

1           **WEST VIRGINIA MINE HEALTH & SAFETY ADMINISTRATION**

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6           **IN THE MATTER OF:**

7           **THE INVESTIGATION OF THE**  
8           **APRIL 5, 2010 MINE EXPLOSION**  
9           **AT THE UPPER BIG BRANCH MINE.**

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12  
13           The interview of JAMES GUMP taken upon oral  
14           examination, pursuant to notice and pursuant to the  
15           Federal Rules of Civil Procedure, before Shawn M.  
16           Holt, Professional Reporter and Notary Public in  
17           and for the State of West Virginia, Tuesday,  
18           December 7, 2010, at the National Mine Health &  
19           Safety Academy, 1301 Airport Road, Beaver,  
20           West Virginia.

21  
22  
23                           **JOHNNY JACKSON & ASSOCIATES, INC.**  
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**EXAMINATION INDEX**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**JAMES GUMP**

**Page**

<b>MR. VANCE . . . . .</b>	<b>9</b>
<b>MR. O'BRIEN . . . . .</b>	<b>38</b>
<b>MR. VANCE . . . . .</b>	<b>40</b>
<b>MR. O'BRIEN . . . . .</b>	<b>41</b>

1 MS. FERGUSON: My name is Dana Ferguson.

2 Today is December 7th, 2010.

3 I'm with the Office of the Solicitor, U.S.  
4 Department of Labor.

5 With me is Jerry Vance, an accident  
6 investigator with the Mine Safety and Health  
7 Administration, MSHA, an agency of the United  
8 States Department of Labor.

9 Also present are several people from the  
10 State of West Virginia. I ask that they state  
11 their appearance for the record at this time.

12 MR. KOERBER: Koerber, Assistant Attorney  
13 General, assigned to represent the West Virginia  
14 Office of Miners' Health, Safety & Training.

15 MR. O'BRIEN: John O'Brien with the West  
16 Virginia Office of Miners' Health, Safety &  
17 Training.

18 MS. FERGUSON: All members of the Mine  
19 Safety and Health Accident Investigation Team and  
20 all members of the State of West Virginia Accident  
21 Investigation Team participating in the  
22 investigation of the Upper Big Branch Mine  
23 explosion shall keep confidential all information  
24 that's gathered from each witness who provides a

1 statement until the witness statements are  
2 officially released.

3 MSHA and the State of West Virginia shall  
4 keep this information confidential so that other  
5 ongoing enforcement activities are not prejudiced  
6 or jeopardized by premature release of  
7 information. This confidentiality requirement  
8 shall not include investigation team members from  
9 sharing information with each other or with other  
10 the law enforcement officials.

11 Government investigators and specialists  
12 have been assigned to investigate the conditions,  
13 events and circumstances surrounding the fatalities  
14 that occurred at the Upper Big Branch Mine South on  
15 April 5th, 2010. The investigation is being  
16 conducted by MSHA under Section 103(a) of the  
17 Federal Mine Safety and Health Act and the West  
18 Virginia Office of Miners' Health, Safety and  
19 Training. We appreciate your assistance in this  
20 investigation.

21 You may have a personal attorney present  
22 during the taking of this statement or another  
23 personal representative if MSHA's permitted it and  
24 may consult with your attorney or representative at

1 any time. Since this is not an adversarial  
2 proceeding, formal cross examination will not be  
3 permitted; however, you or your personal legal  
4 representative may ask clarifying questions as  
5 appropriate.

6 Your identity in the content of this  
7 conversation will be made public at the conclusion  
8 of the interview process and may be included in the  
9 public report of the accident unless you request  
10 that your identity remain confidential or your  
11 information would otherwise jeopardize a potential  
12 criminal investigation. If you request us to keep  
13 your identity confidential, we will do so to the  
14 extent permitted by law. That means that if a  
15 judge orders us to reveal your name or if another  
16 law requires us to reveal your name or if we need  
17 to reveal your name for some other law enforcement  
18 purposes, we may need to do so.

19 Also, there maybe a need to use the  
20 information you provide to us or other information  
21 we may ask you to provide in the future in other  
22 investigations into and hearings about the  
23 explosion.

24 Do you understand?

1 MR. GUMP: Yes.

2 MS. FERGUSON: Do you have any questions?

3 MR. GUMP: Is -- is -- this is an  
4 investigation of the -- of the accident or is this  
5 part of the criminal investigation?

6 MS. FERGUSON: This is the civil  
7 investigation of the accident.

8 MR. GUMP: Okay.

9 MS. FERGUSON: MSHA is a civil law  
10 enforcement agency.

11 After the investigation is complete, MSHA  
12 will issue a public report detailing the nature and  
13 causes of the fatalities in the hope that greater  
14 awareness about the causes of accidents can reduce  
15 their occurrence in the future. Information  
16 obtained through witness interviews is frequently  
17 included in these reports.

