

## ERRATA SHEET

I, the undersigned, SHANE MCPHERSON, do hereby certify that I have read the foregoing sworn statement taken on March 9, 2011 at the West Virginia Mine Academy, and that, to the best of my knowledge, said deposition is true and accurate (with the exception of the following corrections listed below):

| PAGE/LINE | CORRECTION AND REASON FOR CORRECTION |
|-----------|--------------------------------------|
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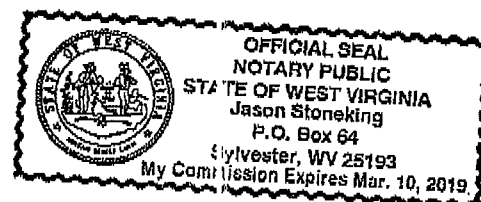
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| PAGE 34 LINE 13 | Shows Methane percentage AS (20)% and should state (2)% |
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Shane McPherson  
SHANE MCPHERSON

Subscribed and sworn to before me this 6 day of May, 2011.

Jason Stoneking  
Notary Public

My Commission Expires: March 10, 2019



**WEST VIRGINIA  
MINE SAFETY AND HEALTH ADMINISTRATION**

**IN THE MATTER OF:**

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

The interview of BOBBY SHANE MCPHERSON, taken upon oral examination, before Jenny Marmol, Court Reporter, and Notary Public in and for the State of West Virginia, Wednesday, March 9th, 2011, at the Mine Academy, 1301 Airport Road, Beaver, West Virginia.

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## BOBBY SHANE MCPHERSON

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1           MR. KOERBER: My name is Barry Koerber.  
2 I'm the Assistant Attorney General assigned to  
3 represent the office of West Virginia Miners'  
4 Health Safety & Training.

5           Today is March 9th, 2011.

6           Beginning at my left, through the -- all  
7 three teams, I would ask that the individuals  
8 identify themselves and who they're with.

9           MR. TUCKER: Bill Tucker, with the West  
10 Virginia office of Miners' Health, Safety and  
11 Training.

12           MR. BABBINGTON: Matt Babbington, I'm an  
13 attorney with the U.S. Department of Labor.

14           MR. CRIPPS: Dean Cripps, with MSHA.

15           MR. MAGGARD: Jasey Maggard, With MSHA

16           MR. BECK: Jim Beck, with the Governor's  
17 Independent Team.

18           MR. KOERBER: We also have with us a court  
19 reporter from Johnny Jackson & Associates. For her  
20 benefit, I'm going to ask that you please say "yes"  
21 and "no" and not "uh-huh," "uh-uh."

22           And I'm also going to ask that you please  
23 allow the question to be finished before you begin  
24 to answer.

1           And I'm going to ask the interviewers to  
2 please allow you to finish your answer before they  
3 begin the next question so we don't have people  
4 talk over one another.

5           Also, if we utilize anything on a map,  
6 obviously here you could point to areas on the map  
7 and say, I went from here to there, and it would  
8 make sense to people looking at the map as you  
9 point. However, on the transcript, that won't be  
10 very productive for anybody reviewing the  
11 transcript at a later date.

12           So I'm going to ask that you identify  
13 specifically where in the mine you might be  
14 pointing to and we may even utilize markers.

15           Also, Johnny Jackson & Associates is a  
16 court reporter agency in downtown Charleston, and  
17 I'm going to give you their business card.

18           They're working on a three-day turnaround,  
19 as far as taking what's said here today and typing  
20 it onto paper.

21           Being that today is Wednesday, three  
22 business days from today takes us through Monday  
23 evening.

24           So come Tuesday of next week, if you so

1 choose, you have the option to call Johnny Jackson  
2 & Associates, schedule a time that is convenient  
3 for and them, and if you elect to take your  
4 attorney with you, convenient for him as well,  
5 where you can go into Johnny Jackson's office.

6 They'll put you in a conference room where  
7 you'll have privacy, and you'll be able to review  
8 the transcript, make any corrections you deem  
9 appropriate on a separate document called an errata  
10 sheet.

11 You will not be allowed to take a  
12 transcript with you. It will have to be done at  
13 the Johnny Jackson & Associates' office. That is  
14 your choice. It is not mandatory.

15 If you do choose to exercise that right,  
16 we would ask that, although you cannot make -- the  
17 transcript won't be available until next Tuesday,  
18 try to call and schedule a time within a couple or  
19 three week period of time, so that we're not trying  
20 to get this done come December or something.

21 I have their business card. I'm going to  
22 give you that here momentarily.

23 Also, if for whatever reason you want to  
24 take a break at any time, just say so and we'll



1 take a break.

2 I would ask that you not discuss your  
3 testimony with anyone outside this interview room  
4 other than your attorney. And the reason I ask you  
5 to do that, is to try to protect the integrity of  
6 the investigation.

7 Matt Babbington, at this time, may have  
8 something he would like to add, and if so, I'm  
9 going to ask him to do so.

10 MR. BABBINGTON: Mr. McPherson, thank you  
11 for coming in and talking to us. I have a letter  
12 here for you from Norman Page, MSHA's lead  
13 investigator, basically describes some of the  
14 backgrounds, the protocols, for the interview here  
15 today.

16 So take a moment to read over that, and  
17 let me know if you have any questions.

18 THE WITNESS: No questions.

19 MR. BABBINGTON: Thank you.

20 MR. KOERBER: We also have two people in  
21 the back of the room. At this time, I'm going to  
22 ask them to identify themselves and who they're  
23 with.

24 MR. HESS: I'm Leland Hess, with MSHA.

1 MR. JUDE: Mike Jude, with MSHA.

2 MR. KOERBER: At this time, I would ask  
3 the court reporter to administer the oath.

4 BOBBY SHANE MCPHERSON, DEPONENT, SWORN

5 MR. KOERBER: Would you please state your  
6 full name for the record and spell your last.

7 THE WITNESS: It's Bobby Shane McPherson,  
8 M-c-p-h-e-r-s-o-n.

9 MR. KOERBER: Would you please state your  
10 address and telephone number?

11 THE WITNESS: (b) (7)(C) ,

12 (b) (7)(C)

13 MR. KOERBER: And do you have an attorney  
14 here with you today?

15 THE WITNESS: I do.

16 MR. KOERBER: Would the attorney please  
17 identify himself and his firm?

18 MR. MCCUSKEY: Yes. John McCuskey, law  
19 firm of Shuman, McCuskey & Slicer in Charleston,  
20 counsel for Mr. McPherson.

21 MR. KOERBER: Mr. McPherson is your  
22 client; correct?

23 MR. MCCUSKEY: That is correct.

24 MR. KOERBER: Mr. McPherson, on April 5th,

1     2010, who did you work for?

2             THE WITNESS:   Massey Coal Services.

3             MR. KOERBER:   What was your job title?

4             THE WITNESS:   Mine rescue.

5             MR. KOERBER:   Did you also perform what  
6     has been called mine safety audits?

7             THE WITNESS:   I did.

8             MR. KOERBER:   We have another person  
9     sitting at the table.   At this time, I would ask  
10    him to identify himself, his firm, and his client.

11            MR. WICKLINE:   I assume that means me?

12            MR. KOERBER:   Yes, sir.

13            MR. WICKLINE:   Scott Wickline, Allen  
14    Guthrie & Thomas, and I'm here on behalf of  
15    Performance.

16            MR. KOERBER:   Mr. McPherson, are you  
17    appearing here today as a result of receiving a  
18    subpoena?

19            THE WITNESS:   I am.

20            MR. KOERBER:   This is a copy of that  
21    subpoena.   I'm going to ask that to be marked as  
22    McPherson Exhibit 1?

23                           (Exhibit No. 1 marked for  
24                           identification.)

1           MR. KOERBER: This is a copy of the  
2 Affidavit of Service signed by my process server,  
3 showing that he served you on the 1st day of March,  
4 2011. I'm going to ask that that be marked as  
5 McPherson Exhibit 2.

6                           (Exhibit No. 2 marked for  
7 identification.)

8           MR. KOERBER: Sir, I'm also going to give  
9 you two other things, other than the Johnny Jackson  
10 business card I mentioned earlier.

11                   One of those things is a memorandum  
12 containing the address of the West Virginia Board  
13 of Appeals.

14                   The West Virginia Board of Appeals is the  
15 administrative agency charged with hearing coal  
16 miner discrimination cases.

17                   Under 22A-1-22, you are protected from  
18 being discriminated against for participating in an  
19 interview such as this.

20                   In the event you find that you have been  
21 discriminated against for participating in this  
22 interview, this is the entity that you file your  
23 complaint with.

24                   The complaint does not have to be anything

1 elaborate, and your attorney can help you with  
2 that.

3 I would caution you that, under the  
4 statute, you only have 30 days from the day of the  
5 discriminatory event to file your complaint.

6 I'm also going to give you Mr. Bill  
7 Tucker's business card. Mr. Bill Tucker is the guy  
8 seated to my left. He is our lead investigator for  
9 the State of West Virginia.

10 In the event after you leave this  
11 interview, if you think of anything that you think  
12 might be helpful and you would like to share with  
13 the West Virginia Office of Miners' Health, Safety  
14 and Training, please contact Mr. Bill Tucker.

15 With that, I'm going to turn it over to  
16 the interview team to give the questions.

17 EXAMINATION

18 BY MR. MAGGARD:

19 Q. Okay, Shane. I guess I'll go first.

20 Tell me a little bit about your mining  
21 experience, how long have you worked in the mines?

22 A. I started in the mines in '96, worked for  
23 a short period of time and was laid off as a red  
24 hat. I went back in the mine since January of '98

1 and been employed ever since.

2 Q. What companies have you worked for from  
3 '96 until now?

4 A. I worked for -- I started with Cline  
5 Resources. I worked around a year with them. They  
6 were a -- one particular mine I was working at was  
7 bought out by Lightning Contracting.

8 Worked for them for just shy of a year  
9 also, then I went to work for Massey Energy in  
10 August of 1999.

11 Q. When you started in August of '99, what  
12 was you -- what jobs from '99 until the present  
13 time have you held at Massey?

14 A. I started out as shuttle car operator. I  
15 was a bolter operator, utility, all sorts of --  
16 really a little bit of everything. I never  
17 consider myself to -- I was never a continuous  
18 miner operator, though.

19 Held a job as utility on longwall,  
20 headgate operator, shear operator, jack setter,  
21 section foreman.

22 Q. Okay. You was a -- was you a section  
23 foreman on the longwall?

24 A. I have been.

1 Q. Okay. What certifications do you hold?

2 A. Mine foreman, underground mine foreman,  
3 MSHA instructor, gas testing instructor, mine  
4 rescue instructor, aiding 40-hour instructor,  
5 diesel instructor. There's more, I just can't  
6 think of it right now.

7 Q. That's a pretty good start.

8 How long did you work for Massey Coal  
9 Service?

10 A. Around October of 2008 was when I switched  
11 over to Massey Coal Services.

12 Q. Okay. And when you switched over, right  
13 before you switched over, where was you working at  
14 and what was you doing?

