarily roof control specialists.

10 Q. Okay. Who were the two people you had in the
11 area?

12 A. The engineers that were in there were Joe
13 Mackowiak, he's a mine engineer, and Michael Haynes,
14 who is also a mining engineer.

15 Q. Okay. And both of those gentlemen work in the
16 ventilation division?

17 A. That's correct.

18 Q. Okay. But you're not --- you're not sure or don't
19 know if actually any analysis was done as far as for
20 the roof control for the strata above, you know, ARMPS
21 and ---?

22 A. The stability of the pillar size, I can say with
23 certainty that that was conducted as part of the
24 evaluation on the roof control plan.

25 Q. Okay.

1 A. I can say that with certainty.

2 Q. Okay.

3 A. And that's standard procedure. That's SOP.

4 Q. Uh-huh (yes).

5 A. I have no doubt that the roof control department
6 would have --- would have looked at those calculations
7 and verified that the company had submitted an
8 appropriate plan. I've not looked at those
9 calculations, Tim, but that's part of the process, the
10 initial approval process.

11 Q. Uh-huh (yes).

12 A. And that also is part of the plan review process.

13 Q. Okay. Do you know if those calculations were
14 reevaluated after --- after this condition was
15 detected? Did they rerun the numbers?

16 A. I can't answer that.

17 Q. Okay.

18 A. No. My answer would be, I don't know.

19 Q. Okay. Do those calculations take into account
20 seams being mined above this seam? Do you know?

21 A. That's a good question and that's a fair question,
22 but I can't answer that with certainty either, because
23 --- because I do know that, you know, they take into
24 consideration abutment pressure. They can take ---
25 they take into consideration depth of overburden, but

1 I've not ran that program personally, Tim. And I
2 would be hesitant to answer that. I'd be hesitant
3 to ---

4 Q. Okay.

5 A. --- answer that.

6 Q. You mentioned there was quite a few --- few items
7 there when you were --- we were talking about the plan
8 that'd been submitted and ---

9 A. Uh-huh (yes).

10 Q. --- something you mentioned was a floating point.
11 Is that an evaluation point or ---?

12 A. No, that would've been a point where --- that's
13 the way it was referred to in the discussion, but that
14 would've been --- that would've been a point where
15 they were to discontinue the use of belt air.

16 Q. Okay.

17 A. And I believe the plan --- the plan that ---
18 ultimately approved would have --- would have an exact
19 location, Tim.

20 Q. Okay. And you also mentioned the tailgate
21 isolation.

22 A. Uh-huh (yes).

23 Q. Okay. What was you referring to when you
24 mentioned the tailgate isolation?

25 A. Tailgate isolation, we talked about tailgate

1 isolation, meaning that you have an entry, the entry
2 immediately adjacent to the longwall pillar being
3 mined. That entry on the tailgate would have ---
4 would be isolated from the gob itself, and a stopping
5 line there, again. The longwall panel, the travelable
6 tailgate entry immediately adjacent to that pillar ---

7 Q. Okay.

8 A. --- would be isolated from the general gob of the
9 previously-mined panel.

10 Q. Okay. So on the map, on the current map we're
11 looking at, we have the stopping line as showing, 4
12 --- between 04 and 05. Is that the stopping line
13 you're talking about?

14 A. Well, the stopping line that I'm primarily talking
15 about would be if you --- if you came into Number Two
16 panel of this district, we're looking at Headgate One
17 North. This (indicating) would be the next panel,
18 Number Two panel. And you got the current headgate,
19 which will become the tailgate in normal circumstances
20 for the Number Two panel ---

21 Q. Okay.

22 A. --- being mined. And then the isolation that I'm
23 talking about is isolating this single entry against
24 the solid pillar, the longwall pillar being mined, ---

25 Q. Uh-huh (yes).

1 A. --- from the previously-mined gob.

2 Q. Okay. And that's the one that you referred to as
3 having the problem with being --- being crushed out?

4 A. No. The one I'm talking the problem with being
5 crushed out in UBB is the Number Three entry, which at
6 the time served as the return entry for Number One
7 section, Headgate 22 ---

8 Q. Okay.

9 A. --- and Headgate 21.

10 Q. Okay.

11 A. And that's a return airway. And that --- that was
12 a separate distinct return airway for this --- these
13 developing sections. Now, this same entry, if that
14 stopping line was intact, would've been the travelable
15 tailgate entry for the Number Two panel ---

16 Q. Okay.

17 A. --- that would be developed. That's what I'm
18 talking about.

19 Q. Okay.

20 ATTORNEY BABINGTON:

21 I'm sorry. Just to clarify for the
22 record, Bob, can you mark the --- you're saying
23 longwall panel Two?

24 A. Yes.

25 ATTORNEY BABINGTON:

1 Could you mark the approximate location
2 of that panel?

3 A. This will be Number Two panel, ---

4 ATTORNEY BABINGTON:

5 Okay.

6 A. --- that I'm referring to. It's the next panel
7 that's scheduled to be mined. I'm calling this ---
8 this is Headgate One North. This would be Number One,
9 the first panel in the district.

10 ATTORNEY BABINGTON:

11 And you're referring to Headgate One

12 North. You said before that in normal circumstances
13 that would become the tailgate for the Number Two
14 panel?

15 A. This (indicating) in normal circumstances, and I'm
16 referring to Headgate One North as this headgate that
17 extends directly --- directly back in line with
18 Bandytown fan on this map. When the Number Two Panel,
19 the next scheduled longwall panel after they mine
20 Headgate One North out with this longwall, then it
21 becomes the tailgate for the next scheduled panel, in
22 normal circumstances.