18 Since we will be interviewing other  
19 individuals, we request that you not discuss your  
20 testimony with any person aside from a personal  
21 attorney or representative.

22 A court reporter will record your  
23 interview. Please speak loudly and clearly. If  
24 you do not understand a question asked, please ask

1 for it to be rephrased. Please answer each  
2 question as fully as you can including any  
3 information you have learned from someone else.

4 I would like to also remind you, Mr. Gump,  
5 that you need to respond with yes or no, with  
6 verbal responses and don't nod your head or use  
7 hand signals because the court reporter can't take  
8 down that information clearly on the record.

9 MR. GUMP: All right.

10 MS. FERGUSON: We would like to thank you  
11 in advance for your appearance here. We appreciate  
12 your assistance in this investigation. Your  
13 cooperation is critical in making the nation's  
14 mines safer.

15 After we have finished asking questions,  
16 you will have an opportunity to make a statement or  
17 provide us with any other information you believe  
18 to be important. If at any time after the  
19 interview you recall any additional information you  
20 believe might be useful, please contact or have  
21 your representative contact Norman Page, who's the  
22 Chief Accident Investigator with MSHA.

23 Do you have any preliminary comments  
24 before we swear the witness?

1 MR. KOERBER: No, but just for the record,  
2 Bill Tucker, Lead Investigator with the West  
3 Virginia Miners' Health, Safety & Training, has  
4 came to the table.

5 MS. FERGUSON: Hey, Bill.

6 MR. TUCKER: How you all doing?

7 MS. FERGUSON: Do you have any questions,  
8 Mr. Gump?

9 MR. GUMP: Not at this time, no.

10 MS. FERGUSON: If you'll swear the  
11 witness, please.

12 JAMES GUMP, DEPONENT, SWORN

13 EXAMINATION

14 BY MR. VANCE:

15 Q. Jim, we appreciate your being here and I'm  
16 glad you made it here safely with the road  
17 conditions as they are.

18 We'll start off with a little background  
19 questions, a few background questions.

20 Could you state your full name and spell  
21 your last name, please?

22 A. James Gump, G-u-m-p.

23 Q. Could you state your home address and  
24 telephone number?

1           A.   (b) (7)(C)

3           Q.   Are you appearing here today voluntary?

4           A.   Yes.

5           Q.   Has anyone made any promises to you for  
6 giving the statements or offered you any rewards in  
7 exchange for making your statements?

8           A.   No.

9           Q.   Has anyone threatened you or warned you to  
10 provide this statement?

11          A.   No.

12          Q.   Has anyone from the company or persons  
13 representing the company talked to you concerning  
14 the explosion?

15          A.   No.

16          Q.   Did you receive any direction on how to  
17 give your testimony today?

18          A.   No.

19          Q.   Did the company representatives -- did any  
20 company representatives suggest that you contact  
21 them after the interview?

22          A.   Now, by company do you mean --

23          Q.   UBB.

24          A.   No.

1 Q. Do you have any mining certifications?

2 A. Yes, sir.

3 Q. Could you tell me what they are?

4 A. I'm a certified miner in West Virginia,  
5 certified mine foreman, certified instructor  
6 underground and surface, certified to teach  
7 continuing education for the State of West Virginia  
8 mine foremen. I have a dust sampling card,  
9 probably something else, but I can't recall just  
10 now.

11 Q. Are you presently employed?

12 A. Yes, sir.

13 Q. Who with?

14 A. David Stanley Consultants.

15 Q. Where are they located?

16 A. Our corporate office is at 100 Village  
17 Drive, Suite 300, Fairmont, West Virginia.

18 Q. Do you have any other offices in this  
19 area?

20 A. Yes, we have an office at George Street in  
21 Beckley.

22 Q. George Street, okay. What's your present  
23 job title?

24 A. Director of Operations and Safety.

1 Q. Could you give us some background of your  
2 mining experience?

3 A. I started as an apprentice miner in 1975  
4 and for the next 28 years was a rank and file  
5 worker for a few years and then in management as a  
6 face foreman, shift foreman, general mine  
7 supervisor, those type things.

8 Q. Did your company provide employees to work  
9 at UBB on April 5th and prior to?

10 A. Yes.

11 Q. Do you recall any of the names that worked  
12 there?

13 A. Yes. Obviously Joshua Napper, Pauline  
14 Davis. I can't really recall right now any -- the  
15 name of any others.

16 Q. Did you do the hiring of the employees?

17 A. No, sir.

18 Q. Who did?

19 A. Our regional manager, Beth Straton.

20 Q. Beth Straton, and she is located where?

21 A. At the Beckley office.

22 Q. At the Beckley office? The boys that you  
23 hired to work at UBB, were they mostly experienced  
24 miners or inexperienced miners?

1           A.    Mostly inexperienced.

2           Q.    Could you explain the process between Dave  
3 Stanley Consultants and Massey concerning contract  
4 employees that you provide for them?