15 A. I was at Mammoth Coal Company, which is  
16 also Massey Energy, safety director.

17 Q. So you was also a safety director.

18 How long was you a safety director?

19 A. From March of 2005 until around July of  
20 2008. I took the job as full-time mine rescue.

21 Q. With the current job, tell me a little bit  
22 about what that entails, what do you normally do  
23 from day to day?

24 A. Complying with the law requirements of

1 staying familiar with the coal mines, training at  
2 each mine, making team visits, safety audits,  
3 training, you know, lots of training to keep up  
4 with the new requirements, competition training.  
5 That's about it.

6 Q. Okay. You said you did mine visits.

7 When was the last time prior to the  
8 accident, if you can recall, that you visited UBB?

9 A. I don't know the date.

10 Q. But you have been to UBB?

11 A. Absolutely.

12 Q. Okay. Was that visit a -- was the purpose  
13 of that for mine rescue training, or was that  
14 purpose for safety audits?

15 A. It was for a team visit.

16 Q. Had you ever done a safety audit at UBB?

17 MR. WICKLINE: Excuse me. Do you mean  
18 prior to the accident?

19 MR. MAGGARD: Prior to the accident, yes.

20 A. Prior to the accident, I'd helped on one,  
21 yes.

22 Q. About how long had that been prior to the  
23 accident, roughly?

24 A. I don't know an exact date. I'm going to



1 say probably the last quarter of 2009. I'm  
2 guessing.

3 Q. When you was up there in the last quarter  
4 of 2009, was the longwall running, or do you  
5 recall?

6 A. It was.

7 Q. Okay. For these safety audits, how do you  
8 normally go about doing those? Do you have a set  
9 schedule that you go to certain mines? And tell me  
10 about what mines that you're responsible for doing  
11 safety audits for.

12 A. A schedule, no, we're pretty flexible on  
13 where we're going and when we visit a coal mine.  
14 Not really set out that we're going to do it, other  
15 than week by week, if I know that nothing else is  
16 going on, I can pretty much plan out a schedule,  
17 but it doesn't always work that way.

18 But for the most part, no, there's not a  
19 schedule to say. Just go about whenever we want to  
20 wherever we want just about.

21 Q. Okay. And who makes the decision of where  
22 you guys go on a safety audit? Who makes that  
23 call?

24 A. I think generally it, to my knowledge, it

1 comes down from Elizabeth Chamberlin to Rob Asbury,  
2 and then on down the line.

3 Q. I know on these safety audits -- do you  
4 have a form you fill out, do you have a set way  
5 that you do these, or how do you do a safety audit?

6 A. We have a checklist of certain items that  
7 we do look at.

8 Q. Where is this form? Is it in a manual or  
9 where does it come from?

10 A. When I got into safety, it was a form that  
11 had already been developed. I don't know for how  
12 long or when, and I just obtained a copy of it and  
13 that's what I went off from.

14 Q. And when you get -- you go out and you do  
15 a safety audit, and you complete a form, who gets  
16 this form?

17 A. Generally after we complete an audit, we  
18 type it up onto another form and email it to the  
19 president, the vice president, safety director,  
20 Elizabeth Chamberlin and Rob Asbury.

21 Q. Do you also keep a hard copy on file?

22 A. I do not myself.

23 Q. Who keeps the hard copy?

24 A. I don't know if they kept a hard copy

1 together beforehand.

2 Since probably sometime in 2010, they  
3 started doing audits that, I guess you could say,  
4 were more comprehensive, and they started keeping  
5 better copies of those.

6 But who kept them and who all got a copy,  
7 I'm not exactly sure.

8 Q. Can you remember what all is on the form,  
9 what you look for when you do the audit?

10 A. It's a wide variety of things, but there's  
11 administrative, you know, checking, just starting  
12 from outside, you know, when you enter onto mine  
13 property until you get to the bathhouse, files,  
14 signage, you know.

15 You try to hit a little bit of everywhere  
16 in the coal mine when we have time. If we don't  
17 have time, we generally try to spot check the belts  
18 and belt heads and the section that we go to.

19 In the section, that's ventilation,  
20 equipment, cleaning, dusting, generally anything  
21 and everything that we should be looking for, we  
22 do, or we try to.

23 Q. Can you remember when you did that safety  
24 audit in the last year of 2009, where did you

1 visit?

2 A. The particular time before that, I did not  
3 go underground that time. I stayed outside and  
4 audited longwall files.

5 Q. What kind of files do you audit?

6 A. Personnel files.

7 Q. What kind of records is in the personnel  
8 files that you look for?

9 A. We look for experienced miner training,  
10 their annual retraining, task training, emergency  
11 medical data sheets, that's about it,  
12 certifications, copies of their certifications in  
13 their files.

14 Q. Tell me a little bit about this  
15 experienced miner training. What do you look for  
16 on that?

17 A. To see that it is in their file.

18 Q. And what does that mean, as far as their  
19 training goes? When you see an experienced miner  
20 training -- when do they need that file? When do  
21 they need a certificate that they've had that  
22 training?

23 A. When they started at that coal mine.

24 Q. Okay. Who gives that training?

1           A.    An MSHA instructor at the coal mine.

2           Q.    Have you ever seen files that an MSHA  
3 instructor didn't give the training?

4           A.    No.

5           Q.    Do you know when the MSHA instructors  
6 normally are at UBB?

7           A.    No, I don't. Usually when we go to a  
8 mine, I try to identify a certified and qualified  
9 list of who is qualified to do it.

10          Q.    Tell me about your -- the visit you did  
11 when you were doing your mine rescue training,  
12 where did you go?

13          A.    Last time I went to the longwall.

14          Q.    And was this also in the last quarter of  
15 2009?

16          A.    Yes.

17          Q.    Okay.

18          A.    Well, I take that back. It may not have  
19 been the last quarter, but maybe the last half.

20          Q.    Was the longwall running then?

21          A.    Yes, it was.

22          Q.    Okay. Had you -- when you talk about this  
23 safety audit and stuff, when you were doing the  
24 safety audit, do you recall any kind of problems

1     you guys identified during the safety audit that  
2     you found?

3           A.   Not particular on the longwall.  On the  
4     personnel files, I found a few items missing from  
5     some of the files.

6           Q.   What about the other guys?  I'm sure you  
7     guys -- do you have, like, a meeting after you've  
8     done the audit and put everything down on one form,  
9     I guess, everybody fills out --

10          A.   Generally whoever, whatever they've done,  
11     they put it out on their own form.

12          Q.   So there's different forms for each part?

13          A.   There could be.  They could start out  
14     their own form.  They do electrical, ventilation,  
15     the section, administrative.

16          Q.   Did you review any of the other forms that  
17     was completed by other people?

18          A.   I did.

19          Q.   Do you recall any safety concerns, any  
20     things that were identified that had to be  
21     corrected, any hazards?

22          A.   That there were items on the list.  I  
23     don't remember exactly what all the items are.

24          Q.   Do you remember any of the items?

1           A.   No, I'd just be guessing. We do so many  
2 of them. They all run together.

3           Q.   Let's say in a month's time, how many  
4 safety audits would you do?

5           A.   Again, we don't have a set schedule or  
6 quota. We just -- as we're available and we have  
7 time, we go do them. I couldn't give you a number  
8 on that.

9           Q.   What was a safety audit -- why was UBB  
10 chosen for that last quarter of '09?

11          A.   We try to make all the mines. It wasn't  
12 particularly chosen or singled out. It was  
13 just ...

14          Q.   When you were doing your mine rescue  
15 training, did you identify anything that needed to  
16 be corrected when you were underground?

17          A.   I did.

18          Q.   Do you recall what it was?

19          A.   Particular item I found was a SCSR on a  
20 toolbox, and I felt it was probably one of the guys  
21 working there. And I went to check all the men to  
22 make sure they were wearing their rescuers.

23          Q.   Is that all that you recall?

24          A.   Uh-huh.

1 Q. Okay.

2 MR. BABBINGTON: Is that a yes?

3 THE WITNESS: Yes.

4 Q. Was you involved -- let me ask you, after  
5 the accident, did you have to go to the mine as a  
6 member of the mine rescue team?

7 A. I did.

8 Q. And do you recall what day did you go in?

9 A. I went the day of the explosion.

10 Q. Was you a member of the first team that  
11 went underground?

12 A. No.

13 Q. What team was you on?

14 A. The second team that went underground.

15 Q. And where did you go underground from?  
16 Where did you portal?

17 A. Ellis portal.

18 Q. And who was on your team, do you recall?

19 A. I took Mike Alexander and Larry Ferguson  
20 with me.

21 Q. And do you recall what time you went  
22 underground?

23 A. I don't.

24 Q. Do you recall how much -- where was the



1 first team? Where were they at when you got there?

2 A. They had just went under not long after I  
3 got there.

4 Q. How long after they had -- do you know how  
5 much time had elapsed from the time they went in  
6 until the time you got there?

7 A. Not long. I don't know a time.

8 Q. How long was it before you guys went  
9 underground after they had?

10 A. I don't know what time they went  
11 underground. It was just soon after.

12 Q. Okay. Who did the briefing when you got  
13 there? Who did you talk to?

14 A. Elizabeth Chamberlin, Wayne Persinger,  
15 Craig Boggs.

16 Q. What did they tell you?

17 A. They just told me that they -- we believe  
18 we have an explosion. And originally they asked me  
19 had I worked there before and could I identify  
20 bodies.

21 I went to try to identify the bodies of  
22 the first crew members that came out and I  
23 couldn't.

24 Then I started asking questions on what

1 they knew, you know, as to the explosion, had  
2 anybody had any air readings on the fan, what the  
3 air readings were, where Robbie and Jim and Mark  
4 were at the time, what they know.

5 Q. And Robbie, Jim, and Mark, was that  
6 members of the first team?

7 A. Uh-huh, the first three that went in.

8 Q. What's their full names, please?

9 A. Rob Asbury, Jim Aurednik, Mark Bolen.

10 Q. Where had they said they were at?

11 A. They had went in Ellis portal, and I  
12 believe they had made it to Ellis switch.

13 I believe they'd been repairing phone  
14 lines on the way up, and they were going inby there  
15 at the time frame.

16 Q. Okay. What did they say about the air,  
17 or, you know, air quality at the fans? What do you  
18 recall?

19 A. I remember them saying that the fans were  
20 still working. They were getting some CO, but no  
21 methane. I don't recall methane, and good air.

22 Q. Did they tell you how many guys were  
23 underground? Did they know at that time?

24 A. I don't remember a number. I just knew

1     that some miner section and the longwall.

2           Q.    Did they have any idea of where the men  
3     were possibly located on the section?

4           A.    I think we believed that they were on the  
5     section still.

6           Q.    Which sections were --

7           A.    22 section and the longwall section.

8           Q.    When you say "22 section," which --

9           A.    Headgate.

10          Q.    Headgate 22?

11          A.    Uh-huh.

12          Q.    Who else was underground? Did they tell  
13     you about anybody else being underground?

14          A.    Jason Whitehead and Chris Blanchard.

15          Q.    Was that the only two that they mentioned?

16          A.    Yes.

17          Q.    Did they know where they were at when you  
18     arrived?

19          A.    No.

20          Q.    So tell me -- let's go through who else  
21     went with your other two guys there that was with  
22     you. Who else went with you when you entered the  
23     mine and when you --

24          A.    It was just us three.

1           Q.    Just you three?

2           A.    Uh-huh.

3           Q.    Just go through from when you entered the  
4 Ellis portal to where you ended up, and just tell  
5 about that whole day, if you can, please.

