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Transcript of the Testimony of Stanley Stewart

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Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

STATEMENT UNDER OATH
OF
STANLEY STEWART

taken pursuant to Notice by Danielle Ohm, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Saturday, June 5, 2010, beginning at 8:00 a.m.

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ROBERT S. WILSON
U.S. Department of Labor
Office of the Regional Solicitor
1100 Wilson Boulevard
22nd Floor West
Arlington, VA 22209-2247

DAVID STEFFEY
National Mine Safety and Health Academy
1301 Airport Road
Room C-137
Beaver, WV 25813-9426

PATRICK C. MCGINLEY
West Virginia Independent Investigation
West Virginia University College of Law
P.O. Box 6130
Morgantown, WV 26506-6130

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

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

2

3 BILL TUCKER

4 West Virginia Office of Miners' Health,

5 Safety and Training

6 Welch Regional Office

7 891 Stewart Street

8 Welch, WV 24801-2311

9

10 TERRY FARLEY

11 West Virginia Office of Miners' Health,

12 Safety and Training

13 1615 Washington Street East

14 Charleston, WV 25311

15

16 ALSO PRESENT:

17 MARTY HUDSON

18

19

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21

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ATTORNEY WILSON:

Good morning. My name is Bob Wilson. I am with the Solicitor --- Office of the Solicitor, United States Department of Labor. Today is June 5th, 2010. We're here to conduct an interview of Stanley Stewart as part of the investigation of the accident that occurred at the Upper Big Branch Mine on April 5th, 2010. With me is Dave Steffey, an investigator with the Mine Safety and Health Administration. He'll be asking questions today for MSHA. Also present ---.

MR. HUDSON:

What's Dave's title?

ATTORNEY WILSON:

Accident investigator.

MR. HUDSON:

Oh, okay. I missed it.

ATTORNEY WILSON:

Also present at the table are several individuals with the State of West Virginia. I'll ask that they state their appearance for the record.

MR. MCGINLEY:

Patrick McGinley, independent

1 investigation team.

2 MR. HUDSON:

3 Does that mean you're part of Davitt's
4 team?

5 MR. MCGINLEY:

6 Yes.

7 MR. HUDSON:

8 Okay.

9 MR. FARLEY:

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

12 MR. TUCKER:

13 Bill Tucker, Office of Miners' Health,
14 Safety and Training.

15 ATTORNEY WILSON:

16 And there are also present in the room
17 several members with the State and the Federal
18 Accident Investigation Teams. All members of the Mine
19 Health and Safety Administration Accident
20 Investigation Team and all members of the State of
21 West Virginia Accident Investigation Teams
22 participating in the investigation of the Upper Big
23 Branch Mine explosion shall keep confidential all
24 information that is gathered from each witness who
25 voluntarily provides a statement until the witness

1 statements are officially released. MSHA and the
2 State of West Virginia shall keep this information
3 confidential so that other ongoing enforcement
4 activities are not prejudiced or jeopardized by a
5 premature release of information. This
6 confidentiality requirement shall not preclude
7 investigation team members from sharing information
8 with each other or with other law enforcement
9 officials. Everyone's participation in this interview
10 this morning constitutes their agreement to keep all
11 information confidential.

12 MR. HUDSON:

13 I have a question on that. Is that
14 included Stanley's Counsel?

15 ATTORNEY WILSON:

16 Yes. And we'll get into that. Why don't

17 I go ahead and ask you to state your appearance for
18 the record at this time.

19 MR. HUDSON:

20 I'm Marty Hudson. I'm a family member of
21 Stanley.

22 ATTORNEY WILSON:

23 And why don't you, just for the record,
24 spell your last name?

25 MR. HUDSON:

1 H-U-D-S-O-N.

2 ATTORNEY WILSON:

3 And could you provide your contact
4 information, a telephone number and address?

5 MR. HUDSON:

6 Telephone number is --- my cell is the
7 easiest way. It's (202) 251-4757. My address is 2
8 Endicott, E-N-D-I-C-O-T-T, Lane, Stafford, Virginia,
9 22554.

10 ATTORNEY WILSON:

11 And to answer your question, yes, we ask
12 that both of you, Mr. Stewart, and yourself, Mr.
13 Hudson, not reveal any of the questions or the answers
14 that are discussed in this interview. We will be
15 interviewing other witnesses and we would like to keep
16 the information within the confines of this interview
17 for now until the information is publicly released at
18 some point in the future.

19 MR. HUDSON:

20 And for the record, I would request that
21 he receive a copy of his transcript before it becomes
22 official public record.

23 ATTORNEY WILSON:

24 Right. And we discussed that off the
25 record.

1 MR. HUDSON:

2 Right.

3 ATTORNEY WILSON:

4 And I understand why you would want to do

5 that. When we do depositions, you know, we always ---

6 the witness reads before it's released to make sure

7 that everything is accurate. We will not release any

8 transcripts even to the witnesses until all of the

9 interviews are completed, but between that all the

10 interviews are completed and when they're released to

11 the public, I think that would be an appropriate time

12 to provide the transcripts to the witnesses for the

13 purpose of reviewing the transcript and making any

14 corrections that might be necessary.

15 MR. HUDSON:

16 And there was a follow-up question. At

17 that time will he get the opportunity to read it and

18 if he disagrees with how a statement was

19 characterized, will he have the opportunity to change

20 it at that time?

21 ATTORNEY WILSON:

22 There will be an errata sheet with the

23 transcript.

24 MR. HUDSON:

25 Okay.

1 ATTORNEY WILSON:

2 That if there were any changes ---

3 MR. HUDSON:

4 Okay.

5 ATTORNEY WILSON:

6 --- or corrections, that can be made. Of

7 course, you understand, you --- when you do that, if

8 ---. Like Mr. Hudson said, if you said and, but it

9 was written down as or, you can make those type of

10 corrections, but you cannot change the substance of

11 your answer.

12 Now, if following the interview you

13 recall any additional information or maybe you think,

14 you know what, I said something that was wrong, you

15 can contact us and make that correction. Now, Mr.

16 Stewart, government investigators and specialists have

17 been assigned to investigate the conditions, the

18 events and circumstances surrounding the fatalities

19 that occurred at the Upper Big Branch Mine on April

20 5th, 2010. The investigation is being conducted by

21 the Mine Safety and Health Administration pursuant to

22 Section 103(a) of the Federal Mine Safety and Health

23 Act and by the West Virginia Office of Miners' Health,

24 Safety and Training. We appreciate you being here

25 this morning to help us in this investigation.

1 You may have a personal attorney present
2 during the taking of this statement and you may
3 consult with your attorney or representative at any
4 time. Mr. Hudson has already stated his appearance
5 for the record. You may refuse to answer any question
6 and you may terminate the interview at any time. You
7 may request a break at any time. This is not an
8 adversarial proceeding. Formal Cross Examination will
9 not be permitted, however, your personal
10 representative may ask clarifying questions as
11 appropriate.

12 Your identity and the content of this
13 conversation will be made public at the conclusion of
14 the interview process and information from this
15 interview may be included in a public report of the
16 accident, unless you request that your identity remain
17 confidential or if your information would otherwise
18 jeopardize any criminal investigation. If you request
19 us to keep your identity confidential, we will do so
20 to the extent permitted by law. In other words, if a
21 Judge orders us to reveal information from the
22 interview or if another law requires us to reveal your
23 identity, we may do so. Also, there may be a need to
24 use the information that you provide to us or other
25 information that we may ask that you provide in the

1 future in other investigations and hearings into the
2 explosion. Do you have any questions about that?

3 MR. STEWART:

4 No.

5 ATTORNEY WILSON:

6 After the investigation is complete, MSHA
7 will issue a public report detailing the nature and
8 causes of the fatalities in the hope that greater
9 awareness about the causes of accidents can reduce
10 their occurrence in the future. Information obtained
11 through witness interviews is frequently included in
12 those reports. Again, because we will be interviewing
13 other witnesses, we would request that you not discuss
14 your testimony with any person other than your
15 personal representative.

16 The court reporter will be recording your
17 interview. Please speak loudly and clearly. If you
18 do not understand the question, please ask that the
19 question be rephrased. Please answer each question as
20 fully as you can including any information that you
21 may have learned from somebody else. Again, I want to
22 thank you in advance for being here, especially on a
23 Saturday morning. We appreciate your assistance in
24 this investigation, and I want you to know that your
25 cooperation is very important and critical to making

1 the nation's mines safer.
2 After we have finished asking questions,
3 we will provide you with an opportunity to make a
4 statement or to provide us with any additional
5 information that you think is relevant. If at any
6 time after the interview you recall any additional
7 information that you would like to provide to us, you
8 can contact Norman Page, who's the lead accident
9 investigator for MSHA, at the contact information that
10 was included in the letter that was sent to you.

11 Now, Mr. Stewart, would you please state
12 your full name for the record?

13 MR. STEWART:

14 Stanley. I'm Stanley Douglas Stewart.

15 ATTORNEY WILSON:

16 And would you, please, state your address
17 and telephone number?

18 MR. STEWART:

19 My address is P.O. Box 53, Orgas,
20 O-R-G-A-S, West Virginia, 25418. Phone number is
21 837-3944.

22 ATTORNEY WILSON:

23 Now, Mr. Stewart, Mr. Hudson has
24 identified himself as your personal representative
25 here today. Did you voluntarily choose to have Mr.

1 Hudson as your representative?

2 MR. STEWART:

3 Yes, sir.

4 ATTORNEY WILSON:

5 Okay. And do you feel that this was

6 completely your choice?

7 MR. STEWART:

8 Absolutely.

9 ATTORNEY WILSON:

10 And you consent to having Mr. Hudson as

11 your personal representative for this proceeding?

12 MR. STEWART:

13 Yes, I do.

14 ATTORNEY WILSON:

15 Do you understand that Massey Energy, its

16 affiliates, its officers or directors and attorneys

17 may not represent or direct you in any --- in this

18 matter?

19 MR. STEWART:

20 Yes, I understand that.

21 ATTORNEY WILSON:

22 Mr. Hudson, are you legally representing

23 Mr. Stewart this morning?

24 MR. HUDSON:

25 I guess the word legally ---.

1 ATTORNEY WILSON:

2 For the record --- I guess for the
3 record, you're not an attorney; correct?

4 MR. HUDSON:

5 Yes, I'm not an attorney.

6 ATTORNEY WILSON:

7 You are ---?

8 MR. HUDSON:

9 I'm a family member.

10 ATTORNEY WILSON:

11 Okay. But you are representing Mr.
12 Stewart this morning?

13 MR. HUDSON:

14 Yes.

15 ATTORNEY WILSON:

16 And do you understand that you may not
17 communicate with Massey Energy, its affiliates, or its
18 officers, or directors or attorneys concerning the
19 substance of this representation?

20 MR. HUDSON:

21 Yes, sir.

22 ATTORNEY WILSON:

23 And for the record, are you being paid by
24 a third party to represent Mr. Stewart?

25 MR. HUDSON:

1 No. Well, let me state for the record, I
2 work for the United Mine Workers of America. I'm not
3 getting paid by a third party. That's my employer.

4 ATTORNEY WILSON:

5 All right. Well, just to clarify for the
6 record --- because the UMWA is a party in this
7 investigation.

8 MR. HUDSON:

9 Exactly.

10 ATTORNEY WILSON:

11 Just so the record is clear, are you
12 representing Mr. Stewart or are you representing UMWA?

13 MR. HUDSON:

14 I'm representing Mr. Stewart.

15 ATTORNEY WILSON:

16 Okay. And then do you also understand
17 that in your representative capacity of Mr. Stewart,
18 that you are not --- you are prohibited from also
19 communicating the substance of this interview to your
20 employer?

21 MR. HUDSON:

22 I understand.

23 ATTORNEY WILSON:

24 Okay. And you agree to that?

25 MR. HUDSON:

1 Yeah. Yes.

2 ATTORNEY WILSON:

3 Okay. And just to clarify, Mr. Stewart,
4 having heard all of the representations here, do you
5 still want Mr. Hudson as your representative today?

6 MR. STEWART:

7 Yes, I do.

8 ATTORNEY WILSON:

9 Okay. Before we start with the
10 questions, Terry Farley, you have something to say?

11 MR. FARLEY:

12 Again, Mr. Stewart, I'm Terry Farley from
13 the West Virginia Office of Miners' Health, Safety and
14 Training. I want to also advise you that the West
15 Virginia Miners' Health, Safety and Training
16 regulations protect the miners against discrimination,
17 and I will provide you with some information, contact
18 information, for filing a complaint if you experience
19 any discrimination as a result of this interview.

20 ATTORNEY WILSON:

21 Pat, did you have anything to add to the
22 record, any preliminary matters?

23 MR. MCGINLEY:

24 Well, so far in this investigation, the
25 independent investigation team, hasn't made any

1 separate statements, but I think it's important for us
2 to make clear that as part of this investigation, as
3 the other investigation teams, we're looking to find
4 the source and the cause of this accident, and there
5 are 29 dead miners and families and children who need
6 to know what the truth is. And that's what we're
7 about, and we're happy you're here to assist us.

8 ATTORNEY WILSON:

9 Mr. Hudson, is there anything before we
10 start with the questioning?

11 MR. HUDSON:

12 No.

13 ATTORNEY WILSON:

14 Okay. I'll turn the questioning over
15 then to ---. I'll have the court reporter swear you
16 in.

17 -----

18 STANLEY STEWART, HAVING FIRST BEEN DULY SWORN,

19 TESTIFIED AS FOLLOWS:

20 -----

21 ATTORNEY WILSON:

22 Okay. Dave Steffey will start with the
23 questions for MSHA.

24 EXAMINATION

25 BY MR. STEFFEY:

1 Q. Good morning.

2 A. Good morning.

3 Q. Just for the record, Mr. Stewart, would you please
4 spell your last name?

5 A. S-T-E-W-A-R-T.

6 Q. And are you appearing here today voluntarily?

7 A. Yes, sir.

8 Q. Has anyone made any promises concerning the
9 testimony you're about to give?

10 A. No.

11 Q. Has anyone given you anything in exchange for the
12 testimony you're about to give?

13 A. No.

14 Q. Has anyone made any threats concerning the
15 testimony you're about to give?

16 A. No.

17 Q. Has anyone else interviewed you concerning the
18 accident and your knowledge of the conditions of the
19 mine?

20 MR. HUDSON:

21 My answer to that would be, yes, it has
22 its own personal counsel, yes, that's interviewed him.

23 A. Yes.

24 MR. HUDSON:

25 When I say interview, took a statement

1 from me, not a deposition, a sworn statement,
2 attorney/client privilege statement.

3 BY MR. STEFFEY:

4 Q. Okay. Has anyone from the company interviewed
5 you?

6 A. No.

7 Q. Okay. Have you been cautioned by anybody about
8 what to say in this interview?

9 A. No, sir.

10 Q. Okay. Have you been given any instructions about
11 this interview as far as the testimony you've already
12 given?

13 A. No.

14 Q. How many years of mining experience did you have?

15 A. Thirty-four (34).

16 Q. Okay. Could you give me a brief description of
17 your coal mining employment history?

18 A. Well, I began mining coal in 1976. Started out as
19 a red hat, of course. And soon thereafter I was
20 working on continuing miner section, ran buggy,
21 continuous miner, scoop, of course, involving the UMWA
22 for the first 20 years, and I began my employment with
23 Performance Coal in July of 1995, and worked their
24 longwall from then 'til January of '09. I worked the
25 longwall as a shearer operator and a jacksetter. And

1 then I went back on the continuous miner in January of
2 '09, and that's what I was doing up until the day of
3 the explosion.

4 Q. Okay. Do you have any mining certifications?

5 A. I was a certified EMTN, and other than that, no.

6 Q. Okay. Now, are you presently employed?

7 A. I'm presently on Workers' Compensation.

8 Q. So your last job --- so you'd say your last job
9 was at UBB?

10 A. Yes, sir.

11 Q. Okay. And you were a continuous miner operator?

12 A. Right.

13 Q. And that was as of January '09 you started that
14 job; ---

15 A. Uh-huh (yes).

16 Q. --- correct? Okay.

17 A. Right.

18 Q. Now, prior to being hired at Upper Big Branch,
19 where did you work at?

20 A. I worked at Montcoal Number 7 for Peabody Coal and
21 was working for them when they sold to Massey.

22 Q. Approximately, how long did you work there?

23 A. Approximately, 19-plus years.

24 Q. Your mining history with Massey was basically
25 since 1995?

1 A. Correct.

2 Q. Okay. What section did you work on?

3 A. I worked on the Headgate 22 section.

4 Q. Okay. How many miners typically work on the
5 Headgate 22 section?

6 A. We had two miners.

7 Q. How many coal miners, though, were ---?

8 A. Oh, sorry.

9 Q. That's all right.

10 A. I thought you meant how many continuous miners.
11 Probably around nine.

12 Q. Around nine. Okay. And which portal did you
13 enter traveling to the section?

14 A. Ellis Portal.

15 Q. Okay. And who did the pre-op check on your
16 mantrip prior to departure?

17 A. I'm not certain about who did it.

18 Q. Okay.

19 A. I can't answer that one. I don't know.

20 Q. Okay. Approximately, how long was your travel
21 time in the section?

22 A. Approximately 40, 45 minutes.

23 Q. Did you travel through any equipment doors going
24 to the Headgate 22 section?

25 A. Yes.

1 Q. Can you identify these doors on the maps that we
2 have. We have a map under this that starts at the
3 Ellis Portal, and then this one covers all the way up
4 to the section. I'll supply you with a highlighter
5 here.

6 A. Okay. Let's see. The Ellis Portal.

7 Q. It's back here.

8 A. Yeah, that's the Ellis Portal right there. I
9 should have brought my reading glasses.

10 Q. If you have them in your vehicle, we can take a
11 break.

12 A. No, I don't have them.

13 OFF RECORD DISCUSSION

14 A. This is the track?

15 BY MR. STEFFEY:

16 Q. Yes. Yes, the yellow line represents the track
17 and the secondary escapeway. The red line is the
18 beltline and the green line represents the primary
19 escapeway.

20 A. Now, I'm not a hundred percent, but it seems to me
21 like they had installed two doors. I can't tell what
22 break it is. Somewhere in this area recently before
23 the explosion, ---

24 Q. Okay.

25 A. --- sometimes they would be open and sometimes

1 they wouldn't. I don't know why they put those in.

2 ATTORNEY WILSON:

3 Mr. Stewart, why don't you, so the record

4 is clear, go ahead and mark this map as Exhibit

5 Stewart One with the blue marker, circle the two doors

6 that you were just referring to and then put a line

7 out to the side here and just write doors.

8 (Stewart Exhibit One marked for

9 identification.)

10 WITNESS COMPLIES

11 A. They're in that vicinity. I'm not a hundred

12 percent exactly where they were.

13 BY MR. STEFFEY:

14 Q. Okay. That's fine. I understand. Any other

15 doors?

16 A. Oh, yes. This is --- let me find 78 Break. This

17 is Ellis Switch. This is 78; right?

18 Q. Uh-huh (yes).

19 A. Okay. As soon as we go through 78 you had four

20 sets of doors. That looks like them there. And the

21 main intake, I believe, came that way, but we had four

22 sets of doors we had to go through there.

23 Q. Okay.

24 ATTORNEY WILSON:

25 Why don't we, again, put two lines out to

1 here from the blue circles and say doors, and this is
2 on Exhibit Stewart Two. And just so that the record
3 is clear, you were saying the intake came here. That
4 would be --- you were pointing to the crosscut that's
5 in green just inby the first set of doors; is that
6 right?

7 (Stewart Exhibit Two marked for
8 identification.)

9 A. Yes, sir.

10 ATTORNEY WILSON:

11 Thank you.

12 A. Okay. And up on Headgate 22 we had another set
13 leading up to the section.

14 BY MR. STEFFEY:

15 Q. You had just one set there?

16 A. There were two.

17 Q. Two sets. Okay. Were these doors automatic or
18 did they have to be opened by hand?

19 A. They had to be opened by hand. Now, the ones out
20 inby 78 Break, they were designed for automatic. They
21 seldom, if ever, worked. And they weren't working for
22 quite some time before April 5th.

23 Q. Why was that?

24 A. I don't know. I would like to.

25 Q. What kind of condition were these doors in?

1 A. They were bent. They were not in very good
2 condition. They'd been banged up quite a bit.

3 Q. How did they get banged up?

4 A. I'm going to assume vehicles running into it.

5 Q. Okay. So people just run into them and knock them
6 open?

7 A. I don't know that they did that, but we never did
8 it. So I don't know if they accidentally ran into
9 them or couldn't get stopped or what, but they weren't
10 in very good shape.

11 Q. Did you ever see a supply motor try to go through
12 those doors at Break 78?

13 A. No, sir, I didn't personally.

14 Q. Did you ever have more than one mantrip traveling
15 in your group when you were traveling to the section
16 there when you'd go through these doors at Break 78?

17 A. Sometimes.

18 Q. Sometimes. How many mantrips could you fit inside
19 between the sets of doors to maintain the airlock?

20 A. You could get two in there comfortably. It'd be
21 --- it shouldn't have been a problem.

22 Q. Okay. Have you ever had a situation where you had
23 three mantrips coming in?

24 A. Not me personally I hadn't.

25 Q. Okay. Have you ever found those doors open, or

1 for that matter, any set of these equipment doors, as
2 you indicated, open?

3 A. There may have been a time or two. The one set,
4 if they weren't closed properly, they could swing
5 open, but most of the time when we would go through
6 them we'd find them closed.

7 Q. When you were approaching from the outby side and
8 the outby doors were closed, could you tell if the
9 doors inby were opened or closed?

10 A. If there were some open there would be more air on
11 the one, but most times going in I've ridden in the
12 back side of the mantrip. So I didn't get out to open
13 them.

14 Q. Okay. And you mentioned these doors were bent and
15 they weren't maintained very well. Was there a lot of
16 leakage around those doors?

17 A. I felt like there was.

18 Q. Was it leaking from the intake into the belt air
19 course or from the belt air course into the intake?

20 A. Explain the question to me a little more.

21 Q. When you were approaching these set of doors ---.
22 These are the doors that you indicated were
23 damaged; ---

24 A. Uh-huh (yes).

25 Q. --- correct?

1 ATTORNEY WILSON:

2 Identify for the record what we're ---.

3 BY MR. STEFFEY:

4 Q. The doors at Break 78. Okay. Could you tell,
5 either by feel or seeing the dust in the air if the
6 air was leaking from either your intake air course
7 into your belt air course or was the belt air course
8 leaking into the intake? Because those doors were
9 supposed to maintain a separation.

10 A. Exactly. I'm not certain which way it would have
11 been.

12 Q. Okay. Well, I guess just to clarify. You said
13 that you felt that it was leaking?

14 A. Yes.

15 Q. Can you explain why you felt that way?

16 A. Because you weren't getting a good seal through
17 the doors, you know. I always questioned --- you
18 know, of course when they were in overcast there, you
19 can't maintain your intake separated a hundred percent
20 with the doors. And you know, around the bottoms,
21 you're going to have leakage and up on the track, you
22 can't seal that off. And plus sometimes the blocks
23 around them would be weak or broken or knocked out
24 before they'd get fixed and ---.

25 Q. Could you hear it leaking?

1 A. Yeah, you could hear it.

2 Q. Okay. Do you know when they would change an
3 outset of doors if they had a set procedure for
4 changing doors?

5 A. No, I don't know if they had a set procedure.

6 Q. Okay.

7 OFF RECORD DISCUSSION

8 BY MR. STEFFEY:

9 Q. Did they ever change the doors out while you were
10 on the section?

11 A. Not to my knowledge.

12 Q. Okay. Do you know why they used equipment doors
13 there in lieu of an overcast?

14 A. No, I don't. It's been something I would like to
15 know.

16 Q. Okay.

17 MR. HUDSON:

18 Can he express an opinion for that?

19 MR. STEFFEY:

20 I have no problem with that? Do you have
21 a problem with that?

22 ATTORNEY WILSON:

23 No. Go ahead.

24 A. Well, I don't know exactly what point in time
25 those doors were put up in that main intake, but I'm

1 going to guess they didn't want to take the time to
2 cut an overcast out and do it right. So you know,
3 that was an easy fix.

4 BY MR. STEFFEY:

5 Q. Why would they not want to take the time to cut
6 the overcast out?

7 A. Now, that one I don't know, unless they were just
8 in a big hurry, in a rush to get things going.

9 Q. We're going to talk about that rushing around here
10 in just a little bit. And now your intake escapeway
11 there came through Break 78 across the track there and
12 then across the overcast. Did you ever travel that
13 intake escapeway?

14 A. Yes, I did.

15 Q. What type of shape was it in?

16 A. I didn't like to walk in it, but there was parts
17 of it tough to walk, a lot of rock, and other areas
18 were okay.

19 Q. When was the last time you traveled it?

20 A. Either late '09 or early '10. I can't recall the
21 exact date.

22 Q. And how often did you --- the crew travel the
23 primary escapeway?

24 A. We tried to do it about every three months.

25 Q. Okay. Let's talk about your section up here. You

1 mentioned you were around the 22 Headgate section,
2 that's the 029 MMU. How was the roof, rib and floor
3 on that section?

4 A. The roof was bad, the ribs were bad and the bottom
5 hooved in places a lot or bust up.

6 Q. How would you describe the roof, rib and floor and
7 other areas of the mine where you worked? You
8 mentioned that you had worked on the longwall for ---.

9 A. Okay. That mine, it had a history of bad top I
10 feel. You can find some areas with actually pretty
11 good top, but for the most part, the roof was bad in
12 it and the ribs were usually bad. In different areas
13 the bottom would hoove and other areas, you know, it
14 was fine.

15 Q. Did you ever have an incident where the floor just
16 suddenly hooved up in the face area either in this
17 Headgate 22 section or elsewhere?

18 A. Okay. I didn't have anywhere it hooved up in the
19 face area, but a few places outby the face I'll say it
20 hooved.

21 Q. And when was the last time that happened?

22 A. Well, it had to be in late March I think it hooved
23 on Headgate 22 in several places.

24 Q. Anybody ever report this to management?

25 A. The bottom hooving?

1 Q. Uh-huh (yes).

2 A. I don't know if they did or not.

3 Q. When you said that the roof and the ribs were bad,
4 can you just explain to me what you mean by that?

5 A. Okay. The top on Headgate 22, it scared me. It
6 was in what we call stack rock. It was old sand rock
7 with little streaks of coal running through it for
8 six, eight, ten feet sometimes, and you can take a cut
9 and it would start working, I mean, just like if a
10 pillar would fall. And sometimes outby the last row
11 of bolts, and you know, you didn't know if everything
12 is going to give way or not. At least that's the way
13 I felt, so you know, to me it was scary. Then the
14 ribs where we'd be taking top, sometimes a foot,
15 sometimes two foot, sometimes three foot of top. You
16 know, coal's soft, so, you know, the ribs get bad.