5           A.    We -- we provide them with contract labor,  
6 both short-term and long-term.  Their -- their  
7 day-to-day instruction is -- supervision is by  
8 Massey supervisors.

9           Q.    Do you know if 30 CFR Part 48 regulations  
10 concerning hiring new employed inexperienced  
11 miners?

12          A.    I'm not sure I understand the question.

13          Q.    Do you know the regulations concerning 30  
14 CFR Part 48.6 Regulation -- 48.5, excuse me,  
15 Regulation of hiring newly employed inexperienced  
16 miners?

17          A.    Well, that -- I mean, they have to have  
18 initial training.  Once they go to the job site --  
19 considering that -- that they're going to be there  
20 for more than five days, they have to have  
21 experienced miner training before they start  
22 working.

23          Q.    Do you know what the training consists of  
24 for inexperienced miners?

1           A.   For inexperienced miners?

2           Q.   Uh-huh.

3           A.   Yes.  I mean, I can't give you every  
4 specific topic, but --

5           Q.   General.

6           A.   -- they're listed in -- in Part 48 and in  
7 our training plan as to what specific topics will  
8 be taught.

9           Q.   Do you know what the regulations is for  
10 experienced miners training, 48.6?

11          A.   Experienced miners when they go to work at  
12 a new location are required to have experienced  
13 miner training before they start working.

14          Q.   Do you know what is of part of that  
15 experienced miner training, what it consists of?

16          A.   Yes.  There -- I believe the number is 12  
17 parts, introduction to work environment, roof  
18 control plans, ventilation plans, emergency escape  
19 procedures, transportation and communication.  I  
20 can't recall all of them right now, but I mean,  
21 they're listed.

22          Q.   What training did your employees receive  
23 prior to employment with Dave Stanley Consultants?

24          A.   Prior to employment with us?

1 Q. Uh-huh.

2 A. West Virginia 80 hour training.

3 Q. What is Dave Stanley's policy to insure  
4 that mining experience or training of miners that  
5 you hire? How do you insure that they are trained?

6 A. They have to have an apprentice card  
7 issued by the State of West Virginia.

8 Q. Experienced miners, how do you know that  
9 they are experienced miners?

10 A. They produce a copy of their miner's card.

11 Q. Do you contact any former employees or --  
12 if they're experienced miners to insure that they  
13 are?

14 A. To insure that they are experienced  
15 miners?

16 Q. Yeah.

17 A. No. I mean, we -- we have their miner's  
18 card and a copy of their photo ID to make sure they  
19 are who they say they are.

20 Q. You get a miner's certificate -- they  
21 provide you have a miner's certificate from the  
22 State of West Virginia, correct?

23 A. Correct.

24 Q. If they're out-of-state miners, how do you

1 know that they are that, employed -- experienced  
2 miners?

3 A. If they're out of state?

4 Q. Yeah, if they come from out of state to  
5 work for you in this state?

6 A. I don't know that I've come across that.  
7 I mean, that -- you know, they.

8 Q. If they would come from Ohio or somewhere  
9 like that for employment here and say that they're  
10 an experienced miners, how do you confirm that?

11 A. Well, if they have documentation from --  
12 from an agency in their state and then depending on  
13 what state they're from, you would look at -- at  
14 how West Virginia views the training in another  
15 state, whether they -- they accept that or whether  
16 they would have to have West Virginia training.  
17 You know, I guess it would just depend on which  
18 state that they were coming from.

19 Q. Do you review the employee's documentation  
20 or does someone else do that when they come to you  
21 from employment?

22 A. Our regional managers review the  
23 documentation.

24 Q. Reviews the documentation. Did you have

1 an agreement with UBB concerning who was  
2 responsible to provide training for your employees  
3 at UBB?

4 A. I'm sorry, ask that again.

5 Q. Do you have an -- did you have an  
6 agreement or do you have an agreement with UBB of  
7 the training that -- of the employees that you  
8 provided for them?

9 A. No.

10 Q. Who done the training for your employees?

11 A. The experienced miner training was done by  
12 Massey.

13 Q. By Massey?

14 A. Uh-huh.

15 Q. They -- they do all the training, part of  
16 the training or --

17 A. All of the training.

18 Q. They done all the training, okay. Who  
19 pays for the training of the employees?

20 A. Massey.

21 Q. Massey, okay. Are you an MSHA approved  
22 instructor?

23 A. Yes, sir.

24 Q. How did you become an approved instructor?

1           A.    I took a class that you taught.

2           Q.    Okay.  So a three day instructor's class?

3           A.    Uh-huh.

4           Q.    Okay.  Did you conduct either a newly  
5 employee inexperienced miner training or  
6 experienced miner training for employees that are  
7 employed at UBB on or before April 5th?

8           A.    Yes.  Let me qualify that, not for Massey,  
9 for my company.  I did not -- I did not train  
10 them.  I mean, the training was -- was the same,  
11 but I did not sign any documentation with an MSHA  
12 number for Massey saying I did their training.