23 ATTORNEY BABINGTON:

24 Thank you.

25 A. Uh-huh (yes).

1 MR. MCGINLEY:

2 Let the record reflect the witness has
3 marked the map with a blue marker, the Headgate One
4 and Two areas that he's referring to.

5 A. Let me make a clarifying statement on that, Tim,
6 if I could.

7 MR. WATKINS:

8 Yeah. Go ahead.

9 A. The general policy for A.T. Massey is to leave ---
10 to leave those three entries when they become a
11 tailgate open and not have any isolation to the gob.
12 And that was --- that was the discussion relative to
13 tailgate isolation.

14 BY MR. WATKINS:

15 Q. Okay. Now, you said under normal conditions, of
16 course the current headgate would become the tailgate.

17 A. That's correct.

18 Q. And I understand that, but on the map we show
19 here, we see that they drove new headgate and new
20 tailgate for the second panel.

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

22 Q. Was that done because of the deterioration in the
23 headgate and it could not longer be travelable, the
24 current tailgate, or why was it --- why was that done,
25 I guess, is the question?

1 A. It was done because of the conditions that were
2 present, the ground control deterioration, in the
3 headgate panel. And that the discussion --- the
4 overall discussion was --- and it was that this panel
5 was failing. And that the discussion was that it's
6 already failing. And the consensus was that they
7 would have difficulty keeping it --- keeping it open
8 as a tailgate for the next panel. And that's the
9 reason that Tailgate 22 is being driven, to establish
10 --- to establish a tailgate for longwall panel Number
11 Two.

12 Q. Okay. Do you know if the company run any or
13 submitted to you any analysis of --- for that design,
14 because it looks like it's pretty similar to the old
15 design?

16 A. Tim, I can't answer that. I can check for you,
17 but I can't truthfully answer that today.

18 Q. Okay.

19 A. Yeah.

20 Q. I was just curious because it looks like rock
21 sizes and all that's pretty similar to what was in the
22 current headgate, ---

23 A. Uh-huh (Yes).

24 Q. --- and I just wanted to ---. The question is, I
25 guess, if it failed there, are we setting up the same

1 thing for this one?

2 A. And I understand. And that's a fair question. I
3 understand what you're saying.

4 Q. Okay. Let's change gears a little bit, Bob, talk
5 about ---. Did you ever know of any methane buildups
6 or report out due to methane accumulations?

7 A. Now, let me ---. Let me ask a question.

8 Q. Uh-huh (yes).

9 A. Prior to last week, meaning the latter part of
10 last week, Thursday or Friday, ---

11 Q. Okay.

12 A. --- no. I wasn't aware. I wasn't aware. Now, I
13 become aware last Thursday and --- that in the past,
14 meaning back, 2004 or 2005, that they did have ---
15 they did have some methane issues in this mine.

16 Q. Okay.

17 A. But I wasn't aware prior to last Thursday.

18 Q. Okay. Do you know where those issues occurred at?

19 A. I don't know exactly the spot, but maybe I can ---
20 maybe I can come up with it here. I was made aware of
21 the existence of two memorandums last Thursday. And,
22 in fact, have copies of those, but I don't --- but I
23 don't know ---. According to a 2004 memorandum,
24 again, which was given to me last Thursday, and
25 today's, what, the 27th, so do the math on the date.

1 Q. Uh-huh (yes).

2 A. It would've been ---.

3 Q. Pretty close to the 20th, isn't it?

4 A. Hold on, just a sec. Actually, I was made aware
5 of it on Thursday and I received a copy of it on
6 Friday.

7 Q. Okay.

8 A. And it says in the memorandum that in February of
9 2004 there was a floor methane outburst in the 17
10 longwall panel. And prior to that, this memorandum
11 says that there was a similar floor methane outburst
12 in 16 longwall panel, in July 2003.

13 Q. Okay. And how'd you become aware of that?

14 A. In a memorandum dated July 15th, 2004. This
15 memorandum was routed from tech support through
16 District 4. And I came to work and this was --- this
17 was under my door.

18 Q. Okay.

19 A. Now, when I opened the door to my office, this is
20 slid under the door.

21 Q. Okay.

22 A. I was also provided a copy of this same memorandum
23 yesterday by Mike Dickerson, who's my staff assistant
24 in District 4. It's an identical copy of the same
25 memorandum. And that had showed up after an extensive

1 search by Joe Mackowiak, who's my ventilation
2 supervisor in the ventilation department. And he
3 found this same memorandum in --- during a search for
4 --- and I don't know who made the request, he doesn't
5 tell me, but basically to put it in layman's terms, it
6 was in a file 13. It was a file that wasn't
7 organized. It was just a --- I don't know whether it
8 was in a file cabinet or whether it was in a box or
9 where they found it, he doesn't say, but they
10 basically had conducted a search in the ventilation
11 department for any documents related to UBB, and they
12 come up with a --- with a copy of this 2004 memorandum
13 in those file 13 documents.

14 Q. Okay. But you don't know who slid the one under
15 your door?

16 A. Have no idea.

17 Q. Okay. The one in 2004, I think you said it was
18 panel 17?

19 A. Let me take a look at that.

20 Q. I think that's what you said.

21 A. I'll go back in this thing and --- it said 2004,
22 February 2004. Seventeen (17) longwall panel is what
23 it references to.