17 Q. Now, you mentioned just sometimes it'd work out
18 beyond that last row of bolts?

19 A. Yes.

20 Q. Did you ever see it fall and pull that last row of
21 bolts to break them?

22 A. A couple of times, yes, I did. It wouldn't be a
23 major fall, but it might be a foot, or two foot or ---
24 I mean, I see the last row of bolts ---.

25 Q. So you have seen them pull that last row. Did

1 anybody ever call that in to MSHA or say anything
2 or ---?

3 A. Not to my knowledge.

4 Q. Not to your knowledge.

5 ATTORNEY WILSON:

6 I'm sorry. Just to clarify. These
7 instances that you're speaking of, is this on Headgate
8 Number 22?

9 A. Yes.

10 BY MR. STEFFEY:

11 Q. And how high would it fall?

12 A. I've seen it fall --- it was ---. Some of the
13 areas of Headgate 22, it would seem like it'd be 15
14 foot high from the bottom to the top. You know, once
15 it would start coming it'd just rock. But you know,
16 not the whole way.

17 Q. Did you ever see bolt head plates break off, off
18 the top?

19 A. No, I never saw any pressure.

20 Q. How deep of a cut could you take on this section?

21 A. Twenty (20) feet.

22 Q. Twenty (20) feet.

23 A. I forget at what point we were cut back to 20 foot
24 cuts, but that's what it was when I quit. Or I didn't
25 quit. As of April the 5th.

1 Q. Did you ever take any cuts deeper than 20 feet
2 after you were --- cut back to 20 foot cuts?

3 A. Me? If I went deeper, it would have been no more
4 than 25. I may have done that a few times.

5 Q. Did anybody from --- did you ever see anybody from
6 management or engineering up there to look at the
7 conditions?

8 A. I worked the evening shift, and I don't recall
9 seeing anyone come up on our shift.

10 Q. Okay. Now, did you ever mine through any gas
11 wells known or unknown?

12 A. At Headgate 22?

13 Q. Uh-huh (yes).

14 A. No.

15 Q. What about anywhere else in the mine?

16 A. I cut through some on the longwall a few times in
17 all my years on it.

18 Q. Did you all know about those gas wells before you
19 cut through them? Did you know they were going to be
20 there?

21 A. Yes, we were aware of it.

22 Q. Anybody ever discuss the Lower Eagle Seam below
23 you and how far below it was or any problems that you
24 may have due to that seam?

25 A. No, it wasn't discussed.

1 Q. All right. What about the overlying works? Now,
2 I understand that there were some longwall mining
3 above this area, the seam above, the Falcon seam.

4 A. That wasn't discussed either, and it might help
5 explain why we had so much pressure on Headgate 22,
6 but take a cut it'd start taking weight immediately.

7 Q. Were there ever any methane outbursts on the
8 section?

9 A. Not on Headgate 22. We were liberating methane.
10 It was coming out of the coal and bubbling up out of
11 the bottom, but as far as a bleeder coming up out of
12 the bottom, no, we never ---.

13 Q. Okay. Did they ever gas the miner off?

14 A. My particular miner, I never gassed it off, but I
15 did reach readings of up to 1.8.

16 Q. Okay.

17 MR. HUDSON:

18 I think you should tell them what you did
19 when you reached those readings, what you all did on
20 you all's section as --- I'm not trying to put words
21 in your mouth, but you said you had shut down and then
22 gone up for air. I mean, ---.

23 A. Right, right. Back it up and go check all of our
24 air, and our boss that I had he would also, you know,
25 and we'd try to get what we could get.

1 BY MR. STEFFEY:

2 Q. Okay. How often did this occur?

3 A. You're referring to Headgate 22, of course?

4 Q. Yes.

5 A. Okay. My methane monitor probably read between .2
6 and .5 most of the time, and if something happened to
7 the ventilation or you got it close into your cut, you
8 know, it reads --- goes to .8, 1.2, but as far as 1.8
9 it wasn't really often.

10 Q. Did you have your own methane detector, the
11 Solaris, the handheld or ---?

12 A. Yes, I had one.

13 Q. Okay. Did anybody else have one on the section?

14 A. The bolt crew and the other mine operator and the
15 boss.

16 Q. Who took your gas check prior to putting the miner
17 in coal?

18 A. Who did?

19 Q. Uh-huh (yes).

20 A. Well, I would and my boss would run the face at
21 the beginning of the shift.

22 Q. And were there any other methane checks that you
23 took during the cut?

24 A. Every 20 minutes.

25 Q. Twenty (20) minutes. Okay. And did you ever have

1 to withdraw due to methane? Did you ever have to pull
2 back off a section?

3 A. No, not on Headgate 22. We didn't withdraw.

4 Q. Okay. Were you on the crew that drove Headgate
5 One North?

6 A. Yes, I was. I mean, if you're only asking about
7 methane --- part of what we talked about, we withdrew
8 many times for the anemometer reading. I mean, ---.

9 Q. We're going to talk about ventilation here in a
10 minute.

11 A. All right.

12 Q. What about up here on Headgate One North. Do you
13 ever remember any mention of that?

14 A. Okay. I wasn't on it until we got here.

15 Q. Okay.

16 ATTORNEY WILSON:

17 Is there a crosscut that you can
18 identify?

19 BY MR. STEFFEY:

20 Q. Crosscut's 90 and 95?

21 A. Right. I was on --- we called this Two section.
22 They called it Tailgate One North.

23 Q. Okay.

24 A. Okay. I was on it and we cut the longwall face
25 across and we drove this into here, and then all of

1 the sections combined and we finished driving the ---.

2 Q. When you say you mined here, you're referring to
3 the diagonal ---?

4 A. Right. The diagonal --- understand what they call
5 the One section, Headgate One North. And then we
6 finished driving all the way to the head to the fan.
7 And in answer to your question, when we punched in to
8 it on that section, yes, we hit --- we hit a lot of
9 methane up to ---.

10 Q. And how high did it get?

11 A. Up toward the head end of the section, and the
12 other miner operator, he told me that he had nine
13 percent one time over in another entry that wasn't
14 being mined at the time. And the bolt crew would hit
15 explosive levels.

16 Q. What'd they do when they hit these explosive
17 levels?

18 A. Well, to start with we didn't have enough air, and
19 I know --- I seen them move the curtain out to the
20 center of the entry to try to get more volume in
21 behind the curtain to flush that methane out. And the
22 entry we would be mining in, of course, we'd do
23 everything we could to get more air as we could to
24 that entry, mining coal.

25 Q. Okay. Let's go ahead and let's talk about the

1 ventilation in this mine.

2 ATTORNEY WILSON:

3 Excuse me. Before we do that, can we

4 mark the exhibit? He was saying with arrows and where

5 they worked, those entries and the place where --- the

6 methane ---. Can you go off?

7 OFF RECORD DISCUSSION

8 ATTORNEY WILSON:

9 Okay. We're back on the record. While

10 we were off the record we've marked Stewart Two

11 Exhibit, and on the back end of the Headgate One North

12 Mr. Stewart had gleaned methane, indicated the areas

13 where he had encountered methane while driving those

14 entries. Is that correct?

15 A. That's correct.

16 ATTORNEY WILSON:

17 Okay. Before we go on, Terry, do you

18 want to ask some follow-up questions that he's covered

19 already?

20 EXAMINATION

21 BY MR. FARLEY:

22 Q. Mr. Stewart, you said earlier that you never seen

23 the bottom hooving outby the face of 22 Headgate. Did

24 you ever detect any methane coming from the floor and

25 in cracks?

1 A. I didn't in the cracks, but it was bubbling up in
2 the water hole. As far as the bottom hoovage, I
3 didn't notice anything coming out of it.

4 Q. Okay. Well, you also said that you weren't sure
5 that the bottom hooving at 22 Headgate was reported to
6 management. Was your section foreman aware of it?

7 A. Yes, sir, he was.

8 Q. Okay. And what was his name?

9 A. Rick Hutchens was my section foreman, and he left,
10 I think, either late February or in March, and then
11 Pat Hilbert took his job.

12 Q. Okay. Now, you said on previous longwall panels
13 that you might have mined into some different gas
14 wells. Now, when you mine through those gas wells on
15 the longwall, did you experience any problems in doing
16 so?

17 A. No. The gas wells that we mined through, mined up
18 to them and cut them out and they were sealed
19 concrete.

20 Q. Okay. You indicated around 22 Headgate that your
21 methane monitoring, continuous miner was high as 1.8
22 percent?

23 A. Uh-huh (yes).

24 Q. Okay.

25 ATTORNEY WILSON:

1 And let the record show the answer ---
2 the witness answered affirmatively.

3 A. Yes.

4 BY MR. FARLEY:

5 Q. Okay. And you said that typically it was 0.2 or
6 0.5, and when the miner cut coal, it would be 0.8 or
7 about 1.2 at the end of the cut. Now, would the
8 readings on your methane --- mining machine methane
9 monitor, were they consistent with what you detected
10 with your handheld detector?

11 A. Yes, sir. I always make it a point to check and
12 make sure it was accurate.

13 MR. FARLEY:

14 Okay. All right.

15 MR. MCGINLEY:

16 Just a couple of questions at this point.

17 EXAMINATION

18 BY MR. MCGINLEY:

19 Q. With regard to the hooving of the gas liberation
20 that you mentioned, can you give us a time frame, if
21 you recall? You know, months or just a general idea
22 of kind of when that occurred when you were mining
23 down there?

24 A. On and off practically the whole plant in
25 different areas of the section, so ---.

1 Q. Now, you're talking about the longwall?

2 A. Are you referring ---?

3 Q. Headgate 22?

4 A. Right.

5 Q. Okay. What about where you marked in green there,
6 what's the time frame for that? Was that before Pat
7 Hilbert became the foreman?

8 A. Yes.

9 Q. Okay. So that --- with regard to that area was
10 Rick Hutchens?

11 A. Right. This was Rick Hutchens, and you know, this
12 would have been back in the first half of '09,
13 probably more like March or April to June.

14 Q. Okay. What was the time frame when you were at
15 Headgate 22?

16 A. Headgate 22, from late '09 to April '10. I don't
17 know exactly when we went over there, maybe in
18 October. I'm not really a hundred percent on the
19 exact date we started it.

20 Q. And you worked the evening shift?

21 A. Yes.

22 Q. And what were the hours of that shift, generally?
23 When did you start?

24 A. We started at 3:00 p.m., quit at 1:00 p.m. --- at
25 1:00 a.m. ---.

1 MR. HUDSON:

2 They had you quit when they told you to
3 quit.

4 A. Well, yeah, that was the quitting time on paper.

5 BY MR. MCGINLEY:

6 Q. So what, did you often stay over?

7 A. I only stayed over when I made and --- you know,
8 one thing about working for Massey, if they said stay
9 'til it's done, you stayed 'til it's done. It didn't
10 matter if it's 6:00 or 7:00 the next morning. And of
11 course, you had to be right back out the beginning of
12 the next shift. And I know on one night --- or one
13 morning my wife come running out the door in tears,
14 thought something was wrong. I said, you know how
15 they are. You have to stay. And if you didn't stay,
16 you didn't come back.

17 Q. Do you know of any specific examples of people who
18 you worked with that said, I'm not going to stay and
19 then they didn't come back?

20 A. No, because they always stayed because they knew
21 they wasn't coming back. We would complain basically
22 to each other about it, but --- you know, you went
23 ahead and stayed.

24 MR. MCGINLEY:

25 I don't have any further questions.

1 ATTORNEY WILSON:

2 Okay. Dave?

3 RE-EXAMINATION

4 BY MR. STEFFEY:

5 Q. You mentioned that your miner --- I think you said
6 it got high as 1.7 percent?

7 A. Uh-huh (yes).

8 Q. What was the procedure you did when the miner's
9 monitor would read that high?

10 A. I would back my miner out of a cut and go see if
11 there's any possible way I could get some more air in
12 my entry.

13 Q. Did you ever have to stop cutting and back out due
14 to the mine roof work?

15 A. Yes.

16 Q. Okay. And what --- do you care to go into that a
17 little more?

18 A. Okay. Yeah, it would sometimes start working and
19 I'd back my miner up and shut it off and watch and
20 listen. And there's been times I've backed myself up
21 quite a bit, you know, just in case the whole roof
22 gave way. And so I sit and watch and listen, and if
23 it would settle down and I felt comfortable, I would
24 go back, continue mining.

25 Q. Everybody else on the section --- everybody else

1 say they would encounter these same problems? Did you
2 all talk about it as a group? Did it worry you all?

3 A. Yes, it worried all of us. Yeah, we talked about
4 it.

5 Q. Okay. You mentioned you took your 20-minute gas
6 checks. How did you do that? Did you have a probe or
7 a magnet?

8 A. I had a magnet put on the miner and our --- you
9 know, they worked and had it up in there.

10 Q. Okay. And going back to that 1.7 percent, did you
11 tell the foreman ---?

12 ATTORNEY WILSON:

13 Excuse me. I think in his previous
14 testimony it was 1.8 percent. Maybe you want to
15 clarify that.

16 A. Yeah, I've seen it 1.8.

17 BY MR. STEFFEY:

18 Q. Okay. Well, 1.8 ---.

19 A. In that area.

20 Q. Right in that area. Going back to that, the real
21 high methane reading, did you tell your foreman that
22 you --- was he aware that you got a reading like that
23 on your miner?

24 A. Yes.

25 Q. What'd he do?

1 A. He would go tighten up curtains, try to seal off
2 anything that needed sealed, just try to get whatever
3 we had up there the best we could.

4 MR. HUDSON:

5 Well, I think it's fair to say what you
6 said, that you all went way down the entry, trying to
7 close gaps and holes. And I'm not speaking for you,
8 but ---.

9 A. Well, yeah, we shut down before and went searching
10 for air.

11 BY MR. STEFFEY:

12 Q. And you shut down on your own to go searching for
13 air?

14 A. The boss shut her down.

15 Q. Okay. What happened to him after that?

16 A. Well, he ended up quitting.

17 MR. HUDSON:

18 I think you ought to tell why he quit.

19 A. Yeah. Okay.

20 ATTORNEY WILSON:

21 And is this Mr. Hutchens?

22 A. Yes, Mr. Hutchens. He would go outside and inform
23 management that we had low air on Headgate 22, and he
24 told me personally that --- it was frustrating because
25 they wouldn't do anything, you know. And I would talk

1 to him. I'd say, look, I'd say, that's out of our
2 hands, getting air to the section. That's their job.
3 If we get the air, we can handle across the faces, but
4 you know, we don't have any control of putting it
5 there. And they would never do anything about it, so
6 he told them he was frustrated. Plus, scared that he
7 was going to get his rear end in any trouble if
8 something happened, operating with low air, so he
9 quit.

10 BY MR. STEFFEY:

11 Q. So it's fair to say, he had a lot of pressure on
12 him?

13 A. I felt like he did, yes. And plus, you know, they
14 was also hammering him all along to get the numbers
15 out, which I know we're there to load coal, but you
16 know, you got to do it right.

17 Q. You got to have some other stuff?

18 A. Exactly.

19 MR. HUDSON:

20 I mean, the statement he made to me, you
21 know, he made it to me, and I think the intent was
22 that he wasn't going to be a part of getting a bunch
23 of people blown up, ---

24 A. Right.

25 MR. HUDSON:

1 --- and he decided to leave the mine.

2 A. He did. He left, and he told me the night that he
3 left to watch myself because he knew the air problems
4 were bad.

5 BY MR. STEFFEY:

6 Q. Okay. You mentioned the air problems two or three
7 times and the methane problems. Let me go through a
8 couple of follow-up questions here, and then I think
9 we need to talk about that ventilation system.

10 A. Okay.

11 Q. Did your methane monitor ever alert at one
12 percent? Your handheld, did it ever go off?

13 A. I didn't have one of those that goes off. The
14 type I had was just a readout, digital readout, ---

15 Q. Yeah.

16 A. --- so no.

17 Q. What type did you have?

18 A. I don't know.

19 Q. Was it silver?

20 A. Yeah, it was silver and it had the great ol' big
21 digital ---.

22 Q. Did you take it home with you?

23 A. I got it at home right now. It's still in my
24 dinner bucket because I had it in my bucket on the way
25 in that day.

1 Q. Okay. Who calibrated that?

2 A. I don't know if the safety director would do the
3 calibration or someone in management. I really don't
4 know who did the calibration.

5 Q. Was that common for the miners to be given a
6 methane detector and told to take it home, you keep
7 this at your house?

8 A. Well, I don't know how common it was, but I just
9 carried mine in my bucket, and then when it needed
10 charged, I'd go up there and Richard would put it on
11 the charge for me.

12 Q. Did it ever run out of charge while you were
13 underground?

14 A. No, mine didn't.

15 MR. HUDSON:

16 The question is, did you ever see
17 anybody ---

18 A. No.

19 MR. HUDSON:

20 --- calibrate it?

21 MR. STEFFEY:

22 Yeah.

23 A. No, I never saw it.

24 BY MR. STEFFEY:

25 Q. Did you know of anybody else's that lost charge

1 underground?

2 A. Yeah, I saw them go dead before.

3 Q. Well, what would they do after that?

4 A. Sometimes they would borrow one off of someone and

5 other times I don't know. Maybe --- could do

6 anything. I really don't know.

7 Q. Methane ever been found in the airways on the

8 section, found any hot spots or anything?

9 A. No, I hadn't, and I'm not aware of it.

10 Q. Okay. You mentioned that they'd hit nine percent

11 up here on the One North Headgate section. What'd

12 they do? What was their procedure? What action was

13 taken when they hit that?

14 A. Okay. I ran the right miner. My buddy ran the

15 left miner, and I think --- I was loading at the time,

16 and I just heard him say that we've got a nine percent

17 rating. And I don't know what they did over there to

18 handle it.

19 Q. Was the section boss aware of that nine percent

20 reading?

21 A. Yeah. Yeah. Yeah, I'm sure Carl came and told

22 him, and so ---.

23 Q. Did you ever watch the section boss do his own

24 shift exams as he runs across the face?

25 A. Yes, I did.

1 Q. Did he ever find any methane during his own shift
2 exams?

3 A. I don't recall him finding any. Here's how the
4 game was played. The shift that we would follow.
5 They would make sure the curtains were up and right
6 before they left. So as far as watching my boss go
7 across the faces, I didn't --- I didn't see his
8 spotter. I couldn't answer if he found any or not.

9 Q. Did you hot seat with the other crew?

10 A. No, we didn't actually hot seat. We usually
11 crisscrossed them on their way out while we were on
12 our way in.

13 Q. So they did the pre-shift exam for your oncoming
14 shift?

15 A. I'm going to assume they did.

16 Q. Okay. Did anybody ever go over with your crew the
17 hazards that were found during the pre-shift?

18 A. Usually we would stop the mantrip, and I've also
19 talked to their boss and informed him what we had and
20 what we were looking at when we got there.

21 Q. Do you know if any hazards were ever put in that
22 pre-shift book?

23 A. No, I don't know if they put them in there or not.

24 Q. Did you ever go up to the section and find any
25 hazards, any methane, any bad top?

1 A. Definitely bad top and we would find methane. I
2 mean, that was a concern. And the biggest concern was
3 we didn't have air. And I actually --- at some point
4 on Headgate One North, I got so concerned that I
5 actually called the mine inspector and informed him
6 that there was low air.

7 Q. Uh-huh (yes). And then what happened? Was this
8 an MSHA inspector?

9 A. I think he was --- I think he's that ---.

10 Q. Okay.

11 A. And I know him personally, so --- and I told him,
12 well, they did put people in there, and I don't know
13 what happened or anything, but we never had any air
14 all the way ever. I mean, not unless to ---.

15 Q. Did you ever go up to the section and find that
16 you had low air as soon as you got there?

17 A. To answer that, yes, because there was always low
18 air on that section.

19 Q. And none of this was ever put in the pre-shift
20 book or do you know?

21 A. I don't know.

22 Q. But nobody ever went over anything in that
23 pre-shift book with your crew, ---

24 A. No. Uh-uh (no).

25 Q. --- nobody ever talked about that?

1 A. No. Uh-uh (no).

2 Q. They just expected you all when you crisscrossed
3 on the track, to talk to each other then?

4 A. Well, I don't even know if they expected that.
5 Just my boss and their boss will do that. I don't
6 know, you know.

7 Q. Okay. Let's talk about ventilation. You've
8 mentioned it several times that you had low air. Did
9 anybody ever go over the approved methane and dust
10 control plan with your crew?

11 A. I don't recall them going over the methane and
12 dust control plan.

13 Q. Okay. So they didn't cover how much air you were
14 supposed to have according to your plan, in your faces
15 and when you were cutting coal with the miner?

16 A. The section foreman would inform them of what we
17 had to have.

18 Q. Okay. Did you ever go up there and find that you
19 didn't have the correct volume?

20 A. Yes.

21 Q. What happened then?

22 A. Okay. We went to the section and at the main
23 intake before you even got to the face, the anemometer
24 would not even move, and so we would knock the power
25 --- that's when we would travel down the intake fixing

1 what stoppings we could. You know, that's fine and
2 dandy. It should be done, but that wasn't the
3 problem. Sealing off as best we could and you still
4 didn't have the volume of air coming up your intake.

5 Q. Well, where did you think the problems originated?

6 A. I really don't know.

7 Q. Did you ever see or hear of anybody from
8 engineering companies engineering in there looking at
9 this problem?

10 A. Nope. I never saw or heard of them looking at it
11 myself.

12 Q. Did anybody from upper management ever come in and
13 look at the problem?

14 A. Not on the evening shift.

15 Q. Did you hear of them on the dayshift?

16 MR. HUDSON:

17 They would talk about what --- I mean,
18 the story you heard about the Friday before the
19 explosion. Tell that story.

20 A. Yeah, I'll get to that. When they would be shut
21 down, inspectors had them on the ventilation problems,
22 then there'd be management personnel in there. And I
23 did see them in there a few times. And it's like they
24 were grasping at straws trying to do something to get
25 enough so they could operate. I mean, one night they

1 had our crew hanging curtains across the stopping up
2 and down on the Headgate One North outby the longwall.
3 We were just going up through there hanging curtains
4 over the stop.

5 BY MR. STEFFEY:

6 Q. To try to control the leakage?

7 A. Yeah, but, you know, those stoppings were in
8 pretty good shape. But anyway that's why I said
9 grasping at straws, just for anything and --- what was
10 that again, Marty?

11 MR. HUDSON:

12 Well, I was saying what you told Chris
13 Blanchard and the group that came in on that Friday
14 evening before ---.

15 A. Yeah, I had heard the Friday before they had some
16 problems there, the Friday before April the 5th. I
17 didn't work that day, but it seems to me like someone
18 said that they had problems and had to withdraw. I
19 don't know due to the inspector or what. I never got
20 the full story.

21 BY MR. STEFFEY:

22 Q. Did they ever make a ventilation change for men
23 underground working?

24 A. Yes, I was in on it myself.

25 Q. When did that happen?

1 A. I can tell you exactly when it happened. July the
2 26th, 2009.

3 Q. What exactly did they have you doing?

4 A. Okay. We were going underground and my boss was
5 told he needed to call outside while we were en route,
6 so he called out and someone outside told him for us
7 to go to Headgate One North and change the air from
8 sweep air to split air. And we --- you know, we knew
9 it was illegal. We didn't know if they had a permit
10 or not, but you still don't do it with men underground
11 and especially with guys inby.

12 Q. So there were guys inby actually working?

13 A. Yeah. The section crew was up here mining coal
14 wherever it was and ---.

15 ATTORNEY WILSON:

16 Let's make sure that, you know, we're
17 getting this on the record. So you're talking
18 about ---?

19 A. Headgate One North.

20 ATTORNEY WILSON:

21 All right. And approximately, where was
22 this? Was there a crosscut that you can ---?

23 A. Probably in the neighborhood of 95. That had to
24 be the area that we made the air change.

25 BY MR. STEFFEY:

1 Q. How far inby was the section crew?

2 A. The section crew was probably between 100 and 102
3 and ---.

4 Q. So they were --- did they know what was going on
5 and getting ready to hang ---?

6 A. Right. Richard actually went up there and told
7 them boys and he came back to us because they weren't
8 too happy, that they went ahead and knocked their
9 power and just waited at the power center. And we had
10 to knock stoppings and rebuild some stoppings to
11 achieve this air move.

12 Q. Now, who gave the instructions to do this?

13 A. Okay. I don't know who exactly called in and told
14 Richard to do that.

15 Q. And what's Richard's last name?

16 A. Hutchens.

17 Q. Hutchens.

18 A. But I'm going to assume that it either came from
19 Chris Blanchard or Jamie Ferguson, one of them.

20 Q. Okay.

21 A. Because that's the president and the vice
22 president, and so I don't feel like anyone lower than
23 that would have the authority to give a command like
24 that.

25 Q. Okay. Now, we've mentioned numerous problems here

1 with the ventilation system. Have you ever gone up to
2 the section, your crew, gone up there and you found
3 that you had low air and gone back, you worked on
4 controls, tried to tie some stuff up, still didn't
5 have the air, and you were told to put --- to go ahead
6 and put it in coal? Did anything like that ever
7 happen?

8 A. Well, right. We have loaded with the air --- not
9 enough air and do everything we could to get what we
10 had and we went ahead and mined.

11 Q. Okay. Why did you go ahead and mine?

12 A. Well, because you knew that you better go ahead
13 and mine the coal or --- the atmosphere around Massey
14 was, you know, you just keep your mouth shut and do it
15 if you want to keep your job.

16 Q. So it's fair to say that this was a threatening
17 atmosphere?

18 A. Yes, I feel that 100 percent.

19 Q. When you were up there and you would put it in ---
20 and they would have to go ahead and put it in the
21 coal, those instructions, did they come from the
22 outby?

23 A. Most of the time it just implied.

24 Q. Implied. Okay. How was it implied, we need the
25 coal or ---?

1 A. Oh, yeah. They definitely need the coal. When it
2 would come from --- I know we went in there before and
3 the boss was under pressure to call out for coal, you
4 know, because if you had some things to take care of
5 and you got into the coal late, then, you know, he had
6 some explaining to do when he got outside. That's why
7 you get it started sooner, so you know, the pressure
8 was on them also. So I had went in there and my miner
9 would be the one up first, so you know, you get the
10 coal and get that first buggy loaded so they could
11 make that call outside so to keep the pressure off of
12 him.

13 Q. Did you ever know anybody that was fired over not
14 producing?

15 A. There had been so many men fired there, I can't
16 say whether it was over not producing or not. They're
17 not going to fire you on the spot. They had a habit
18 of writing people up.

19 Q. They'd write you up and then maybe try to force
20 you to quit on your own?

21 A. Right. Or if they write you up twice, then the
22 third time you were fired and they got the paperwork
23 there. Look, we wrote this guy up twice and he
24 wouldn't have any leg to stand on.

25 Q. Okay. Let's go back to the atmosphere at the mine

1 and then we'll come back to the ventilation. When an
2 inspector was in the mine, did you all know he was
3 coming?