13          Q.    Did anyone else from your company conduct  
14 training for your employees?

15          A.    Yes.

16          Q.    Who was that?

17          A.    Norman Lester.

18          Q.    Norman Lester?  Did you ever observe  
19 this -- this person conducting experienced miner  
20 training?

21          A.    Yes.

22          Q.    How often?

23          A.    Twice best I can recollect.

24          Q.    Where was the training conducted at?

1           A.    At the Marfork Training Facility for  
2    Massey.

3           Q.    Did you use or provide an outline to your  
4    other instructors to conduct inexperienced miner  
5    training?

6           A.    No.

7           Q.    Was the training consistent with each  
8    group of employees that you hired?

9           A.    Yes.

10          Q.    It was consistent?

11          A.    Uh-huh.

12          Q.    What training material did you use to  
13    conduct this training?

14          A.    As far as training material, I used the  
15    regulation.  What we did was in addition to Massey  
16    providing experienced miner training, we also went  
17    there and did some I guess you'd call it the  
18    company initial training where we not only talked  
19    about parts of -- of MSHA's experienced miner  
20    training requirements, but also about our -- our --  
21    what we expected of the employee, you know, showing  
22    up on time, working safe, following instructions,  
23    accident reporting, those sort of things.

24                As far as any -- using anything actual, I

1 never used anything actual because when you look at  
2 things like roof control plans, ventilation plans,  
3 those are specific to each mine and those are  
4 taught by Massey. What I did during my training  
5 was talk about theory, letting these people know  
6 what a roof control plan was, that every mine was  
7 required to have one, what had to be in that roof  
8 control plan or ventilation plan. The fact that  
9 they had the right to look at those plans at any  
10 time they asked, that they had to be reviewed every  
11 six months and how that review process worked, that  
12 you know, MSHA and the State would look at what  
13 kind of ventilation or roof control problems that  
14 they had or violations and see if they needed to  
15 make adjustments to their plan so that it could be  
16 approved in that upcoming six months.

17 Spent a good deal of time during that  
18 training talking about accident prevention, hazard  
19 recognition and used those based on my experience  
20 and based on accident reports throughout our  
21 company that come back that we use to -- use the  
22 misfortune of one to hopefully help everyone else.  
23 So again, our training was more theory than actual  
24 here's what they do at UBB or somewhere else

1 because we don't have that.

2 Q. You don't -- you didn't have no roof  
3 control plans, ventilation plans or anything from  
4 UBB to go over or review?

5 A. No, no, that -- because they did that.

6 Q. What was the actual length of the time of  
7 session -- of each session of your training people?

8 A. Forty-five minutes to an hour.

9 Q. Forty-five minutes to an hour, okay. So  
10 you -- you -- you're stating that training was not  
11 mine specific to a mines or UBB?

12 A. Correct.

13 Q. Okay. How many employees do you usually  
14 train in a session?

15 A. Oh, that depends. It might be two or  
16 three, it might be 10.

17 Q. Two or three, 10. When you do this  
18 training for these sessions for eight, 10 people,  
19 do some of the mines go to other mines than UBB --  
20 assigned to other mines instead of UBB?

21 A. Oh, yes. Yes.

22 Q. You don't go over -- there's no plans for  
23 them or amendments for those companies either,  
24 other mines? Do you go over any of their plans or

1 is it the same generic training for all?

2 A. It's the same generic thing and they get  
3 their mine specific experienced miner training at  
4 each mine site.

5 Q. What other training does your employees  
6 receive from Massey before they report to the  
7 mines?

8 A. I can't answer that.

9 Q. Have you ever observed them doing any  
10 other training at Marfork Training Center before  
11 your people are assigned to mines?

12 A. Nothing other than experienced miner  
13 training, no.

14 Q. No what?

15 A. Nothing other than the experienced and the  
16 experience -- the experienced miner training from  
17 Massey's standpoint is kind of done in two parts.  
18 Some of it is done at the Marfork Training Facility  
19 which includes self-rescue devices that are the  
20 same everywhere and then as these employees are  
21 sent to the specific mine where they're going to  
22 go, then they get the specific roof control plan,  
23 ventilation plan, transportation and communication,  
24 all those things that are specific to that mine.

1 Q. At the trainings that they received at  
2 Marfork Training Center, who usually provided that  
3 training for your employees?

4 A. The Massey training?

5 Q. Yeah.

6 A. Jackie Stover.

7 Q. Jackie Stover? He didn't have like you  
8 that -- correct me if I'm wrong, you stated that he  
9 don't have none of the specific plans there or like  
10 escapeway maps or things like that?

11 A. Not for every mine, no.

12 Q. Does he ever go over them for any  
13 particular mines especially UBB when he done that  
14 training?

15 A. I can't answer that.

16 Q. You can't answer that? When you provided  
17 this training to your employees, did or your  
18 instructors fill out 5000-23's indicating that you  
19 had provided them training?