24 Q. Okay. And that was prior to you going back to
25 District 4 as a district manager?

1 A. Yes. This is July 15th, 2004. And I came back
2 acting as the district manager on August the 7th of
3 2006.

4 Q. Okay. Did that report --- did it say what the
5 cause was that they put in, for the methane
6 inundation?

7 A. It's pretty extensive and --- but it references
8 interaction, overburden interaction. And what I read
9 in it, from reading the memorandum, that the
10 composition of the strata below the Eagle seam, which
11 UBB's in the Eagle seam, ---

12 Q. Okay.

13 A. --- that there are gas sands situated
14 approximately 25 feet --- 2,500 feet below the Eagle
15 seam, which is a considerable distance. But that
16 methane trapped in those seams below the Eagle, the
17 report states that they could be released through
18 fractures opened up by longwall extraction. And also,
19 the memorandum, I think it refers to a venting of this
20 underburden could complicate the issue. But that's
21 the --- that's the study that was conducted.

22 Now, there is another memorandum that --- there
23 were two memorandums that were stapled together. The
24 second memorandum goes back a little earlier to March
25 4th, 2004. The first memorandum that I just talked

1 about is date stamped July 15th, 2004.

2 The second memorandum is dated March the 4th,
3 2004, dealing with the same subject at UBB. And it's
4 actually the evaluation of tech support's --- the
5 evaluation of Headgate 17, and they evaluated Headgate
6 18. And also it refers to --- and they call it
7 critical overburden value, and that would be a
8 thousand plus feet in innerburden thickness between
9 the Eagle and the Lower Eagle. Those are the two
10 memos.

11 Q. Okay. Would it be possible to get copies of those
12 two memos --- memorandums?

13 A. Sure.

14 Q. Okay.

15 MR. FARLEY:

16 We'd also like to request copies of
17 those, please.

18 MR. MCGINLEY:

19 The same.

20 ATTORNEY BABINGTON:

21 Okay. So just to clarify, both State and
22 Davitt's team have requested copies, in addition to
23 MSHA requesting copies of those two memos.

24 BY MR. WATKINS:

25 Q. Let me ask you a question here, Bob. If you'd

1 known about those two memos, would you might've looked
2 at things a little bit differently, as far as when it
3 come to the plan approval process?

4 A. Yes. Absolutely.

5 Q. How so?

6 A. Well, Tim, I probably would have --- would have
7 did a correlation between these known areas and linear
8 analysis of this mine, to see whether any fault zones
9 were present. Certainly would've required a plan with
10 elements in it to address this potential of methane
11 outbursts in the floor from during --- during longwall
12 mining, without a doubt. And would've required
13 certainly there be a part of training for the miners,
14 including ---. Well, let me rephrase that. Training
15 for anybody that worked in the mine or was hired. It
16 would be part of the training process to address this,
17 the people that worked or new people that were yet to
18 be employed by the mine.

19 And I certainly would've looked, is there any way
20 to alleviate this through degasification, either by
21 --- either by boreholes from the surface into, you
22 know, into this area? You'd look at the innerburden.
23 You'd look, you'd look at the innerburden between this
24 mine and is there any mapping of these particular
25 sands, because, you know, there's a possibility that

1 the State or gas drilling companies may --- may have
2 these mapped. I mean, you would look at it pretty
3 intensely, if you knew that potential existed.
4 And it certainly --- it certainly brings to light
5 the things that need to be done at this mine before it
6 ever goes back into production. And it also brings to
7 light that the potential may exist out there in the
8 other mines that are mining in the Eagle seam. So
9 yes, it does put a whole different perspective on this
10 issue, now that I am aware that this did happen in the
11 past, and looking at the potentials for this
12 particular coal seam in the future.

13 Q. Just a couple questions on the current longwall
14 and the ventilation, and then I'll let Terry and them
15 guys see if they have any follow-up questions before
16 we get too far along; okay? The current longwall, as
17 far as evaluation points and how the effectiveness of
18 that system is evaluated, do you know where those
19 points are at?

20 A. Tim, I know currently there are evaluation points
21 on the back end. And I don't have a map, and I don't
22 think this map shows 'em. And there's also evaluation
23 points at the wall, meaning at the face of the wall
24 and the back end, and the back end to the headgate.

25 Q. Okay. Okay. And you mentioned --- you mentioned

1 something a little earlier about the engineers, you
2 know, being kind of young and stuff. And then you
3 also mentioned Bill Ross.

4 A. Uh-huh (yes).

5 Q. I understand Bill was a former employee of MSHA;
6 is that correct?

7 A. Yeah, Bill was a --- had worked in the ventilation
8 department and was supervisor of that department upon
9 his retirement.

10 Q. Could you tell a difference in the submittals? I
11 know that we had a lot of submittals and stuff on
12 hand, I guess, as far as Massey goes submitting
13 submittals and revisions. Can you tell a difference
14 once they came onboard? Did those submittals and
15 revisions slow down any or did it stay about --- about
16 the same as far as the number of submittals?

17 A. Personally, I can't tell you that, because
18 historically the company has a lot of submittals
19 because they have a lot of issues. I can't honestly
20 answer that, Tim.

21 Q. Okay. Do you think this company has more
22 submittals and revisions than say a company of
23 comparable size, than a different company?