4 A. Yes.

5 Q. How'd you know that?

6 A. The dispatcher would call up to the section.

7 Q. And who was that dispatcher?

8 A. They had so many different ones and they switched
9 out shifts, so I can't name any certain name.

10 Q. And what happened after that?

11 A. After that, you know, we would be informed that
12 the inspectors were on the property. Didn't know
13 exactly where they were going and --- but anyway ---.

14 Q. Were you ever told to stop, tidy up?

15 A. Oh, yeah. Yeah, you want the scoop, clean places
16 and dust, make sure you dust, get all the curtains
17 right.

18 Q. Why do you think they would do that then?

19 A. Well, I've always said this. If they just ran
20 right to start with, they wouldn't have to worry about
21 this stuff, but --- you know, everything is a sense of
22 urgency and a hurry in the world of Massey, they don't
23 bother doing things right all the time.

24 MR. HUDSON:

25 Without interjecting, but didn't you tell

1 me once that they had lowered the speed of the shearer
2 when they were running the dust pump?

3 A. Uh-huh (yes).

4 MR. HUDSON:

5 When they knew inspectors were coming,
6 they'd slow the shearer down? I mean, you can say.
7 You said a bunch of stuff.

8 A. Yeah.

9 BY MR. STEFFEY:

10 Q. And did you experience that directly, them
11 lowering the speed of the shearer?

12 A. Oh, yeah. Yeah, yeah. We'd slow that shear down.
13 It probably wouldn't go a foot a minute.

14 Q. What was your normal mining rate?

15 A. As fast as you can run it, you know. Whatever the
16 belts would hold. Sixty (60) foot a minute, 70 foot a
17 minute if the conditions allow, but --- yeah, we'd
18 slow that shearer down and keep the shield 10 or 15
19 shields behind the shearer to keep the dust down. And
20 the fact is, is it was --- I think Reba, was a mine
21 inspector. This is several years ago. She said,
22 what's wrong up there or something. And you know, I
23 said they must have a rock on the shearer.

24 Q. Why do you think they would do that? Is that to
25 get their dust to ---?

1 A. Get the dust in compliance.

2 Q. And then the rest of the time, they'd run wide
3 open?

4 A. Oh, yeah.

5 Q. So it's fair to say then that how you ran on the
6 days that you ran dust was an accurate reflection of
7 your normal production practices?

8 A. That's a very fair statement.

9 Q. Okay.

10 MR. HUDSON:

11 I think while you're on the longwall you
12 might as well talk about putting it in the coal
13 without all the shields being set up, just to call
14 outside. I'm not telling you stuff that he hasn't
15 told me, so you might as well tell that story.

16 A. Yeah, we'd be on the longwall move, and I always
17 joked that these guys did this --- that somebody could
18 make that first call to Blankenship, but we wouldn't
19 even be finished setting the shields. Usually it's
20 like about three, but I've seen it as high as 20
21 shields still needing set on the face, and they'd fire
22 that shearer up and take it to the tail. So they
23 could call out and say, hey, we got her in the coal.

24 And I know one day I was spinning the shields on,
25 you know, had to drive in my shields in nose first.

1 And that shearer started up and the dust --- you
2 couldn't see anything. I just shut the holler off and
3 went around there. I said, look, I ain't setting
4 these shields 'til you all quit. I ain't killing
5 somebody because, you know, that's tedious work the
6 last two shields on a longwall. It's dangerous. And
7 you know, that made me mad.

8 Q. When you say you got mad, did you --- you told
9 them. Who were you telling?

10 A. I was telling the set-up boss on the longwall.
11 He's one of them that had the shearer. And I told him
12 I wasn't putting another shield in there.

13 Q. And what was his reaction?

14 A. He just went ugh, and I think the line shut down
15 at the time. Something broke or whatever, so that was
16 the end of that. So it became irrelevant.

17 Q. We're going to come back to that longwall. You
18 probably have some answers to some questions that I've
19 got concerning it, but let's go back to this Headgate
20 22 section here and let's talk about ventilation up
21 there a little more. You mentioned several times that
22 you go up there and you haven't had proper quantity of
23 air?

24 A. Right.

25 Q. Have you ever been on that section when there was

1 an air reversal?

2 A. Not on our shift. I don't recall one air reversal
3 on my shift.

4 Q. Okay.

5 MR. HUDSON:

6 I think you need to talk about cutting
7 the crosscuts the wrong way. That was on your
8 section.

9 A. You may not be aware of this. The question may
10 not arise, but we were told --- and of course, our
11 intakes come in here.

12 BY MR. STEFFEY:

13 Q. Uh-huh (yes).

14 ATTORNEY WILSON:

15 When you say here ---?

16 A. At Number Two entry.

17 BY MR. STEFFEY:

18 Q. Number Two entry.

19 A. Okay. And then when it gets to the power center,
20 it goes over to Number One and then up and across the
21 faces to Number Three, the return. Okay. Of course
22 the proper way to mine these, always keep the air to
23 your back.

24 Q. That's right.

25 A. Turn your crosscut to the right. All right. We

1 were made --- of course you turn the Number Two to
2 Number One, the proper way, but we were made to turn
3 from Number Two to Number One. Anyway it was cutting
4 it back.

5 Q. So you would cut from ---

6 A. We'd cut ---.

7 Q. --- Number Two to Number One, and that was cutting
8 against your air?

9 A. Yep. And when you punched the crosscut through,
10 you're cutting into your intake and blowing the air
11 right over top of you and your buggy man. And this
12 came from Chris Blanchard, and I know this for a fact.
13 And you know, I'd look at Smurf, Richard Hutchens, my
14 boss. I'd say, that's wrong, that's against the law.
15 And Blanchard said he wanted it done that way. I said
16 --- you know, he had to do it that way. If he didn't
17 Blanchard would have fired him, and I know he would
18 have, so he was just following orders. And so that's
19 what we did until we got on up in here so far and then
20 we started doing it right. I said, wow, wonder why
21 we're doing it right now, but ---.

22 Q. What was his reason for wanting it cut like that?

23 A. The only reason I can come up with, and I'd hope
24 that you'd ask me that, is over here at Number One you
25 can only run one buggy. That's all we could run.

1 Over here, you can get two buggies to the miner, so
2 that would be the only reason I can think of, just to
3 load more coal, get it quicker and the heck with doing
4 it right.

5 Q. Okay.

6 A. And one other time we moved the belt, and not too
7 soon, and this wasn't approved.

8 Q. What break are we talking about?

9 A. I really don't know exactly what break.

10 Q. It was on the current Headgate 22?

11 A. It was on the current Headgate 22, but anyway I
12 got the drawing here to show you.

13 ATTORNEY WILSON:

14 We're going to get another map, so why
15 don't we --- let's go off the record.

16 OFF RECORD DISCUSSION

17 ATTORNEY WILSON:

18 We're back on the record. Marked as
19 Exhibit Stewart Three an enlargement of the Headgate
20 22. Is that true?

21 (Stewart Exhibit Three
22 marked for identification.)

23 EXAMINATION

24 BY ATTORNEY WILSON:

25 Q. Before we went off the record, Mr. Stewart, you

1 were explaining --- or describing the mining method of
2 driving the crosscuts. And what I would like for you
3 to do is with the highlighters indicate what you had
4 testified to before we went off the record. And so
5 keeping in mind that the entry, the belt entry is the
6 Number One entry; is that right?

7 A. Right.

8 Q. And then the middle entry, Number Two, that was
9 the intake; is that right?

10 A. Right.

11 Q. And then the Number Three entry would be the
12 return; is that right?

13 A. Right.

14 Q. All right. So what I would like for you to do is
15 take this yellow highlighter, and with arrows,
16 indicate the direction that the crosscuts were
17 supposed to be driven.

18 A. From Number One to Number Two Crosscut, those
19 would have been turned from the Number One entry,
20 Number Two.

21 Q. Maybe you can put an arrow at the end of it.

22 WITNESS COMPLIES

23 BY ATTORNEY WILSON:

24 Q. Okay. So you showed that in four different ---
25 you know what, that's not coming out too well. Let's

1 use this other yellow. Maybe that'll be a little
2 clearer. And then if you can take the blue marker
3 that you have and then show how you were actually
4 driving ---.

5 A. Okay. We were instructed to turn the crosscuts
6 from the Number Two entry towards Number One.

7 Q. And you're indicating that in blue?

8 A. Right.

9 Q. And when you first started driving the 22
10 Headgate, which way were you driving those crosscuts?

11 A. When we first started?

12 Q. Yes.

13 A. When we first started, we were turning them the
14 proper way from Number One into Number Two, and then
15 we were told stop that and start turning them from
16 Number Two into Number One. And that came from Chris
17 Blanchard.

18 Q. But how do you know that came from Chris
19 Blanchard?

20 A. My boss told me so.

21 Q. And was that Mr. Hutchens?

22 A. Yes, sir.

23 Q. Did Mr. Hutchens --- what else did he say to you
24 about that practice?

25 A. We would simply say to him that, you know, that's

1 against the law, that's wrong and what's wrong with
2 doing it the right way? And his answer would be,
3 because that's the way Blanchard said to do it. You
4 know, we had to do it that way. Or I know he did, and
5 I guess if we did turn them wrong, you know, it could
6 have come back on us also. We'd lose our jobs or he
7 could lose his also for not following orders.

8 RE-EXAMINATION

9 BY MR. STEFFEY:

10 Q. Now, when did he quit?

11 MR. HUDSON:

12 Approximately two months before ---.

13 A. Yeah. Yeah, a couple --- a month or two before
14 the explosion, April the 5th, so it had to be February
15 or March.

16 BY MR. STEFFEY:

17 Q. And what about the guy that replaced him, who was
18 that?

19 A. His name was Pat Hilbert.

20 Q. Okay. What about him?

21 A. Pat Hilbert was a good guy --- and we had already
22 stopped this practice by then, but --- yeah, Pat run
23 the section as best he could.

24 Q. Now, when you say you stopped this practice by
25 then, what was the reason for stopping?

1 A. The boss was told to start turning them on the
2 proper side.

3 Q. Did anybody ever find out why they changed?

4 A. No, I never heard of why. I just laughed and
5 said, wow, you mean we're going to do it right now? I
6 don't know if they had ever gotten caught on this or
7 anything like that. We just started doing it right.

8 ATTORNEY WILSON:

9 Do you recall, approximately, when this
10 order from Blanchard came down to cut the crosscuts
11 from the One to the Two entry?

12 A. Not exactly when, no, but I know we went at least
13 2,000 feet turning the wrong way and probably a little
14 more than 2,000 feet. But I know it was at least
15 2,000 feet we had to do it like that.

16 MR. STEFFEY:

17 Okay.

18 ATTORNEY WILSON:

19 Terry, do you have any follow-ups?

20 MR. FARLEY:

21 Yes.

22 RE-EXAMINATION

23 BY MR. FARLEY:

24 Q. Listening to what you said earlier, that the ---
25 that when you experienced low air problems --- and I'm

1 not sure I understood where ---. And you called a
2 state mine inspector that you had ---?

3 A. Yes.

4 Q. Okay. Now, was that low air problems on 22
5 Headgate?

6 A. When I called the inspector, which is the only
7 time I've done that in my 34 years, no, it was on the
8 Headgate One North.

9 Q. Okay. Would that have been sometime in 2009?

10 A. Yes.

11 Q. Okay. Do you recall who the inspector was that
12 you called?

13 A. Yes, I do.

14 Q. Who would that be?

15 A. Don Hendricks.

16 Q. Okay. Now, did somebody from the Office of
17 Miners' Health, Safety and Training respond to your
18 complaint? Did they send someone out to check on the
19 ventilation?

20 A. They did send people up there, and Don actually
21 told me --- he thanked me. He said, we count on
22 people like you.

23 Q. Okay.

24 MR. HUDSON:

25 You ought to tell him the experience of

1 what the feds and the State would say to you in
2 passing on the QT. I mean, I think they need to know
3 the atmosphere there and explain.

4 A. Right. This would have been March the 9th.

5 BY MR. FARLEY:

6 Q. Of this year?

7 A. Right. And I don't know who the --- I don't know
8 the names of these two inspectors, but anyway, they
9 had the mine shut down. In fact, they sent us home.
10 Dayshift had already been sent home. And anyway they
11 had a talk with us, went over some things with us
12 outside, and that one told each and every one of us
13 that if we had a problem with anything, fellows, he
14 said, just walk by me. You don't even have to give me
15 your name. Nobody has to know that you even spoke to
16 me and just tell me the problem in passing by, you
17 know, like you're not even talking to him. Just let
18 him know that --- what your problem might be and he
19 would not use your name or any reference to you.

20 And you know, he was just being a good guy because
21 he knew the situation there, you know. If you run up
22 to an inspector to go tell him a bunch of stuff, you
23 know, Massey's going to get rid of you. Not that day,
24 but some day and some day soon probably, but, yeah, I
25 remember that vividly, him requesting that, you know

1 --- just let him know discreetly if we had any
2 concerns. Because everyone was afraid to say anything
3 to anybody, you know. You knew you keep your mouth
4 shut or you're marked and once you're marked --- they
5 like to use the term member. You would not be
6 considered a member and they wouldn't need you any
7 longer. I thought I'd bring that out.

8 Q. Okay. I want to make sure I got it correct. When
9 you talked to Don Hendricks, someone from the Office
10 of Miners' Health, Safety and Training did respond to
11 your complaint?

12 A. Right. They did respond.

13 Q. Okay.

14 A. Yeah.

15 Q. On the 22 Headgate section, do you recall any
16 instances where the two continuous miners were
17 operating at the same time?

18 A. There may have been a couple of times, but we
19 didn't make a practice of that.

20 Q. Do you know the last time that might have
21 happened?

22 A. No. Usually that would happen like one miner
23 would be cleaning the place up or something and then
24 the buggy may run to the other end and get going a
25 little bit ahead of schedule.

1 Q. Okay. So clean-up in one maybe and cutting
2 coal ---?

3 A. Right. That would happen sometimes.

4 MR. HUDSON:

5 Would you consider that on the same split
6 of air?

7 A. Uh-huh (yes).

8 MR. HUDSON:

9 Okay.

10 ATTORNEY WILSON:

11 You have to say yes or no.

12 A. Yes, sir.

13 BY MR. FARLEY:

14 Q. And would that be contrary to the ventilation and
15 dust control plan?

16 A. Yes, it would be.

17 Q. Now, I know you talked about encountering as much
18 as 1.8 percent methane on the 22 Headgate section.
19 Did you folks consistently operate the mining machine
20 when the methane would reach one percent?

21 MR. HUDSON:

22 I think you folks need to be defined as
23 Stanley, and I think he should answer the question.

24 BY MR. FARLEY:

25 Q. Did you do so, Mr. Stewart?

1 A. I did a few times, yes, and --- but if it got much
2 above one I would back up.

3 Q. You indicated that you were with the crew that
4 mined the tailgate entries for the existing longwall
5 and that you would have been with the crew that mined
6 through the connecting entries to the Headgate One
7 North and the diagonal which connected into the
8 Headgate One North entry?

9 A. Yes.

10 Q. Now, when either of those two panels was mined
11 through to Headgate One North, was anyone working inby
12 towards Bandytown?

13 A. No. No, when we punched through --- like that one
14 night we had to stay 16 hours to get the longwall face
15 across and we was ready to pump it through, we were
16 told to stay 'til it was finished. And the reason
17 being, they wanted us to do it before anyone got in.
18 So the dayshift --- they wanted us to cut through and
19 get the stopping belt before we could go home so
20 dayshift would be ready to load the coal that morning
21 because heaven forbid they lose an hour of loading
22 time.

23 Q. Now, I think you --- sometime prior to 2009 you
24 worked on the longwall at UBB; is that correct?

25 A. That's correct.

1 Q. Now, at any time that you were working on the
2 previous longwall panels, did you experience any
3 instances where you had a methane outburst from the
4 mine portal?

5 A. Yes, I did, several of them.

6 Q. Can you tell me when and give me a description of
7 each, please?

8 A. Okay. I can't remember the exact time frames for
9 these.

10 Q. Do you remember which panel they occurred on?

11 A. No. And we mined so many panels I got mixed up on
12 which panels they occurred on, but I know we did one
13 one time. It sounded like a dead airplane engine,
14 roaring, and it was putting out so much methane that
15 it was five percent all the way back to the power
16 center. And we had went on the face one time. We
17 were down for three days, and the inspector told my
18 son, he worked on another longwall crew, that they
19 were getting 50 percent at mid face. And he said, had
20 we been out on the tail, you know, we might have had
21 the lack of oxygen, it was putting out so much.

22 Q. When you say 50 percent, you mean ---?

23 A. Methane.

24 MR. HUDSON:

25 I think you need to tell them about the

1 fireball that you had on the longwall. Not assuming
2 an ignition from the shear, but talking about the fire
3 ball.

4 A. Oh. The '97 explosion.

5 MR. HUDSON:

6 Yeah, I think you ought to --- yeah.

7 That's still --- yeah.

8 A. Well, we had a --- I call it an explosion after
9 this one. They refer to it as an ignition. That was
10 in '97, and I thought I was a dead man that day. Most
11 of them went down the tail entry and that came from
12 behind the face, the tail entry. I saw the glow
13 coming, I just took off running down the face.

14 BY MR. FARLEY:

15 Q. Down the longwall face?

16 A. Uh-huh (yes). That would have occurred in '97 and
17 then I know my son in '05, he told me about a couple
18 fire balls around the rim of the shearer, and he went
19 to management and they told him the bits were just
20 hot, keep loading coal. And he said it was so dusty
21 you couldn't see, which I worked that longwall face.
22 It was like that more often than not.

23 MR. HUDSON:

24 And I think you ought to --- you know,

25 while you're on the longwall, you know, I think what

1 you've told me ---. And I'm not putting words in your
2 mouth, but the build-up of the water behind the
3 longwall that wouldn't allow the bleeders to bleed was
4 --- you said you felt it was a lot of the problems
5 with the methane build up.

6 A. Especially on the one we're on now. We
7 encountered a lot of water and they brought that water
8 the whole way and dealt with it. And I felt like it
9 was roofed out. And plus those entries, the top was
10 bad.

11 BY MR. FARLEY:

12 Q. Now, when you say there was an increase in the
13 water in the longwall panel, did you mean the longwall
14 panel that was being mined on April 5th ---

15 A. Right.

16 Q. --- of this year?

17 A. Yes, sir.

18 Q. And could you indicate on the map where the water
19 problems were as best you can remember?

20 A. I felt like they had water problems --- they had
21 them on the tail.

22 Q. Can you give me a number there approximately, a
23 specific location as best you can ---?

24 A. I don't know about specific location.

25 Q. But you're referring to the tailgate entries on

1 the longwall panel which was being mined as of April
2 5th of this year?

3 A. Right. I feel like that probably starting from 65
4 up they probably had water problems. Now, I'm not
5 sure exactly what all places. And then over on the
6 headgate side, they had water problems most of the way
7 up, all the way to the head up. In fact, we dug a big
8 dewatering trench up at the head of it, but I don't
9 believe the water made it to it.

10 Q. Would the water problems in the headgate entries
11 would started in the vicinity of where the longwall
12 panel commenced mining?

13 A. Yeah. Yeah, they had ---.

14 Q. Is that accurate?

15 A. Yes, that's accurate. Our section was shut down
16 for a week. We was up there building a Kennedy
17 stopping wall in the middle of the entry of the ---
18 all the stoppings had rode out, falling out in the
19 entries. And there was water running and going
20 up ---. I don't know exactly where they may have
21 been, but to me, it was just all the way.

22 Q. Okay. At any time did you work in the water in
23 helping set any pumps or anything like that?

24 A. When we were mining up in toward the head of
25 Headgate One North, yeah, we had pumps set and we'd be

1 mining in water especially over in the Number Four
2 entry.

3 Q. Now, are you --- can you be more specific as to
4 where you're talking about on the map, please?

5 A. I'd say we started encountering it, like I said,
6 most of the way. It just went with us from, let's
7 say, 85 all the way to 135.

8 Q. 135 into the Bandytown fan location?

9 A. Uh-huh (yes). Yes, sir.

10 Q. Prior to April 5th, what was the last shift you
11 worked at UBB? Excuse me.

12 A. It would have been April the 1st. I believe that
13 was a Thursday.

14 Q. How was your ventilation on the 22 Headgate
15 section on that shift? Had it improved at any time?

16 A. Yes, it had improved. It seemed like a couple
17 weeks prior to that the inspectors had shut them down
18 for low air and we went back to work and we had air.

19 Q. Do you know how or why it improved?

20 A. No, I don't. I have heard that the longwall had
21 less air, so I don't know that they took it from the
22 longwall or not. I don't know where they got it. I
23 don't know why we couldn't get it before.

24 Q. When you said you heard that the longwall had less
25 air, did you hear that from anyone in particular,

1 anyone that actually worked on the longwall section?

2 A. Well, as the guy told me, that there was a
3 stopping, a door or something and it just had a wing
4 wall out of it. Their intake went up the track and so
5 they just more or less had regulated it down. Now,
6 that's what Bill told me.

7 Q. Okay. Well, you worked on the longwall at UBB on
8 previous panels?

9 A. Right.

10 Q. How much --- in cubic feet per minute, how much
11 air did you normally have on your intake side of your
12 longwall coming across the headgate at those times?
13 Can you recall any of them?

14 A. I remember some of the early panels had like
15 120,000 and then there'd be other panels. It'd be 40,
16 50, 60 pounds at the headgate.

17 MR. HUDSON:

18 Wasn't there a theory you told me that
19 when one section would bitch there's no air then air
20 would be put on that section, then the other section
21 would be starving for air? Was that your theory,
22 or ---?

23 A. Yeah, that happens. And I know one time we didn't
24 have much air at all around the headgate and it was
25 misery working down that face. You get to the face

1 you wouldn't have any, and I'm not kidding. I could
2 not see the shield beside of me pulling up, and I told
3 shield. I just know from experience where it would
4 have been, and it would be hot and miserable. I
5 remembered the oxygen being down to like 18.8 or
6 something on the tail, and we came in the next day and
7 I went around the head drive and there was no air. I
8 said, we can't load in here. Went straight to the
9 shearer, the line started and they started the shearer
10 up. No, this is it. I don't care. I got fight in me
11 and I didn't care. They could fire me, they could do
12 what they please, I was ready to shut the line off.
13 And the Headgate operator hollered up and wanted to
14 know what was wrong. I said, we're not loading. We
15 don't have any air at all. So they called outside and
16 said that I had shut it down and about two or three
17 hours later we had air.

18 BY MR. FARLEY:

19 Q. He said it was on one of the previous ---?

20 A. One of the previous panels, yes.

21 Q. Okay.

22 A. Giving you an indication of things, how they work
23 sometimes.

24 Q. Okay. Would that have been sometime prior to
25 2009?

1 A. Yes, that would have probably been back in '03,
2 '04 range.

3 Q. Okay.

4 MR. HUDSON:

5 Don't you have an entry in your book on
6 September 9th? I mean, I read in the paper that there
7 was a page missing out of the fire boss book,
8 supposedly in October or something, but you got a 2009
9 note in your notes that that you kept? I don't know
10 what --- when the page was missing. I just read the
11 paper, but ---.

12 A. '09 ventilation problems and we missed that whole
13 week, off, off, off, off, off. So ventilation
14 problems.

15 BY MR. FARLEY:

16 Q. Would that have been around the time the existing
17 longwall fired up?

18 A. No, it was already in operation then. I think
19 they fired it up in August maybe, somewhere in late
20 August.

21 Q. Do you know where the ventilation problem would
22 have occurred in the mine that caused you to be off
23 for a few days?

24 A. I believe it was on the longwall.

25 Q. Are you certain they were ---?

1 A. I'm pretty certain they were struggling to get the
2 ventilation proper on the longwall.

3 MR. FARLEY:

4 Okay. All right.

5 ATTORNEY WILSON:

6 Pat, do you have some questions?

7 RE-EXAMINATION

8 BY MR. MCGINLEY:

9 Q. Let me go back and ask you about a couple of
10 things you said earlier. You were talking about the
11 mobile equipment, airlock doors. I think it was
12 around the 76 Break and you said they wouldn't close
13 properly and swing open?

14 A. Right. If you didn't --- the way they were hung,
15 if you didn't shut one first then they would swing
16 open.

17 Q. So would that happen immediately or whoever would
18 close the door they would walk away and look back and
19 see ---?

20 A. Look back and see it.

21 Q. Is it possible they would swing open and no one
22 would see?

23 A. That could be possible, depending on who's going
24 through them. Say a motor crew or something shut it
25 wrong or something like that.

1 Q. There was some question about the Thursday or so
2 before Chris supposedly --- supposedly that Chris
3 Blanchard and a couple more guys that went in and done
4 something that Thursday that nobody actually knew what
5 they were doing to the air. Was it ever figured out
6 what they did when they went in that shift to do
7 whatever they did themselves, you know, people had
8 told you and ---?

9 A. Yeah, yeah. What they did, I have no idea. They
10 didn't share information about the things they did do.

11 Q. Earlier you talked about Mr. Hutchens and the time
12 when he --- you had low air on Headgate 22. I think
13 Mr. Hudson had helped to prompt your memory about
14 Hutchens saying that he was afraid of what was going
15 to happen. Can you put that in your own words? What
16 did Hutchens say to you about his concerns?

17 A. He was just worried about all the air problems
18 they had at that time. That he knew the potential was
19 there for something to happen is the way I took it,
20 what he meant and the danger he listed. And the air
21 problems weren't addressed. And it was very real, and
22 so, yeah, that was his concerns.

23 Q. When he say something would happen, did he say
24 anything in --- more specific than something would
25 happen?

1 A. I can't recall him actually saying it would blow
2 up or anything like that, but that was a concern of
3 all of ours, and some of us would use those words. I
4 know I used them myself.

5 Q. So you took Hutchens to mean that ultimately if
6 the ventilation problems weren't fixed, there's a
7 possibility of an ignition or an explosion?

8 A. Yes, absolutely. Yeah, he knew that, and I knew
9 it. In fact, I even voiced it to my wife last year.
10 I went home from work and got mad and never said a
11 word to her. I didn't say nothing to her about
12 anything, and she out of the clear just said, what's
13 bothering you? And I said, well, I said, if anything
14 ever happens to me you sue the crap out of them. I
15 told her on my own exactly what I told her. I said,
16 that place is a ticking time bomb up there. I said,
17 there's a lot of wrong. She asked me --- she said,
18 well, I don't know anything, what to say or do, for me
19 to write down a few things in case something did
20 happen. I did make a few notes. I wish I made more,
21 but some days I'd come home and say, I need to write
22 this down or that and the day would go by and another
23 day and I --- a few times I did write a few things
24 down.

25 Q. Did you write things down contemporaneously at the

1 same time they would happen? Like you'd go home and
2 write it down?

3 A. The notes I have, yeah, I'd write them down then.
4 That's why I dated some of them.

5 Q. Is that --- you brought a small notepad in with
6 you. Is that where you wrote them or did you rewrite
7 them into that ---?