20 A. Yes.

21 Q. Are the mine specific plans and  
22 amendments to the plans or escapeway maps and other  
23 specific mine material available for you to conduct  
24 this training?

1           A.    I don't know.

2           Q.    You don't know?  Has anybody ever offered  
3 you to provide you with plans, mine maps,  
4 amendments to the plans, conduct training for your  
5 people?

6           A.    So that I could conduct the training?

7           Q.    Yes.  Yeah.

8           A.    No.

9           Q.    Did they every provide you with  
10 amendments to your ventilation plans or roof  
11 control plans when the changes are made to go over  
12 with your people?

13          A.    No.

14          Q.    Who does that?

15          A.    They do.

16          Q.    How do you know that they are getting  
17 these changes to the plans and amendments?

18          A.    I don't.  I personally do not.

19          Q.    Did you or have any of your mine  
20 management observed experienced miner training  
21 completed at the mines before your employees are  
22 assigned work duties?

23          A.    I -- I went through the experienced mining  
24 training myself.

1           Q.    You went through it.  Have you observed  
2 your employees receiving this training at the  
3 mines?

4           A.    Yes.

5           Q.    How often?

6           A.    Well, half a dozen times probably.

7           Q.    What was the latest you did prior to April  
8 the 5th?

9           A.    I don't know.  I mean, probably better  
10 than a year.

11          Q.    Better than a year prior to April 5th?

12          A.    Yeah.

13          Q.    Did you or your company provide task  
14 training to your employees?

15          A.    No.

16          Q.    Who does?

17          A.    The mine.

18          Q.    Have you or any of your management people  
19 observed task training being conducted at the mines  
20 for your employees?

21          A.    Yes.

22          Q.    When was this and how often?

23          A.    I observed task training on two or three  
24 occasions about four years ago when we first

1 started working with -- down in this area with  
2 Massey Energy.

3 Q. You haven't observed none of your training  
4 for your employees since four years ago at UBB?

5 A. I don't think so, no.

6 Q. What's your company's policy to insure  
7 that your employees received the required training  
8 at the mines before they are assigned work duties?

9 A. Ask me that again.

10 Q. How do you insure that your miners -- your  
11 people are getting the required training at the  
12 mines?

13 A. It's the mine's responsibility to do that.

14 Q. So it's the mines responsibility, but  
15 they're your employees so you check on to see to  
16 make your employees gets the proper training?

17 A. They have documentation that says they  
18 have the training, yes.

19 Q. Do they provide you -- you that training,  
20 that copy of that documentation that they get at  
21 the mines?

22 A. Most of the time, yes.

23 Q. Who provides that documentation to you?

24 A. Somebody from their safety department will

1 fax us copies.

2 Q. Fax you copies, okay?

3 A. (Nods head.)

4 Q. Do they fax you copies of their task  
5 training records?

6 A. No.

7 Q. So do you have any way of knowing that  
8 they are tasked trained on -- on the jobs that they  
9 do?

10 A. No.

11 Q. How often has any of your other mine  
12 management -- or your management people at Dave  
13 Stanley Consultants or instructors have they went  
14 underground at UBB?

15 A. At UBB?

16 Q. Yeah.

17 A. I've been underground there half a dozen  
18 times.

19 Q. Have any other management people from Dave  
20 Stanley been underground?

21 A. Not to my knowledge, no.

22 Q. Are you familiar with the S1 and P2  
23 programs at Massey?

24 A. Vaguely. Safety one, production second,

1     **yes.**

2             **Q. Can you explain it to us?**

3             **A. Not in great detail other than that's --**  
4     **that's their -- the basis of it. Safety's first in**  
5     **every task, production --**

6             **Q. Has Massey ever provided you with any**  
7     **manuals for their S1 or P2 programs to cover with**  
8     **your people?**

9             **A. No.**

10            **Q. Have you observed any training being -- of**  
11   **your people concerning the S1 or P2 programs?**

12            **A. Yes.**

13            **Q. When was the last time you observed that?**

14            **A. A couple of months ago I guess.**

15            **Q. A couple of months ago? Did they provide**  
16   **that with guidelines or anything like that on their**  
17   **training?**

18            **A. I believe they provide them with a**  
19   **handbook, but I'm -- but I'm not -- I'm not**  
20   **absolutely certain about that.**

21            **Q. You're not absolutely certain? Okay. In**  
22   **reviewing the records, Norman Lester conducted**  
23   **training for your people, correct?**

24            **A. Uh-huh.**

1 MS. FERGUSON: Was that a yes?

2 THE WITNESS: Oh, yes, I'm sorry.

3 BY MR. VANCE:

4 Q. When you hire an instructor to do training  
5 for your people, how do you insure that he's  
6 approved to do experienced miner training,  
7 inexperienced miner training or annual refresher  
8 training?