6           A.    Again, I showed up at the mine and they  
7 gave me all the answers that they could give, and I  
8 started getting dressed to go underground.

9                   And I gave my apparatus to a guy named  
10 Clinton Craddock at the time to ready my apparatus  
11 for me. I grabbed a couple other guys to go get a  
12 mantrip ready for me.

13                   And in between all that, talking with  
14 Wayne, Elizabeth and anybody that could tell me any  
15 information, I gathered all the information that I  
16 could.

17                   I grabbed a first-aid box from our mine  
18 rescue trainer. Just one. It was a No. 2 box, and  
19 I loaded extra supplies in it.

20                   I got a mine map from the office, and I  
21 told Mike Alexander and Larry Ferguson to get their  
22 things ready to go with me.

23                   They got the mantrip that was -- that had  
24 came out from the explosion out of the way and got

1       ours ready to where we could go. We got as much  
2       information and supplies as we could and we started  
3       underground.

4               I got to Ellis switch and called outside  
5       to check in. Chris Adkins answered the phone and  
6       told me he could hear me, told me that Robbie had  
7       checked in at a point and Robbie was working his  
8       way up toward 78, repairing phone lines, and that  
9       they would probably be at 78 by the time I got  
10      there.

11              So we left Ellis and continued on up  
12      toward 78. That's where we met Robbie, Jim and  
13      Mike -- or Robbie, Jim and Mark.

14              Q.    Okay. And continue on. What happened  
15      after that?

16              A.    Chris told me his concern. He knew Jason  
17      and Chris were in the mine, knowing that they  
18      didn't have any mine rescue apparatus, and we  
19      needed to make it a priority to try to find those  
20      two.

21              So I met up with the guys at 78, and we  
22      were trying to repair phone lines and get  
23      communications established there.

24              Once we did, we were -- we know that

1 there's a whole lot of people we need to be looking  
2 for. So we started inby 78 on the North Glory  
3 Mains toward the longwall mother drive.

4 It's basically disbelief and half shock, I  
5 would think, to what we were seeing, but at the  
6 same time trying to locate those guys.

7 We made it a short distance to the North  
8 Glory Mains, and I do not know how far the distance  
9 was or the time frame exactly. Things were going  
10 too fast.

11 Eventually Jason and Chris came walking  
12 outby on the North Glory mains. Got to them,  
13 checked them out, they appeared to be okay.

14 We walked them back to 78, and I asked  
15 them, you know, if they were okay and if there was  
16 anything I could do for them. They said that they  
17 were okay, and, you know, we let them know outside  
18 that we had found those two.

19 And along that lines, we were trying to  
20 get communications between here and the mother  
21 drive. And we eventually made it to the mother  
22 drive.

23 Q. Who all made it to the mother drive with  
24 you?

1           A.    I don't know exactly who all was there at  
2 the mother drive. Best I remember, we were  
3 dropping people off, or we had radios trying to  
4 maintain communications back to 78.

5                By the time we got there, it was a short  
6 time after, best I remember, some other teams and  
7 MSHA started showing up underground, and we met up  
8 with those teams, ended up at the mother drive with  
9 us.

10               Jerry Cook is one I remember from MSHA  
11 being there with us. Jerry showed up and he was --  
12 he said he was wanting to split us up and send half  
13 to the longwall and the other half to headgate 22.

14               I told Jerry with the people we had and  
15 the communication issues we had, we didn't have  
16 enough people or communications to go both ways,  
17 that we would be lucky to make it to the longwall,  
18 the longwall is where we should go first because it  
19 is the shorter distance of the two.

20               He agreed, and he assembled what people we  
21 could there and we started making a plan to go inby  
22 toward the longwall, try to get up to the longwall  
23 face.

24           Q.    I would like for you to talk about that,

1 too. Before you went -- started up to go to the  
2 longwall, did you have any idea that there was any  
3 people that were deceased already?

4 A. We did. A guy at the -- (b) (7)(C) , who  
5 was at the mother drive starter box, we had found  
6 him. His detector was going off over by the mother  
7 drive.

8 We walked over there and checked (b) (7)(C) and  
9 his detector was still alarming at that time. Bent  
10 down and picked it up and shut it off and set it  
11 back down where I found it.

12 Q. Okay. Had you been told by Jason or  
13 Chris, had they seen anybody that was --

14 A. They had. I don't know who or which ones  
15 in particular that they had already found.

16 Q. Did they give you a number of guys that  
17 they had seen?

18 A. Three comes to mind.

19 Q. Did they tell you where they was located?

20 A. I didn't hear exactly where they were  
21 located.

22 Q. Did they try to brief you on where they  
23 had made it to, and give you a heads up of what to  
24 look out for?



1           A.    They mainly talked to Rob Asbury on what  
2 they had done exactly, and I was still looking,  
3 trying to help with communications, assessing the  
4 conditions that they had.

5           Q.    When you made it to the mother drive, what  
6 kind of air quality did you have? Do you remember  
7 checking that there?

8           A.    I know we had 20.8 oxygen, zero methane,  
9 and I don't recall any CO.

10          Q.    Take me from when you went up the, I  
11 guess, the headgate side of the longwall. Talk to  
12 me about that, how it progressed up there, where  
13 you ended up at, and just what you can remember  
14 about it?

15          A.    We, and I say "we," I don't know all that  
16 went up through there with us, but me and Rob and  
17 Jim Aurednik and Jerry Cook, Charles Conn, from our  
18 East Kentucky mine rescue team, and I don't know  
19 how many total.

20                We started up the belt entry toward the  
21 longwall, and somewhere along the line, a couple of  
22 them split up and went over to the track entry.

23                And there were some -- we had to maintain  
24 a straight line together to keep our communications

1 from not working on us.

2 And we would try -- it was just  
3 experimental, you know, going up through there as  
4 to how far we could travel before we had to drop  
5 somebody off with the radio, and I don't know  
6 exactly where they were dropped off.

7 I stayed in the belt entry the majority of  
8 the way up. I think it was Jerry and Jim had went  
9 over to the track entry when they found the four  
10 over in the track entry.

11 Once we found those four, the first four  
12 in the track entry, I guess that would have made  
13 five total.

14 Somehow along the way I made it over into  
15 the track entry, and somebody had taken my spot in  
16 the belt entry, and I went on up to the longwall  
17 face with Rob and Jerry, then found the headgate  
18 operator, (b) (7)(C) , and we decided we was going  
19 to start down the face.

20 Jerry didn't have a radio, so I gave him  
21 my radio to stay at the head drive so he could  
22 maintain communications, you know, down the line,  
23 down the belt line, to the people outby.

24 Rob and I started down the face, and

1 that's when we just started, you know, finding some  
2 of the bodies.

3 Q. How far did you make it down the face?

4 A. I made it to shield 125.

5 Q. Tell me about the air quality up there  
6 when you got across the face. How was it when you  
7 was up there?

8 A. Starting across the face, I had 20.8  
9 oxygen, zero methane, and 20 parts per million CO.

10 Started down the face, and approximately  
11 halfway down the CO went from 20 to 40.

12 And by the time I got to around 120, 125  
13 shield, it went to 60 parts per million CO and 20  
14 percent methane.

15 That's when, you know, Rob was trying to  
16 stay in communication with Jerry, and I didn't have  
17 a radio, given that to Jerry, and I was in -- I was  
18 pushing my limits at yelling distance at what I  
19 had, so I quit, turned around and came back.

20 Q. When you were going across the face, I  
21 know you seen Ellis switch at the mother drive, his  
22 detector going off, did you see detectors going off  
23 when you went across the face?

24 A. No.

1           Q.    Can you describe anything else that jumped  
2 out at you that you noticed when you were going  
3 across that might be helpful with the --

4           A.    No.

5           Q.    -- team here?

6                   When you were going across, which way did  
7 it appear that the air was going up there?

8           A.    Air was traveling from the head to the  
9 tail. I remember that well, because I could turn  
10 around toward the head and it felt good. I was  
11 burning up and that was the only cooling air that  
12 it seemed that I had that night.

13          Q.    When you all went to the mother drive, who  
14 was down at 78?

15          A.    I don't know who all was down there.

16          Q.    Okay. And when you met Chris and Jason at  
17 the -- around the mother drive --

18          A.    No, it was before the mother drive.

19          Q.    Before the mother drive?

20          A.    Yeah, that was in this area somewhere,  
21 just guessing. I don't know the crosscut number.

22          Q.    How many crosscuts outby the mother drive  
23 was you when you --

24          A.    I don't know.

1 Q. Don't know?

2 Where did they go after that? Did they go  
3 to 78?

4 A. They did.

5 Q. Tell me about after you got to 125 shield,  
6 you seen 2 percent methane?

7 A. Uh-huh.

8 Q. What did you all do after that?

9 A. We left and went back to the head -- or  
10 the head drive, I should say.

11 Q. When you got back to the head drive, tell  
12 me what was going on then?

13 A. We met with Jerry, and we told him how  
14 many bodies we had found and what we had seen. And  
15 then I believe we retreated back out to the mother  
16 drive at that time.

17 Q. Did any of the team members try to go to  
18 the rescue chamber or anything on the section, or  
19 do you recall?

20 A. The longwall section?

21 Q. Yeah.

22 A. The rescue chamber was passed on the way  
23 up there.

24 Q. Did anybody go to it from the team at that

1 time?

2 A. No. I mean, it was enclosed. I mean,  
3 they had walked by it.

4 Q. They'd seen that it wasn't deployed?

5 A. Right.

6 Q. So you went back to the mother drive, and  
7 what was your instructions, what was going on, what  
8 was they telling you from the command center, what  
9 was going on?

10 A. I hadn't talked to anyone at the command  
11 center. There was a group of people there. I  
12 don't know who all they were.

13 I think that there were teams had already  
14 arrived and started up toward headgate 22. That's  
15 really all I remember.

16 Q. About how long after you got back to the  
17 mother drive did you all come outside?

18 A. I don't know.

19 Q. Did you come out in the morning sometime?

20 A. Yeah. Oh, yeah, it was early morning.  
21 Before daylight is all I can tell you.

22 Q. Okay. Who all went out at the same time  
23 you did?

24 A. I believe we all went out.

1           Q.    Okay.  Do you recall why you all went out  
2 at that time?

3           A.    I don't remember the reason.

4           Q.    How many mantrips was you driving out when  
5 you left?

6           A.    I don't know the number.

7           Q.    Okay.  And which way did you go out?

8           A.    We went out -- I believe we went all the  
9 way out the main portal, I guess you would call it.

10          Q.    Would that be the UBB portals or the --

11          A.    Yeah.  Best I remember.  I was in and out  
12 of that mine so many times I wake up -- but I think  
13 that's the portal we went out that night.

14          Q.    So that was basically what you could  
15 remember the night of April 5th and into the  
16 morning hours of April 6th?