8 A. No, I wrote them. This is the original writing.

9 Q. Would you be willing to share those with --- for
10 the investigation?

11 A. Well, if you ---.

12 MR. HUDSON:

13 I'd probably say wait until your attorney
14 --- you know, wait 'til you talk to the attorney about
15 that.

16 A. Okay.

17 MR. MCGINLEY:

18 Okay. But you'll get back to us ---

19 MR. HUDSON:

20 Yeah.

21 MR. MCGINLEY:

22 --- promptly on that?

23 MR. HUDSON:

24 Yeah.

25 BY MR. MCGINLEY:

1 Q. When your wife asked you what you were concerned
2 about, you said that was last year. Would that have
3 been when you were up in the One North?

4 A. Right. Yes, sir.

5 Q. Do you know anything about methane bursts on the
6 longwall face going back a few years, 2003, 2004,
7 somewhere around that time period?

8 A. What we call a bleeder coming up out of the
9 bottom? Is that what you're referring to?

10 Q. Something that was major that, you know, went
11 along with a long crack opening up?

12 A. Yes. Yes, I'm very aware of several of those.

13 Q. What do you know about it?

14 A. All I know is like --- I assumed the pressure from
15 the longwall up at the methane underground and the
16 bottom would burst or crack and release it.

17 Q. Were you working --- ever working at a time when
18 that happened?

19 A. About every one of them.

20 Q. Is that right? Were you working on the longwall?

21 A. Yes.

22 Q. And can you describe what happened? Was there
23 sound? Was there --- you know, could you smell
24 something? What was ---?

25 A. Right. They would make a roaring noise.

1 Q. Like the one you described earlier in your
2 testimony?

3 A. Yes.

4 MR. HUDSON:

5 You already testified to the water
6 bubbling and coming up from the bottom.

7 A. Yeah. I mean, ---

8 BY MR. MCGINLEY:

9 Q. Well, we're talking about 2004

10 A. --- we tested the bleeders.

11 MR. HUDSON:

12 Okay.

13 A. I mean, you could actually see it. I mean, it
14 looked like looking at a railroad track in the
15 summertime, you know, like the heat coming off it. I
16 recall being able to like, you know, see it. And it
17 would have a little --- it seemed like a different
18 smell.

19 BY MR. MCGINLEY:

20 Q. Did it affect the shears or any of the equipment,
21 if you recall?

22 A. Yeah. Yeah, it knocked the power.

23 Q. And so production stopped?

24 A. Uh-huh (yes). Yeah, we did those. Yeah, we
25 stopped, went outside.

1 Q. Do you have any recollection of how many times
2 that might have happened, just roughly?

3 A. I'm thinking about four. Three or four. At least
4 three for certain.

5 Q. Did production stop each time?

6 A. Yes.

7 Q. Were men withdrawn each time?

8 A. Right.

9 Q. Was the longwall shut down for, you know, a shift
10 or a few days after those?

11 A. Yes. One in particular seemed like three days,
12 and the others I don't remember being down
13 tremendously a long time. They'd let them bleed out.

14 Q. What do you mean by that, for the record, for
15 people who don't understand?

16 A. Okay. They let them liberate all the methane they
17 were going to liberate and stop and then we could go
18 back to work.

19 Q. Did the foreman or any management bosses talk
20 about the --- after those occurred talk about any
21 particular precautions to take because these things
22 were happening?

23 A. No, I don't recall anyone talking about taking any
24 particular precautions. No, I don't remember anything
25 like that.

1 Q. Did anybody from management form --- explain what
2 they thought had happened, what had caused these
3 methane bursts?

4 A. No, they didn't really explain it to us. I guess
5 everyone automatically assumed that, you know, the
6 weight and the pressure and gas trapped down under and
7 the bottom would crack and break, out it would come.

8 Q. In your 30-some years of mining experience is this
9 --- those methane bursts unusual?

10 A. Those are the only ones that I've witnessed of
11 that nature. Yeah, I would consider it seemingly
12 unusual.

13 Q. Going through that, experiencing that, did that
14 make you concerned about the liberation of gas
15 and ---?

16 A. Yes, absolutely. Yeah, we had one one time ---
17 there was some officials on the longwall. I can't
18 remember exactly. I know the president of the company
19 was there, and they switched presidents so many times
20 I can't recall his name, and some more people with
21 him. I was on the tail and we was leaving the face
22 and I was wanting to panic a little bit, because I
23 didn't feel like they were leaving the face fast
24 enough to suit me. I wanted to get off of there, and
25 I almost was ready to run. I had a little bit of this

1 massive sense of urgency, we need it now. But yeah,
2 it was a definite concern.

3 Q. I didn't ask you this. When those occurred what
4 job were you performing, if you recall?

5 A. The jacksetter.

6 Q. When you were working One North you said most of
7 the time you didn't have adequate air.

8 A. Correct.

9 Q. Do you recall the state inspector --- and they
10 sent some people out. Did the air get better after
11 that?

12 A. I recall it got better for a short period of time,
13 but I also recall when we finished that panel up we
14 never did really have adequate air.

15 Q. Well, do you remember what the air readings were?

16 A. No, I do not. The boss took those.

17 Q. Would you expect that the pre-shift examination
18 reports would indicate that there wasn't adequate air?

19 A. If they were recorded properly they should have,
20 but no guarantee of that.

21 Q. Why do you say that?

22 A. Because I feel like they're going to put in those
23 books what they need to put in them to keep everything
24 right, look good on paper.

25 Q. They had Mr. Hutchens --- you think he put the

1 accurate air readings? I know you said he went and
2 talked to management about it. Do you think he wrote
3 down the ---?

4 A. I don't know if he would have been forced to ---
5 or told to do that or not. I can't answer that one.

6 Q. Would there have been some pressure on the folks
7 taking the readings not to report it?

8 A. Yeah, they wouldn't get pressure on it, and there
9 was a boy just here recently that quit another one of
10 their mines because he was getting pressured to try to
11 put false air readings in the book, and he just quit.
12 This was after April the 5th.

13 Q. What was his job? Do you remember?

14 A. He was a hoot owl foreman, I believe, and he
15 wasn't getting --- I talked to him personally. He
16 said the anemometer wouldn't even move, but he was
17 told to put it in the book.

18 Q. Told by somebody outside of the mine?

19 A. Somebody in higher management than him.

20 MR. HUDSON:

21 I mean, I know this story, too. And then
22 offered another job, he didn't want to fill out the
23 book. You go somewhere else and work in the mine, but
24 he quit and walked out the door.

25 BY MR. MCGINLEY:

1 Q. Did you hear him say that, Mr. Stewart, offered
2 another job?

3 A. Yes. I didn't hear him ---.

4 MR. MCGINLEY:

5 Just you're not sworn, so ---.

6 MR. HUDSON:

7 Okay.

8 A. Right, right. This guy told me that, yeah, he ---
9 they offered to let him work somewhere else so they
10 could get somebody to do the job he was doing.

11 BY MR. MCGINLEY:

12 Q. Was it a Massey mine?

13 A. Yes.

14 Q. Can you recall which one?

15 A. It was --- he was a Black Knight or White King.

16 I'm not exactly sure. It was one of them out of Price
17 or Whitesville.

18 Q. How recently did this happen?

19 A. This just happened a couple months ago.

20 Q. Since April 5th?

21 MR. HUDSON:

22 Yeah, I wouldn't even call it a couple
23 months ago.

24 A. Maybe not that long ago.

25 MR. HUDSON:

1 No, it wasn't that long ago.

2 A. Yeah, it may have been a month, month and a half.

3 BY MR. MCGINLEY:

4 Q. How many times have you read this, the S1 manual?

5 A. Who me?

6 Q. Uh-huh (yes).

7 A. I haven't read it.

8 Q. Do you know what it is?

9 A. I know what their S1 program is.

10 Q. Do you know there is --- the only thing about an
11 S1 manual before I mentioned that term?

12 A. No. Actually, no, I don't have any knowledge of
13 their S1 manual.

14 Q. Massey Energy has made public, and I think it
15 appears on their website, what is termed as corporate
16 social responsibility report 2009. And in that report
17 they have a section the heading is listening to our
18 numbers about safety practices. I'm going to quote
19 from there. It says, quote, Massey encourages active
20 involvement and empowers all Massey members at all
21 levels to be part developing and improving our safety
22 programs, end quote. Can you explain how Massey has
23 encouraged your active involvement and empowering you
24 to improve safety programs?

25 A. No, I can't explain any way they've empowered us

1 to improve their safety programs. I've never been
2 asked anything on improving their safety program and I
3 don't know of anyone else that has.

4 MR. HUDSON:

5 It's in the record, so ---.

6 BY MR. MCGINLEY:

7 Q. Do you have something else to add?

8 A. Yeah. They asked Blankenship to name one miner
9 that had withdrew himself, asked him up on the hill,
10 over a safety concern, and he couldn't name one.

11 Q. Do you know of any miners ever been disciplined as
12 a result of the company --- Performance receiving
13 citations from MSHA or the State?

14 A. I can't think of their names, but some bosses that
15 had been suspended and maybe a few miner operators,
16 different guys, had been suspended and some discharged
17 over --- yeah. And I forgot about Pickles. They had
18 a boss down there a couple of years ago, called
19 himself a boss, but they found out he didn't even have
20 his papers. They fired him.

21 Q. Well, with regard to disciplining miners or
22 management, you said you knew of some situations like
23 that. Any of those actions to discipline occur
24 recently in the last couple of years?

25 A. Yeah. It actually happened in the last year and a

1 half. I just can't remember those guys' names. They
2 get new people coming and going down there and then
3 you just hear of somebody being suspended or fired.
4 They like to do that anyway to keep that fear over
5 everyone's head.

6 Q. Do you think that's a positive thing for people to
7 get fired if they're --- for safety violations?

8 A. It would depend on the severity of the safety
9 violation, I feel, before they should be fired.

10 MR. HUDSON:

11 The question is, was there any miner
12 there that got an individual, personal assessment from
13 the inspector that you're aware of? That's an
14 individual personal assessment regarding the safety
15 standard.

16 BY MR. MCGINLEY:

17 Q. You were responding to my question more generally
18 about hearsay in the mine about miners and management
19 having to get disciplined or fired after the State or
20 Federal citations were received; is that correct?

21 A. Correct.

22 Q. You testified about miners being written up and
23 the third time they're out. What do you mean by that?

24 A. What I mean by that is they would write a man up
25 for whatever, you know. If they want to, they'll find

1 ways to write you up. They, I guess, put it on paper
2 and put it in your record you've been written up for
3 something that's bad. And they do that two times, the
4 third time they'll fire you. And the fact is, I know
5 two bosses personally told me that they were told
6 early this year or late last year to start writing
7 people up. They had cut our pay and they had a lot of
8 people under these enhanced agreements. Are you aware
9 of those?

10 Q. No. Explain enhanced.

11 A. The enhanced agreement, I call them the slave
12 labor contract where they was going to give you a pay
13 raise and if you didn't sign it, you didn't get the
14 pay raise. And you would be working at will, read
15 between the lines, whatever. And if you signed it you
16 got the pay raise, plus a bonus in the summer and the
17 fall or winter. And you'd still be fired for
18 unsatisfactory work or anything, anything they could
19 fire you for. And if you quit or were fired you were
20 not allowed to work at any mine anywhere within a 90
21 mile radius of any Massey mine. And plus you had to
22 pay back the difference of what you were making before
23 you signed the contract.

24 So that's basically covering the enhanced

25 agreement, but the coal market went a little bad, I

1 think, late last year or last year or whatever and so
2 they cut our pay. And then the bosses were told to
3 start writing people up, so I just figured that they
4 wanted to do that to go ahead and fire some guys
5 rather than --- you know, just up and fire them or had
6 a layoff. Because it guarantees you a job for three
7 years as long ---.

8 Q. The enhanced agreement did?

9 A. The enhanced agreement guaranteed you employment
10 for three years or they could fire you for any reason
11 they found, but --- and so ---.

12 Q. Did you sign an enhanced agreement?

13 A. I did not sign it for somewhere between six months
14 to a year and they added more pay to it, and you know,
15 finally I broke down and signed it for the simple
16 reason I ain't going to work beside these guys doing
17 the same job and some of these boys hadn't been in the
18 mine a year, two years, whatever. And so for the
19 money I went ahead and signed it. I just call it like
20 it is. It just didn't feel fair.

21 Q. So do you think that by signing that agreement,
22 had you been fired, you couldn't have gone to get a
23 job at any other mine within a 90 mile radius of a
24 Massey mine?

25 A. I would have. I wouldn't have cared what they

1 said because when they went over it with us I stood up
2 and said, ain't this America? I said, ain't a man
3 allowed to work wherever he pleases, you know? And
4 the woman just looked at me and she was probably
5 thinking, he's not being a member.

6 Q. Did anybody ever tell you those agreements aren't
7 enforceable under law?

8 A. I spoke with Marty about it when it first came out
9 and he said he didn't think it would stand up. And we
10 didn't think it would stand up either because most of
11 the guys worked there, you know, they're thinking they
12 signed it ---.

13 Q. They gave their word?

14 A. Excuse me?

15 Q. They signed it, they gave their word to abide by
16 it?

17 A. Yeah. Right.

18 Q. Will you share --- do you have a copy of that
19 enhanced agreement?

20 A. Yes, I do.

21 Q. Would you allow us to copy it?

22 MR. HUDSON:

23 There's a public record and he submitted
24 it to the Senate Committee, so it's in public record.

25 MR. MCGINLEY:

1 That way we can make it an exhibit.

2 A. I have to call my wife. I can't find it.

3 MR. HUDSON:

4 But it wasn't just Performance, it was
5 any Massey mine.

6 A. Right. It was a Massey-wide thing.

7 MR. MCGINLEY:

8 Do you want to take a short break?

9 ATTORNEY WILSON:

10 Sure. Why don't we go off the record?

11 SHORT BREAK TAKEN

12 ATTORNEY WILSON:

13 We're back on the record. We're waiting
14 to make copies of the enhanced agreement, so we'll get
15 back to that after we get those copies.

16 MR. MCGINLEY:

17 I'm going to continue here on a couple
18 other issues.

19 BY MR. MCGINLEY:

20 Q. Mr. Stewart, you mentioned the air problems and
21 the time when people for outside, management came in
22 and they were hanging curtains over stoppings. Now,
23 what area was that? Was that in 22 longwall or up in
24 the One North?

25 A. That was on Headgate One North.

1 Q. Okay. Is there any question in your mind that top
2 management of Performance knew about the air problems
3 that you experienced?

4 A. No, there's no question in my mind at all. They
5 had to know. They had to be aware of it, especially
6 all the times the men were pulled out of the mine and
7 they were shut down over the air problems. Right.
8 And I'm talking top management all the way to
9 Blankenship had to be aware of it.

10 MR. HUDSON:

11 Do you want to elaborate on how you know
12 Blankenship was --- well, I don't know if you was
13 there.

14 BY MR. MCGINLEY:

15 Q. My next question was, how do you know why
16 Blankenship would be aware?

17 A. All right. The bosses on the section had to call
18 out to the dispatcher every two hours a report, and
19 that had to be faxed to Blankenship every two hours,
20 every section of every mine that they operate. And I
21 know this for a fact because my son got his finger cut
22 off a couple of years ago, and they let him sit in
23 that office and dispatch. And he had to call those
24 reports to Mr. Blankenship, and if they weren't on
25 time then they would get a call from Blankenship

1 chewing them out. And so anything that went on he was
2 aware of it.

3 Q. Who was calling, the dispatcher? Who was it that
4 was making the call?

5 A. The dispatcher had the responsibility of faxing
6 Blankenship the report. Was that the question?

7 Q. Yeah.

8 A. Okay.

9 Q. Okay. And so he had a fax machine right there
10 with him?

11 A. Right. And then once the boss got outside they
12 came down, I think, late last year or whatever, that
13 they had 15 minutes to fax their final report.

14 Q. And do you know what's in these reports? Is it
15 production?

16 A. Production and downtime, why you are down, you
17 know, just standard reports that everyone gets on a
18 mine report. It would be production reports and
19 that's what would get faxed to them.

20 Q. So shift foreman would call out to dispatcher and
21 say --- every two hours and would say, this much
22 production and then the dispatcher would write it down
23 and fax it?

24 A. Right. They'd tell him how much footage you had
25 and what downtime or what might be down at the time,

1 and you know, the dispatcher would accept those
2 reports.

3 Q. So would you expect that when you had downtime
4 because of inadequate air that that would be on the
5 report, if you know?

6 MR. HUDSON:

7 I wouldn't know about it.

8 A. I don't really know. Right. I mean, just for
9 example, how Blankenship operates we move the
10 longwall, and we had down at Logan's Fork, and they
11 had to call their two-hour reports out on how many
12 shields had been pulled off the face. Okay? From one
13 two-hour period to the next one, the two reports
14 didn't jive, so Blankenship called my son personally
15 and was chewing him out because there was a one shield
16 discrepancy what was being pulled off the face. And
17 so that shows me he's right on top of everything. I
18 mean, you know, you get all the shields put off the
19 face, and we finish when it's finished. But he was
20 mad because them two reports didn't go together.

21 My son told him, look, I'm just sending you what's
22 called out to me. He had nothing to do with it. And
23 I think the president of the company came up there and
24 started chewing him out, and my boy said he stood up
25 and told him the same thing. You know, don't jump on

1 me because he hadn't even called about Blankenship.

2 Q. What mine was that?

3 A. That was at Logan's Fork at Sylvester. Our
4 longwall was there. We moved from UBB to Logan's
5 Fork, I think, in '06.

6 Q. What was your son's job?

7 A. He was a shearer operator and then he got off the
8 longwall and took a fire boss job.

9 MR. HUDSON:

10 I think --- I mean, you might as well go
11 ahead and tell him about the memo posted on the board
12 about production and ---.

13 BY MR. MCGINLEY:

14 Q. Well, Mr. Stewart, was there any memos posted on
15 the board outside UBB about production?

16 A. Yes, there was. Last year, '09, our block
17 superintendent.

18 MR. HUDSON:

19 Tell his name.

20 A. Yeah. Andy Kolson came up and posted if we did
21 not load 235 feet per shift, then we would not get our
22 vacation.

23 BY MR. MCGINLEY:

24 Q. When did that happen?

25 A. This was a couple months prior to vacation, so

1 that would have been at least April he posted that.

2 Q. 2009?

3 A. Right. April 2009. And if memory serves me
4 correct, time went on and we wasn't meeting those
5 demands, they posted another one that said 265. It
6 went up because we weren't getting what they had
7 wanted. And I know the reason behind it is we were on
8 Headgate One North and before they could set this
9 longwall up, we had to finish.

10 Q. When you say this longwall ---?

11 A. The longwall where it's presently located on
12 Headgate One North. It was sitting outside. They
13 pulled it out of Logan's Fork and brought it back to
14 UBB and it --- they couldn't start setting it up until
15 we finished Headgate One North and got that fan hole
16 drilled, and so ---.

17 Q. So they're really talking about your crew to set
18 up for the longwall there; is that right?

19 A. Excuse me?

20 Q. They were talking about your crews and setting up
21 for the start of the longwall?

22 A. Right.

23 Q. In terms of the notice on the board, ---

24 A. Right. Right.

25 A. --- that was directed towards you and the crew

1 you're working with?

2 A. Right. On the miner section driving Headgate One
3 North.

4 MR. HUDSON:

5 Did you get your miner's vacation?

6 A. No. No, we did not get our miner's vacation. Had
7 to work the --- even July the 4th.

8 BY MR. MCGINLEY:

9 Q. How long were those signs up on the bulletin
10 board? Do you have any recollection?

11 A. They were up at least two months. I can't recall
12 for sure if it was longer than two months or not, but
13 somewhere between two and three months.

14 Q. What size were they? Were they, you know, normal
15 notebook size, 9 by 11?

16 A. Probably bigger. Probably a little larger than
17 notebook size. It was written in handwriting and it
18 wasn't on a memo.

19 Q. Was it signed or did --- you know, did it say
20 management?

21 A. I can't remember for sure. I feel like it said
22 management, but I can't remember for sure.

23 Q. You mentioned the name of someone who was
24 responsible for posting it. What was his name?

25 A. Andy Kolson.

1 Q. How do you know it was him?

2 A. I saw him post it and we spoke with him, you know.
3 You know, you got to run coal, got to run coal, pour
4 it on. That was the famous word.

5 Q. Did you speak to him at the time he was posting
6 the sign?

7 A. We griped a little bit, you know, but he didn't
8 say too much.

9 Q. When did you learn you weren't going to have the
10 July vacation?

11 A. About a week before.

12 MR. HUDSON:

13 I mean, was there anything on that notice
14 that had to do with you need to be careful with
15 anything ---?

16 A. No. No, nothing on it to do with health and
17 safety. It's just get that mine footage or you do not
18 get your vacation.

19 BY MR. MCGINLEY:

20 Q. What about bonuses? You know, you mentioned this
21 enhancement agreement, giving bonuses. Was there any
22 possible impact on bonuses if production goals weren't
23 achieved?

24 A. On the enhanced agreement?

25 Q. That or otherwise.

1 A. Oh, well, of course they had a production bonus,
2 but on the enhanced agreement, you have to --- the
3 vacation bonus wasn't based on production, I don't
4 believe. It was based on attendance.

5 Q. So you said there's a production bonus. Can you
6 explain that?

7 A. I don't even know what it was, how much tonnage
8 you had to load to get to the bonus. Whatever it was,
9 we never got it.

10 MR. HUDSON:

11 Yeah. I think what you described to me

12 --- and I'm not going to say it, but you can say it.
13 But what you said was the field hole always kept
14 moving. If you got there, it would move to a
15 higher ---.

16 A. Oh, yeah. Yeah. In the prior years, if we were
17 bonusing good, then the standard went up in order to
18 continue bonusing.

19 BY MR. MCGINLEY:

20 Q. Did you ever get a production bonus while you
21 worked for Massey?

22 A. We got them in the early years.

23 Q. When would that be, when you say early years?

24 A. It would have been back in '97, '98, '99 when
25 there was a strong union threat. Bonused pretty good

1 then. Once the threat went to ebbing so did the
2 bonuses.

3 Q. So when would you say, roughly, just an
4 approximation the last time you got a production
5 bonus?

6 A. Probably the last one would be several years.

7 MR. HUDSON:

8 Well, we can look at the organizing
9 drives and tell you we had two drives there and
10 they're both tied, so that would have been when it
11 was.

12 A. Right.

13 MR. HUDSON:

14 We'd have to get those dates.

15 BY MR. MCGINLEY:

16 Q. Well, can you give me just off the top of your
17 head the 2000, 2002, 2008 ---?

18 A. Me personally, it would have been --- I know the
19 longwall got a few small ones in this past year, but
20 we never got one. It's possible we may have gotten a
21 couple small ones in '05. I can't remember.

22 Q. Was there something in writing about production
23 bonuses? I mean, how did you know that there was a
24 goal and that you could earn bonuses if you met that
25 goal?

1 A. It was word of mouth. I don't recall anything in
2 writing if they had it.

3 Q. Do you think that some people in the --- miners in
4 the longwall received small production bonuses
5 recently?

6 A. Some people on the longwall? Yeah, they had
7 gotten some. I seen the guys there, you know, with
8 their checks and talking about it.

9 Q. But you don't remember anything being in writing
10 about it?

11 A. I don't.

12 Q. Well, what about the goals, how do you know what
13 the production goals were that supposedly were to lead
14 to a bonus?

15 A. How do I know?

16 Q. Yeah. I mean, the number.

17 A. Oh, I didn't never know the number, how much
18 footage they wanted out of us, or we could bonus. I
19 know the longwall had the footage, but I don't know
20 what it was. I never did hear them say.

21 Q. So how do you know that it was changing if you
22 don't know what the numbers were?

23 A. Knowing how much coal we were loading and the
24 bonus we would get in prior years, and all of a sudden
25 --- you know when you're loading good coal, how much

1 you're putting out.

2 Q. You mentioned that the bosses were told.

3 A. Right.

4 Q. Who were those? Do you know who the bosses were
5 that were told?

6 A. The two that told me personally was the --- I call
7 him Smurf, and Wayne Alderman. He used to work at
8 UBB, but he's in another Massey mine now. I don't
9 know exactly which one, maybe Round Bottom.

10 Q. And both of those --- you talked to both of those
11 people and they told you that they've been told to
12 write people up?

13 A. Right. And Wayne was working at a different mine
14 at the time he told me this. This is how I felt like
15 it came from up top to all Massey mines. He wasn't
16 even at UBB at the time. Those are the two that told
17 me personally. They were requested or told to write
18 people up. And I'll give Richard credit, he said he
19 ain't going to do it and he never ---.

20 Q. In your notebook you indicated you recall that on
21 July 26th, 2009 you were told by the boss while you
22 were en route to where you were working to go up to
23 Headgate One North and change the air?

24 A. Correct.

25 Q. Well, how did they want you to change it?

1 A. They wanted to go --- the best I can recollect we
2 were on sweep air and you got to remember they was
3 wanting this finished.

4 Q. This finished meaning?

5 A. The Headgate One North finished so they could get
6 started setting their longwall up and so even though
7 the air was already low up there, they didn't want to
8 go to split air so we could run both miners at the
9 same time and speed up to get it finished.

10 Q. Who were the bosses that were there at the time,
11 if you recall?

12 A. Like the superintendents and whatnot, the mine
13 foreman. I know Gary May was there. I think Andy
14 Kolson was still there and Jamie Ferguson, of course
15 Chris Blanchard was the president.

16 Q. Was he there? Did he come up there or --- to
17 where you were doing the change?

18 A. No. No, it was just our crew and my boss.

19 Q. Okay.

20 A. Okay. You were referring to who was there while
21 we were ---

22 Q. Yes.

23 A. --- making the change?

24 Q. Right.

25 A. Okay. No, just Richard Hutchens.

1 Q. Okay.

2 A. Okay. Those other guys weren't there.

3 Q. They were --- but they were outside at that time?

4 A. I'm going to assume some of them were outside.

5 Q. Who was the superintendent?

6 A. Okay. They switched superintendents. I'm going
7 to --- Everett Hager may have already taken over
8 because Homer Wallace retired last July, so Everett
9 may have already taken over.

10 Q. You talked about situations where the speed of the
11 shearer would be lower?

12 A. Uh-huh (yes). Yes, sir.

13 Q. And that was when you got a call, but there were
14 inspectors that might be in the mine or coming your
15 way?

16 A. Actually, it was to get a good dust sample. We'd
17 be testing for dust and these people would be there on
18 the site, so that's when we had to take measures to
19 make sure the dust sample cleaning ---.

20 Q. So would you slow down the speed of the shearer
21 --- or I should say would the operator slow down the
22 speed of the shearer before the inspector got there?

23 A. Sometimes they would come in with us when they
24 were testing the dust themselves at the start of the
25 shift. So as long as they were there, we kept it

1 slow.