9 A. You know, could I -- could I make a  
10 statement at this point?

11 MS. FERGUSON: Sure.

12 THE WITNESS: I was contacted and asked if  
13 I would willingly be involved in an interview down  
14 here concerning the disaster at UBB, okay?

15 MS. FERGUSON: Yes.

16 THE WITNESS: So far it appears to me that  
17 what this questioning is is questioning my company  
18 and what we do and how we insure everything is  
19 done. I kind of feel like I've been brought here  
20 on false pretenses.

21 MS. FERGUSON: Okay. Maybe we should go  
22 off the record and talk about this a little.

23 (Break.)

24 BY MR. VANCE:

1 Q. In your refresher training, do you provide  
2 that to your employees or did Massey provide that  
3 to the employees?

4 A. Our inexperienced miners, as you know,  
5 they're required to have experienced miner training  
6 and then that starts their clock ticking for annual  
7 refresher and whenever Massey does annual  
8 refresher, they just put our people right in with  
9 them.

10 Q. Put them in with their classes.

11 A. Now, as far as experienced miners,  
12 Massey's requirement is that before they take a guy  
13 that's an experienced miner from us, that he'll  
14 have an up to date annual refresher in which case,  
15 we do that before we send him which is not worth  
16 anything.

17 Q. That's my next question. What's the  
18 purpose of it?

19 A. Well, the purpose is is because the safety  
20 people at Massey said, yeah, we understand what  
21 you're showing us in the law, but it's not  
22 required, but we're not going to hire them if you  
23 don't give it to them. So I -- we give them a --  
24 again, we give them a generic annual refresher

1 because there's nothing to refresh them on as far  
2 as a mine specific because they haven't been  
3 working there so -- but yeah, in those rare  
4 instances we do that.

5 Q. When Massey -- when Massey does that  
6 training, have you observed some of their annual  
7 refresher training?

8 A. No.

9 Q. What's the average length of employment  
10 for individuals at Dave Stanley Consultants?

11 A. I'm going to guess and say five, six  
12 months --

13 Q. Five or six months?

14 A. -- but now that -- I mean --

15 Q. Are they usually hired by Massey as  
16 members at UBB or other mines?

17 A. Some are, yeah.

18 Q. What is the rate between Dave Stanley  
19 Consultant and Massey with UBB wishes to hire one  
20 of your employees?

21 A. Well, we kind of have -- we don't have any  
22 written contract, but we kind of have -- I mean, we  
23 have a written contract with the company, but in  
24 that contract there is nothing that states how long

1 an employee will work for us. We have a  
2 gentlemen's agreement that they'll work -- work  
3 them under us for -- for 90 days minimum so that we  
4 can recoup our -- our costs and then they'll --  
5 they'll pull them in and offer them a membership in  
6 the company.

7 Q. How do they usually pick the guys they  
8 hire, by their -- how they work or how often they  
9 work or --

10 A. How does Massey do it?

11 Q. Yeah.

12 A. I don't know.

13 Q. You don't have no idea? Okay. Okay. How  
14 are the instructions given at the mine -- to your  
15 employees at the mines by Massey?

16 A. How?

17 Q. How are the instructions given? Are they  
18 give by you or Massey of what's going on at the  
19 mines?

20 A. Oh, no, Massey. They get their day-to-day  
21 instruction from Massey management.

22 Q. So they get the directions of the  
23 mining -- of the mining work directly from Massey?

24 A. That's correct.

1 Q. Does your company reprimand your employees  
2 or does Massey?

3 A. We do.

4 Q. How does that coordinate between you and  
5 Massey?

6 A. They will discuss -- well, like in the  
7 area of absenteeism, our regional manager keeps  
8 track of that and we handle that. If Massey has a  
9 problem, they'll contact the regional manager and  
10 depending on what the problem is, it may be  
11 counseling or maybe a warning slip. It's just  
12 depending on what it is.

13 Q. Do you have -- do you have some kind of  
14 procedures in place for discipline of your people  
15 if -- like warnings?

16 A. We have an employee handbook that we give  
17 each employee that states our company policies. We  
18 also have an employee safety handbook that we give  
19 each employee when they start to work for us  
20 that -- that generally say that here -- here are  
21 our rules and regulations and they go along with  
22 the company rule and regulations where you're being  
23 assigned along with State and Federal regulations  
24 to insure that -- that we promote a safe workplace

1 for everyone.

2 Q. Accidents, reporting accidents of your  
3 employees, who does that? Do you report that to  
4 MSHA or does Massey report that?

5 A. I do.

6 Q. How do you report these accidents, by the  
7 mines or by the employee or the company or --

8 A. You mean the -- I use the mine ID number.

9 Q. You use the mine ID number?

10 A. Yeah, and our -- and our MSHA ID. So it  
11 will have the mine ID plus -- and the contractor  
12 ID.

13 Q. I'd like to ask you, could you provide us  
14 with any accident reports that happened between  
15 April 5th, 2008 and April 5th, 2005 of accidents  
16 that occurred with your employees at UBB?