17          A.    Yes.

18          Q.    The next visit you had, where did you have  
19 to go?

20          A.    I don't remember exactly the route of  
21 travel that we went.  The next -- I remember the  
22 first night, and I remember the last night fairly  
23 well.  In the middle is kind of a blur.

24          Q.    Okay.  Tell us what you remember about the

1 last night.

2 A. I just remember the last night they -- we  
3 were going in, and we had sent in teams to recover  
4 the last of the bodies and have them bagged, and  
5 all the teams being split up from where they were  
6 located up to 78, and we were in seven to ten break  
7 intervals, as best I can remember, and we were just  
8 chaining down the bodies to the mantrips.

9 Q. And how far did you have to go in the last  
10 night?

11 A. The last night, we parked the mantrips in  
12 this location, and I just had a seven break  
13 interval from here to ...

14 Q. You're pointing to about 81 break?

15 A. Six, seven, yeah. 85, 86, 87. Around 87  
16 break, roughly. Then we would -- as they would  
17 bring them down to us, then we would pick them up  
18 and bring them onto the mantrip.

19 MR. BABBINGTON: I'm sorry, to clarify,  
20 the mantrips were parked at 81 or 87 break?

21 THE WITNESS: The mantrips were parked  
22 probably right here.

23 MR. MCCUSKEY: Remember, they don't know  
24 what "here" is, so use numbers, if you can.



1           THE WITNESS: I was trying to. This  
2 number is not here, so around 81.

3           MR. BABBINGTON: Thank you.

4 BY MR. MAGGARD:

5           Q. What day was that, do you remember?

6           A. No, I don't.

7           Q. Tell me -- I'll kind of switch gears a  
8 little bit and give you a break on that. Okay?

9           A. I'm fine. Go ahead.

10          Q. On your audit team, who is on your team  
11 that normally goes out to the mines?

12          A. It's a mixture. No set person really.  
13 It's whoever really. Try to get everyone involved.

14          Q. Okay. Give me some names of people you  
15 work with that go out on the audit team?

16          A. Rob Asbury Jim Aurednik, Mark Bolen, Tommy  
17 Dove, just about everyone on the team participates  
18 in an audit.

19          Q. Who normally participates from the mine  
20 site with you during the audit?

21          A. Usually no one.

22          Q. So you basically go into whenever you're  
23 going, just your team, and tell me -- you go to a  
24 section, you stop and spot a belt -- am I on the

1 right track?

2 A. Yeah, generally.

3 Q. If you find something during your audit,  
4 who do you relay that to if it's something that  
5 needs immediate attention?

6 A. If it needs immediate attention, we'll fix  
7 it ourselves, if we can. If we can't, then we'll  
8 bring somebody, management in to do it.

9 Q. Give me examples of things that in prior  
10 audits at other mines that you would have to fix  
11 yourself?

12 A. Ventilation on the section. If the  
13 ventilation isn't a hundred percent or up to their  
14 plan, we'll shut it down. Generally, at the  
15 continuous miners, you know, if it's lacking a  
16 little bit, you know, we'll stop and take an air  
17 reading. If it's not right, we'll fix it.

18 Q. As far as equipment goes, equipment  
19 checks, do you do any kind of equipment checks  
20 during the audits?

21 A. Generally our electricians on the team  
22 will check equipment, you know, as far as  
23 electrical goes.

24 As far as, you know, my experience is on a

1 miner, we'll check the sprays, fire suppression,  
2 splices, you know, see what the splices look like,  
3 some things of that nature.

4 MR. MAGGARD: I'm going to take a break  
5 and pass it on to somebody else. I know I took up  
6 a lot of time here. I appreciate it.

7 (Break.)

8 EXAMINATION

9 BY MR. TUCKER:

10 Q. Shane, again, I appreciate you coming in  
11 today. I appreciate all that you do as far as mine  
12 rescue goes.

13 I'll go bouncing around a little bit.  
14 Jasey has done a real good job questioning, and  
15 you've done a good job answering, so I'm going to  
16 -- there's a couple questions I have here to try to  
17 fill in some gaps.

18 How did you actually find out that  
19 something had happened at the mine?

20 A. Rob Asbury called me. I was in Bluefield  
21 that day, taking a test at the college. He called  
22 my cell phone and told me we had been put on  
23 standby.

24 Q. Okay. Was you in Bluefield when you got

1 the call?

2 A. I was in Bluefield, yes.

3 Q. Do you recall about what time that was?

4 A. It was a little after 3:00. I'm thinking  
5 around 3:30 or so.

6 Q. So I guess you left Bluefield, came  
7 straight to the mines. Have any idea timewise  
8 about what time you got to the mines?

9 A. It was around 5:00, the best I know, Bill.

10 Q. When you got to the mines, did you go to  
11 your all's training center where your mine rescue  
12 equipment is at, or did you go straight to the  
13 mine?

14 A. I went straight to the mines. I told Rob  
15 that -- he didn't know what was going on, other  
16 than we were on standby.

17 I told him -- I was leaving Bluefield  
18 actually when he called me. I finished my exam and  
19 I was on my way back to Beckley.

20 I told him I'd get to Beckley as fast as I  
21 could, that I had to run by my house and get my  
22 things.

23 I called him when I got to Beckley to find  
24 out more detail. I called his office, and he

1 wasn't answering. So I assumed he was at UBB, and  
2 I called the mines to ask them what was going on.

3 They asked who I was, and I just responded  
4 that this was Shane. They said, Is it Shane  
5 McPherson, and I said, Yes. They said, You need to  
6 come down here. I said, I'm on my way. I just  
7 want to know what's going on. They said, You just  
8 need to come down here. I said, Well, I'm coming.

9 I went to -- they told me that the team  
10 was at the Ellis portal. So I went straight to the  
11 Ellis portal.

12 Q. Did you call anybody else after you were  
13 notified?

14 A. No. I was on my way there. Jamie  
15 McClarity (phonetic), who was mine foreman at ICG's  
16 mine, called my cell phone to ask -- he had heard  
17 something happened, and he was asking me, he called  
18 me asking me. I told him I didn't know and no one  
19 was telling me, but I was on my way there.

20 He said, Do you think we ought to get  
21 ready. I said, Well, getting ready never hurts, I  
22 said, you know, I said, The least that happens you  
23 can just go back to work. Before the end of that  
24 night, his team was underground.

1           Q.    You mentioned that when you called out at  
2 the Ellis switch, Chris Adkins answered the phone?

3           A.    Yes.

4           Q.    Is that the first contact you had with  
5 Chris, or was he there before you went underground?

6           A.    I never went inside the trailer. That was  
7 the first time I talked to Chris there. But when I  
8 got there, I was just getting things ready. I  
9 didn't go in to see who was where.

10                  That's a good-sized building they have up  
11 there. So if he was there prior, I don't know.

12           Q.    Okay. You mentioned you all were starting  
13 up North Glory Mains, and that's where you found  
14 Chris and Jason, they were walking back towards  
15 you?

16           A.    That's right.

17           Q.    Did they indicate to you where all they  
18 had been at that point?

19           A.    No.

20           Q.    And I know you mentioned that you was  
21 working on communications and they primarily talked  
22 to Rob?

23           A.    That's right.

24           Q.    After they briefed Rob, then Rob, I guess,

1 would have briefed y'all as far as to come up with  
2 a game plan with how to proceed forward.

3 Did he indicate where they had been?

4 A. Where Chris and Jason had been, no. We  
5 just know they had come from the longwall area, and  
6 I knew that they'd found, I believe, it was three  
7 bodies.

8 Once we found them, you know, we all went  
9 back to 78, and that's where we checked them out  
10 and they appeared to be fine.

11 Then we started trying to come up with a  
12 game plan as to getting up through there as fast as  
13 we could.

14 Q. But Robbie didn't indicate they had been  
15 down the longwall jack line or been up at the tail,  
16 just that they came from --

17 A. Right. To my knowledge, they did not go  
18 down the jack line. I believe they tried to get up  
19 that direction, but I don't believe they were  
20 successful. I believe the -- for whatever reason  
21 they didn't make it, to my knowledge.

22 Q. By the time your team arrived on the  
23 headgate, several hours had passed since the  
24 original explosion, were you bare faced the whole

1 time?

2 A. I was.

3 Q. Did you ever go under air the first night?

4 A. No.

5 Q. Do you recall why we were pulled out?

6 A. I don't remember to be honest with you,

7 Bill.

8 Q. I know that things run together. You had  
9 some recollection of the last night and the first  
10 night.

11 Do you recall going under air any of the  
12 other trips underground?

13 A. Yeah.

14 Q. And where at?

15 MR. KOERBER: That was a yes?

16 THE WITNESS: Yes, that is a yes.

17 A. Where did we do it at?

18 Q. Just thinking about that, does that help  
19 jog your memory a little bit as far as maybe what  
20 you done on your second trip under?

21 A. You know, what night I went under air, I  
22 don't know. I can tell you where I went under air  
23 at, but which night it was, I don't know.

24 Q. If you could just tell what was happening



1 on that trip, even though you're not sure if it was  
2 your second or third trip underground, as best you  
3 can remember.

4 A. By this time, best I remember, the 22  
5 crossover had not been made yet. We came in and  
6 established a fresh air base inby the longwall  
7 face, I believe it would be 27 break on headgate 1  
8 north.

9 I believe we had went inby probably to 28  
10 break. We were wanting to try to get over to  
11 tailgate 22, best I remember, to find the section  
12 shelter.

13 I remember off up through here was good  
14 air up headgate 1 north. I turned the crosscut,  
15 walked three feet and had 300 parts per million  
16 CO. I don't remember which crosscut entry exactly  
17 it was, other than it was going toward that area,  
18 and that's when we went under air.

19 But we stepped back into the fresh air,  
20 and went under air, then we started exploring this  
21 area.

22 I did not go to the shelter myself, but  
23 other team members did, with MSHA and, I believe,  
24 State guys as well. I can't really remember.

1           Again, which night was which, I don't know  
2 that either.

3           We went under air again after the bore  
4 holes had been drilled and temporaries put across  
5 22 and inundated, I believe, with nitrogen, you  
6 know. Then we, of course, went under air again  
7 over through here and that night that we went up to  
8 try to finish exploring that area.

9           Q. When you say "up through here," you're  
10 referring to?

11          A. Headgate 22 and the crossover. The  
12 crossover went -- we established a fresh air base,  
13 I think, by the time -- it was right in here.

14          Q. Where is that?

15          A. Up 25, 26, 27 -- probably around 27 break,  
16 headgate north. And then we traveled from there  
17 across the crossover from tailgate 22 to headgate  
18 22, and then we started up headgate 22.

19               Then we were doing the communications with  
20 the radios, and we would drop off every so often to  
21 keep good communication.

22               I made it, myself, approximately five to  
23 seven crosscuts up headgate 22, and that's where I  
24 dropped off on communication.

1           And, yes, it was all under, all under air  
2 those times.

3           Q.   Do you recall the highest methane you  
4 encountered?

5           A.   One percent of headgate 22 was the highest  
6 I saw myself.

7           Q.   How about prior to April 5th, as far as  
8 methane?

9           A.   Zero.

10          MR. TUCKER: I appreciate that. That's  
11 all I have.

12   EXAMINATION

13 BY MR. BECK:

14          Q.   Shane, you said that you were a safety  
15 director at Mammoth from March 2005 to July 2008;  
16 is that right?