2 Q. Did you wonder why the inspector would take a
3 sample when it was running so slow?

4 A. Well, as I stated, that one lady, her name was
5 Reba asked me what's wrong? And I told her I must
6 have a rock in front of the shearer and fighting it,
7 but I'm going to assume they probably knew. That was
8 strange.

9 Q. There's a big difference between running the
10 shearer one foot a minute and 60 or 70 feet a minute?

11 A. A huge difference. Absolutely.

12 Q. And you can tell just by looking and listening?

13 A. Uh-huh (yes).

14 Q. Is that right?

15 A. Right.

16 Q. What's the difference in terms of the visible
17 float dust that --- when you're running a one foot and
18 60 or 70 feet?

19 A. You're not generating much dust running it slow
20 like that, and so when you run it fast, especially if
21 the air quality's not what it should be, the whole
22 face would be dusted out.

23 Q. When you say air quality's not what it should be,
24 what do you mean?

25 A. I mean, feet per minute.

1 Q. Low air velocity?

2 A. Low air velocity. Right.

3 Q. You mentioned I think it was in March of 2010 you
4 had a meeting with an inspector and he basically told
5 you how you could communicate with him without
6 management knowing if one of your crew wanted to know
7 --- wanted to inform the inspector of a safety
8 concern?

9 A. Yes, I did.

10 Q. Do you remember who the inspector was?

11 A. No, sir, I didn't know his name.

12 Q. Was it a State or Federal ---?

13 A. I'm thinking they were Federal.

14 MR. HUDSON:

15 I don't know if I'd characterize it as a
16 conversation. It was in passing.

17 BY MR. MCGINLEY:

18 Q. So it wasn't really a meeting?

19 A. Right. He met with us and went over some things,
20 but then, you know, he would just --- it was like he
21 was reaching out to us trying to tell us, you know, if
22 you all got any concerns, you can just tell me in
23 passing. Nobody has to know you're actually talking
24 to me, you know. It was like he knew our concerns and
25 he was trying to let us know --- let me know things,

1 but nobody will ever know that you did it.

2 Q. Do you think that was a good thing that he did
3 that?

4 A. I think it's a sad thing that he had to do that,
5 him knowing the air placed over everyone, but yeah.
6 Yeah, I felt like it was a good thing. I really don't
7 feel like anyone took him up on it because of the fear
8 that is instilled in everyone, but --- you know, he
9 was just trying to let everyone understand that come
10 on you all can tell me things and I can help.

11 Q. So he was trying to be helpful?

12 A. He was trying to be helpful. Absolutely.

13 Q. And that he recognized ---?

14 A. Massey had everyone thinking that the inspectors
15 were the enemy. I mean, I've had guys tell me on the
16 section, oh, God, the inspectors are coming up here.
17 I said, boys, I said they're our friend. I said,
18 they're here to help us. I said, we'd have hell to
19 pay without them. And you know, I tried to make them
20 understand they're not our enemies, but the company
21 wanted everyone to think that.

22 Q. How did they do that? And it does --- I mean,
23 we've heard testimony. It does seem like there is a
24 pervasive concern about the inspectors and talking to
25 the inspectors about safety problems. How did the

1 company communicate this idea that the inspectors were
2 the enemy?

3 A. Well, you know, they just convey things that ---
4 you know, they're writing us up on stuff, they're
5 hurting our production, you know.

6 Q. How about in safety meetings, did that --- any
7 comments about the inspectors?

8 A. We had a survey, I don't know, maybe a month
9 before the explosion, somewhere in that neighborhood.
10 And in that survey one question was, do you think that
11 MSHA or inspectors, however they worded it, is harder
12 on Massey mines than other company's mines? And you
13 know, just a question like that is --- like they're
14 picking on them.

15 Q. Did you fill out the survey?

16 A. Yes, I did.

17 Q. How would you know whether inspectors were harder
18 on --- did it say Massey mines or did it say
19 Performance Coal?

20 A. It said Massey mines.

21 Q. How would you know whether inspectors are harder
22 on Massey Mines than other mines if you never worked
23 in other mines?

24 A. Exactly. But I did know, and I put no for my
25 answer. I feel like their standards are a little

1 tougher on UMW Mines. In Massey mines, I worked in,
2 you know, I've seen a whole lot of things that I say,
3 wow. They didn't get that.

4 Q. Do you recall what other questions were on this
5 survey?

6 A. Well, they had questions like, you know, what's
7 your --- how do you feel about your company president,
8 and your superintendent, and your immediate foreman
9 and things like that.

10 Q. Did you have to sign it?

11 A. No.

12 Q. So these were anonymous?

13 A. They were anonymous.

14 MR. HUDSON:

15 Supposedly.

16 A. Supposedly.

17 BY MR. MCGINLEY:

18 Q. Was there any way that they could connect the
19 person that filled these out?

20 A. I don't know if there was a way they could have or
21 not, but of course there's always that doubt in your
22 head just from the way they normally are.

23 Q. Did they ever tell you the result of the survey?

24 A. They went over them in our re-training about a
25 week before the explosion, and I can say Chris

1 Blanchard got the lowest rating in all of Massey.

2 Q. You mean you were told that?

3 A. Yes, I certainly was.

4 Q. Who told you that?

5 A. I don't know his name. They had several people in
6 our annual re-training, but had one guy going over the
7 survey with us. Not the whole survey, just certain
8 parts of it.

9 Q. What did they emphasize about the survey in that
10 meeting, if you recall?

11 A. They was emphasizing the ratings that the people
12 at our mine got and that's about that.

13 Q. And why were they doing that?

14 A. I'm really not certain.

15 Q. Did they ask you any questions?

16 A. No.

17 Q. Any other questions you can remember that were on
18 the survey that would be relevant to this
19 investigation?

20 A. They had safety questions on the survey, and ---
21 you know, like how you feel about the safety at your
22 mine and different things to that nature.

23 Q. What did you put down?

24 A. I put unsatisfactory or whatever the answer were.

25 Q. Was it a multiple choice ---?

1 A. Probably a lot of the questions --- yeah, they
2 were mainly multiple choice.

3 Q. Was there any place where you would write in an
4 answer or sentence or two sentences?

5 A. They had a thing at the end of it, state comments.

6 Q. Any other comments you might have, something ---

7 A. Right.

8 Q. --- like that? But otherwise, it was a multiple
9 choice or a yes or a no?

10 A. Uh-huh (yes). Right. Multiple choice or yes or
11 no.

12 Q. Blankenship has testified publicly that Massey
13 mines have better injury rates. I guess that means
14 less injuries than other companies. How do you think
15 Massey accomplishes that?

16 A. They fabricate those records. We used to have a
17 joke going on at UBB that the walking wounded. Guys
18 would be hurt and some of them hurt pretty bad, they
19 allow them to go sit in the office, answer the phone,
20 possibly dispatch. My son injured himself loading
21 fork when he cut his finger off and continued paying
22 him. He stopped a lost-time accident. And part of
23 the way they accomplish this is whoever the safety
24 director is at that mine, someone gets hurt and they
25 have to call an ambulance for them then he chases the

1 ambulance to the hospital and he goes in and
2 immediately starts trying to persuade them to come on
3 back to work and avoid a lost-time accident.

4 Q. Do you have any personal experience with that? I
5 mean, how do you know that?

6 A. My son. I went to the hospital with him that
7 night he cut his finger off. And I got there ahead of
8 the ambulance because I knew where it was going. But
9 when the ambulance pulled in the safety director at
10 Logan's Fork was right behind it and came right in
11 with him.

12 Q. Did you hear the conversation?

13 A. Yes, I did. He was telling him, you know, I can't
14 make you come back and all that, but you know, it's my
15 job, I'm told to do this. If it's possible you can,
16 you know, come back and avoid a lost-time accident?

17 Q. Did your son do that?

18 A. Yes, he did.

19 MR. HUDSON:

20 I'm not under oath, but one of the
21 deceased workmen also got his finger cut off and was
22 in the dispatcher's office the next day also. His
23 widow told me that.

24 BY MR. MCGINLEY:

25 Q. Do you know of any other people that had told you

1 that that had happened to them?

2 MR. HUDSON:

3 What about the guy ---.

4 A. Right. His name was Dodson. Yeah, I think he had
5 a broken back or hurt his back, but yeah, he's another
6 one.

7 BY MR. MCGINLEY:

8 Q. When did that happened?

9 A. They put the pressure on him. That probably
10 happened in the last year, give or take a little.

11 Q. Was this at UBB?

12 A. No, he doesn't work for UBB.

13 Q. Where does he work?

14 A. He's at Black King or White Knight, one of those
15 two mines. Yeah, he told me personally and he told me
16 he felt the pressure if he didn't do what they wanted
17 him to do, that, you know, he's not going to be a
18 member. And felt like he would be retaliated against
19 later and a former boss of mine, Larry Brown, burnt
20 both hands and arms putting a breaker in and he told
21 me that they called, and called and called and hounded
22 him to come back. And he wouldn't do it and he said,
23 quote, I can't even wipe my butt. I ain't about to go
24 down there.

25 Q. Was he at UBB?

1 A. Right. That was at UBB.

2 Q. How long ago was that, if you know?

3 A. That's been probably five, six years ago.

4 Q. So from what you're saying is that this seems like
5 a policy that's continued over an extended period of
6 time?

7 A. Yes. My 15 years at Massey, absolutely.

8 Q. What about contract miners, you know, miners that
9 are coming in, they're not Massey employees, are there
10 very many of them in your experience working in the
11 mine?

12 A. Right. Yeah, there's usually quite a few.

13 Q. Are they included --- do you have any idea whether
14 they're included in the Massey injury --- lost-time
15 injury reports?

16 A. I don't know if they are or they're not, to tell
17 you the truth. I hadn't never thought of that.

18 Q. You mentioned methane bursts. It sounded like a
19 jet engine roaring and there was 50 percent methane
20 all the way back to the power center. What part of
21 the mine was that? I think you indicated, I just
22 can't recall and I wanted to ask you questions.

23 A. That would have been between Ellis Switch and
24 somewhere, let's see, back toward the Montcoal Portal.
25 And the Lower Big Branch and this was a big long

1 stretch of track to the Ellis Switch. They had a lot
2 of panels we had to --- Headgate 20. It was like 11,
3 12, 14 or 15.

4 Q. So this was a long time ago?

5 A. Right. This being quite a while back.

6 Q. Okay. You said that your son had --- your son
7 told you about a couple of fire balls at the shearer?

8 A. Uh-huh (yes).

9 Q. Was that at UBB?

10 A. Yes, it was.

11 Q. What time frame would that have been, if you know?

12 A. That would have been around the year 2005.

13 Q. You mentioned there was a lot of water up on the
14 --- was it One North?

15 A. Uh-huh (yes).

16 Q. On both the tailgate and the headgate side, but
17 more on the headgate side?

18 A. When we were mining with a continuous miner it was
19 more on the headgate side. Now, after all this had
20 happened --- because I don't know ---. I know they
21 were sending guys up in there a lot.

22 Q. When you say all this, where ---?

23 A. The tailgate side.

24 Q. Okay.

25 A. Right. It could have gotten worse once it was

1 mined out. When we finished mining, the water had
2 time to accumulate.

3 Q. And you said you were involved in digging a trench
4 up near the Bandytown fan; is that right?

5 A. That's correct.

6 Q. It was like a sump?

7 A. Yeah, I call it the fan ---. It went and it cut
8 16 foot of bottom, the end of it and then take it out.
9 It seemed like we went like two break through and then
10 through one and then two more down and through two and
11 then two more down.

12 Q. So what was the distance from the bottom to the
13 top? Could you estimate?

14 A. It had to be between 25 and 30 feet at the end of
15 it. It's not real big.

16 Q. Do you know anything about pumps breaking down,
17 water pumps breaking down?

18 A. Are you referring to up in ---?

19 Q. Right. In this One North ---.

20 A. I heard a few of the guys talk about having the
21 ten gallon pump.

22 Q. Do you know anything about people wading through
23 water that was waist deep?

24 A. Yes, I do. I've heard them boys talk about that
25 and they hate it. A couple of contractors actually,

1 they hated that job they were on.

2 Q. Do you know any names?

3 A. I can't think of them boys names. I didn't need
4 to know them.

5 Q. Why would there have been that much water? Pumps
6 down? In your view, if you know.

7 A. Okay. Part of it would be, in my view, they just
8 didn't know how to handle it, how to pump it out and
9 have a good system to do it. And the mine was putting
10 out a lot of water, and I guess they just weren't
11 equipped to take care of it as they should be.

12 Q. So it was just their inability to set up a pumping
13 system that would work effectively? Is that fair?

14 A. That's my opinion.

15 MR. MCGINLEY:

16 Can we take just a couple minutes? I
17 want to read this enhancement agreement.

18 ATTORNEY WILSON:

19 Okay. Yeah, I've marked the enhancement
20 agreement as Exhibit Stewart Four. We'll put that
21 into the record.

22 (Stewart Exhibit Four
23 marked for identification.)

24 RE-EXAMINATION

25 BY MR. FARLEY:

1 Q. Mr. Stewart, I just have a couple clarifying
2 questions I'd like to ask, and if you've already
3 answered any of these I apologize for asking again.
4 On this enhanced agreement --- it's from a Jason
5 Bussey, a human resource manager?

6 A. Yeah.

7 Q. Do you know if Jason Bussey is still with
8 Performance Coal?

9 A. Yes, I'm certain he is.

10 Q. You were talking about when your son was injured
11 and he was taken to the hospital and the safety
12 director from the company showed up.

13 A. Uh-huh (yes).

14 Q. Do you recall who that safety director was?

15 A. No, I don't, but he probably knows. But I didn't
16 know his name.

17 Q. You're saying your son probably knows?

18 A. Right. He should have remembered. I don't.

19 Q. And when did this occur?

20 A. It's been between one-and-a-half and two years
21 ago. It had to be '08. Sometime in '08, I feel
22 certain. I don't know. I don't remember exactly the
23 date.

24 Q. Okay.

25 A. He would.

1 Q. All right. The survey that you talked about
2 completing about a month before the accident, how was
3 that distributed to you? Where did you fill it out
4 and how did you turn it back in?

5 A. Okay. I got to work, got my clothes on and
6 Everett Hager brought them down and into the waiting
7 room in the bath house, and they passed them out, and
8 I was told to fill them out right before shift. And
9 it was almost time for us to go underground. And they
10 had a cardboard box there with a slit cut in it. When
11 we finished them, we put them in the box.

12 Q. So you did not get a copy of this?

13 A. No.

14 Q. Do you recall how long the survey was?

15 A. It was several pages.

16 Q. A while ago you were talking about on the 22
17 Headgate, and you said sometime prior to April 5th the
18 air on the section had improved.

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

20 Q. Do you recall approximately when that was?

21 A. Approximately two to three weeks before, that's
22 approximate, because I know we didn't have enough air.
23 And I remember --- we worked the section three
24 schedule, and I think after one of our three days off,
25 I went back to work and they said they'd shut them

1 down on the air, and so we had air then. But it was
2 only in the neighborhood of a couple weeks.

3 Q. And you said that you had heard that the longwall
4 had less air?

5 A. Yes, I've heard that.

6 Q. Who did you hear that from?

7 A. I just heard the longwall guys talking. And Gary
8 Quarles, who died on the face that day, he had told me
9 that they didn't have any air on the tail. He said,
10 Goose, man, it's dusty. I said, I know what you mean,
11 Spanky. That's what we called him, Spanky. But he
12 told me the week prior to the explosion that they
13 didn't have any air down on the tail on that longwall.
14 And I had my reasons why --- if they cut their air
15 down, that would lessen. Plus, their return system
16 just wasn't working. It's supposed to return from the
17 head of the section. And they don't have any air on
18 the tail, and you know, right there's --- where the
19 problem was. You got the water blockage. You got
20 everything falling in. I know the entries on the head
21 and the tail were bad, and some of them had fell in,
22 and ---.

23 Q. How do you know --- and you're talking about the
24 headgate and the tailgate entries of the active
25 longwall panel?

1 A. Uh-huh (yes). Yes, sir.

2 Q. How do you know those entries had fallen in?

3 A. Well, I know on this side we had to go up there
4 and build what I called the Great Wall of China.

5 MR. HUDSON:

6 And that's on the Headgate One North?

7 A. Headgate One North. And while we were building
8 it --- I didn't want to be there, but you could look
9 over and you could see a lot had fallen in. Now, I
10 personally don't know that on the tail side they had
11 fallen in. I'm just basing that on experience on the
12 longwall, plus the conditions at the top in that mine,
13 once all that longwall weight gets on it. The top
14 half of these entries wasn't good either, so I assume
15 some of those had fallen in also. But in all my years
16 on that longwall, the closer we got to a longwall
17 move, the less air we had, to where --- and they were
18 close to a move, and so I understood what Spanky was
19 telling me, that they didn't have any air on the tail.
20 And with the water and the blockage and whatever
21 reasons that we couldn't never maintain the
22 ventilation, I didn't like that sitting on the
23 ventilation, or at least with them operating on it
24 because it never worked.

25 BY MR. FARLEY:

1 Q. What were the problems associated with cutting out
2 on the tail besides the lack of air?

3 A. I still don't understand the problems.

4 Q. Did you have any problems with methane over on the
5 tail? Was it more prevalent there?

6 A. You're referring to this panel?

7 Q. Yes.

8 A. I don't know.

9 Q. What about on the panels that you worked on?

10 A. Well, I know in '97 that one blew up down on the
11 tail, not on the face itself, but coming from in
12 behind the tail. But the other panels, except for
13 them bleeders, we didn't experience methane problems,
14 except when we hit those bleeders. But this
15 particular panel scared me, although I wasn't on it,
16 because I knew what methane we had encountered driving
17 these panels.

18 Q. Was that methane coming from the floor?

19 A. It come from the floor and the coal. Yeah, it
20 came from both places. And so the fact is I was on
21 Headgate 22 just a couple weeks prior to April the
22 5th, and I remember being up there thinking anything
23 happens on that longwall, we're don't have a chance up
24 here, and that was my actual thought. And I knew how
25 --- especially talking to Gary Quarles, they didn't

1 have the ventilation that they needed.

2 Q. And did you miss any shifts in March, you may have
3 already answered this question, due to a ventilation
4 change?

5 A. I know March the 9th we didn't work because that's
6 the day that I referred to the inspector there. They
7 talked to us before we were sent home, but we never
8 went underground. They were working on ventilation
9 that day.

10 Q. And did you have increased ventilation after that?

11 A. Now, that --- that might have been when we got on
12 Headgate 22, right after that.

13 Q. Okay. Did it affect the other sections?

14 A. Now, that I don't know for sure, just --- I had
15 heard the longwall had less.

16 Q. When an inspector would come to your section, did
17 you notice the air pick up, you had more ventilation
18 then?

19 A. Working the evening shift, we seldom ever got an
20 inspector, so that wasn't ---.

21 Q. What about did you hear about on the dayshift if
22 anybody had sent more air to the section where the
23 inspector was at?

24 A. I never heard of that. I did --- we'd go to work
25 and, you know, how much did the dayshift load today,

1 and we would be told, well, they had an inspector, so
2 they didn't load much. So I could only assume that,
3 you know, for whatever reasons they just had her shut
4 down.

5 Q. What about when you ran dust, did you have enough
6 air then?

7 A. On ---

8 Q. On Headgate 22.

9 A. --- Headgate 22?

10 Q. When you'd have dust pumps?

11 A. I never noticed any difference myself.

12 Q. Didn't notice a difference. You mentioned that it
13 was in September when you encountered the methane,
14 September of '09. Did I hear that right?

15 MR. HUDSON:

16 I think he had said that they shut down
17 for a couple days.

18 A. Yeah. We were down for almost a week in
19 September, the first week of September, on
20 ventilation.

21 BY ATTORNEY FARLEY:

22 Q. You remember the first week of September on
23 ventilation?

24 A. Uh-huh (yes).

25 Q. Was that ever put in the record book anywhere?

1 A. I don't know. You would think they would have to
2 have record of it. I can't answer that for certain,
3 but you would think it would be somewhere.

4 Q. You believe, because you were down due to methane?

5 A. Right, methane or ventilation.

6 Q. Where and when --- you mentioned that bad top on
7 Headgate 22.

8 A. Uh-huh (yes).

9 Q. Did you have water up there also?

10 A. We were encountering water the last month we
11 worked over in the Number Three entry.

12 Q. About where did that start at on this map? Do you
13 remember?

14 ATTORNEY WILSON:

15 And you're referring to Exhibit Three?

16 MR. FARLEY:

17 Yes.

18 BY MR. FARLEY:

19 Q. And these are posting dates right here in green.

20 A. I'm going to say probably, roughly, back in ---
21 what break am I at? I can't see this area.

22 ATTORNEY WILSON:

23 You got the spad numbers here.

24 A. Okay. Probably in the neighborhood of spad number
25 244610. That's roughly.

1 BY MR. FARLEY:

2 Q. Okay.

3 MR. MCGINLEY:

4 Maybe we can mark the exhibit.

5 ATTORNEY WILSON:

6 You can just circle that spad number and

7 maybe write water.

8 WITNESS COMPLIES

9 BY MR. FARLEY:

10 Q. What was your mining outfit there on the Headgate
11 22 section?

12 A. It varied. We tried to maintain six-and-a-half to
13 seven feet when the roof would fall out and we'd hit
14 that rotten top and get eight, ten.

15 Q. Ever get as low as five?

16 A. I don't remember any five feet.

17 Q. What about on Headgate One North, what was height
18 there?

19 A. Tried to maintain the same longwall panel. You
20 tried to keep it six-and-a-half to seven feet.

21 Q. And did you try to do that also on the tailgate?

22 A. Yes, sir.

23 Q. Okay. One more follow-up question here for you.

24 Actually, I got a couple more, but it shouldn't take
25 too long. When the company would run dust --- you

1 meant for the dust pump on the miner man.

2 A. Uh-huh (yes).

3 Q. Do you know of any instance, either with you or
4 with one of the other miner men when someone took that
5 dust pump and hung it in the intake?

6 A. I have heard that at --- where a guy said, hey,
7 you know, put them in the intake.

8 Q. Did you ever see it happen?

9 A. Yes, I have.

10 Q. When was this?

11 A. I can't remember dates for sure.

12 Q. Was it recently?

13 A. No. Probably a year, two years, last ---. Yeah,
14 that had been ---.

15 Q. Why would they do that?

16 A. Get a good dust sample, because you're not going
17 to get one otherwise.

18 Q. You mentioned a boss that didn't have papers
19 earlier and you called him Pickles. Do you happen to
20 remember his name?

21 A. I do not remember. I know his real name, and I
22 cannot remember it.

23 Q. Okay.

24 MR. MCGINLEY:

25 If you recall that, could you let us

1 know?

2 A. Yes. Yes.

3 BY MR. FARLEY:

4 Q. You also mentioned some signs being posted on the
5 company billboard explaining that if certain footages
6 weren't met, that vacation would be canceled. Do you
7 have a copy of those signs?

8 A. Nope. I didn't get the privilege to get one of
9 those.

10 Q. Those methane outbursts that you referred to
11 earlier when you were on the longwall, do you remember
12 exactly where those were at, where that occurred or
13 when?

14 A. No. I can't remember exactly which panel they
15 were on or ---

16 Q. Okay.

17 A. --- exactly when they happened.

18 Q. Okay. And the smell that you said when these
19 outbursts would occur, you said there was a distinct
20 odor?

21 A. Yes.

22 Q. Did that burn your eyes? Did anybody complain
23 about their eyes burning?

24 A. No. I don't remember anyone complaining. I don't
25 remember burning mine.

1 Q. Okay.

2 MR. FARLEY:

3 That's it for follow-up.

4 ATTORNEY WILSON:

5 Let's go off the record.

6 LUNCH BREAK TAKEN

7 ATTORNEY WILSON:

8 Okay. Let's go back on the record.

9 we're back on the record after a lunch break. I'm
10 going to remind you, Mr. Stewart, you're still under
11 oath.

12 A. Okay.

13 ATTORNEY WILSON:

14 Dave?

15 RE-EXAMINATION

16 BY MR. STEFFEY:

17 Q. You mentioned your son earlier, that he also
18 worked at the same mine?

19 A. Yes, sir.

20 Q. What was his name?

21 A. Stanley Stewart, II.

22 Q. Okay. Also you mentioned water earlier up through
23 here?

24 A. Uh-huh (yes).

25 Q. On One North Headgate, I believe it was out there

1 past Break 95, going toward the fan; is that correct?

2 A. That's correct.

3 Q. Okay. And did that water come from the floor or
4 the roof?

5 A. It was coming from the floor.

6 Q. Anybody from mine management ever come up there
7 and look at it?

8 A. Not on the evening shift.

9 Q. Did you hear anything about him being up there on
10 the dayshift?

11 A. I never heard.

12 Q. What about the gate road that you're currently
13 driving on, Headgate 22, did you have a lot of water
14 there?

15 A. It wasn't --- I didn't consider it a lot. We went
16 to picking up quite a bit in the Number Three entry
17 the last month or so, but it would get knee deep
18 sometimes.

19 Q. And was it coming from the floor or the roof?

20 A. Coming from the floor.

21 Q. Coming from the floor, okay. Did most of the
22 water that you encountered come from the floor?

23 A. Yes.

24 Q. What type of roof supports did they use on the 22
25 Headgate? What type of bolts were they using; do you

1 know?

2 A. Six foot torque-tension. And I believe in the
3 return entry they put up eight-foot cable bolts, two
4 per each row.

5 Q. And this was --- 22 Headgate you have a three-
6 entry system?

7 A. Right.

8 Q. Your beltline that came up --- do they come up the
9 Number One entry; is that correct?

10 A. That's correct.

11 Q. Okay. What type of condition was that belt in?

12 Was it --- a lot of float dust on that belt? Did they
13 keep it rock dusted good? Can you tell me about that?
14 Did you know anything?

15 A. I'm not really certain if they kept it rock dusted
16 very well. I was always in the face when we were
17 running, so I can't really answer about the float dust
18 on that.

19 Q. Were you ever down because of float dust?

20 A. No. I don't remember being down because of float
21 dust.

22 Q. Okay. Do you know how many rock dust crews they
23 had?

24 A. I know they had one on the hoot owl, and that boy
25 had gotten fired not too long before April, and I

1 don't know if anyone replaced him or not at the time.

2 Q. Okay. Typically coming off of a belt move, how
3 many breaks outby the last open crosscut was the
4 feeder?

5 A. Typically one or two breaks.

6 Q. Okay. Can you explain the method of mining, just
7 a brief description here on this three-entry system?
8 In particular, how do you cut on the outside after a
9 belt move?

10 A. Okay. I need to know exactly what you're asking.

11 Q. Just right here where the belt entry is, can you
12 mark me the location of the feeder, where it would be
13 after a belt move ---

14 A. Okay.

15 Q. --- if your faces looked like this, right here, as
16 we indicate here that the final face is posted on this
17 map on 3/31/2010? This is Exhibit Three.