24 A. I would say that, yes.

25 Q. That they have more?

1 A. Yes.

2 Q. Okay. Do you know why that would be? Is there
3 just conditions or do you know why that would be?

4 A. Well, to answer that the best that I can, they
5 don't mine by typical. Typical meaning that you
6 would have a typical plan to move the longwall,
7 ventilation of the longwall, or a typical plan to move
8 a --- move a working section, a continuous miner
9 working section. It seems that they have more
10 localized, individual ventilation issues than most
11 companies have because of that, and that would be a
12 combination of mine design overall and long-term mine
13 design. And in-mine conditions, which companies have,
14 that would probably be part of the reason --- the
15 reason why.

16 MR. WATKINS:

17 Terry, how about you?

18 ATTORNEY BABINGTON:

19 I'd actually like to take a quick break.

20 Off record.

21 SHORT BREAK TAKEN

22 ATTORNEY BABINGTON:

23 So let's go back on the record. Just as
24 a note for the record, because these two memos that
25 were previously mentioned are new, new to the

1 interviewing parties, we're going to delay following
2 up with questions on that until a later follow-up
3 interview. We have one follow-up question and then
4 we'll move on to the follow-up questions on the rest
5 of the substance of your previous interview.

6 BY MR. WATKINS:

7 Q. Those memos that you submitted there, Bob, do you
8 know if those memos went to the company or was that
9 just an in-house memo?

10 A. Tim, I have no idea. The only thing that I can
11 tell you is, you know, it's obviously the people that
12 are on front page, their routing and signatures, seen
13 that memo. I have no clue.

14 Q. Okay.

15 A. I mean, I'd --- again, let me restate, I became
16 aware that the existence of those verbally Thursday of
17 last week. That's the first knowledge that I had, so
18 I do not know what the distribution of that --- those
19 memos were.

20 Q. Okay.

21 A. All right.

22 EXAMINATION

23 BY MR. MCGINLEY:

24 Q. Now, just a follow-up to that. We're not going to
25 go into the memos, but just a related question.

1 Notwithstanding whether the memos were distributed to
2 the company, the company clearly knew about the
3 methane bursts at the time. Would you agree with
4 that?

5 A. I think that's a fair --- I think that's a ---.
6 I would have to agree with that, yes. Because these
7 were outbursts, they were reportable accidents, and
8 certainly I would think, and I don't know this to be a
9 fact, that they were investigated and discussions held
10 at that point in time.

11 Q. By the company? Wouldn't you expect the company,
12 having experienced these two outbursts in summer of
13 2003 and summer of 2004, they would've undertaken
14 their own analysis to determine the implications of
15 this underlying gas on their operations?

16 A. Yes. I would expect that they would. And the
17 regulations require them to investigate accidents.
18 The regulations meaning 30 CFR Part 50. And
19 regulation requires them to investigate accidents.

20 Q. And from what you --- from what you said earlier
21 in the interview, it was clear to you that these
22 outbursts required --- or had you known about this, it
23 would require you to look at this mine in a different
24 way because of the potential safety problems attending
25 the methane burst?

1 A. Yes.

2 Q. And company --- Massey's safety people ---? Would
3 you say Massey's safety people or anyone acquainted
4 with mine safety would have responded the same way you
5 did, that there's something here that we really have
6 to investigate and take care of?

7 A. I would agree with your statement, that if I were
8 a manager of that company or in the safety department
9 of that company and aware of that potential that you
10 would --- you would put something in your organization
11 to address that potential, yes.

12 Q. And then if they were to do that, they should also
13 share that with MSHA. Would you agree with that?

14 A. Yes. I think that the ventilation regulations ---
15 as a district manager, not only would I expect them to
16 share that. I would require 'em to develop that as
17 part of their ventilation plan. And I would require
18 that. I wouldn't expect it, I would require it.

19 MR. MCGINLEY:

20 Thank you.

21 ATTORNEY BABINGTON:

22 Terry?

23 MR. FARLEY:

24 I think we're going to withhold our
25 questioning until we have the opportunity to review

1 the required documents here.

2 ATTORNEY BABINGTON:

3 Do you have any follow-ups related to the
4 other testimony?

5 MR. FARLEY:

6 Maybe one.

7 EXAMINATION

8 BY MR. FARLEY:

9 Q. Let's go back to the meetings in December, Mr.
10 Hardman. If I understood you correctly, there was
11 originally a plan approved for the UBB Mine, a
12 ventilation plan that is approved on December the
13 18th, which would have done away with the use of belt
14 air for ventilating purposes on the longwall panel; am
15 I correct there?

16 A. You are correct, 12th and the 18th.

17 Q. Okay.

18 A. We approved a plan to reverse the belt air and
19 eliminate its use.

20 Q. Okay. And then that was followed by a meeting on
21 December 23rd, where after they, in whatever manner,
22 determined that they were not able to follow through
23 with that plan; is that correct?

24 A. No, that statement that you just made is not
25 totally correct.

1 Q. Okay.

2 A. The correct --- to be correct --- and what I said
3 earlier was that on the 23rd of December ---

4 Q. Uh-huh (yes).

5 A. --- a revision was requested. A plan was hand-
6 delivered by Bill Ross ---

7 Q. Okay.

8 A. --- and Chris Adkins.

9 Q. Okay.

10 A. And it was --- they had tried to implement the
11 12th and 18th approved plan and they were unsuccessful
12 in doing that ---

13 Q. Uh-huh (yes).

14 A. --- and the 12th and the 13th plan was another
15 proposal on how they would go about doing that.

16 Q. Okay. Well, the second proposal, did it continue
17 to allow the use of belt air, to a certain extent?

18 A. Yes, it did to a certain point in the mine. And
19 as I stated earlier, I don't have that exact
20 location ---

21 Q. Okay.

22 A. --- with me. I can get it ---

23 Q. Okay.

24 A. --- for you all.

25 Q. Okay.

1 A. But at that point at that exact location, belt air
2 would be discontinued.

3 Q. Okay.

4 A. Yeah

5 MR. FARLEY:

6 All right. Thank you.

7 RE-EXAMINATION

8 BY MR. MCGINLEY:

9 Q. Mr. Hardman, I've got a number of clarifying
10 questions relating to your earlier statements. In
11 refreshing your recollection regarding dates, you
12 referred to some documents that you have there.