17          A.   That's right.

18          Q.   And then in October of 2008 is when you  
19 started with Massey Coal Services as a mine rescue  
20 member?

21          A.   That's when I transferred over. We had  
22 started actually the mine rescue from July, but we  
23 didn't transfer over until around October of '08.

24          Q.   So from October 2008 going forward is when

1 you would have participated in safety audits at the  
2 various mines?

3 A. Yeah. Well, I've done safety audits the  
4 whole time I was a safety director.

5 Q. But as a member of Massey Coal Services  
6 team?

7 A. Yes. Yes, somewhere around July/August  
8 2008?

9 Q. Do you recall how many safety audits were  
10 done in Upper Big Branch during that period of  
11 time?

12 A. No, I don't.

13 Q. More than one?

14 A. I couldn't guess. I don't know.

15 Q. And the audits, are they always done on  
16 the day shift?

17 A. No, not always.

18 Q. So they'll be done sometimes on evening or  
19 midnight?

20 A. On the evening.

21 Q. Any on midnight shift?

22 A. I never went on midnight shift myself.

23 Q. Did mine management know that the audit  
24 was coming?

1           A.    No.

2           Q.    So it was totally unannounced?

3           A.    That's correct.

4           Q.    No one knew?

5                    You mentioned that if you find, in  
6 particular I think you mentioned a ventilation  
7 problem, you guys would just go right ahead and fix  
8 it then?

9           A.    That's right.

10          Q.    Do you remember -- and you did do an audit  
11 at Upper Big Branch; that was right?

12          A.    That was right. An audit was done, but  
13 not by me personally.

14          Q.    You were on the outside?

15          A.    That's correct.

16          Q.    Did you get to review the audit report,  
17 the entire report, before it was submitted?

18          A.    I had reviewed -- I don't know if it was  
19 all the report. I had reviewed some of it.

20          Q.    Do you recall if there were any  
21 ventilation problems on that report?

22          A.    No, I don't recall any. Best I remember,  
23 the last audit done was on the longwall. I don't  
24 remember any ventilation issue.

1           Q.   How about any rock dusting issues at Upper  
2 Big Branch?

3           A.   No.

4           Q.   Now, when the report was submitted, were  
5 there still items on the report that needed  
6 corrected?

7           A.   Yes.

8           Q.   And how did you guys follow up to see that  
9 they were corrected?

10          A.   I did not follow up myself at all.  
11 Generally, like I said, the reports are submitted  
12 to management, and then leave it up to them to  
13 correct.

14          Q.   Rob Asbury is the --

15          A.   Director of mine rescue.

16          Q.   Do you know if he followed up to see if  
17 any deficiencies on the report were corrected?

18          A.   I don't know.

19          Q.   On these audits, whether it be at Upper  
20 Big Branch or any other mine, would it ever happen  
21 that you would go back on a second audit and sort  
22 of find the same things that you find on the first  
23 audit?

24          A.   You find the same issues, but not

1 necessarily the same places.

2 Q. So if you find the same issues, was  
3 anything ever done to address that problem that you  
4 were finding the same issues?

5 A. Sure. We would do training ourselves, you  
6 know, we would stop and talk with the members and  
7 try to give some guidance on what they can do to  
8 help themselves.

9 Q. Okay. Now, you said the completed audit  
10 was emailed to the president and vice president.  
11 That would be of that particular subsidiary?

12 A. That's right.

13 Q. And the safety director and Elizabeth  
14 Chamberlin; is that right?

15 A. Yes. And Rob Asbury.

16 Q. And Rob Asbury.

17 Do you know if those emails or that report  
18 was distributed any higher up in the Massey  
19 management chain?

20 A. Prior to or after?

21 Q. Prior to.

22 A. I don't think so.

23 Q. But you don't know for sure?

24 A. I don't know.

1           Q. Did anybody from upper management, and by  
2 that, I mean higher up than the subsidiary  
3 president, ever accompany you guys on an audit?

4           A. No.

5           Q. Did Elizabeth Chamberlin ever accompany  
6 you on an audit?

7           A. Yes.

8           Q. Do you recall if she was on the audit at  
9 Upper Big Branch?

10          A. No.

11           MR. MCCUSKEY: Let's make sure the record  
12 is clear. He said, no. I don't know if you were  
13 saying, no, she wasn't, or you don't know?

14           THE WITNESS: No, she was not at Upper Big  
15 Branch.

16          Q. During the rescue efforts, do you recall  
17 who was calling the shots in the command center,  
18 directing the mine rescue teams on what to do?

19          A. No, I don't.

20          Q. During the mine rescue effort, were there  
21 always adequate backups while teams were working?

22          A. Yes.

23           MR. BECK: That's all.  
24



**EXAMINATION**

**BY MR. CRIPPS:**

Q. Shane, I just got a couple questions for you, if you don't mind.

A. Uh-huh.

Q. How long have you actually been participating in the mine rescue?

A. 2004.

Q. 2004 is when you started?

A. Uh-huh.

Q. Are you still on the team?

A. I am.

Q. So you're still doing mine rescue?

A. I am.

Q. Did you ever work at Upper Big Branch?

A. I did.

Q. What did you do at Upper Big Branch?

A. I was a headgate operator on longwall.

Q. When was that?

A. Around October of 2000.

Q. 2000?

A. Uh-huh.

Q. Okay. And how long was you there?

A. Around three months.

1           Q.    Okay.  How come you left Upper Big Branch?

2           A.    That particular time, we had two longwalls  
3   in that mine, on headgate 11, and they were just  
4   starting headgate 12.

5                    I went to headgate 11 longwall, and the  
6   coal was pinching out.  It was becoming solid  
7   sandstone.  And they had just finished driving gate  
8   panels at the Brushy Eagle mine at Mar Fork, and  
9   they were set up, ready for a longwall, you know,  
10   so we tore down the one at UBB and moved it to Mar  
11   Fork, and I went with it.

12          Q.    How long did you work at Mar Fork?

13          A.    It was around nine months.

14          Q.    What did you do there?

15          A.    I was a headgate operator and a shear  
16   operator.

17          Q.    Okay.  How long was you actually a section  
18   boss on the longwall?

19          A.    I just floated people when bosses were  
20   missing.  We had one boss in particular that his  
21   wife had passed away shortly before I got  
22   certified, and he was just missing a little bit of  
23   work, and I would just fill in when he was off or  
24   if they had somebody else off they needed replaced.

1           Q.    When you was working as the section  
2 foreman on the longwall, did you do any  
3 examinations on the longwall?

4           A.    Yes.

5           Q.    Okay.  What examinations did you perform?

6           A.    Pre-shift and on-shift examinations.

7           Q.    Okay.  Explain to me what those consisted  
8 of and how you did that.

9           A.    Pre-shift examination I would, you know,  
10 start out down by the mule train, and I checked the  
11 mule train fire extinguisher, roof and rib exams,  
12 gas testing chargers, worked my way up to the  
13 longwall face, take air readings out at the  
14 longwall, the air was coming up to the face.

15                   Check the gate entry, or the belt entry  
16 where the headgate operator was, and I proceeded  
17 down the face from all the way to the tail and out  
18 into the tail entry.

19           Q.    Did you -- how did you report your  
20 pre-shift exam results?

21           A.    I would call them out.

22           Q.    From the longwall?

23           A.    Yes.

24           Q.    And who would you call them out to?

1           A.    To the next foreman, oncoming.

2           Q.    Okay.  Then would that foreman actually  
3 record the results in the pre-shift book?

4           A.    Yes, he would.

5           Q.    Okay.  Would you then sometime actually  
6 sign that report?

7           A.    Yes, I would.

8           Q.    When would you do that?

9           A.    When I got outside.

10          Q.    At the end of that shift?

11          A.    Yes.

12          Q.    As far as the on-shift examinations go,  
13 specifically dust parameter checks, in your  
14 experiences, when you was filling in as the boss  
15 and also as the shear operator, did you ever  
16 observe them being done?

17          A.    Yes.

18          Q.    Who generally did the different parts of  
19 those exams?

20          A.    The operator would do the exams.

21          Q.    The shear operator?

22          A.    The shear operator would check his bits  
23 and sprays, and the foreman would check the air,  
24 and an electrician generally checked the pressure

1 of what was coming out of the drums.

2 Q. Do you know was a record made of that  
3 examination?

4 A. I don't know that.

5 Q. Okay. On your mine rescue team, what team  
6 member are you, or what's actually your function?

7 A. Right now I'm captain of a working team  
8 and I'm map man on the competition team.

9 Q. On the day of the accident, what was your  
10 positions on the teams?

11 A. I was a map man.

12 Q. Map man on the working team?

13 A. Yes.

14 Q. Who was the captain of your team?

15 A. Rob Asbury.

16 Q. Who was the other members of your team?

17 A. Once we were all together, it was Jim  
18 Aurednik, Mark Baldwin, Larry Ferguson and Mike  
19 Alexander.

20 Q. So on April the 5th, then, part of the  
21 team, as I understand, three members of your team  
22 actually went in ahead of the rest of the team?

23 A. Yes.

24 Q. And then the other three members went in

1     sometime later?

2             A.    Yes.

3             Q.    And then you joined up at 78 crosscut?

4             A.    That's right.

5             Q.    Okay.  When you went across the longwall  
6     face -- let me back up.  You're talking about the  
7     communication, and I just want to get this clear in  
8     my mind.

9                     You mentioned that you would drop off so  
10    you could have communication.  Explain that to me  
11    exactly what you mean there?

12            A.    The radios, if you get too far away, just  
13    won't communicate with one, so you would have to  
14    drop somebody off that could still communicate with  
15    the next person out by you with the radio.

16            Q.    I've been at UBB several times since the  
17    accident, and there's areas of the mine where  
18    anybody with a radio can talk to the surface and  
19    talk to anybody else in the mine?

20            A.    Right.

21            Q.    Was that working after the accident?

22            A.    Not to my knowledge, no.

23            Q.    Okay.  So by communication, you're talking  
24    about their walkie-talkies --

1           A.    I'm talking about our mine rescue teams'  
2 hand held radios that we had. We had our own  
3 permissible radios that we just use for our own  
4 training and exercises that we do.

5           Q.    Okay. And that's a walkie-talkie type  
6 radio?

7           A.    Yes.

8           Q.    And it's just direct communication, one  
9 radio to the next?

10          A.    Well, I mean, you know, anyone within  
11 range of all of our radios can hear.

12          Q.    But everybody on the rescue, on your team,  
13 carries one of the radios?

14          A.    We do.

15          Q.    So when you went down the longwall face,  
16 you left Jim at the headgate area with a radio?

17          A.    Jim?

18          Q.    I'm sorry.

19          A.    Jerry?

20          Q.    Jerry.

21          A.    Jerry Cook. Yes, Jerry stayed at the head  
22 drive.

23          Q.    Okay. Who had the radio on the face?

24          A.    Rob Asbury.

1 Q. Okay. How far did he go down the face?

2 A. I don't know where his -- where he dropped  
3 off at exactly.

4 Q. But he could still communicate with Jerry  
5 at the headgate?

6 A. Yes.

7 Q. And then you proceeded on inby Rob?

8 A. Yes.

9 Q. When you and Rob was going down the face,  
10 when you started finding the longwall crew members,  
11 was the two of you together?