18 A. Okay. Well, the best example is right here.
19 Right here would typically be where the feeder is.
20 The feeder would sit right here in the Number One
21 entry.

22 Q. Okay.

23 A. In that break.

24 Q. Okay. And you're marking that with a blue pen?

25 A. Right. And the way the buggies could run --- they

1 had a buggy that ran here and you had one anchored
2 over here that ran in the Number One entry.

3 Q. Okay.

4 ATTORNEY WILSON:

5 So you're indicating that one shuttle car
6 would go across the crosscut from One to Two and up
7 the Number Two entry; is that right?

8 A. Correct.

9 ATTORNEY WILSON:

10 And the other shuttle car would go up the
11 Number One entry and then across ---

12 A. That's correct.

13 ATTORNEY WILSON:

14 --- the inby crosscut?

15 A. Right.

16 BY MR. STEFFEY:

17 Q. Was there at any point, particularly coming off
18 these belt moves, where they just could hot with one
19 shuttle car?

20 A. Usually in the Number One entry, one shuttle car
21 is all that would load over there. And other than
22 that, usually both of them could run Number Two and
23 Three.

24 Q. Now, when you could load both shuttle cars from
25 the miner, where did you typically change out at?

1 What was your change-out point?

2 A. For the buggies?

3 Q. Uh-huh (yes).

4 A. Okay. It would be ---.

5 Q. Let's say if we had this set up here and the
6 feeder is where you located it at, which would be one
7 break outby spad 24599 in the Number One entry. Let's
8 say we were cutting just inby spad 24599 here in the
9 Number Two entry and both shuttle cars were running,
10 where was your change-out point?

11 A. The change-out point would be at the last open
12 break.

13 Q. At the last open break.

14 A. The middle shuttle car would wait straight in
15 Number Two entry and the left shuttle car would wait
16 in the crosscut going into Number Two.

17 Q. Now, what about if you were cutting in Number One,
18 would you load the coal cars in the Number One entry?

19 A. No. Normally, just the one buggy would run.

20 Q. And why was that?

21 A. Most of the time that's all that could run.

22 Q. What about at this crosscut here, this through
23 between One and Two at spad 24599?

24 A. There was rare occasions where that shuttle car
25 wouldn't make it around the block. He didn't do it

1 very often, but there were some times that he didn't
2 travel around the block to that miner in Number One.

3 Q. Okay. What type of face ventilation did you guys
4 employ?

5 A. We were using exhausting ventilation.

6 Q. Okay.

7 A. We were using exhausting ventilation system. Air
8 came up the entry, the intake.

9 Q. Uh-huh (yes).

10 A. And the return went behind the curtain ---

11 Q. Uh-huh (yes).

12 A. --- on our right.

13 Q. Okay. Did you ever take a cut or see or hear of
14 anybody taking a cut by a curtain?

15 A. Yes, I have and yes, I've saw (sic). Yes, I've
16 heard.

17 Q. Was that a common practice on those sections?

18 A. We personally didn't try to do it too often, but I
19 feel like it was a common practice on most of their
20 sections.

21 Q. And why do you think that was?

22 A. Made it take it loads, load more coal without
23 taking the time to do it right. And a lot of these,
24 lot of these boys, especially the younger ones,
25 thought that to please the higher ups in Massey, you

1 know, hurry up and load coal. Let's not take time.
2 Or they were scared if they took the time to ventilate
3 the way it should be, whether they would be or not,
4 they were too scared they'd be fired or gotten rid of
5 or taken off of that job and put on something that
6 might not be as good for them as working on the face.

7 Q. And did they just roll the curtain up or did they
8 take it down completely?

9 A. Sometimes there just wasn't any there.

10 Q. Now what if the inspector approached, you got a
11 call the inspector was coming while this was going on?

12 A. Well, then the curtain would --- someone would go
13 get some curtain and hang it.

14 Q. And hang it?

15 A. Right.

16 Q. So you would stop, hang curtain, try to ---

17 A. Uh-huh (yes).

18 Q. --- make it look good ---

19 A. Right.

20 Q. --- before the inspector had got there?

21 A. Right. Try to make it right.

22 Q. And what did mine management say about that sort
23 of thing? I mean, if you were able to do that before
24 the inspector got there, did that cause you all to
25 avoid a citation?

1 A. Yes, yes. If an inspector came and everything was
2 proper, no, then there wouldn't be no citation.

3 Q. Well, what was mine management's attitude toward
4 hanging curtains? Did anybody ever say anything about
5 it?

6 A. No one ever said anything to me about it
7 personally, so I really --- I really can't answer
8 exactly what their attitude was. I do know that if a
9 number weren't there you heard from them, you know,
10 you're not loading enough coal. You're going to have
11 to do better.

12 Q. You had two continuous miners on the section, did
13 I hear you correctly?

14 A. That's true.

15 Q. Okay. Were these miners equipped with a scrubber?

16 A. Yes, they were.

17 Q. Were you allowed by your approved ventilation plan
18 to turn this scrubber on?

19 A. Far as I know, I was.

20 Q. Okay. Did you run the scrubber when the inspector
21 would run dust on the sections?

22 A. We never had that occur to us, but had it occurred
23 with me to run the miner, yes, I'd have ran the
24 scrubber.

25 Q. Okay. How'd you do your perimeter checks on the

1 scrubber?

2 A. Perimeter checks?

3 Q. Yeah, how'd you check the airflow coming through
4 the scrubber duct?

5 A. I didn't.

6 Q. Okay. What about your filter?

7 A. Filter, I tried to clean it least once a shift.

8 Q. At least once a shift?

9 A. Uh-huh (yes).

10 Q. Anybody ever go over the components of the
11 scrubber with you as far maintenance? Anybody in
12 management ever do that?

13 A. No, not really. I don't know if they figured I
14 knew or whatever, but no, I never had anyone going
15 over it with me.

16 Q. Did they tell you to turn the scrubber on or did
17 you guys turn --- figure you could?

18 A. I just saw no problem with running it.

19 Q. What about your water sprays on the mine, how were
20 they maintained?

21 A. I kept mine on my miner working. If there was a
22 few out, you know, that was all right. But if there
23 was a bunch of them out, I took them out and cleaned
24 them to make sure they was working.

25 Q. Now, when you got up on the section ---

1 A. Uh-huh (yes).

2 Q. --- who did the dust perimeter check on the miner?

3 A. I don't know.

4 Q. Do you know when it was done, or about?

5 A. No, I don't.

6 Q. Okay. Now, you said your miner had a methane
7 sniffer on it.

8 A. Yes.

9 Q. That's like a methane sensor; is that correct?

10 A. Uh-huh (yes).

11 Q. Where was this methane sensor at?

12 A. Located up on the right-hand side of the miner
13 close to the cutter.

14 Q. How close to the cutter? Could they have gotten
15 it any closer or was it about as close as practical?

16 A. I feel like it was about as close as practical,
17 back behind the hood, I think, in that area.

18 Q. And did you ever see the methane monitor go into
19 the malfunction mode on the miner?

20 A. Yes, I did. It shut down on me one night. There
21 was a code that you could use on your remote control
22 box ---

23 Q. Uh-huh (yes).

24 A. --- to get the power back on, and I trammed it,
25 trammed it back out of the face.

1 Q. Uh-huh (yes).

2 A. And we got our maintenance man in and we fixed it.

3 Q. Okay. Did you ever hear of that happening to
4 anybody else?

5 A. Not in that particular manner.

6 Q. Okay. Did you ever hear or see anyone either
7 bridge out a methane sensor or otherwise disable it?

8 A. Over the years, yeah, I've heard of it.

9 Q. What about at this mine?

10 A. At this mine, yeah, on the longwall face I'd heard
11 of it. I don't actually recall seeing it done because
12 I know the maintenance man that we had, we've had
13 several out on the methane monitor.

14 Q. Uh-huh (yes).

15 A. And he would go to the phone and he'd come back
16 and he would say he is not bridging that thing out.
17 If they want it done, they can do it theirselves.

18 Q. And who did he talk to on the phone?

19 A. I don't know who he would have been talking to.

20 Q. How long ago was this?

21 A. Oh, it would have been probably six years ago
22 since he left.

23 Q. What about on this (indicating) panel right here?

24 Did you hear of anybody doing that on the panel, on
25 the --- I guess it's the Number One Panel? It's

1 between --- the panel between Headgate One North and
2 Tailgate One North.

3 A. They evidently --- I did hear that they've had
4 some trouble out of their methane monitor because a
5 guy told me that they had told them that they could go
6 24 hours without it as long as they got it fixed
7 within a 24-hour period. It was okay as long as they
8 took their spot checks every 20 minutes.

9 Q. Did he say who told them that?

10 A. I can't remember if he said Jack Roles or somebody
11 in their maintenance department. But yeah, I've heard
12 him --- a guy told me that.

13 Q. Okay. About how long ago was that?

14 A. Well, he just told me that a few weeks ago. When
15 those situations occurred, I don't know.

16 Q. But it's been on this, while they've been mining
17 on this panel?

18 A. Yes.

19 Q. Do you think mine management had knowledge of this
20 going on?

21 A. Somebody in mine management would have, I think,
22 or at least --- at least on the longwall end of the
23 management, coordinator or whatever.

24 Q. Okay. How many production shifts ran each day on
25 your 22 Headgate section?

1 A. Two.

2 Q. Okay. How many maintenance shifts did you have?

3 A. One.

4 Q. Did they ever run coal on a maintenance shift?

5 A. Not to my knowledge, they never.

6 Q. Okay. And you had three entries on your section.

7 Now, did I hear you correctly earlier when you said

8 that the only person who ever covered your approved

9 methane and dust control plan was your section boss,

10 and he would just go over it with you?

11 A. That's correct.

12 Q. Did he ever go over the cut sequence in your plan?

13 A. Yeah, yeah, we would go over the cut sequence. It
14 became daily, though, but yeah, we'd have our cut.

15 Q. Now, I'm not talking about the cut sequence he put
16 on the whiteboard, the cut sequence that was actually
17 a part of your submitted plan. Did he ever cover that
18 with you and your crew?

19 A. That cut sequence?

20 Q. Are you aware if there was a cut sequence in that
21 plan?

22 A. Really and truly I don't believe I am.

23 Q. Okay. Now, did I understand you correctly when
24 you said that sometimes you've run both miners on your
25 section at the same time? And would this be mainly

1 when you were doing the cleanup car on one side to go
2 ahead and start to the other side?

3 A. Right. That would happen occasionally.

4 Q. Was there any other times that they would run both
5 miners?

6 A. Not on our section. We never would begin two cuts
7 at the same time.

8 Q. How many roof bolters were on your section?

9 A. Two.

10 Q. How often were they downwind from the miner while
11 it was cutting?

12 A. Quite often.

13 Q. When you guys ran respirable dust and the
14 inspector was there, how often was it downwind?

15 A. That's another one where we seldom got an
16 inspector, so it really wasn't a concern.

17 Q. What about the dayshift that --- well, did you
18 ever hear what they would do?

19 A. Only thing I would hear about the dayshift was
20 when the inspectors were there that they didn't have
21 much footage for that shift.

22 Q. Okay. Did you guys ever employ blowing
23 ventilation on this section even though it wasn't in
24 your plan?

25 A. Not on this section.

1 Q. What about anywhere else?

2 A. We had the blowing over on the tailgate side.

3 Q. Now, was that actually in your plan or ---?

4 A. Yes, yes, it was, and I liked it way better than
5 the one we had on 22.

6 MR. FARLEY:

7 For the record, could you clarify what
8 section they had the blowing ---?

9 MR. STEFFEY:

10 It's on the tailgate.

11 A. Tailgate One North.

12 BY MR. STEFFEY:

13 Q. Now, let's go back to the scrubber on your miner.
14 What'd mine management ever tell you about that
15 scrubber? Did they ever talk about it to you guys?

16 A. No.

17 Q. Nobody ever said anything then, just ---?

18 A. Ain't no one ever said anything to me. I can't
19 remember anything being said about the scrubber.

20 Q. Okay. Let's talk about inspectors now. And
21 you've mentioned a couple times there in our
22 discussion that you guys had prior notification that
23 they were coming, that the dispatcher would call in
24 and whoever answered the phone, they'd tell them
25 there's an inspector on the way. And you'd stop, tidy

1 up, hang curtains, do whatever. What was the, I
2 guess, the opinion that mine management seemed to ---
3 the attitude that mine management had toward the
4 inspectors?

5 A. The attitude that they had toward inspectors was
6 not a good attitude. In my opinion, they didn't like
7 the inspectors. They were there to destroy them, is
8 the attitude that they gave me. And you know, the
9 easiest and the fastest and the quickest way they
10 could get them off the property, the happier they
11 would be.

12 Q. Did you ever hear of them steering an inspector
13 away from an area or changing the airflow in the mine
14 to maybe keep the inspector from finding an area that
15 had a low air volume? Any of that ever go on?

16 A. I feel like I've heard that they'd try to steer
17 him away from an area with whatever means possible,
18 but as far as changing airflow, I personally can't say
19 that I have knowledge of that.

20 Q. Were you or the --- you or the men on your section
21 or the men employed at the mine, were they ever
22 cautioned about what they said to inspectors? Hey,
23 you know, be careful what you say. They're not here
24 to help us, something to that effect?

25 A. I was never cautioned by anyone, but you know,

1 like I said, it was just --- it was just there. You
2 knew to keep your mouth shut. And if you didn't, you
3 knew what would happen.

4 Q. Did you ever see after a citation was issued a
5 dollar amount written on that citation and then posted
6 on the bulletin board outside, showing basically how
7 much that citation was going to cost?

8 A. I never looked and saw any of those, but I've
9 heard them state how much the fines would be for
10 violations on some of the violations.

11 Q. Did you think that in some instances these fines
12 were treated almost like a cost of doing business?

13 A. Yes, that's the way I feel they did, you know?
14 And they would rather, in my opinion, just run outlaw
15 rather than run right and take their chances.

16 Q. Were you ever --- was there ever a citation issued
17 on your section while you were working? I may have
18 already asked that.

19 A. While I was on shift?

20 Q. Uh-huh (yes).

21 A. I can't remember if there was any issues while I
22 was working, but we didn't get any inspectors. But I
23 know they got some on the dayshift.

24 MR. FARLEY:

25 Can I ask a question? Do you guys ever

1 have any --- or the supervisor ever have any
2 conversation with you, Stanley, after the new law that
3 if you guys get citations, you're going to cause this
4 mine to be under a pattern or something? Was the word
5 pattern ever brought up at your mine? Have you ever
6 heard that?

7 A. Yeah, I've heard them use the word pattern, that
8 they were close to being on pattern a time or two.

9 MR. FARLEY:

10 From bosses or from people?

11 A. It seems to me like they're from both.

12 MR. FARLEY:

13 Yeah. Okay.

14 BY MR. STEFFEY:

15 Q. What'd they say about the pattern of violation?

16 A. They need to keep their citations down by a
17 violation because they didn't want to be put on a
18 pattern violation.

19 Q. And when you say keep them down, how do you mean
20 keep them down?

21 A. You know, not get any violations rather than do
22 things to keep them from getting them.

23 Q. Now, did they want them done right all the time or
24 just done right just before the inspector came?

25 A. I always felt like, you know, do some things

1 right, you know, and just make sure you got it right
2 before the inspector gets there.

3 Q. Did you ever discuss any mine plans with
4 inspectors?

5 A. No.

6 Q. And you've mentioned a lot of ventilation problems
7 here that this mine had, a lot of water. Do you know
8 about when all these problems started?

9 A. Well, I went back to UBB from Logan Fork last
10 January, and on Tailgate One, we had good air up
11 through there.

12 Q. Uh-huh (yes).

13 A. But then one night I had to go over to what we
14 call One Section, which would be Headgate One North
15 ---

16 Q. Okay.

17 A. --- and run the miner over there, and that's when
18 I realized they had very little air over there at all.

19 Q. Okay.

20 A. And so I'd say that problem, I wasn't aware of it
21 until I went over there that night.

22 Q. Okay.

23 A. And I can't remember if that's --- not long after
24 that's when I called the inspector or not. But
25 anyways, so that means at least from last January on

1 Headgate One North, there was a problem.

2 Q. Did anybody from management ever discuss this
3 problem with the crews and discuss what they're doing
4 or trying to do to correct this?

5 A. No, not to me personally or any of my knowledge.

6 Q. Okay.

7 A. Long, as long as the men was loading, it wasn't a
8 problem.

9 Q. Has there ever been anything said about if this
10 mine doesn't produce enough that there will either be
11 layoffs or they'll shut the mine? Anybody ever say
12 anything like that, imply it in any way?

13 A. You mean management personnel?

14 Q. Uh-huh (yes), yeah, management personnel.

15 A. It seems like that I've heard them, you know,
16 throw that around.

17 Q. Yeah.

18 A. But I can't remember any times or exactly who it
19 may have been.

20 Q. Okay. In the weeks just prior to the explosion,
21 were you ever withdrawn from the mine due to an unsafe
22 condition?

23 A. Yeah. March 9th was, I think, the last time that
24 I personally was withdrawn.

25 Q. And ---?

1 A. Wasn't withdrawn. We just weren't --- they
2 withdrew the dayshift and I wasn't allowed to go.

3 Q. Okay. So your shift was canceled?

4 A. Right.

5 Q. Why was the dayshift withdrawn?

6 A. Ventilation, and I'm thinking it was on Headgate
7 22. I'm not sure if it had anything to do with the
8 longwall or not.

9 Q. Were they under citation or did they do it on
10 their own?

11 A. They was under citation. I'm pretty certain.

12 ATTORNEY WILSON:

13 Can we take a break a sec?

14 SHORT BREAK TAKEN

15 BY MR. STEFFEY:

16 Q. Okay. And did you say that was on March 9th?

17 A. Right. March 9th, I'm pretty certain.

18 Q. Okay. Any other times that you can think of?

19 A. I can't recall anything there until the day of the
20 explosion. Now, I heard that they --- I'm not sure
21 they were withdrawn that Friday before the explosion
22 or exactly what, but when we got to the bathhouse that
23 day, I heard a little bit of talk around the
24 bathhouse, something had happened that Friday.

25 Q. There was some talk, you had mentioned to me,

1 like, a week before or something or was that just kind
2 of around that March the 9th because, like, I thought
3 it, like, a week before or something.

4 A. I don't know if I said a week or two before.

5 Q. Okay, okay. Has the carbon monoxide monitoring
6 system ever gone into alert or alarm mode when you
7 were working?

8 A. Yes, it had.

9 Q. Okay.

10 A. Tail roller and one of the belts smoked up really
11 bad one night. That set the carbon monoxide alarms
12 off.

13 Q. Okay. What happened then?

14 A. Okay. They sent people to it, half of them off of
15 our section, some off the longwall. They pumped
16 grease in. I had a guy set there to keep water on it,
17 thinking it may be the bearing and then tried to run
18 the belt, but it smoked up the whole entry again and
19 the boy finally shut the belt off. So then we had to
20 go work on it.

21 Q. Okay. Did you ever see Chris Blanchard, Justin
22 Whitehead or --- who's the other guy that you
23 mentioned --- Jamie Ferguson underground?

24 A. I've seen Jamie Ferguson underground more than any
25 others. Blanchard, I seldom seen him underground.

1 Now, whether he went up there and went in on the
2 dayshift much or not, I don't know.

3 Q. Okay.

4 A. Jamie, he was underground quite often.

5 Q. Did they talk to you or the crew?

6 A. Underground?

7 Q. Yeah.

8 A. No. I mean, if we had to get off section and work
9 around him, we'd talk to him a little bit.

10 Q. Okay. And what about outside as far as the
11 beginning of the shift? Did they ever come out there
12 and talk to you guys?

13 A. Talk to us as a group or ---?

14 Q. Yes, talk to you as a group.

15 A. No, I don't think.

16 Q. Okay. What about Chris Adkins or Don Blankenship,
17 did you ever see them at the mine?

18 A. Years ago, but not --- not in quite sometime.
19 It'd have been --- if you go back in the '90s, yeah,
20 we saw them a lot.

21 Q. Did you ever see any memos here posted by them?

22 A. No, usually the memos were Chris Blanchard or
23 Jamie Ferguson.

24 Q. Was there a lot of pressure at this mine to run
25 coal?

1 A. Yes.

2 Q. Where'd that pressure come from?

3 A. Well, to me personally, it started with
4 Blankenship, passed on down to the president of the
5 company, who passed it down to the superintendent, who
6 passed it on down to the mine foremen, and then they
7 put the pressure on the section foremen.

8 Q. Now, when you first started with Massey, did you
9 get the Massey initial training?

10 A. The Massey initial training?

11 Q. Yeah.

12 A. I don't know exactly ---.

13 MR. HUDSON:

14 Stanley was grandfathered in from ---

15 MR. STEFFEY:

16 Okay.

17 MR. HUDSON:

18 --- from Peabody, which was a unique
19 situation because he got to carry all of his Union
20 contractual benefit days. It was one of them little
21 tweaks that, like he had his graduated days, his sick
22 days and all of that to ---

23 MR. STEFFEY:

24 Okay.

25 MR. HUDSON:

1 --- the company Union contract, so he was
2 one of a different group. You know, they had so many
3 groups there, but he had everything that I have ---
4 our guys have under contract with the pension plan.
5 So they treated them a little bit --- well, maybe a
6 whole lot different from the other workers because
7 they were --- they came over from, you know, Armco
8 Number Seven and like, you know, never took their days
9 or anything. So they were different, yeah.

10 MR. STEFFEY:

11 These even had a different category?

12 MR. HUDSON:

13 Yeah, exactly.

14 MR. STEFFEY:

15 Okay.

16 BY MR. STEFFEY:

17 Q. Let's talk about the longwall. You used to work
18 on the longwall; is that correct?

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

20 Q. Now, this mine map shows a three-year gap in
21 longwall production. Do you know why?

22 A. Yes, I do. We moved that longwall. There was no
23 more panels being developed at UBB, and in '06 when we
24 finished the last one and they had the belts on at
25 Logan Fork, Sylvester.

1 Q. Uh-huh (yes).

2 A. And so we pulled it out of there, moved it to
3 Logan Fork and pulled three panels down there, and in
4 the meantime they already developed these new panels
5 at the UBB. When we finished Logan Fork, that's when
6 I came back to UBB.

7 Q. Okay.

8 MR. HUDSON:

9 They're coming on right there. Doing the
10 math on that production, when you go from January to
11 April of this year and you're at 1.2 million tons last
12 year, and if you done the math this year at that pace
13 they were on before April 5th, and you guys probably
14 already done it, the year would have ended up at 1.8
15 million tons. So there was a --- there was beginning
16 to be another huge increase in production, if you take
17 that quarter at a time, the beginning of this year.
18 Last year was 1.2, but do the math from the hours,
19 which I did, from the hours and the men, it would have
20 been equivalent to 1.8 million at the end of this
21 year.

22 MR. STEFFEY:

23 Yeah.

24 MR. HUDSON:

25 And you guys have probably already done

1 them, but I done them, but I did that, you know,
2 so ---.

3 MR. STEFFEY:

4 Right. Yeah. Let's limit the
5 conversation on the record.

6 MR. FARLEY:

7 He was answering a question.

8 BY MR. STEFFEY:

9 Q. In this mine on the mine map, various portions of
10 the longwall panels were skipped.

11 A. Uh-huh (yes).

12 Q. Do you know why?

13 A. Well, there was a couple of them that was a
14 graveyard at the top of the mountain.

15 Q. Uh-huh (yes).

16 A. So we would move it out of there, move it around
17 the graveyard, get it back up. And then some of them
18 with the long gaps at the end of the panel, ---

19 Q. Uh-huh (yes).

20 A. --- condition just low coal and solid sand rock,
21 top and bottom. You could hardly cut it, so they'd
22 pull them out early.

23 Q. So it was a combination of difficult cutting
24 conditions and, in some instances, the subsidence
25 control plan?

1 A. Uh-huh (yes). Right.

2 Q. And do you know if the longwall hot seats?

3 A. As far as I know they still do. We always did.

4 Q. Okay. Is the shift change --- at shift change,
5 can you conduct --- when the two longwall crews would
6 hot seat out, how did they exchange information as far
7 as hazards and conditions on the longwall panel
8 itself?

9 A. When I was on it and we would go in on the evening
10 shift, our boss would talk with the dayshift boss.
11 And me personally, if I went by, say, the other shield
12 --- shield man ---

13 Q. Uh-huh (yes).

14 A. --- he would tell me anything I may need to know.

15 Q. Okay. Are you familiar with the mule train in the
16 longwall?

17 A. Yes, I am.

18 Q. Do you know if there is a way to disable a methane
19 monitor on the shearer from the mule train?

20 A. I don't know that there is a way to do it from
21 there. No, I don't know.

22 Q. Okay. And this longwall, current longwall panel
23 here, how much did you know about that area on the
24 current --- on the current panel?

25 A. On the current panel?

1 Q. Uh-huh (yes). As far as water accumulations is
2 where I'm going with this. You mentioned earlier
3 about there being quite a bit of water, it seemed like
4 in this (indicating) area?

5 A. Uh-huh (yes).

6 Q. And it was coming from the floor.

7 A. Well, I know they had men going in here
8 (indicating) trying to work, and they were wading the
9 water, because I'd hear them boys talk about it,
10 trying to get pumps set and get it pumped out and what
11 have you. And then over here when we was building
12 that wall through that, through the Number Three
13 entry, I guess,

14 Q. Uh-huh (yes).

15 A. --- there was plenty of water there, and then our
16 boss, daily he would have to walk all the way to the
17 pump, all the way up to the head of the section. And
18 they talked about how deep the water was trying to get
19 up through there, so that's how I know about the water
20 problem.

21 Q. Now, these pumps that were up in the mains, in
22 this area and going behind the current longwall panel
23 and going up toward the Bandytown fan, what kind of
24 pumps were these? Do you know?

25 A. I can't remember what horsepower they were using.

1 Q. Do you know where they got the power supply at for
2 the pumps?

3 A. I know the ones I saw, what I saw over here
4 (indicating), I remember the cable ran way back. I'm
5 not sure if it went all the way to the mule train.
6 I'm thinking it did. Over here, I'm not sure.

7 Q. Okay.

8 A. I know they had a power box out the mouth.

9 MR. STEFFEY:

10 Before we discuss the date of the
11 accident, let me give these guys a chance to do
12 follow-up questions.

13 ATTORNEY WILSON:

14 Terry?

15 MR. FARLEY:

16 Yes.

17 RE-EXAMINATION

18 BY MR. FARLEY:

19 Q. Earlier when you were discussing --- you indicated
20 that the safety person made a point of coming to the
21 hospital and asking you to return to work as soon as
22 possible, do you know if the hospital medical bill was
23 paid by a mixture of your Workers' Comp or was it paid
24 by Massey?

25 A. To my knowledge, it was paid by Workers' Comp. I

1 think they're under Wells Fargo now, I believe. It
2 may have been under Wells Fargo then. I'm not sure on
3 that.