13 A. Okay.

14 Q. Could you identify them for the record?

15 A. Okay. What I have ---. What I have is, one, I
16 keep an attendance record, a sign-in sheet, of the
17 meetings that I'm involved with. No different than
18 asking you, could I have an attendance roster of this
19 meeting ---

20 Q. Uh-huh (yes).

21 A. --- for future reference? And then the other
22 document that I refer to here is just simply a spiral-
23 bound that I keep general notes of my own in.

24 Q. In that spiral-bound book, do you write those
25 notes contemporaneously with meetings or does it vary?

1 Sometimes you take notes during meetings and other
2 times you write down what you recall?

3 A. Well, actually it's a combination of both. If
4 it's a brief --- if it's a brief meeting and there's
5 something I want to clarify for a future use, I may
6 just capture the --- you know, I may sit down after
7 the meeting and just capture it in general. But in
8 most cases I'll make these notes as the meeting
9 progresses, just for my future reference.

10 Q. When you have a full meeting, for example, the
11 December 23rd, 2009 meeting when the Massey folks came
12 in with the revision of the plan that had just been
13 approved a few days before, would you ordinarily or
14 someone prepare a memorandum or notes regarding what
15 was said at that meeting, a formal, typed-up version?

16 A. Okay. Let me clarify once more that there wasn't
17 a meeting on the 12th and 23rd. And you know, I just
18 addressed that with Mr. Farley here a second ago. My
19 statement was on 12/23rd that a revision was hand-
20 delivered to our office by Bill Ross and Chris Adkins.
21 That wasn't a meeting.

22 They came in and hand-delivered a request for a
23 revision because they had tried to implement the plan
24 that was approved on 12/18 and they were unsuccessful.
25 So they had another proposal on how they --- how they

1 thought they could eliminate the use of belt air.

2 Q. So for further clarification, with regard to that
3 meeting, were you ---?

4 A. No, you're referring to a meeting that never ---

5 Q. I understand.

6 A. --- took place.

7 Q. I understand that. I understand your statement.
8 I'm trying to understand what happened on that day.

9 A. Yes.

10 Q. So Chris Adkins came in. Several people came in
11 and they had a revised plan, to revise the plan that
12 had been approved a few days earlier, I think on the
13 18th of December 2009. There was no discussion at all
14 with regard to why the previous plan, the approved
15 plan, had not worked?

16 A. The discussion that would've --- if there was ---
17 if there were discussions at that point in time,
18 would've taken place in the ventilation department
19 with the ventilation supervisor.

20 Q. Okay. So there may have been a meeting with the
21 ventilation supervisor?

22 A. There may --- there may or may not have been a
23 meeting. I'm certain there was general discussion
24 about why the previously-approved revision, they
25 couldn't implement it. And then the general content

1 and concept of the newly-submitted revision may or may
2 not have been discussed at that time because they were
3 starting the review process of that.

4 Q. Well, that review process started on the 23rd and
5 ended on the 3rd --- 23rd; is that correct? Because
6 there was a ---.

7 A. Yeah, the only reference that I --- the only
8 reference that I have here to jog my memory is that
9 this plan --- this plan was a 12/23 plan that I
10 approved. I don't have an exact date and time that it
11 was hand-delivered. The only thing that I have is the
12 fact that the revision was hand-delivered by Bill Ross
13 and Chris Adkins, ---

14 Q. Uh-huh (yes).

15 A. --- but the approval date was 12/23.

16 Q. I think previous testimony in my notes show that
17 it was delivered on the 23rd and that Chris Adkins and
18 the others showed up unannounced it that day.

19 A. And that may be true. And, you know, and the only
20 thing I have on it, the plan --- the plan was dated
21 12/23. I don't have the cover letter with me that I
22 would've signed or, in my absence, another manager
23 would've signed.

24 Q. Is it --- is it common for high officials like Mr.
25 Adkins in a big coal company to appear unannounced

1 with plan revisions?

2 A. I think the word you used is common, and I would
3 say it isn't. It is not common, in most --- or coal
4 companies that a person of Mr. Adkins' position would
5 --- would normally hand-deliver a plan. I think given
6 that this is a longwall and that production
7 capabilities off the longwall, when it's idle is a
8 pretty positive process, so I can't say that it was
9 uncommon for the type of plan that he carried in there
10 for him to be involved in it.

11 Q. Because the approved plan of, I believe it was
12 December 18th, didn't work, ---

13 A. Yes.

14 Q. --- should production have been shut down pending
15 approval of the revision on the 23rd?

16 A. I can't say that it should have. I can't say that
17 I would answer that to be yes. What you have to
18 remember is belt air had been used in this mine in the
19 past, and we promulgated a regulation for the use of
20 belt air. After many studies, a report, belt air
21 report came out, and we had a regulation and the
22 agency, meaning MSHA, developed policy relative to the
23 use of belt air.