12 A. Yes.

13 Q. A couple of the longwall guys were found  
14 in the area of 85 shield. You two were together  
15 when you got to those guys?

16 A. I was a little ahead of Rob, but he was  
17 following me, yes.

18 Q. Okay. So you was actually the first  
19 person across the face then and actually found the  
20 longwall crew members?

21 A. I was.

22 Q. Falling back on your mine rescue training,  
23 what do you do when you come across victims in an  
24 accident like this?



1           A.    Luckily this was the first time I have  
2           ever had to come across a victim, and I didn't have  
3           to do anything.  It was obvious that they were  
4           deceased.

5           Q.    Okay.  When you was assessing them there,  
6           was there any evidence, or did it appear like there  
7           had been anybody there ahead of you?

8           A.    No.

9           Q.    No evidence that anyone had been across  
10          the face that you could tell?

11          A.    No, there's -- no.

12          Q.    You said you proceeded down to  
13          approximately number 125 shield?

14          A.    That's right.

15          Q.    If that's the case, then you would have  
16          found the other longwall crew members in the area  
17          of 105 shield?

18          A.    I did.

19          Q.    When you found them, and you proceeded  
20          towards the 125, did you have any reason to  
21          believe, or did you know if there was any other  
22          victims towards the tailgate?

23          A.    We were still missing one, and I believe  
24          that that's where he was going to be at.

1           Q.   How did you determine there was still one  
2 missing?

3           A.   By that time we had knowledge of the crew  
4 members missing, and we knew that there was one  
5 left.

6           Q.   Okay. But when you got to 125, that's as  
7 far as you went.

8                   Did you turn around because of the air  
9 quality or because of communication?

10          A.   The communication.

11          Q.   Okay. So if you would have had somebody  
12 else with a radio, you possibly could have went to  
13 the tail?

14          A.   Yes, I could.

15          Q.   Or farther down the face anyway?

16          A.   Yes.

17                   MR. CRIPPS: Okay. That's all I've got.

18                               EXAMINATION

19                   BY MR. TUCKER:

20          Q.   Just one quick follow up. While you're  
21 there on the face, Shane, did you hear anything  
22 unusual, was the top working, you know, caving or  
23 anything at all unusual that you may have heard?

24          A.   No.

1 Q. Smell anything unusual?

2 A. No.

3 Q. Have any type of eye irritation that  
4 night, first night?

5 A. No, not my eyes. There was a burning on  
6 my skin that was slight, but not necessarily my  
7 eyes or anything else.

8 Q. Do you recall where you first encountered  
9 that burning sensation?

10 A. Coming down here somewhere.

11 Q. Which is?

12 A. The headgate of the longwall.

13 Q. Coming from the mother drive up toward the  
14 longwall face?

15 A. Yes.

16 MR. TUCKER: Okay. That's all I have.

17 MR. BECK: I don't have anymore.

18 MR. BABINGTON: Can we go off the record  
19 for five?

20 MR. KOERBER: Let's go off the record.

21 (Break.)

22 BY MR. TUCKER:

23 Q. Shane, I just got just a couple follow up  
24 questions on the burning that you felt on your

1 skin.

2 Is there any way that you could describe  
3 that in some form or fashion there?

4 A. Just a light burning is all I can tell  
5 you. I mean, not really as if as a sunburn or  
6 something, just a light burning.

7 I had a sweat rag, basically, with me that  
8 I just dropped a couple of times, and it was dirty  
9 from other things, and I was using that rag to wipe  
10 off my face. I took it as if maybe I had gotten  
11 something off the rag basically. Didn't know what  
12 or where.

13 But, I mean, it was not intense by any  
14 means, it was just irritating, I guess is the word.

15 Q. You basically just felt that on your face  
16 and head?

17 A. Just my face.

18 Q. All right. Did you or any of the other  
19 team members complain of any type of burning  
20 issues?

21 A. I don't remember during that particular  
22 night, but after talking with some the following, I  
23 don't know if it was the day or that morning or  
24 what, yes.

1 Q. Do you recall what they were saying they  
2 encountered as far as what they were complaining  
3 of?

4 A. Basically the same.

5 Q. Just skin? They didn't -- anybody say  
6 anything about their eyes burning, do you recall  
7 anything?

8 A. I don't remember.

9 MR. TUCKER: That's all I have. Thank  
10 you.

11 EXAMINATION

12 BY MR. MAGGARD:

13 Q. I got a few questions.

14 When you said earlier that you thought you  
15 guys had sufficient back up for the mine rescue  
16 teams, you also mentioned that the first team was  
17 already underground when you arrived.

18 Who was their backup when you arrived?

19 A. When I arrived who was their back up? I  
20 don't know.

21 Q. Okay. Do you think they had backup?

22 A. There were other team members outside when  
23 I arrived.

24 Q. How many?

1           A.    I don't know.

2           Q.    And when you guys went underground, was  
3 there other team members there when you went  
4 underground?

5           A.    When I went underground?

6           Q.    Was there another team outside?

7           A.    Yeah, there was several guys out there,  
8 like I said, when I arrived, and then there was  
9 still team members outside when I went under.

10          Q.    When you do your safety audit report, are  
11 you filling out a portion of a report like -- let's  
12 go back to when you did this one, when you looked  
13 at personnel files, is that several sheets of paper  
14 and you've got one portion of it you have got to  
15 fill out, or is that a separate sheet that you fill  
16 out?

17          A.    Yeah, we try to divvy it up between team  
18 members, you know.

19          Q.    So it would be several sheets, one portion  
20 you would do, and, I guess, you would put this --  
21 give your part to who?

22          A.    Generally we would --

23          Q.    Would you email that?

24          A.    Yeah. What we would do is either -- we

1 would sit down at a computer and put it all in one  
2 report. I would go and type up my portion, then  
3 somebody would come in behind theirs and type up  
4 their portion, or if it didn't work out that way,  
5 yes, it could be emailed and say, here's what I  
6 got, fill in yours, that type of thing.

7 Q. Who would put all of that together and  
8 send it out to the president, vice president, and  
9 whoever else?

10 A. Any one of us.

11 Q. Any one of you?

12 A. Yeah.

13 Q. Okay. What was primarily the stuff on  
14 this audit form that you did? Was that -- did it  
15 have to do with federal regulations, state  
16 regulations?

17 A. Company policies.

18 Q. How was it tailored? Was it more for  
19 company policy? Tell me a little bit about what  
20 it's set up for.

21 A. I don't think it's tailored for any  
22 specific law or federal or state. I think it's a  
23 mixture of --

24 Q. Is it something --

1           A.    -- a broad view of things to look at.

2           Q.    Is it something that's found in an S-1  
3 Manual or P-1 Manual or --

4           A.    No, it's not in the S-1 Manual.

5           MR. BABBINGTON:  Sorry.  Can I follow up  
6 on that real quick, Jasey?

7           MR. MAGGARD:  Sure.

8           MR. BABBINGTON:  So the checklist, you  
9 said it covers a broad area of material?

10          THE WITNESS:  (Witness nods.)

11          MR. BABBINGTON:  Is that a yes?

12          THE WITNESS:  Yes.

13          MR. BABBINGTON:  But you don't think it's  
14 specifically based on the S-1 Manual?

15          THE WITNESS:  No.  I mean, it has S-1  
16 policies in this as well.  It's a collective  
17 federal/state company policies.

18          MR. BABBINGTON:  Does it have P-2 policies  
19 in there as well?

20          THE WITNESS:  It does.

21          MR. BABBINGTON:  Thanks, Jasey.

22 BY MR. MAGGARD:

23          Q.    Does it address dust control?

24          A.    It does.



1           Q.    Tell me what you have to look for on the  
2 dust control?

3           A.    We have to check for dust parameters  
4 around the continuous miner and bolt machine,  
5 particularly checking your bits and sprays,  
6 ventilation, water pressure, bolt machine again,  
7 the same as the suction on the bolt machine, water  
8 in the water box on the bolt machine, ventilation  
9 as well.

10          Q.    Would that sheet have the values or things  
11 -- what would it say that you needed to look for?  
12 How did you know what to -- was it set up for a  
13 particular mine or how --

14          A.    No, it was not.  It's a general, take this  
15 and go to any mine, basically.

16          Q.    So how did you keep up with all the  
17 different mines and all the different things they  
18 did at the mine?  How did you prepare for an audit?

19          A.    Exactly what do you mean?  How did we  
20 prepare for the audit?

21          Q.    Yeah.

22          A.    Before we got there?

23          Q.    Yeah.  Let's just say, like, on dust  
24 control, how would you prepare for the audit?

1           A.   Generally when we would get to the  
2 section, we would consult with the operators or the  
3 foreman of what their parameters were supposed to  
4 be.

5           Q.   Okay.  And on the parameters, tell me some  
6 things that you found in the past that you had to  
7 correct.

8           A.   Cleaning of sprays, changing of bits,  
9 checking ventilation curtain wise, you know, water  
10 pressure.

11          Q.   As far as the ventilation goes, changes  
12 you had to make, did you have to do any kind of --  
13 did you find any ventilation problems outby in the  
14 mine?

15          A.   No.

16          Q.   Okay.  As far as dust control goes in the  
17 sprays, how would you unclog a spray?

18          A.   Generally we would knock the power to the  
19 miner itself and have an electrician get the proper  
20 tools to take it out and either clean it or replace  
21 it.

22          Q.   What about types of sprays?  How would you  
23 keep track of that?  I know you said that you had  
24 to talk to the foreman.  Was that something that he

1 would tell you what type of sprays --

2 A. Uh-huh.

3 Q. -- the machine had?

4 A. Yeah. I mean, they, you know, what they  
5 used is what they had.

6 Q. Okay.

7 A. I've never known them to have anything  
8 else.

9 Q. Did you ever have to do the dust control  
10 parameters on the longwall?

11 A. Yes, when I was an operator.

12 Q. What about during an audit?

13 A. I never did personally on an audit.

14 Q. When you were coming up the belt entry of  
15 headgate One North after the accident, which way  
16 was the air flowing on that belt line when you were  
17 going up through there?

18 A. I believe it was flowing inby.

19 Q. Do you know if this mine had belt air  
20 prior to April 5th?

21 A. I don't remember.

22 Q. The detector that you was using during  
23 your mine rescue efforts, what type of was that?

24 A. An IBrid.

1           Q.    On that IBrid, was there any downloads  
2 taken from the IBrid that you were carrying?

3           A.    I don't know.

4           Q.    Was there any downloads taken from any  
5 IBrids or any other devices that the team used at  
6 UBB after the accident?

7           A.    Downloads by?

8           Q.    Data downloads?

9           A.    I don't know. I don't know if we have  
10 that capability to do that.

11          Q.    Okay. When you made it up to the --  
12 around the head drive of the longwall, and I assume  
13 you made it around the headgate box and that area  
14 as well?