4 Q. Uh-huh (yes).

5 A. That's who handled their Workers' Comp back then.

6 Q. Was there any plan or agreement that you were
7 aware of between the company, Massey and Wells Fargo
8 or Workers' Comp where they required workers to return
9 to work more quickly?

10 A. To my knowledge they had no agreement, or I don't
11 know that they had one.

12 Q. Okay. Any type --- okay. When you were operating
13 on the One North section as the continuous miner
14 operator, do you recall who the other continuous miner
15 operator was on your shift?

16 A. Yeah, Carl Grimmitt.

17 Q. Carl Grimmitt, okay. What about the other shifts?
18 Do you remember who might have been the operators
19 then?

20 A. Okay. One of --- we had three crews. One crew
21 had William Griffith and Joe Ferrell. And another
22 crew had James Griffith.

23 Q. Okay.

24 A. And for a while it was that lady, Bobbie Pauley.
25 I don't know when exactly they took her off of it.

1 Q. All right.

2 A. And I don't know who replaced her.

3 Q. Okay. The last shift you worked on 22 Headgate,
4 if I remember correctly, was Thursday, April 1st?

5 A. Yes.

6 Q. Do you recall where the end of the track was at
7 that time in terms of its distance from the face?

8 A. Probably close to a half a mile from the face.
9 I'm not sure exactly which break. Okay. I feel like
10 the track was probably somewhere right in this
11 (indicating) area. I can't --- can you see?

12 Q. I'm like you. I can't read the spads, so ---.
13 Maybe you give me a spad number.

14 A. Now, this may not be exact, but 243480.

15 Q. Okay. Now, during the time that you worked on 22
16 Headgate, was there always a mantrip at the end of the
17 track that would have enough room to transport the
18 entire crew?

19 A. No.

20 Q. How often would the --- well, explain that.

21 A. All right. I'll explain that. They did get us a
22 little battery powered car that could haul all of us
23 and ---.

24 Q. One car?

25 A. Right, rubber tire.

1 Q. Okay.

2 A. And when it wasn't broke down, we used it. Okay?
3 And some point, maybe early March, it had a flat tire,
4 sat there for a week.

5 Q. Okay.

6 A. And in the meantime, we're walking a half a mile
7 up and half a mile back. And it wasn't until an
8 inspector came, wrote them a violation on it, and
9 actually we weren't even allowed --- he came back in
10 that evening with us to see to it that it was fixed
11 ---

12 Q. Okay.

13 A. --- before --- he wasn't even going to allow us to
14 go to face. And you know, miraculously they got a
15 tire and fixed it. But after that, it wasn't over.
16 We were told not to use it.

17 Q. Not to use the rubber tire vehicle?

18 A. To leave it up here (indicating) on the section
19 and continue to walk. So even though they fixed it, I
20 guess to keep them from getting another violation in
21 case it broke down --- maybe they didn't want to get
22 it fixed or whatever --- they just made us park it and
23 we had to keep walking. And then they didn't make a
24 whole lot of effort to get the track up.

25 Q. Okay. That rubber tired vehicle, would it

1 accommodate the number of people you had on the
2 section?

3 A. Yes, the one we had, we all rode in it together.

4 Q. When it was in operation?

5 A. Uh-huh (yes). Right. When we were allowed to use
6 it.

7 Q. Okay.

8 MR. HUDSON:

9 Did it have self rescuers on it?

10 A. I think it did, Marty. I can't --- I believe it
11 did, yeah.

12 MR. FARLEY:

13 Okay. That's it.

14 RE-EXAMINATION

15 BY MR. MCGINLEY:

16 Q. Do you know the names of the longwall coordinator
17 at UBB from the time you've been there --- since
18 you've been back --- when was that, January 2009 when
19 you came back?

20 A. Yes. The longwall coordinator was Jack Roles.

21 Q. Okay. Is there a longwall coordinator for each
22 shift or is ---?

23 A. No, he was the main longwall coordinator. He had
24 an assist.

25 Q. And who was that?

1 A. It would have been Harold Wills.

2 Q. I'm going to show you a couple of documents, the
3 citations issued for violation of approved ventilation
4 plan, March 11th --- or I'm sorry, March 9th and March
5 11th, 2010. Just take a look at that. I'm going to
6 ask you a couple questions.

7 WITNESS REVIEWS SAME

8 MR. MCGINLEY:

9 Go off the record?

10 OFF RECORD DISCUSSION

11 BY MR. MCGINLEY:

12 Q. So did you take a look at those two citations?

13 A. Yes, I did.

14 Q. Anything look familiar there at --- for example,
15 on the 9th, one of the things, the citations --- well,
16 let me just read it for the record. The approved mine
17 ventilation plan, approved 8/09/09 and re-approved
18 1/22/10 was not being followed to the tailgate entries
19 of the longwall panel.

20 The air was going outby in the Number Five to
21 Seven entries from the longwall face, return air, to
22 the mouth of the section instead of intake air going
23 inby from the mouth of the section to the longwall
24 tail. The regulator at survey station 22412 was not
25 present and instead was a permanent stopping, blocking

1 intake air from ventilating the tailgate entries. Do
2 you know anything about that?

3 A. No, no, I didn't never have any knowledge of that.
4 I just knew they was having ventilation problems and
5 the inspector would periodically, I guess, try to make
6 them correct them.

7 Q. Well, if it was a permanent stopping that was
8 built that was blocking intake air, and if that was
9 contrary to the ventilation plan, that'd be pretty
10 obvious, wouldn't it?

11 A. Yeah, that's serious there.

12 MR. FARLEY:

13 That's not what you guys called --- I
14 think one time you characterized it like the Great
15 Wall of China where you ---?

16 A. No.

17 MR. FARLEY:

18 That's not that; okay.

19 A. Uh-uh (no).

20 BY MR. MCGINLEY:

21 Q. So did you --- I think maybe this was asked
22 before, I'll just clarify. Did you know in the area
23 where you were working what the approved ventilation
24 plan required?

25 A. I'm in the main intake or ---?

1 Q. Yeah.

2 A. I know what --- I was supposed to have a minimum
3 6,500 feet behind my curtain ---

4 Q. Okay.

5 A. --- when I was loading coal for every run.

6 Q. So when the foreman talked to you about
7 ventilation, basically did you know anything more than
8 what you were supposed to have right in your
9 workplace?

10 A. No, I really didn't.

11 Q. You're familiar with the Raman Point System?

12 A. Yes, I am.

13 Q. What is it?

14 A. You get so many points for not getting hurt each
15 month or --- and you build up your points and they've
16 got a catalogue with different items, some expensive,
17 some not. And ever how many points one cost, if you
18 want that particular item and you have enough points
19 you can order it through the Raymond Program.

20 Q. How do you know how many points you get?

21 A. You can get on the internet and check.

22 Q. Do you know what the --- what S1 means?

23 A. Yes, I do, safety first.

24 Q. And was there a S1 program at the Upper Big Branch
25 Mine?

1 A. Supposed to be. S1 and P2, I believe they call
2 it.

3 Q. What does P2 mean?

4 A. Production second.

5 Q. With regard to S1, what was the S1 program?

6 A. They had an S1 team. I seldom saw them, I
7 believe. You know, you go around to different Massey
8 mines and give them their own little inspection,
9 writing things up. I hadn't saw it in a long time.
10 You know, it's supposed to be safety first.

11 Q. Well, and looking at the --- Massey's Corporate
12 Social Responsibilities Report for 2009, they've
13 referred to the S1 program, so is it more than just
14 saying, safety first? I mean, you know, how did you
15 understand it? What was the program?

16 A. You want my honest opinion?

17 Q. Yes.

18 A. You know, that's just my opinion. I felt like the
19 S1 Program was propaganda.

20 Q. Well, did you know if any ---? I mean did they
21 --- anyone in management explain to you safety
22 meetings, otherwise or give you any written material
23 that said, this is what the program --- the S1 Program
24 is?

25 A. I don't remember ever getting anything on it. I

1 mean, I could have possibly gotten something in the
2 mail. But I don't remember.

3 MR. TUCKER:

4 Can I ask a question?

5 MR. MCGINLEY:

6 You can --- yeah.

7 MR. TUCKER:

8 Stanley, do you notice any change in
9 Safety meetings or anything after Aracoma? After
10 those deaths at Aracoma, were there anything else that
11 went on, on health and safety, that you would have
12 noticed?

13 A. I don't remember any changes. I know usually
14 anything happened in Massey, you know, they kept it a
15 secret. I mean, we had gas fields at our mines and
16 couldn't get any information on it. They wouldn't go
17 over what happened, how it happened or anything. It's
18 like it was a secret.

19 MR. TUCKER:

20 Well, there was an agreement that you
21 guys would receive enhanced --- enhanced safety
22 training ---

23 A. Oh.

24 MR. TUCKER:

25 --- or awareness. Did you notice

1 anything different on how they, you know, conducted
2 safety meetings, done anything with you guys different
3 after those deaths at Aracoma?

4 A. No. Me personally, I don't remember anything
5 being much different.

6 BY MR. MCGINLEY:

7 Q. You were saying there's a --- Massey had a team?

8 A. Yeah, they used to have a S1 team, it seemed to me
9 like. Like I say, I don't know if it actually still
10 exists --- that would around writing things up. And
11 their S1 program requires you to wear gloves,
12 metacarpal gloves and safety glasses and things like
13 that. That was in their S1 Program, so that's part of
14 it that was spoke of occasionally.

15 Q. In the 2009 Corporate Social Responsibility Report
16 under the heading, Listening to Our Members About
17 Safety Practices, this report says, our extensive
18 training efforts and frequent operations of management
19 unions create opportunities for the exchange of
20 information and new ideas. How many operations
21 meetings would you have, say, per month that give you
22 an opportunity to exchange information and new ideas?

23 A. I don't know of any.

24 Q. The next sentence says, through these meetings,
25 Massey managers share best practices for safety,

1 ensuring that all Massey operations are equipped with
2 the best, most current safety tools and programs. I
3 know you said you don't know of any meetings, but that
4 does that sentence help jog your memory? Did you have
5 any meetings with Massey managers where they were
6 sharing best practices for safety?

7 A. Sharing what?

8 Q. Best practices for safety?

9 A. I can't recall any meetings that I attended just
10 for that sole purpose.

11 Q. Well, did that come up in any meetings with ---
12 other than with the foremen?

13 A. Nope.

14 Q. Did it come up with --- in meetings with foremen
15 you discussed safety?

16 A. With our foremen every evening we stopped to fire
17 boss and had a little safety talk.

18 Q. Did the issue of, for example, inadequate air come
19 up in those meetings?

20 A. Yes, sometimes, absolutely.

21 Q. And what was the foreman's response? What was
22 said?

23 A. That he was going to take air readings, check it
24 out, but you know, we all knew when we didn't have
25 enough.

1 Q. You didn't have to take an anemometer reading to
2 know you didn't have enough air?

3 A. No, most times you really didn't have to. You
4 could tell you didn't have enough.

5 Q. How could you tell?

6 A. Just by the dust and the way, you know, movement.

7 Q. And you said it at least one time, and maybe more
8 than that, there was no air movement at all?

9 A. Right. It was a couple of times even right in the
10 main intake, not up in the face. We never had any,
11 because that auger would not turn.

12 Q. Was that Headgate 22 or only on the One North?

13 A. It was on Headgate 22.

14 Q. You mentioned early on this morning that you had
15 observed ground hooving. And where was that? I think
16 you said sometime late April, March. Was that this
17 year?

18 A. Yes, that was this year in March, February, March.

19 Q. I don't have it in my notes. Can you describe
20 that, what that --- the appearance of the ground
21 hoove?

22 A. Well, just, you know, after we've done the mine,
23 you can just see it hoove up and kind of peak,
24 sometimes in the seam or in the entry, sometimes over
25 to the left or the right. But didn't make a big ---.

1 In fact, I've had to go in and take my miner and cut
2 it out a few times because it, you know, made the
3 roadways too rough.

4 Q. How high would that hump be, maximum?

5 A. Anywhere from six inches to two feet.

6 Q. You said you heard from someone that the Friday
7 before April 5th, there were problems. Was that the
8 longwall or where you had been working?

9 A. I don't know exactly where they were at because
10 that was our first day back and just getting my
11 clothes on, getting dressed to go to work, just heard
12 the talk around the bathhouse. Can't even remember
13 exactly who may have been saying it. Didn't really
14 get the details.

15 Q. Did anybody mention gas, like gas burst or gas
16 problems?

17 A. I never heard anyone mention that.

18 Q. We've heard from others that they didn't notice
19 problems with air on Headgate 22. Why do you think
20 they might say that?

21 A. The only reason I can think that they would say
22 that goes back to the Massey code of silence to keep
23 your mouth shut and go on. So you know, they're
24 trying to be a member. Or they just weren't even
25 aware that there wasn't enough air there. I don't

1 know what their reasons or motives may have been.

2 Q. Now, Mr. Stewart, you signed an agreement that
3 you'd mentioned earlier today, the Enhanced Wage
4 Agreement?

5 A. Yes.

6 Q. I think it's been marked for identification as
7 Stewart Exhibit Four. Did you have a lawyer look at
8 this before you signed it?

9 A. No, I did not.

10 Q. Do you know anyone who didn't sign it?

11 A. Grover Payne is the only man that I know of
12 personally that never did sign it.

13 Q. Did he tell you that he didn't sign?

14 A. Yes, he told me that.

15 Q. Did he say why he did not?

16 A. He just said he was a very highly religious man
17 and he wasn't going to agree to things he didn't ---
18 that like what was in it.

19 Q. On the second page of this exhibit --- it's not
20 numbered, but it's the second page of the exhibit. It
21 mentions a covenant not to compete. Do you know what
22 that means?

23 A. I think I do. I think it means not to seek
24 employment with a rival coal company.

25 Q. Okay. If someone was to sign this agreement, they

1 committed themselves to work for Massey for three
2 years; is that correct, ---

3 A. That's correct.

4 Q. --- until December 31st, 2010? If somebody didn't
5 like the conditions of work, there were safety,
6 serious safety problems and they quit, what's your
7 understanding of the effect of this agreement? Say
8 they'd been working there for two years on the
9 agreement.

10 A. According to my understanding of it, they would
11 have to pay back the difference of what the pay raise
12 was before they signed the agreement and what they
13 were getting, and could not seek employment within a
14 90-mile radius of any Massey mine. That's employment
15 at any other coal company in the mining business.

16 Q. So they couldn't work as a coal miner, in your ---
17 well, where did the 90-mile radius extend to? You
18 signed this and are bound by it. Where does that ---?

19 A. The way I read it, it would extend from any Massey
20 mine, so not just the mine you worked at. And then I
21 mean you could go to Kentucky at a Massey --- but if
22 there was a Massey mine there, you wouldn't be allowed
23 to supposedly get a job at any other coal company.

24 Q. Actually I'm looking here on page three of the
25 agreement. It's page five of the exhibit. It says

1 90-mile radius from Performance Coal. If you had to
2 quit your job because your spouse had a serious
3 illness, what would be the effect of this agreement to
4 your understanding?

5 A. Could you restate the question?

6 Q. Yeah, if you had to quit work --- yeah, you've
7 been working for two years and you had to quit because
8 your spouse had a serious illness and you had to quit,
9 what would be the effect of the agreement?

10 A. I wouldn't be able to seek employment with another
11 coal company. And I guess I stated that wrong. It
12 does say from your Performance Coal Company work
13 location. But yeah, it'd be my opinion that if I had
14 to quit because of her, I wouldn't be allowed to
15 work ---

16 Q. Well, let's ---.

17 A. --- according to the agreement.

18 Q. Okay. On the second page of the agreement, page
19 four of the exhibit, actually a continuation from the
20 previous page, the company reserves the right to
21 terminate your employment for lack of performance as
22 determined by management. What does that mean?

23 A. Well, which page was that on?

24 Q. It would be page two. There's the number two at
25 the bottom.

1 A. Okay. I interpreted that to mean that even though
2 they're guaranteeing you a job for three years, I
3 didn't see any guarantee at all. I mean it didn't ---
4 you know, that paragraph plainly says getting rid of
5 you for whatever reason they deem fit. So how's that
6 a guaranteed job for three years?

7 Q. On page three --- there's a number three. It's, I
8 think, the fifth page of the exhibit. It says you
9 agree that in exchange for your promise not to
10 compete, in this regard the company's provided you
11 with the following consideration. I direct your
12 attention to number three, the specializing training
13 you receive as a company employee. What did you
14 understand that to be?

15 A. I couldn't understand that.

16 Q. You don't know?

17 A. No. You know, it may have been for some others,
18 but I didn't get any specialized training from them.

19 Q. Did you get any specialized training at Massey
20 that you didn't receive at Peabody?

21 A. No. No. I was pretty well experienced when they
22 bought us, so they never gave me any specialized
23 training.

24 Q. What about number four here on page three, page
25 five of the exhibit, the use of the company's

1 confidential and proprietary information regarding the
2 company's practices and policies, including S1? What
3 does that mean? Were you told that there were any
4 practices or policies of the company regarding S1 that
5 were confidential?

6 A. I didn't fully understand that statement either.

7 Q. When you signed this agreement, how was your pay
8 enhanced? How much more money did you get?

9 A. Well, initially the agreement came out with a 50
10 cent raise.

11 Q. Per hour?

12 A. Right. And I said they can keep it. I wouldn't
13 sign it. Okay. Then they upped it to \$3 an hour.
14 And I held off for a little bit. That's when I said,
15 you know, my mom taught me not to bite my nose off to
16 spite my face. So that's when I signed it. And then
17 they added to that as time went on, with the
18 stipulation they could take it back if they wanted.
19 But it got up to \$30 an hour on that miner operator.

20 Q. \$30 more than a miner would have made if they
21 hadn't signed the agreement?

22 A. No. Had I not signed it, I'd ---.

23 Q. What would be the difference?

24 A. It would've been probably around \$8 or \$9 an hour.

25 Q. Okay. So if you left Massey to go to work at

1 another coal company, you'd have --- sooner than three
2 years, you'd have to pay all that extra money back,
3 the raise?

4 A. That's the way I read this.

5 Q. Even if you quit two days before December 31st,
6 2010?

7 A. That's right.

8 Q. And most of the other folks you worked with signed
9 the document?

10 A. Yes, they did.

11 Q. And they think that was enforceable, do you think?
12 Is there any question about whether that could be
13 enforced?

14 A. I think some of them thought it was probably legal
15 and enforceable. I told them I didn't think so.

16 There ain't no way. I said there's not way they can
17 make this stand, but I think a lot of the guys thought
18 that it could and would.

19 MR. SHERER:

20 I don't have questions.

21 RE-EXAMINATION

22 BY ATTORNEY WILSON:

23 Q. Okay. Before we go on, I just had one quick thing
24 I wanted to follow up that you had mentioned this
25 morning. You said that you had heard that Chris

1 Blanchard had gone into the mine the Thursday before
2 the explosion; is that right?

3 A. I'd heard he had.

4 Q. Okay. Can you give us a little more detail on
5 what you heard and where you heard that from?

6 A. I cannot remember who told me that, and I don't
7 know that they --- whoever --- you know, this whole
8 bathhouse talk. Sometimes I would just overhear a guy
9 talking while I was getting my clothes on. But that
10 they had been in the mine. And usually when he was in
11 there, it's something serious. He don't --- he just
12 don't come up to visit.

13 Q. That's all the detail that you ---?

14 A. Yes, that's about all I can bring up here now.

15 ATTORNEY WILSON:

16 Okay. David?

17 RE-EXAMINATION

18 BY MR. STEFFEY:

19 Q. I have a few follow-up questions here. Was there
20 any problems with fire clay in the floor on the
21 Headgate 22 section?

22 A. Fire clay?

23 Q. Uh-huh (yes).

24 A. Not that I'm aware of it.

25 Q. Okay. You mentioned that the bottom was hooving

1 up on Headgate 22 and busting up and you had some
2 problems with the floor that maybe contributed to the
3 problems with that little rubber tire mantrip that
4 they left you guys with. Did I understand you
5 correctly?

6 A. No, I don't think that was --- contributed to any
7 problem with it, because the intake where we was
8 running it ---

9 Q. Uh-huh (yes).

10 A. --- it wasn't too bad.

11 Q. Okay.

12 A. It'd been scooped and ---.

13 Q. Okay. Up there on the section in the area inby
14 the feeder, where was the scoop at there? Were those
15 haul roads regularly scooped?

16 A. I wouldn't say regularly. They were scooped when
17 we could get to them. I mean you got --- you got two
18 miners and two bolters and two buggies ---

19 Q. It's kind of crowded.

20 A. --- in three entries.

21 Q. Okay.

22 A. But --- and we cleaned them maybe not regularly,
23 just --- but tried to get to them when they could.

24 Q. Scoop in good shape?

25 A. Most of the time it was. One of them --- one of

1 them we had up, I think had some break problems out.
2 And I don't know if they ever fixed those or not. I'd
3 hop on it every once in a while and they seemed to
4 operate okay.

5 Q. Okay. How long had it been since you ran a
6 continuous miner prior to returning to UBB January of
7 '09?

8 A. It had been approximately 14 years.

9 Q. Okay. Did you receive any training from
10 management when you returned to UBB in January of '09?
11 Had there been training with you on the miner or ---?

12 A. Well, when I went for my first shift back, they
13 told Richard Hutchens to let me just be the setup guy
14 that night and you know, this and that, you know. I
15 told him, I said, it's like riding a bicycle as a
16 matter of fact, and I can run the thing. I'll be all
17 right. So that's what happened there.

18 Q. On your first shift back, what'd you do?

19 A. I loaded coal and I just mainly took my time and
20 worked on learning the remote box because it was
21 different than the ones I had ran prior to getting on
22 the --- being on the longwall.

23 Q. Visit any other areas of the mine?

24 A. No.

25 Q. No. Just went straight to the section, then, and

1 went to work?

2 A. Right. I went straight to the section with the
3 section crew.

4 Q. You may have already answered this. We'll cover
5 it again just to make sure. Were miners subject to
6 retaliation and threats if they reported safety issues
7 and other concerns?

8 A. I felt like that they would be, and everyone else
9 felt the same way. If they continuously went and
10 raised concerns and rocked the boat, so to say, yes,
11 everyone felt like that they would eventually be
12 retaliated against.

13 Q. Okay.

14 ATTORNEY WILSON:

15 But do you know of any specific instances
16 where that happened?

17 A. All I know of is of guys being written up and
18 several guys fired. You wouldn't ever hear the exact
19 reasons why. And there had been so many turned loose
20 there, I can't bring up names right off the top of my
21 head. The guys just come and go so often, so ---.
22 And most of the older experienced guys, you know, were
23 still --- they were still there. And they'd be the
24 names that I would know if it would've happened to
25 them.

1 BY MR. STEFFEY:

2 Q. And you mentioned the young --- the young miners
3 had a different attitude toward the inspectors than
4 the older miners did.

5 A. Right. I think so.

6 Q. Would you care to go on with that a little bit,
7 how this came about, where this attitude came from?

8 A. I feel like this attitude was instilled by
9 management and probably just listening to them or
10 whatever and, you know, they kind of side up and think
11 that the inspectors are there and they're against
12 them. They're trying to hurt them and make things
13 hard on them, and so they ---. And like I stated
14 earlier, you know, I'd tell them boys they're our
15 friend. They're not here to get you. They're here to
16 take care of you.

17 Q. Did you ever personally hear anybody in management
18 saying that the inspectors are here to hurt us?

19 A. Not directly. I don't think I've personally
20 actually heard them say that. You know, I say --- I
21 say that on the grounds of just the way they are and
22 the way they act when the inspector does show up on
23 the property.

24 MR. STEFFEY:

25 Okay. Do you want to take a break before

1 we talk about the day of the accident or --- good?

2 A. I'm good unless you all want a break.

3 RE-EXAMINATION

4 BY MR. FARLEY:

5 Q. I have one more question before we proceed. In
6 the weeks preceding the explosion on April 5th, did
7 you pass --- happen to pass by the scoop charger on
8 the 22 Headgate section?

9 A. Yeah, I went by it every day.

10 Q. Okay. Did you notice any unusual smell?

11 A. No, I didn't.

12 MR. FARLEY:

13 Okay. That's it.

14 RE-EXAMINATION

15 BY MR. STEFFEY:

16 Q. Okay. Let's talk about April 5th. Where were you
17 at the time of the accident?

18 A. I was sitting in a mantrip approximately 300 feet
19 underground.

20 Q. Okay. And how did you know that something had
21 taken place?

22 A. We were getting ready to leave to head to Headgate
23 22. The longwall section was in the mantrip in front
24 of us. And I was sitting there and then I just --- I
25 just felt a slight breeze start blowing initially.

1 And silly as this is, I thought, wow, it's like a
2 thunderstorm blowing up, you know? And then I ---
3 there's no thunderstorm happening in here.

4 About that time it went to getting much stronger.

5 And so then I realized, hey, this ain't good. So out
6 of the mantrip I came. I can't remember if I yelled
7 run or whatever, but anyway, everybody else, we all
8 took off toward the portal.

9 Q. Do you remember if you got anything? Did you
10 happen to look at your spotter after you got outside?
11 Did it pick up anything?

12 A. No, the spotter that I carried operated at ---
13 it's not a continuous.

14 Q. Okay.

15 A. Not one of those continuous.

16 Q. Did anybody don their SCSR?

17 A. Not on my crew. There was a mantrip inby us that
18 was setting up a new section. I think some of them
19 boys got theirs out.

20 Q. Okay. Let's go back to these doors here at Break
21 78 where the intake crosses the track.

22 A. Uh-huh (yes).

23 Q. Now, this explosion occurred basically at shift
24 change; ---

25 A. Right.

1 Q. --- correct? Was there ever an instance when you
2 recall in your shifts when your shift ended and you
3 were leaving the mines if someone would leave these
4 doors open for the crews behind them to come on out?
5 Did that occur?

6 A. I have seen that occur.

7 Q. You have seen that occur. All right. When was
8 the last time you saw that happen?

9 A. Oh, my. That's a tough question as far as the
10 date and everything goes, but ---.

11 Q. Did it occur in the weeks leading up to the
12 accident?

13 A. Yeah, I saw it happen in that time frame. If
14 there were mantrips back to back, it would be.

15 Q. Okay.

16 A. Now, sometimes both of them would go through and
17 the one in front would wait for them to shut the doors
18 the right way, ---

19 Q. Yeah.

20 A. --- but that wasn't always the case.

21 Q. How often were there mantrips back to back?

22 A. With our particular crew it wasn't really too
23 often, but it did occur.

24 Q. What about with the dayshift crew?

25 A. Well, I don't know. I'm not really certain how

1 the dayshift went in and out, so I don't know how
2 often they might have been back to back.

3 Q. Okay. And you said you felt the air, the air
4 blast come through the air, the wave of air come
5 through?

6 A. Uh-huh (yes).

7 Q. You felt it hit you. Well, did it get real dusty?
8 How was the visibility?

9 A. Visibility, it got down to where you couldn't
10 really see before I got outside. I mean, you know,
11 just the swirling. I could feel stuff getting in my
12 eyes, so I think I shut them.