24 The regulation preamble requires a justification
25 for continued use of belt air. And this company had

1 not provided justification, sufficient justification,
2 up to a point, which --- and they never have provided
3 that justification. And without that justification,
4 my guidance is, you don't approve use of belt air.
5 That's the guidance that I have under policy.

6 Q. Well, if the December 18th plan wasn't working,
7 doesn't that mean it wasn't adequate ventilation?

8 A. No.

9 Q. So what would that mean? Do you know --- I mean,
10 do you know --- rather, do you recall ---?

11 A. No, that doesn't mean that there was inadequate
12 ventilation. What that means is they were not
13 successful in changing the direction of air flow in
14 the belt entry and bringing it outby instead of
15 allowing it to continue to the working face. It
16 doesn't mean, by any means, that that section, whether
17 it's a longwall or whether it's a mining unit or this
18 particular section was inadequately ventilated.

19 Q. Could it have meant that?

20 A. Could it have meant that?

21 Q. Right. I mean, are you saying that there was
22 adequate ventilation or are you saying that you don't
23 know that there was not adequate ventilation? I mean,
24 what ---- I'm asking you about your own knowledge.

25 A. All right. Let me ---. Let me --- let me try to

1 answer it in this manner. This is the first longwall
2 panel in this district sitting right on top of
3 Bandytown fan. Do they have the capability, without
4 the use of belt air to ventilate this with their mine
5 properly designed? Absolutely.

6 Q. And nevertheless they were having ventilation
7 problems?

8 A. I can't say that they were having ventilation
9 problems. The ventilation problems that they had was
10 in the return entry off of One section, Headgate 22
11 due to restrictions in there because they couldn't
12 travel it. That didn't mean that the ventilation was
13 affected. It was an issue of deteriorating roof
14 conditions and the ability to travel that particular
15 entry. Were they having trouble implementing approved
16 changes? Absolutely.

17 ATTORNEY BABINGTON:

18 For clarification, I believe you referred
19 to the bad conditions on, being on One Section
20 Headgate 22?

21 A. No, I'm saying that the conditions were in on
22 Headgate 22, which was the return for --- excuse me,
23 the Headgate One North, which was the return for
24 Number One section, Headgate 22.

25 ATTORNEY BABINGTON:

1 Okay.

2 A. If I misspoke, I apologize.

3 ATTORNEY BABINGTON:

4 Okay. And I just want to then clarify,

5 then, the Headgate One North being the return for
6 Headgate 22, that was where you --- that was where the
7 adverse conditions could be found?

8 A. That's correct.

9 BY MR. MCGINLEY:

10 Q. To your knowledge, was there ever an instance of
11 inadequate ventilation in this mine from the date of
12 the explosion back a year?

13 A. Yes.

14 Q. And when would that have been?

15 A. Hold on just a second. I'm going to work from the
16 date of the explosion backwards in time.

17 Q. Okay.

18 A. Let me ask you a clarifying question on your
19 question to me. You asked me if there was ever a
20 problem with ventilation. In my answer do you want me
21 to include problems with ventilation --- face
22 ventilation on the working section in that answer?

23 Q. Yeah.

24 A. Okay. On March 23rd, 2010, there was a failure to
25 follow the approved ventilation, methane and dust

1 control plan on the 066-0 MMU. On that same day,
2 March 23rd, 2010, another citation was issued for
3 failure to followed the approved ventilation, methane
4 and dust control plan on the 066-0 MMU. On the same
5 date, March 23rd, 2010, on the 067-0 MMU, the
6 ventilation plan wasn't being complied with, in that
7 there was insufficient quantity of air in the last
8 open crosscut.

9 On March 17, 2010, the operator was cited for not
10 following approved ventilation plan on the 040-0 MMU
11 for the belt air flowing in the wrong direction.

12 On March 11th, 2010, on Two North belt, between
13 Crosscut 67 and Crosscut 57, man doors were a thousand
14 foot apart. They were required to be at 600 foot
15 intervals.

16 ATTORNEY BABINGTON:

17 Sorry to interrupt. How far back in the
18 mine's history do you --- would like him to go?

19 MR. MCGINLEY:

20 Actually, if there's something in
21 writing, that would --- you know, that would answer
22 the question. He could just put that in the record.

23 ATTORNEY BABINGTON:

24 Well, actually ---.

25 MR. MCGINLEY:

1 I'm just thinking back until --- I was
2 trying to get a feel for the ventilation problems and
3 the correlation between the revised ventilation and
4 what was approved and ventilation problems that were
5 sort of in the mine. I just have a lack of adequate
6 ventilation, so I really didn't think of anything more
7 than going back to that mid-December ---.

8 ATTORNEY BABINGTON:

9 Okay.

10 A. I can move through that pretty quick, if you want
11 me to, back to mid-December.

12 ATTORNEY BABINGTON:

13 We can go through it pretty quickly?

14 A. Yeah.

15 MR. MCGINLEY:

16 Okay.

17 ATTORNEY BABINGTON:

18 Okay. Actually, can we go off the record
19 for one second?

20 A. Sure.

21 OFF RECORD DISCUSSION

22 ATTORNEY BABINGTON:

23 Let's go back on.

24 BY MR. MCGINLEY:

25 Q. Let me just ask you a question, a general

1 question. You've had a chance to briefly look at your
2 records going back from the date of the explosion to
3 December 2009. Just as a general matter, were there
4 many violations? How would you characterize the
5 ventilation violations that fell in the category of
6 the 75-300 series citation?