15          A.    I come the track entry around by where the  
16 gate box was located at and then came back in  
17 through the crosscut to the head drive.

18          Q.    Did you have to shut off any water or  
19 anything --

20          A.    No.

21          Q.    -- on the face?

22          A.    No.

23          Q.    Did you have to shut off any water  
24 anywhere in the mine as you all were working,

1     trying to work?

2             A.    I did not do it myself.

3             Q.    Okay.

4             MR. BABBINGTON:  Can I follow up on that,  
5     Jason?

6             MR. MAGGARD:  Sure.

7             MR. BABBINGTON:  You said you didn't  
8     yourself shut off any water?

9             THE WITNESS:  That's correct.

10            MR. BABBINGTON:  Do you know of anyone  
11    else shutting off water?

12            THE WITNESS:  I recall somebody shutting  
13    off water because of the water lines being busted  
14    open and water flowing out of the lines.  It seemed  
15    like somebody did go outby one of the nights to  
16    shut the water off.

17            MR. BABBINGTON:  Do you know approximately  
18    where that was?

19            THE WITNESS:  No, I don't.  Outby 78.

20    BY MR. MAGGARD:

21            Q.    When you met Chris and Jason on the North  
22    Glory Main area, were they carrying anything?

23            A.    No.

24            Q.    What about rescuers, what did they have?

1 A. I don't recall them. I don't know.

2 Q. Okay. So -- but you don't recall if they  
3 had one, two?

4           A.    I don't recall them carrying anything, and  
5    I didn't pay attention to what was on their belt.

6 Q. Were they carrying spotters?

7           A.    I don't know that either.

8 MR. MAGGARD: I think that's all I've  
9 got.

10 **EXAMINATION**

11 BY MR. BECK:

12 Q. I just have one more question.

13                   Back to the completed forms that was  
14                   emailed to the president, the vice president,  
15                   safety directors, subsidiaries and Elizabeth  
16                   Chamberlin, was there ever a meeting with that  
17                   group of people by the mine rescue team or upper  
18                   management to discuss the report and talk about its  
19                   findings?

20           A.    It's a practice now, but I don't know if  
21   it was a practice beforehand.

22 Q. Okay. And the president of Performance  
23 Coal was Chris Blanchard, is that right, prior  
24 to --

1           A.    I think so.

2           Q.    -- prior to the explosion?

3           A.    I think so.

4           Q.    Do you know who the president of a  
5 subsidiary reports to?

6           A.    Not exactly, no.

7           Q.    Okay.  So prior to the explosion, these  
8 meetings didn't occur, as far as you know, to  
9 review the findings of the report?

10          A.    Not by me, no.

11          Q.    By anybody?

12          A.    Not that I know of.

13          Q.    What would compel the president of a  
14 subsidiary, once he gets this report, if his boss  
15 doesn't get it and nobody follows up, what would  
16 compel them to take action on it, in your opinion?

17               MR. WICKLINE:  Objection.  You're asking  
18 him to speculate on --

19          A.    I don't know.

20               MR. BECK:  Okay.  That's all.

21                               EXAMINATION

22           BY MR. CRIPPS:

23           Q.    Shane, I have got a few more questions I  
24 want to ask you, if you don't mind.

1           The day of the accident, after you went up  
2 on the longwall face, do you recall as you went  
3 down the face, was there any shields down?

4           A.    There was one.

5           Q.    Did you have to crawl under the shield?

6           A.    I did.

7           Q.    Okay. Did you make any trips to the  
8 longwall after your -- the initial trip you made  
9 right after the explosion?

10          A.    Yeah.

11          Q.    Tell me about those trips, if you recall  
12 any?

13          A.    During the investigation, I've been down  
14 the face a few times. I don't know how many.

15          Q.    As part of the accident investigation?

16          A.    Yeah.

17          Q.    Okay. Who did you travel with?

18          A.    Oh, gosh --

19               MR. WICKLINE: I don't want to get into --  
20 as part on the investigation on behalf of the  
21 company, I think it's privileged?

22          Q.    Was you on Massey's investigation, or was  
23 you on company MSHA teams?

24          A.    Massey's primarily. I believe we were on



1 MSHA's some of -- there was a mixture of everybody.  
2 To say whose team was what, I don't know.

3 Q. Okay. In initial part of the  
4 investigation, when MSHA and the State was  
5 conducting their investigation, was you with those  
6 teams?

7 A. Some, yes.

8 Q. On the longwall?

9 A. Yes.

10 Q. Okay. Do you recall what you did, what  
11 those teams did?

12 A. I guess the one time we were trying to --  
13 we came up the tail entry to get to the shear, and  
14 just was looking in that area, not exactly anything  
15 in particular what we were looking for, but I just  
16 happened to be there with them.

17 Q. During our investigation, we found the  
18 water valves up at the headgate that supplied water  
19 to the shear shut off. Are you familiar with those  
20 valves?

21 A. I am.

22 Q. Did you, or any of your team members, to  
23 your knowledge, operate those valves --

24 A. No.

1 Q. -- the night of the explosion?

2 A. No.

3 Q. Also, as part of our investigation, we  
4 found the shear disconnect up at the headgate  
5 open. Are you familiar with that disconnect?

6 A. I am.

7 Q. Did you, or any of your team members, to  
8 your knowledge, operate that disconnect that first  
9 night?

10 A. No.

11 Q. Do you know, or do you recall, was any  
12 other items or material on the longwall disturbed  
13 that first night that we should perhaps know about?

14 A. No, there was not.

15 Q. Okay. When you went across the longwall  
16 face, do you recall, was it -- the bottoms, was  
17 they wet and muddy, or was it pretty dry?

18 A. It was dry.

19 Q. Okay. When you was going across the  
20 longwall face, you had mentioned earlier that you  
21 already had an idea of the number of men that were  
22 on the longwall crew; is that correct?

23 A. Uh-huh.

24 MR. BABBINGTON: Sorry. Is that a yes?

1                   THE WITNESS:   Yes.

2                   Q.   Do you recall how you gained that  
3 information?

4                   A.   No, I don't.

5                   Q.   As you was going across the longwall face,  
6 did you have any knowledge or any idea where the  
7 shear would be located?

8                   A.   I did not.

9                   Q.   Did you, in fact, see the shear that  
10 night?

11                  A.   No, I did not.

12                  Q.   Okay.  When you went to 125 shield, then,  
13 and you traveled from the headgate to 125, you had  
14 not passed the shear?

15                  A.   No, I had not.

16                  Q.   Okay.  And when you got to 125 shield, had  
17 you looked towards the tailgate?

18                  A.   Absolutely.

19                  Q.   Did you see the shear?

20                  A.   I couldn't see it from 125.

21                  Q.   Okay.  You said earlier that after you had  
22 went across the face and you had come across the  
23 longwall crew members, you understood that there  
24 was one person still unaccounted for; is that

1 correct?

2 A. I believe so.

3 Q. Did it strike you as odd, from your  
4 experience on the longwall, that you had not made  
5 it to the shear yet, but yet only one person was  
6 unaccounted for?

7 A. I don't know about being odd, you know, I  
8 mean, I just know the shear wasn't -- I hadn't  
9 gotten to the shear yet, and I didn't believe that  
10 we had found every one.

11 So I didn't know if that person was still  
12 -- I believed in my heart that's where he was going  
13 to be, but that's not where I ended up finding him.

14 Q. As you was going across the face, would  
15 you have expected that you would have found the  
16 shear operators at the shear?

17 A. Yeah, that's where I thought they would  
18 be.

19 Q. In your experience at Massey's longwalls,  
20 did they generally use two shear operators?

21 A. They do.

22 Q. Okay. So did you feel it was unusual that  
23 the shear operators were not, in fact, at the  
24 shear?

1           A.    You know, I don't know what they saw or  
2    did beforehand, you know. I don't know what they  
3    were doing, why they were doing what they were  
4    doing.

5                    If they were down, no, I wouldn't expect  
6    them to be at the shear for whatever the reason  
7    that they were down.

8                    If you go down and you anticipate running  
9    again, generally the operators, the shear operators  
10   and the jack setter would stay at the shear,  
11   waiting for things to come up again.

12                   If you know you were going to be down a  
13   while, there's no use in sitting down there  
14   twiddling your thumbs, so they may go out and do  
15   outby work or whatever needs done.

16           Q.    Okay. On the 5th, you mentioned earlier  
17   and I forgot, where did you go on the day of the  
18   5th prior to the accident?

19           A.    I went to school.

20           Q.    Was there an audit team scheduled to go to  
21   UBB that day?

22           A.    I don't know. I actually took a vacation  
23   day that day, and I hadn't been to work all day.

24           Q.    So you don't know if some of the other

1 members of your rescue team had been scheduled to  
2 go to UBB that day?

3 A. No, I don't.

4 Q. Okay. Since the accident occurred and you  
5 have talked to some of them, have any of them give  
6 you indication that they was, in fact, scheduled to  
7 go to UBB that day?

8 A. They told me that they thought about going  
9 to the mine to do an audit and something came up  
10 and they didn't go.

11 Q. Okay.

12 A. And I don't know if that was for an audit  
13 or for a team visit.

14 Q. Okay. Do you recall who told you that?

15 A. No, I don't.

16 Q. In your years that you served as a safety  
17 director, what was your duties as safety director?

18 A. Oversee the health and safety at the mines  
19 and the prep plant, ensure that things were being  
20 followed.

21 Q. Did you oversee any training?

22 A. I did.

23 Q. Was you the person in charge to see that  
24 all the training was kept up to date and was

1     adequate?

2             A.    For new hires, myself and an assistant  
3     oversaw the training of new hires that came in.  
4     And then once they got to the mine site, generally  
5     the superintendent, mine foreman and section boss  
6     would resume training after that.

7             Q.    Okay. Was any of your duties involve  
8     going underground?

9             A.    Yes.

10            Q.    How often would that happen?

11            A.    Whenever possible.

12            Q.    What would you do when you went  
13     underground?

14            A.    Safety audits, spot inspections. Not  
15     detailed every time, but just go in and look  
16     around, walk airways, belts. Of course you go to  
17     the working section and look around.

18            Q.    Did you have the authority to take  
19     equipment out of service?

20            A.    I did.

21            Q.    Did you have authority to shut down a belt  
22     line?

23            A.    I did.

24            Q.    Did you ever, in fact, do that?

1           A.    I did.

2           Q.    What would cause you to actually do that?

3           A.    If I felt it was too unsafe to operate a  
4 piece of equipment, I'd shut it down and have it  
5 fixed.

6           Q.    Okay. Did you ever have any members of  
7 mine management question your judgment when you  
8 take it out of service?

9           A.    No.

10          Q.    No ramifications for shutting down the  
11 belt line?

12          A.    No.

13          Q.    What about accidents? Did you investigate  
14 accidents at the mine?

15          A.    I did.

16          Q.    Did you fill out the accident reports?

17          A.    I would fill out 7000-1s on the  
18 reportables, but I generally didn't do the initial  
19 accident report.