13 Q. Where was your lifeline at? And did you have a
14 lifeline there?

15 A. I don't remember if there was a lifeline going to
16 the outside or not, tell you the truth.

17 Q. Okay. That's fine. Once you got outside, what
18 happened then?

19 A. Okay. When I got outside I went to the right and
20 I turned around and looked, and I could see the air
21 was still whooshing out. I mean --- you know. And
22 actually them plastic buckets were flying with it. It
23 was still strong.

24 And so I thought --- I didn't know if everyone had
25 gotten out or not, so I actually kind of snuck back up

1 and was trying to look around, getting close enough
2 without getting too close to yell in and ask them if
3 everybody --- or holler if anyone, everyone had gotten
4 out. And I did that and no one answered.

5 But then a few minutes later a couple more of my
6 buddies came staggering out of there. And I asked
7 them if they heard me and they said, nope. I guess
8 the wind was too strong.

9 Q. About what time was that?

10 A. It was between 2 after 3:00 and 5 after 3:00 all
11 this had taken place. I estimated about 3:02 when I
12 initially felt the air.

13 Q. How long did the wind blow out of the mine? Do
14 you have any idea?

15 A. I'm going to say at least two minutes, just a wild
16 guess and a gut check --- or a gut feeling. I feel
17 like it blew for at least two minutes.

18 Q. Okay. And what happened after that?

19 A. We went over and sat down, a few of the guys, you
20 know. And no one knew exactly what had happened.
21 Somebody said they think the roof fell somewhere. I
22 said boy, that roof didn't fall in. And they said,
23 what do you think it was, Goose. And I said, the
24 place blew up. I said I've been around a thousand
25 roof falls. I just thought it wouldn't create

1 anything like that, and I said, there's nothing in
2 there to fall in to create anything like that.

3 And so we sit around and talked. And someone came
4 down from upstairs, I don't even know who this man
5 was, asked us to write down what we had just
6 experienced for him. But they were on the mine phone,
7 trying to call the longwall, Headgate 22. I could
8 hear them hollering to that.

9 Q. Were there any problems that you knew of that day
10 on the longwall or on the headgate section?

11 A. None that I knew of. See, we were just coming
12 back from being off and I hadn't been at the bathhouse
13 for 30 minutes getting clothes on and everything. So
14 the only thing I knew that someone had said something
15 about that Friday, that they were pulling them out
16 over ventilation or something. I'm really not sure
17 exactly.

18 Q. Did you ever hear if the longwall crew had called
19 out just prior to the explosion and indicated there
20 was a problem?

21 A. I never that, if they did or not.

22 Q. Okay. Now, you mentioned a gentleman came
23 downstairs and took a statement from you and you
24 couldn't remember who it was, and he just asked what
25 you --- what did you experience?

1 A. Right.

2 Q. Did he give you any other instructions?

3 A. We were asked if there was any media --- there
4 would be media around, and he would appreciate it if
5 none of us spoke to the media.

6 Q. Did he ever mention what had happened?

7 A. No. When people started arriving, I remember
8 seeing Chris Blanchard go by and Jamie Ferguson. And
9 I swear I remember Chris Blanchard stating about the
10 roof had fell and they were trying to get some people
11 together to go in and investigate and see.

12 Q. Did you ever see him go in the mine?

13 A. Yes, he went in.

14 Q. Did he have an SCSR with him?

15 A. Yes, I'm pretty sure he did.

16 Q. How many did he have?

17 A. I don't know. I even asked if I could go. I
18 didn't ask him, but I volunteered myself to go if they
19 would allow me. I know it wasn't a roof fall.

20 Q. And what about Jamie Ferguson? Did you see him go
21 in the mine?

22 A. Yep, him and I think Wayne Persinger went in. I
23 think Pat Hilbert went in.

24 Q. What about Jason Whitehead?

25 A. I'm thinking he went with them. I didn't actually

1 see him. I don't know him that well.

2 Q. Did any of those guys carry in extra SCSRs?

3 A. I don't know if they took any extra with them or
4 not.

5 Q. Okay.

6 A. I really don't. Okay. And all, all this taking
7 place, those guys went underground. And you know, we
8 were outside getting what information that we could.
9 And finally, someone came and said they were bringing
10 people out. Well, there was a motor supply car parked
11 just inside the portal.

12 Q. Uh-huh (yes).

13 A. And I took it upon myself to move it out of the
14 portal and switch it out of the way. I said they can
15 bring them in that one then and clear the track. So
16 we did that. Another guy went in and then got on the
17 extra mantrip that was in there and brought it outby.
18 And we got all of that out of the way, and then not
19 long after that --- I don't know how much time ---
20 that's when they brought the two injured guys and the
21 seven deceased guys out. And you know, we worked on
22 them guys, done what we could and everything.

23 And you know, I went over and sat down and just
24 cried. And I got to thinking that man, I better --- I
25 better go call home. So I went upstairs, asked to use

1 the telephone, and the man told me I couldn't use it.
2 I said I didn't need it but for ten seconds. I know
3 my wife is frantic. He said we better get permission.
4 So I went outside and told Gary Frampton about it,
5 and he was going to let me use the phone --- that he
6 was going to let me. And I just walked back in that
7 office and I told the guy. I said, look, Gary
8 Frampton says I could use it and I ain't going to tie
9 your phone up. Anyway, he got up and just walked out.
10 That's when I used the phone and called home.

11 Q. Did you ever go back underground after that at
12 UBB?

13 A. No.

14 Q. Okay. How long were you on the mine property
15 after that?

16 A. I was there until approximately eight o'clock and
17 the man came out and asked if we wasn't one of the
18 ones actually needed at the time --- they said if we'd
19 go ahead and leave, clear the parking lot up in case
20 they needed more people or personnel up there.

21 Q. Uh-huh (yes).

22 A. So I waited until they was loading up the guys in
23 ambulances at the time, and --- I was blocked. I had
24 to wait until that was all done and they got them off
25 the hill before I left, so it was about eight o'clock.

1 Q. Okay. Did you ever see Blanchard or Ferguson or
2 Whitehead come back out of the mine, or Persinger?

3 A. No, I didn't. I never saw. They did not come
4 back out. I didn't notice them, anyway, when they
5 brought those guys out. I didn't see them anymore.

6 Q. Did you ever hear anybody say whether or not they
7 thought the men up on Headgate 22 section were still
8 alive, some of them, or if they thought everyone was
9 dead?

10 A. The only thing that was said to me --- I talked to
11 Everett Hager, and he said Headgate 22 was on a
12 different air split, that them guys might be all
13 right. And I told him I hoped he's right. And you
14 know, of course the whole time I was there, I kept
15 watching them, praying to see somebody come out. As
16 time went on, you know, that hope failed.

17 Q. Did you see anybody take any air quality and
18 quantity readings at the mine portal?

19 A. No, I didn't see anyone do that.

20 Q. Okay. Did you see anybody come out that had
21 donned an SCSR?

22 A. Of the guys that went in?

23 Q. Uh-huh (yes).

24 A. I didn't notice if any of them had them on.

25 Q. Okay. Were you on the mine after, anytime after

1 that date? Were you on the mine property?

2 A. Yeah. Went up to the Montcoal Portal one day. I
3 never went back to Ellis. I told my son to go up
4 there and get all of my stuff. I didn't want to go
5 back up there.

6 Q. Yeah. Do you know how --- the people that were
7 entering the mine, that entered the mine after the
8 explosion, how they were accounted for as far as their
9 whereabouts?

10 A. I don't know. I don't know. They would have
11 their little huddle and you know, they were getting
12 --- getting their stuff together or whatever. So I
13 don't know if they left, made sure that the other
14 management personnel knew exactly who all went back
15 again or not.

16 Q. Did you ever know if there was any problems with
17 the tracking system prior to this accident?

18 A. No, I didn't know if they was any problem with it
19 or not.

20 Q. Okay. Have you ever traveled to the top end of
21 the Eight North area?

22 A. No. No, I never went --- I never went all the way
23 to the top end of it.

24 Q. Okay. And what about the area around the Glory
25 Hole? Were you ever there?

1 A. A long time ago. I hadn't been to the Glory Hole
2 since I came back in January.

3 Q. Okay. And did you ever hear of any problems
4 associated with either area?

5 A. No, I can't think of me personally hearing of any
6 problems associated with it.

7 Q. Okay. Did you know Josh Napper?

8 A. No, I never got to know Josh. I knew his Uncle
9 Timmy really good. Me and him were real close fiends
10 for years. Worked with him on the longwall.

11 Q. Are you aware of the letter that he wrote his
12 family prior to the explosion?

13 A. I've saw where he did write one and, you know, I
14 found that intriguing, because no longer than he'd
15 been in the mines, and I think, my gosh, that boy's
16 inexperienced and he knew something, something was up.

17 Q. That's why you think he would write a letter like
18 that?

19 A. Yes.

20 Q. What do you think the --- as far as Massey had
21 their S1 and P2 programs, where do you think their
22 emphasis was?

23 A. We had a joke that we would say P2, S1. I mean
24 P1, S2. I said that wrong. I feel like the emphasis
25 always was on production. Once again, I know that's

1 what we're there for, to load coal, but their emphasis
2 would be load coal above all else. That's the way I
3 felt about the program.

4 MR. STEFFEY:

5 Anybody have any questions?

6 ATTORNEY WILSON:

7 Terry?

8 MR. FARLEY:

9 Yes.

10 RE-EXAMINATION

11 BY MR. FARLEY:

12 Q. After the explosion occurred and you were on the
13 surface, did you happen to hear any conversations on
14 the mine phones ---

15 A. No.

16 Q. --- once you were about of the mine?

17 A. I could hear the paging part, and there was other
18 guys standing there eavesdropping ---

19 Q. Uh-huh (yes).

20 A. --- so no, as far as listening personally, no, I
21 didn't.

22 Q. Okay.

23 ATTORNEY WILSON:

24 Pat?

25 RE-EXAMINATION

1 BY MR. MCGINLEY:

2 Q. Stewart, was there an electronic emergency
3 tracking system that was installed at UBB?

4 A. Yes, and you're referring to the individual
5 tracking? Yeah.

6 Q. And what kind of training did you receive with
7 regard to that system, if any?

8 A. I don't recall getting any training on it. We
9 were just --- they were given to us and like, if there
10 was an emergency, there was a button on it you could
11 push, but I wasn't really aware of exactly how they
12 worked.

13 Q. So if there was an emergency, what were you
14 supposed to do?

15 A. I'm assuming push that button on.

16 Q. Uh-huh (yes).

17 A. And it would give out a signal.

18 Q. Did anybody explain it to you?

19 A. I don't recall it being explained to me.

20 Q. Did it run on a battery? How did it operate, if
21 you know?

22 A. I'm going to assume it had a battery in it. Other
23 than that, I don't know.

24 Q. Did you keep it with you all the time?

25 A. Yes, I did, had it attached to my belt.

1 Q. So when did you get that, first time?

2 A. Oh, my. They gave those to us probably in March.

3 Had to be around March, I think.

4 Q. This year?

5 A. Right. February or March.

6 Q. Did you ever change the battery in it?

7 A. No.

8 Q. Would you know when the battery had run down?

9 A. I wouldn't know unless it had a way of telling you
10 itself. I don't know what the --- how it was designed
11 or how it worked.

12 Q. Did it have any kind of digital readout or could
13 you tell when it was on or not?

14 A. Had a little green light on the top of it, I
15 believe. I wish I'd have brought it with me. I still
16 got it.

17 Q. Did you push it when that explosion occurred?

18 A. No, no, I had one thought on my mind. I knew
19 where the outside was, and I just headed toward it.

20 Q. You have a book of notes there. Is there anything
21 else in there that you think might be helpful to us in
22 our investigation? If you want to take a second to
23 look, skim through it, that'd be fine. And I was
24 talking about the notes, you know, those, the
25 handwritten notes that you have here (indicating),

1 here.

2 A. Oh, the handwritten?

3 Q. Either --- you know, anything you've got there
4 that would be helpful to you.

5 A. Well, there was a man that told me that they had a
6 couple of fireballs around that shear. And I don't
7 know exactly how close to the explosion it was, but,
8 they were prior to the explosion.

9 Q. Fairly close in time to the explosion?

10 A. I'm going to assume they were. But that's what he
11 told me.

12 Q. Did you write that down in your ---?

13 A. No, I didn't. I was informed of this after the
14 explosion.

15 Q. I see. And do you recall who informed you?

16 A. Yes, I do.

17 Q. Who would that be?

18 A. That would have been Kenny Woodrum.

19 Q. And how do you know him?

20 A. I graduated high school with him and I worked on
21 the longwall with him, and he was the headgate
22 operator on one of the other crews.

23 Q. So he was working at UBB at the time of the
24 explosion? I don't mean in the ---.

25 A. Right, right.

1 Q. Still employed then?

2 A. Yeah. And he actually told me that he didn't see
3 it himself, but the shear operator on their crew's the
4 one that told him.

5 Q. Do you know who that is?

6 A. I do, but I can't --- I wrote his name down
7 somewhere. Chad Brown. Chad Brown. I knew it'd come
8 back. But, okay, I got one note here for the month of
9 July of '09. I wrote down, finding explosive levels
10 of methane regularly. Section has low air. Company
11 constantly trying to fool the inspector.

12 Q. Well, with regard to constantly trying to fool the
13 inspector, what did you mean by that, do you recall?

14 A. I felt like, you know, they, of course, had
15 someone in management walk with the inspectors and
16 constantly trying to talk them out of violations. If
17 one would come --- and occasionally we did get one on
18 the evening shift. A lot of times we'd just get a
19 call that they were on the property and we would never
20 see them.

21 They would go to some other part of the mines.

22 But you know, my earlier statement, we never got them
23 on the evening shift, they would be there at times.

24 Just a lot of the time they didn't come to our
25 section. But the occasions that they would make it to

1 our section, we would like block off sets of flies,
2 make the buggies run through and just tighten up
3 everything on the section and not load so can get a
4 proper air reading in the face and things like that.

5 Q. And July of 2009 were you up in One North?

6 A. Yes, I was.

7 Q. And under explosive levels, how do you define
8 that?

9 A. Anywhere from 5 to 15 percent.

10 Q. So how many times do you think that happened in
11 July of 2009?

12 A. On our section, several. I mean, on our crew.
13 Usually they would be away --- say I was loading coal
14 in Number Three entry and I heard the other miner
15 operator talking about finding higher levels over on
16 his side, and the bolt crews talking about finding
17 explosive levels. And you know, them boys were ---
18 they were scared.

19 Q. Did you ever find explosive levels yourself?

20 A. On my side of the section, no, I didn't find
21 explosive levels. I was on the intake side where, you
22 know, I had the most of the air. Time it got across,
23 they didn't have it over there.

24 Q. Okay. Anything else in your notes here that you
25 might want to tell us that you think might be helpful?

1 A. I don't know if this one would be helpful or not,
2 but it was a very wrong practice on Headgate 22. One
3 night they moved the belt where the feeder was in the
4 last open break in Number One. And the crosscut was
5 not through from One to Two, and so it was impossible
6 to ventilate Number One entry. Do you see where I'm
7 coming from?

8 Q. Yes.

9 A. There was nowhere, there was nowhere to send the
10 air and for it to return. So you know, we moved the
11 belt too soon. That break needed to be punched
12 through before that belt was ever moved up to here.
13 So we had to mine and cut into Number One entry the
14 wrong way in order to get to where you could even
15 ventilate.

16 Q. Is that what you were telling us about earlier?
17 All right. And you already told us about that and we
18 had the map, you were saying that they're going the
19 wrong way?

20 A. Right. We were getting them the wrong way, but
21 this particular belt move put us in a work predicament
22 because this break wasn't even punched through yet.
23 And so there was no way to put air up there and return
24 it in Number One until this break was cut through.

25 Q. Do you have the date of that?

1 A. January 9th, 2010.

2 Q. How long before you were able to break through
3 there?

4 A. Well, I'm thinking we put it through that night.
5 The dayshift worked all day without being able to
6 ventilate the Number One entry. And then at some
7 point in time during our shift, we was able to punch
8 it through.

9 Q. And then you were able to establish enough air or
10 additional air?

11 A. Additional air, yeah. But at that time you
12 couldn't get any of it to the face. And it was in
13 there probably 120 or 130 feet.

14 Q. Do you know where that would have been, the
15 location?

16 A. No, I'm not sure exactly which break that was.

17 Q. I guess the, you know --- there's a mine map,
18 dated mine map that will generally show the location
19 on that day.

20 A. It probably could if it's got dates on it?

21 RE-EXAMINATION

22 BY MR. STEFFEY:

23 Q. This feeder that you had pushed up in the last
24 open break, January 9th, 2010, was this feeder
25 permissible?

1 A. Far as I know, it was.

2 Q. Okay. And you mentioned in July of 2009 having
3 some problems with some methane. Approximately where
4 was this at in the mine?

5 A. I felt like we were hitting the methane most of
6 the way up, but from 120 Break to the end, which I
7 think we went about 135, that's when things get worse.

8 Q. Okay.

9 A. And the airflow just seemed to get worse also.

10 Q. Okay. And you also mentioned the first week of
11 September. Well, let's go back to that briefly. That
12 was on the One North Headgate; correct?

13 A. Right. On One ---

14 Q. It would have been ---

15 A. --- One North Headgate.

16 Q. --- driving toward the Bandytown fan?

17 A. Yes.

18 Q. Okay. And you also mentioned earlier that the
19 first week of September that day, you were off just
20 about that entire week.

21 A. Right.

22 Q. Now, was that due to methane or ventilation
23 problems or ---?

24 A. Ventilation problem.

25 Q. Was the power ever off that week?

1 A. I don't know. You mean, you mean the mine power?

2 Q. Uh-huh (yes).

3 A. I don't know if it ever was, because I'd just get
4 a call not to come to work.

5 Q. Okay. You also mentioned earlier that on the day
6 of the explosion you saw some people eavesdropping on
7 the mine phones?

8 A. Right.

9 Q. Do you know any of these people?

10 A. I can't remember actually who was doing the
11 eavesdropping. I really can't.

12 Q. If you happen to remember, would you please
13 contact us?

14 A. Yes.

15 MR STEFFEY:

16 That's about all I have.

17 ATTORNEY WILSON:

18 Terry, anything further?

19 MR. FARLEY:

20 No.

21 RE-EXAMINATION

22 BY ATTORNEY WILSON:

23 Q. All right. A couple more things. The mine was
24 shut down on Easter Sunday, 4th of April. Do you have
25 any idea when they started running coal on the

1 longwall on the 5th?

2 A. My guess would be the dayshift.

3 Q. You don't know, though?

4 A. No, no. Normally it would be the dayshift would
5 start. I don't know that they had the hoot owl fired
6 up or not. I don't know.

7 Q. Is there anything else in your book there that ---
8 I think you left off in January 2010.

9 A. I just got about that tail roller smoke we had.
10 That was January the 10th. We done went over that.
11 And just a few dirty tactics that don't apply to this
12 investigation.

13 MR. HUDSON:

14 Spraying water?

15 A. Right. I went over the spraying water on the tail
16 roller earlier, I think.

17 MR. FARLEY:

18 I don't think you said water, but ---.

19 A. I thought I did.

20 MR. HUDSON:

21 I think he did.

22 ATTORNEY WILSON:

23 Did? Okay.

24 A. That's about all I have in the note department.

25 BY ATTORNEY WILSON:

1 Q. Okay. Let me ask a couple other questions. In
2 the pre-shift examiner's report, just looking through
3 here, March of 2010, I see a number of notations.
4 Under violations, other hazardous conditions observed
5 and reported of needs cleaned, dusted, water in face
6 at Headgate 23, Tailgate 22, Tailgate 22, Headgate 22,
7 water, needs cleaned and dusted over a period in time.
8 Did you notice those, those conditions yourself?

9 A. Yes, I did.

10 Q. Was there accumulation of coal dust frequently?

11 A. Well, they was wet over in --- the water they're
12 referring to mainly in the Number Three entry. But
13 you know, a lot of times, you know, there's so much
14 equipment up there that it's tough to get in to clean
15 and dust sometimes. And occasionally, we would just
16 back up and it'd be so far along and go ahead and
17 clean it and dust it.

18 Q. In the traveling in and out of the mine, do you
19 have any comment about the, you know, observation of
20 rock dusting or accumulation of coal dust?

21 A. On the track entry theirselves (sic), they usually
22 tried to keep them pretty well dusted. The other
23 entries off the track entry, I'm not aware of whether
24 they kept them up very well or not. When they wasn't
25 running their track duster, then they'd dust the track

1 entry for sure.

2 ATTORNEY WILSON:

3 All right. Anything else?

4 MR. STEFFEY:

5 No.

6 ATTORNEY WILSON:

7 All right. Then Mr. Stewart, we really

8 appreciate you coming in here today and taking the

9 time. I know we've been here for quite some time, and

10 we appreciate that. But before we go off the record,

11 I do want to give you an opportunity. If there's

12 anything else that you would like to add to the record

13 or if there's any kind of a statement that you would

14 like to make for the record, I'll give you that

15 opportunity at this time.

16 A. I'd like to add, number one, I would like to

17 submit my testimony before the Congressional

18 Committee.

19 ATTORNEY WILSON:

20 All right.

21 A. And I'd like to add that working in a UMWA Mine

22 that the comfort level there, there was no comparison

23 to working at a Massey mine. UMWA, you could go talk

24 to company personnel about safety issues and you

25 absolutely 100 percent never worried about going home

1 and being dismissed a day later or a week later or a
2 month later. You were perfectly comfortable. At
3 Massey, you were not comfortable doing any of those
4 things.

5 And the pressure they applied to load coal, I feel
6 like that contributed a lot. And the guys being
7 scared to speak out about, hey, we don't have enough
8 air. We're going to shut it down. They wouldn't do
9 that. I've been there. I done it myself. Just go
10 ahead and continue loading because you felt like you
11 had to.

12 And I felt like in view of --- I got 29 buddies
13 were killed that day. Time for somebody to step up
14 and quit being scared and tell the truth about things
15 of what they know about them. And hopefully, it can
16 help someone else, other coal miners from being killed
17 and their families suffering and losing.

18 And so I stopped being afraid and I'll help any
19 way I possibly can, because there's no sense in a man
20 having to work under the conditions that you're
21 required to work at a Massey mine. And especially an
22 occupation like coal mining, it's not a place to have
23 to be afraid and do things that you know are wrong and
24 you shouldn't be doing, all in the name of loading
25 coal for Massey. I mean ---.

1 MR. HUDSON:

2 If there's any other things he remembers,
3 who should he contact?

4 ATTORNEY WILSON:

5 Norman Page, Lead Accident Investigator.

6 MR. HUDSON:

7 Okay.

8 ATTORNEY WILSON:

9 The letter that we went to you ---

10 MR. HUDSON:

11 Requesting ---?

12 ATTORNEY WILSON:

13 --- yes, requesting that ---. You still
14 have that letter?

15 A. Yes.

16 ATTORNEY WILSON:

17 All right. Contact information for

18 Norman Page is contained in that letter. You can
19 contact him with that phone number.

20 MR. SHERER:

21 And he's in the room now, so ---.

22 ATTORNEY WILSON:

23 Yeah, he's ---.

24 MR. SHERER:

25 You can also contact Bill Tucker and

1 myself if you wish to.

2 A. Uh-huh (yes).

3 MR. HUDSON:

4 All right.

5 ATTORNEY WILSON:

6 Now, you've indicated that you would like

7 to have your congressional testimony made part of this

8 record. Do you have an extra copy of that with you

9 that we can have? Or do you want to submit that after

10 the fact? Mail it to us and we'll make that an

11 exhibit and part of the record.

12 A. I think Mindy's got this on her computer. She

13 could run me off another copy.

14 MR. HUDSON:

15 But don't put no handwritten notes on it.

16 A. Well, there's just a few things I changed.

17 MR. HUDSON:

18 Okay. All right.

19 ATTORNEY WILSON:

20 All right. Thank you.

21 MR. HUDSON:

22 Uh-huh (yes).

23 ATTORNEY WILSON:

24 Do you have exhibit labels? We'll wait.

25 When we go off the record, we'll mark this as Exhibit

1 Stewart Four, and that --- or Five, and that'll be the
2 statement dated May 24, 2010.

3 MR. HUDSON:

4 And then for the record again, we'd like
5 to request to get a chance to review this testimony
6 before it's released ---.

7 ATTORNEY WILSON:

8 To the public?

9 MR. HUDSON:

10 He would, yes.

11 ATTORNEY WILSON:

12 All right.

13 MR. HUDSON:

14 In case he has something that he thinks
15 was mistaken down, you know, in some form that he
16 wasn't meaning to articulate it that way, but ---.

17 ATTORNEY WILSON:

18 All right.

19 MR. HUDSON:

20 Not to change the content but ---.

21 ATTORNEY WILSON:

22 I understand.

23 MR. HUDSON:

24 Okay.

25 ATTORNEY WILSON:

1 And we'll get back to you on that. It
2 would be sometime after all the interviews are
3 completed and before they release it to the public.

4 MR. HUDSON:

5 Okay.

6 ATTORNEY WILSON:

7 All right. Mr. Stewart, on behalf of
8 MSHA and the State of West Virginia, I want to thank
9 you for appearing here today and answering our
10 questions. Your cooperation is very important to the
11 investigation as we work to determine the cause of the
12 accident. Again, I'll remind you that we ask that you
13 not discuss your testimony with anyone else.

14 And after questioning other witnesses, we
15 may have some follow-up questions and we may contact
16 you. And again, please contact Norman or Terry if you
17 have any additional information that you would like to
18 provide.

19 Before we go off the record, I do want to
20 remind you of your rights under the Mine Act. And I'm
21 sure you're aware of this, but any statements given by
22 miner witnesses to MSHA are considered to be an
23 exercise of statutory rights and protected activity
24 under Section 105(c) of the Mine Act.

25 If you believe that any discharge,

1 discrimination or any other type of adverse action is
2 taken against you as a result of your cooperation with
3 this investigation, you are encouraged to immediately
4 contact MSHA and file a complaint under Section 105(c)
5 of the Mine Act. Remedies under the Mine Act include
6 back wages, an immediate temporary reinstatement to
7 your most recent position with the company pending a
8 complete investigation of your complaint.

9 In order to file such a complaint, you
10 should contact the MSHA District 4 Office in Mount
11 Hope, and that address and telephone number was also
12 provided in the letter that we sent to you. For more
13 information concerning your rights as a miner under
14 the Mine Act, you can go to MSHA's website at
15 www.msha.gov.

16 Again, I want to thank you for your
17 cooperation in this matter. If there's nothing
18 further from anyone, we'll go off the record.
19 (Stewart Exhibit Five marked for
20 identification.)

21
22 * * * * *

23 STATEMENT UNDER OATH CONCLUDED AT 1:15 P.M.

24 * * * * *

25

1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Danielle Ohm, 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.



Danielle Ohm