7 A. I would agree with the term many.

8 Q. Numerous?

9 A. Numerous, yeah.

10 Q. Do you know whether when these citations, any of
11 these citations were issued for inadequate
12 ventilation, coal was being produced?

13 A. Yes. The majority of these issuances would've
14 been issued on a production day. I mean, that's no
15 different than any other mine. I mean, normally when
16 we're inspecting, they are producing.

17 Q. Accept on the night term; right? At this mine the
18 night term, nightshift, isn't a producing shift?

19 A. I'd have to look and verify that. You know, each
20 mine would have scheduled ---

21 Q. Right.

22 A. --- maintenance at some point in time.

23 Q. Some of these citations required withdrawal of
24 miners?

25 A. Let me answer it this way. If there were

1 withdrawal orders issued, I would have to research to
2 provide an accurate answer back to your beginning date
3 in mid-December to the explosion date. I would have
4 to research that to accurately answer it.

5 Q. Would it be inaccurate to say that this mine, the
6 Upper Big Branch Mine, always had sufficient fresh air
7 and air flow?

8 A. Would it be inaccurate?

9 Q. Right.

10 A. That would be an inaccurate statement, because
11 there are citations during that time frame for
12 inadequate amount of air.

13 Q. So was this mine producing coal when there wasn't
14 proper ventilation, based on those violations?

15 A. Yes. Based on my knowledge of the history, you
16 know, adding to my previous statement, the majority of
17 these ventilation violations were written when the
18 mine was in production.

19 Q. And so the company should've stopped production
20 and fixed these ventilation problems, notwithstanding
21 what MSHA inspectors did. Is that a fair statement?

22 A. When they recognize a hazard in the mine, they're
23 required to correct it. And that requirement's by
24 law.

25 Q. You said earlier in the interview that at the

1 Upper Big Branch Mine they were using belt air prior
2 to December 10th. Do you recall that?

3 A. Yes.

4 Q. Had they been approved to use belt air prior to
5 December 10th?

6 A. I would have to say yes. The prior procedure in
7 the agency was to file a petition for modification to
8 use belt air. That changed whenever we promulgated
9 the Belt Air Rule, the law. And within that
10 regulation, it required a rejustification for the use
11 of belt air. The answer is, yes, they were using it
12 prior to, and they were legal because ---. I'll put
13 it this way, is if they had a petition for
14 modification filed with the agency and approved for
15 the use of belt air, they were legal. They were
16 within the law.

17 Q. If they had a petition filed and approved or just
18 filed?

19 A. Filed and approved.

20 Q. Okay.

21 A. They can't implement a petition until it's
22 approved --- it's reviewed and approved.
23 Investigated, reviewed and approved.

24 Q. The term negative pressure's been used quite a few
25 times in the interviews. I don't know if anyone

1 defined it for the record. Can you ---

2 A. Sure.

3 Q. --- in terms of, you know, what it means in the
4 ventilation plan at Upper Big Branch?

5 A. Yes. Flow of air occurs because of pressure
6 differentials. It flows from positive to negative.

7 You disagree with that, Tim?

8 Okay. And there's different --- different

9 ventilation schemes specific to each mine.

10 And in this particular mine, the Bandytown fan is
11 an exhausting fan which creates negative pressure in
12 the mine entries, at that portion of the mine. Does
13 that answer your question?

14 Q. Yeah. And as a practical matter, negative
15 pressure in the mine, at some particular point, what's
16 the implication of that in terms of the mine's air?

17 A. When you design a mine, you design a mine
18 ventilation system to create proper air flow.

19 Q. Continuous flow of a --- at a ---

20 A. Yes.

21 Q. --- velocity that will carry coal dust and methane
22 outby ---?

23 A. That's correct.

24 Q. So you don't want negative pressure?

25 A. No. I'm not saying that.

1 Q. Okay.

2 A. Pressure differentials are what create airflow,
3 direction of airflow. And the pressure differentials,
4 positive and negative, are a part of mine design that
5 creates airflow. And you have to have the direction,
6 the proper velocity and quantity to properly ventilate
7 the mine.

8 Q. The plan approved on the 18th of December, the
9 idea was to reverse belt air? Is that your statement?

10 A. The plan that was approved in December was to
11 discontinue the use of belt air, which required a
12 reversal of direction, because prior to it flowed inby
13 towards the longwall and the reversal direction of
14 flow would've been outby, away from the longwall.

15 Q. And then they weren't successful in doing that?

16 A. They were not successful in implementing the plan
17 that I approved on December the 18th.

18 Q. And that's why they came out on December 23rd?

19 A. Yes.

20 Q. You said that Adkins a couple of different times
21 in your discussion with him said, we'll do whatever it
22 takes. What did that mean to you?

23 A. That meant to me that they would consider an
24 exhaustive fan shaft or developing entries to the
25 surface to provide an exhausting fan, negative

1 pressure, outby the longwall district.

2 Q. So in response, you were making suggestions ---?

3 A. I was making --- I was holding a discussion ---

4 Q. Right.

5 A. --- and looking at the what-ifs, not necessarily
6 --- you know, not necessarily a discussion that said
7 that you need to do this or a suggestion that you do
8 that.