17 MS. FERGUSON: You mean 2010?

18 Q. 2010, sorry.

19 A. Yeah, give me that date range again.

20 Q. Between April 5th, 2008 --

21 A. April 5 --

22 Q. -- and April 5th, 2010?

23 A. -- 2008, okay.

24 MR. TUCKER: Just for the record, if you

1 don't mind if you could provide the State with a  
2 copy of those too.

3 THE WITNESS: Yeah. I mean, how do -- how  
4 do I get those to you? Can I fax them to you or  
5 Email them to you or --

6 MS. FERGUSON: You can Email a PDF to --  
7 to you.

8 MR. VANCE: Email them to me.

9 MS. FERGUSON: If that's the easiest way  
10 to do it.

11 MR. VANCE: Scan 'em and Email 'em.

12 MR. KOERBER: Here's the Email for Bill  
13 Tucker.

14 THE WITNESS: Okay.

15 MR. VANCE: You can Email them to me. My  
16 Email address is --

17 THE WITNESS: Email Jerry Vance.

18 MR. VANCE: It's vance.jerry@dol.gov

19 THE WITNESS: Okay.

20 BY MR. VANCE:

21 Q. A couple more questions here. Who -- who  
22 provides the SCSR self rescuer units for your  
23 employees?

24 A. The company.

1 Q. The company does?

2 A. Uh-huh.

3 Q. Okay.

4 MS. FERGUSON: By the company, you mean  
5 the mining company?

6 THE WITNESS: Massey. Yes, Massey. In  
7 this case Massey.

8 BY MR. VANCE:

9 Q. What other mines or areas do you provide  
10 employees to the mining industry? You provide  
11 other mining companies in this area or other areas  
12 of the country?

13 A. Alliance, Peabody, Consol, Rhino Eastern.  
14 I'm sure there are other, I just can't think of it  
15 right now.

16 Q. Do you -- do you in your opinion believe  
17 that your employees was getting the required  
18 ventilation plans or roof control plans,  
19 amendments to the plans at the mines?

20 A. Yes. I don't have any reason to believe  
21 that they weren't.

22 Q. Do you have any reason to know that they  
23 did?

24 A. Well, I don't have any physical document

1 to say that they did, but I will say that my  
2 observations of the training at Massey generally  
3 speaking is as good or better of -- than -- than  
4 the other companies that I work with.

5 Q. Could you -- can you explain on that a  
6 little bit better, the specifics?

7 A. Well, I mean, like the self rescuer  
8 training. You know, I've -- I've observed self  
9 rescuer training done for Massey many, many times  
10 and it's a very thorough training. I have happened  
11 to be down there on occasions when they're doing  
12 expectations training and they have their trailer  
13 there and they put people through smoke and . . .

14 Q. Have you ever had occasions to observe the  
15 training on their ventilation plans or amendments  
16 to the plans?

17 A. Only -- only when -- when we first started  
18 working down here and I attended all of the  
19 training myself to satisfy myself that it was  
20 quality training for our employees and that was  
21 at -- and that was at UBB.

22 Q. That was at UBB?

23 A. Yes.

24 MR. VANCE: I don't have any other

1 questions right now.

2 EXAMINATION

3 BY MR. O'BRIEN:

4 Q. Mr. Gump, again, I appreciate you coming  
5 by today and helping us out. Bear with me, I  
6 probably will jump around and I may repeat a  
7 question inadvertently, okay?

8 First question, your current job that you  
9 described, did you do the same duties -- did you  
10 have the same duties on April 5th of this year?

11 A. Yes.

12 Q. Other than providing employment or workers  
13 for the coal mines, does your company provide any  
14 other services to the mining industry or anybody  
15 else?

16 A. Training.

17 Q. Do you provide just strictly underground  
18 employees or do you also provide surface employees?

19 A. No, we have both.

20 Q. Both? Okay.

21 A. Yes.

22 Q. Does David -- David Stanley Consultants  
23 teach any 40 and/or 80 hour classes themselves?

24 A. There -- yes, we have a retired miner

1 that -- that trains in the evenings, does training,  
2 yes.

3 Q. Now, do your employees come from those --  
4 get their training from this fellow or both,  
5 outside?

6 A. It could be him or it could be any  
7 other -- any other certified training company.

8 Q. Does David Stanley Consultants provide any  
9 other type of certification classes like mine  
10 foreman or --

11 A. No.

12 Q. How do you obtain workers? Do you -- do  
13 you publicize or people just know to put in  
14 applications or how does that work?

15 A. We advertise sometimes, sometimes it's  
16 word of mouth. As we all know the mining  
17 industry's a pretty small industry and it's -- a  
18 lot of times it's Uncle John's nephew and so and  
19 so's son and so -- but we do both.