9 Q. Right.

10 A. You know. I mean, we were holding a general
11 discussion about ventilation.

12 Q. You were just throwing out ideas ---

13 A. That's right.

14 Q. --- back and forth?

15 A. Yeah, that's right.

16 Q. In his public statement to the Senate Committee,
17 Don Blankenship said with regard to ventilation
18 issues, our engineers resisted making the changes in
19 once instance to the point of shutting down production
20 for two days before agreeing to MSHA's ventilation
21 plan changes. We opposed the changes because our
22 engineers believed they made the mine less safe. Do
23 you have any knowledge of Massey engineers resisting
24 changes, saying that what MSHA was talking about would
25 make the mine less safe?

1 A. I don't have personal knowledge of it.

2 Q. You never --- never heard that?

3 A. I can't tell you that I heard anyone from that
4 company say that this would --- this would make this
5 mine unsafe.

6 Q. Do you know anything about the company shutting
7 down production for two days before agreeing to MSHA's
8 ventilation plan changes?

9 A. I don't, and, you know, I mean, the only thing
10 that I can --- and I don't know what time exactly
11 they're referring to, but you have to realize that to
12 make these changes, if they're major ventilation
13 changes, that people have to be removed from the mine.
14 And they were in the process, during that time frame,
15 of trying to implement changes that they had made
16 request for and that I approved.

17 The law, the regulations require that they be out
18 of the mine, they meaning miners. And only the
19 persons that are involved in the change itself can be
20 underground. They cannot produce during that period
21 of time. If that's what they're referring to, that
22 they kept the mine down for two days, then that's what
23 it was.

24 Q. One more question. Mr. Blankenship said in his
25 public testimony before the Senate Labor, or I'm

1 sorry, Appropriations Committee last week that at
2 Upper Big Branch we complied with MSHA's safety
3 orders, even when we strenuously disagreed with them
4 and believed them to be detrimental to the health and
5 safety of the mine. We particularly disagreed with
6 MSHA's ventilation plan for Upper Big Branch Mine. In
7 your experience, are you aware of any strenuous
8 disagreement that Massey made about the ventilation
9 plan and in the context of that strenuous
10 disagreement, them taking the position that what MSHA
11 wanted to do would be detrimental to the health and
12 safety of the mine?

13 A. Well, let me --- let me say this. I don't develop
14 plans for a coal mine. The term, MSHA wants to do, is
15 entirely incorrect. They develop proposed plans for
16 their mine. My folks review those plans --- are they
17 a prudent mine design and do they meet our regulations
18 and policy. And recommend either approval or
19 disapproval to me as a district manager. When they
20 come to me with the routing recommendation, I also
21 review that same plan or those plans to see if there
22 are --- if they are a prudent design and do they meet
23 our regulation and policy.

24 Q. Is it fair to say that every ventilation plan
25 revision in the last year at Upper Big Branch was a

1 plan that was proposed by Massey? I mean, they
2 submitted revisions, a plan and then revisions ---.

3 A. Yes, that's a fair statement. Again, I'll
4 reiterate that --- that we hold discussions on plans
5 submitted by a coal company. I certainly don't
6 develop a plan and call them in and say, here's your
7 plan.

8 Q. Right. Of course.

9 A. Yeah.

10 Q. And just finally, so are you aware of any Massey
11 engineers or executive that would tell you or tell
12 people that work for you, we strenuously disagree with
13 this ventilation plan and that's been approved and we
14 think it's going to make the mine less safe than what
15 we want it to?

16 A. Those discussions were never held with me as a
17 district manager, I'll answer it in that manner.

18 Q. And you didn't hear anything from your people to
19 that effect?

20 A. There are certainly disagreements that occur
21 during a review process, but, again, you know, I
22 wasn't --- I wasn't made aware of those type of
23 disagreements.

24 Q. It would be a fairly noteworthy position for a
25 company to take to say, this plan is going to make the

1 mine less safe, so you'd remember that?

2 A. Oh, absolute --- if that were voiced to me, I
3 certainly would remember. And that wasn't voiced to
4 me as a district manager.

5 MR. MCGINLEY:

6 Thanks very much.

7 A. Uh-huh (yes). You're welcome.

8 ATTORNEY BABINGTON:

9 Okay. Mr. Hardman, you requested that
10 the roster be read at the end of the record for this
11 particular interview?

12 A. Yes, I did.

13 ATTORNEY BABINGTON:

14 So just to clarify that the --- you know,
15 I'm not going to repeat the names of the people who
16 did the interviewing. We already have that at the
17 beginning of the record. But the people in, that were
18 watching the interview, I want to clarify that they
19 were not --- not all of them were here for the entire
20 interview. They were here --- some of them were here
21 intermittently.

22 A. That's correct.

23 ATTORNEY BABINGTON:

24 Okay. So those were Bill Tucker with the
25 State; Wally McMasters with MSHA; Agent Wilson with

1 MSHA; Richard Stoltz with MSHA; Thomas Morley with
2 MSHA; Dana Ferguson with the Office of the Solicitor;
3 Clete Stephan with MSHA; Suzanne Weise, with the
4 McAteer Independent Team; Norman Page with MSHA and
5 John Godsey with MSHA. Okay. I also want to note for
6 the record that one of the Bandytown fan maps was
7 marked and we will label that Hardman One, and that
8 map will be part of the record.

9 (Hardman's Exhibit One marked for
10 identification.)

11 ATTORNEY BABINGTON:

12 And for now we'll suspend the interview
13 and pick it up at a later time.

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15 * * * * *

16 STATEMENT UNDER OATH CONTINUED AT 10:56 A.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Brett Steele, 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.



Brett Steele