20 Q. An inexperienced or apprentice miner,  
21 let's put it that way, inexperienced miner that's  
22 employed by David Stanley Consultants gets their  
23 six months and 108 days in worked and they want to  
24 become an experienced miner, they need an

1 experienced miner's document --

2 A. Uh-huh.

3 Q. -- now who verifies that time that they  
4 have six months and 108 days, is it David Stanley  
5 Consultants or is it the mine where they work?

6 A. We do.

7 Q. You do? How do you verify that time? How  
8 do you know they got that time?

9 A. Through their time sheets, you know,  
10 through their pay records. You know, we keep track  
11 of shifts and hours and, you know, six months.

12 Q. Who is James W. Hayhurst?

13 A. He's the president and managing partner of  
14 the company.

15 MR. O'BRIEN: That's all we have at this  
16 moment. Thank you.

17 EXAMINATION

18 BY MR. VANCE:

19 Q. You stated earlier what your job title --  
20 job description is, could you re -- reemphasize  
21 what you said your job title is and job  
22 description?

23 A. My job title is Director of Operations. I  
24 run the day-to-day operations of the company and

1 also handle all safety issues. My job was  
2 previously Safety Director and I was elevated to  
3 Director of Operations and I'm still the Safety  
4 Director too.

5 MS. FERGUSON: Welcome to 2010.

6 Q. How many regional managers do you have?

7 A. Six.

8 Q. Six? Are they all located in this area or  
9 different?

10 A. Beckley. I have one at our corporate  
11 office in Fairmont. We have one in Northern  
12 Cambria, Pennsylvania; St. Clairsville, Ohio;  
13 Madisonville, Kentucky; Evansville, Indiana;  
14 Harrisburg, Illinois.

15 EXAMINATION

16 BY MR. O'BRIEN:

17 Q. I have one more. If a new apprentice  
18 miner is hired by David Stanley and goes to work as  
19 a red hat or an apprentice miner at a coal mines  
20 and works four to five months and leaves for  
21 whatever reason, what protections are in place to  
22 allow that this apprentice miner gets his  
23 documented work experience towards his experienced  
24 miner certification?

1           A.    They call us and we get it ready for  
2 them.  If they don't work for us any -- you know  
3 say a guy works for us three months and because --  
4 in addition to what we do at places like Massey, we  
5 also do jobs for other contractors where they'll  
6 need additional labor.  So we may have guys that  
7 work for a, you know, a drilling company and then  
8 they -- you know, or maybe a mine just needs some  
9 additional manpower to timber an airway or  
10 something, and we'll have them there six weeks and  
11 then they don't need them anymore and we put them  
12 over here, and then somebody offers them a job and  
13 they go and they work there three months, and they  
14 call us and say, hey, I've got three months down  
15 here and I think I have three months with you, I  
16 think I need a document so we get it ready and mail  
17 it to them.

18           Q.    You mail the experienced --

19           A.    Sure.

20           Q.    Have you ever had an employee call you  
21 with a safety complaint at UBB?

22           A.    No.

23           MS. FERGUSON:  For any other Massey mine?

24           THE WITNESS:  No.

1 MS. FERGUSON: Anything else?

2 Mr. Gump, on behalf of MSHA and the Office  
3 of Miners' Health Safety and Training we want to  
4 thank you for appearing and answering our questions  
5 today. The cooperation is very important to the  
6 investigation as we work to determine the cause of  
7 this accident.

8 We request that you not discuss your  
9 testimony with any person aside from a personal  
10 representative or attorney. After questioning  
11 other witnesses, we may call you if we have any  
12 follow-up questions. If at any time you have  
13 additional information regarding the accident that  
14 you would like to provide to us, please contact  
15 Norm Page.

16 If you wish, you may now go back over any  
17 answer or make any statements you would like to  
18 make.

19 THE WITNESS: No, I -- I just -- I just  
20 hope my being willing and helpful doesn't come back  
21 to bite me.

22 MS. FERGUSON: Fair enough. Thank you  
23 very much for your cooperation. Off the record.

24 (This concludes the interview of James

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Gump. )

1 STATE OF WEST VIRGINIA, To wit:

2 I, Shawn M. Holt, a Notary Public and a  
3 Professional Reporter within and for the State  
4 aforesaid, duly commissioned and do hereby certify  
5 that the interview of JAMES GUMP was duly taken by  
6 me and before me at the time and place specified in  
7 the caption hereof.

8 I do further certify that said proceedings  
9 were correctly taken by me in stenotype notes, that  
10 the same were accurately transcribed out in full  
11 and a true Record of the testimony given by said  
12 witness.

13 I further certify that I am neither attorney  
14 or counsel for, nor related to nor employed by, any  
15 of the parties to the action in which these  
16 proceedings were had, and further I am not a  
17 relative or employee of any attorney or counsel  
18 employed by the parties hereto or financially  
19 interested in the action.

20 My commission expires the 18th day of August,  
21 2016.

22 Given under my hand this 7th day of November,  
23 2010.

24 \_\_\_\_\_  
Shawn M. Holt  
Court Reporter