20          Q.    Who would do those?

21          A.    A foreman usually.

22          Q.    So would you be the person responsible to  
23 report the accidents?

24          A.    To reportable?



1 Q. To MSHA?

2 A. Yes, I would. Myself or my assist.

3 Q. Did they have a light-duty program at your  
4 mine?

5 A. No, they did not.

6 Q. Okay. So if an employee was injured at  
7 the mine and could not return to his normal duties,  
8 what would happen?

9 A. He would stay off until the doctor  
10 released him to full work duty.

11 MR. CRIPPS: Okay. That's all I've got.

12 EXAMINATION

13 BY MR. MAGGARD,

14 Q. Have you ever heard of the pop offs or  
15 ignitions at UBB prior to April 5th?

16 A. No.

17 Q. As a safety director, did you check books,  
18 examination books and records at the mine?

19 A. I would spot check records.

20 Q. When you spot checked, how often would you  
21 do that?

22 A. No certain schedule. If I just happened  
23 to be outside in the mine and, you know, I was  
24 there, I would.

1 Q. What books would you normally spot check?

2 A. Calibration of the spotters, fire drills,  
3 weekly on-shift, pre-shift, belt track, just about  
4 everything except electrical. I'm no electrical  
5 man by any means, and just not trained in the  
6 electrical aspect of things.

7 MR. BECK: I don't have anything.

8 MR. BABBINGTON: I just have one last one.

9 EXAMINATION

10 BY MR. BABBINGTON:

11 Q. We talked a little bit before about,  
12 during safety audits, watching people replace water  
13 sprays.

14 A. Uh-huh.

15 Q. Do you recall that?

16 A. Yes, I do

17 Q. Was that on a longwall section, or was  
18 that on a continuous miner section?

19 A. That was a continuous miner section.

20 Q. Do you recall ever watching people replace  
21 or clean water sprays on the longwall section at  
22 UBB?

23 A. No, no.

24 MR. MCCUSKEY: I had a couple things I

1 wanted to clarify for the record, if I might,  
2 unless -- is that the right time to do it?

3 MR. KOERBER: This is a great time.

4 EXAMINATION

5 BY MR. MCCUSKEY:

6 Q. There was some testimony that you just  
7 gave a few moments ago, Mr. McPherson about a mine  
8 you worked at where there was, and I think you said  
9 "worked at," where there was no light duty program.

10 A. Uh-huh.

11 Q. Can you identify what mine you were  
12 talking about?

13 A. That was Mammoth Coal Company that I  
14 worked at.

15 Q. Is that the only time you filled out  
16 accident reports, the 7000-1 form that you  
17 described.

18 A. No, I also done those at Elk Run Coal  
19 Company as well.

20 Q. But the mine that you referred to with  
21 respect to light duty was Mammoth only?

22 A. No. All the ones that I was responsible  
23 for, we didn't have a light duty program, you know,  
24 where I worked at. Either you had a full release

1 to return back to work or you didn't. You couldn't  
2 come back until the doctor recommended you could.

3 Q. At the mines where you worked?

4 A. Yes.

5 Q. Okay. And you also described earlier a --  
6 when you came across the first victim, I think

7 (b) (7)(C) , that his detector was going off?

8 A. It was.

9 Q. And you disabled it?

10 A. I turned it off.

11 Q. Or turned it off?

12 A. Yeah.

13 Q. Were you able to tell what readings were  
14 causing it to go off?

15 A. I didn't look.

16 Q. Would that have been something you could  
17 tell if you had looked?

18 A. Yes.

19 Q. But you did not?

20 A. I did not.

21 Q. With respect to that detector, why, if you  
22 know, from your experience with those detectors,  
23 why would it still be going off if the air that you  
24 were measuring wasn't showing those readings?

1           A.   Once it sees a certain range of a gas and  
2 it goes over range on that sensor, it will continue  
3 to alarm until you reset it or shut it off.

4           Q.   I didn't mean to put words in your mouth  
5 in any respect. Did you find any -- was your meter  
6 going off -- did you have a Solaris or a different  
7 type?

8           A.   I had an IBrid on me at the time.

9           Q.   A what?

10          A.   An IBrid

11          Q.   IBrid. Okay.

12                   Did your IBrid detect any readings that  
13 were causing it to go off at the time you found  
14 (b) (7)(C)           going off?

15          A.   No, it was -- air clear there.

16          Q.   You were asked a number of questions about  
17 the -- whether you had -- when and where you had  
18 your rescuer on or your air supply on; right?

19          A.   Yeah.

20          Q.   The first night you were there, to your  
21 knowledge, did you have any reason to have your air  
22 supply on?

23          A.   No.

24          Q.   Why is that?

1           A.    The air was clear.   There was 20.8 percent  
2 oxygen, 20 parts per million, even up to 60 parts  
3 per million was not a concern to me, and there was  
4 no methane.   It was fine air at that time.   The  
5 first night.

6           Q.    All right.   And then as I understood your  
7 testimony, and you clarify if I didn't understand  
8 it correctly, subsequent nights, and you're not  
9 sure which ones, you did get into areas where a  
10 rescuer -- is "rescuer" the right words?

11          A.    Yeah, that's fine.   An apparatus.

12          Q.    Apparatus was required, and when that  
13 occurred you put it on?

14          A.    Absolutely.   You had to.   The area had  
15 been inundated with nitrogen, and the oxygen level  
16 had went down to, where I was at, 7 percent oxygen,  
17 and it would have killed you if you would have  
18 tried to breathe it.

19          Q.    The nitrogen, was that part of the natural  
20 process, or was that something that was introduced?

21          A.    It was introduced to bring down the  
22 methane levels, the best I remember.

23          Q.    Remember or understood?

24          A.    Understood, yes.

1           Q.    You weren't part of that process, though?

2           A.    No.  Once the bore holes had been drilled  
3   into the area, then I don't know if it was MSHA or  
4   the company's decision to bring it down to -- we  
5   thought they had an explosive mixture up there and  
6   they were trying to, if there were any hot spots,  
7   keep the explosive mixture from igniting?

8           MR. MCCUSKEY:  If I would -- I wanted put  
9   an objection on the record for you all, on behalf  
10  of Mr. McPherson, and I've talked to him about  
11  this.

12           We learned today through your questions --  
13  and I would like also for the record to note that  
14  every person that's asked questions today of  
15  Mr. McPherson was not a person in the early  
16  interviews that I attended on behalf of a number of  
17  clients, totally different group of people.  Not  
18  one person has the advantage of the continuity of  
19  knowing what's happened for the last year, unless  
20  you read 400 transcripts.

21           And I want to point out -- let me finish.

22           MR. MAGGARD:  Can I say something?

23           MR. MCCUSKEY:  No.  After I finish, you  
24  can do that then.  I'm making an objection.

1           MR. MAGGARD: Well, I'd like to make an  
2 objection, too.

3           MR. MCCUSKEY: Well, you make your  
4 objection when I'm finished with my objection, sir.

5           MR. BABINGTON: I don't remember him  
6 being in here before.

7           MR. MCCUSKEY: He hasn't been in here  
8 before. That's my point, sir.

9           But the other ones that have, you weren't  
10 the questioners. And that's what I want to get to  
11 on my objection.

12           It's been one year almost since the  
13 explosion where 29 people were killed. This is the  
14 first man who was on the scene that actually saw,  
15 heard, smelled, detected everything that happened  
16 down there, and you all have waited almost a year  
17 to ask him questions.

18           And you sit here today, and you, in  
19 essence, complain because he can't remember things  
20 or his memory is a little bit foggy.

21           And I want the record to reflect for the  
22 public and the world to know that if you would have  
23 done this interview when you did the early  
24 interviews, the first man that was on the scene and



1     you knew he was on the scene, because Mr. Cook, the  
2     MSHA guy was with him that same day, you knew his  
3     identity, you shouldn't have waited a year to find  
4     out the facts.

5             This isn't your fault. You all aren't the  
6     ones that decided this, but there are people above  
7     you that did. And if you had a real -- if the  
8     people above you really had a desire to find out  
9     what happened, you would have taken Shane  
10    McPherson's interview a year ago when you started,  
11    not waited until March of 2011.

12            And that's my objection, and I want that  
13    stated for the record.

14            MR. WICKLINE: And I will join in that  
15    objection.

16            MR. TUCKER: I would ask who you  
17    represent.

18            MR. MCCUSKEY: That's what I just said. I  
19    represent only Mr. McPherson, Mr. Tucker. And my  
20    objection is made --

21            MR. TUCKER: Because I don't think I've  
22    said anything out of the way to Shane. I have got  
23    too much respect for him to say anything.

24            MR. MCCUSKEY: Nobody said anything that

1 wasn't respectful to him. But to the extent that  
2 you question why he can't remember things a year  
3 later, that's not necessarily his fault.

4 MR. TUCKER: We're just trying to bring  
5 things up to jog his memory.

6 MR. MCCUSKEY: Exactly. And if you would  
7 have done this interview a year ago, you wouldn't  
8 have had to jog his memory because it would be  
9 fresh in his memory.

10 MR. TUCKER: Where would the cutoff be?  
11 What if it's two weeks? What if it's a month?  
12 What if it's six months? What if it's two months?

13 MR. MCCUSKEY: As the song goes, memory as  
14 an --

15 MR. TUCKER: As time goes by --

16 MR. MCCUSKEY: -- memory as an elephant.

17 MR. TUCKER: -- you forget stuff.

18 MR. MCCUSKEY: That's exactly right. As  
19 time goes by. And if you want to get it fresh, you  
20 don't wait a year and have 350 other people in  
21 between for the first guy.

22 MR. TUCKER: I totally don't see where  
23 your objection -- the point of your objection.

24 MR. MCCUSKEY: Okay. Well, I'm sure the

1 public will.

2 MR. KOERBER: Let's put it on the record.

3 MR. MCCUSKEY: I'm done.

4 MR. KOERBER: Is there anything else that  
5 you --

6 MR. MCCUSKEY: But I do want to make sure  
7 it's clear to Mr. Tucker, he asked me who I  
8 represented. I told him who I represented.

9 My objection was made on behalf of  
10 Mr. McPherson, only Mr. McPherson because he's my  
11 client. There may be other clients of mine that  
12 I'll make the same objection, but I'm not here on  
13 behalf of Massey. I'm here on behalf of  
14 Mr. McPherson, and that's my objection on his  
15 behalf. Thank you.

16 MR. KOERBER: Jasey, you wanted to say  
17 something?

18 MR. MAGGARD: I just want to say, Shane,  
19 that I'm sorry you had to hear this grumbling go on  
20 after this interview. I think you were very  
21 helpful today. That's all I got.

22 MR. KOERBER: Anybody else have anything?

23 Okay. Mr. McPherson, at this point in  
24 time, if there was anything you would like to

1 clarify, anything you would like to add, anything  
2 you would like to state, the floor is yours.

3 THE WITNESS: No.

4 MR. KOERBER: With that, we're going off  
5 the record.

6 (Interview concluded.)  
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1 STATE OF WEST VIRGINIA, To-wit:

2 I, Jenny Taylor, a Notary Public and Court  
3 Reporter within and for the State aforesaid, duly  
4 commissioned and do hereby certify that the  
5 interview of BOBBY SHANE MCPHERSON was duly taken  
6 by me and before me at the time and place specified  
7 in 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 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 or 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 6th day of March  
21 2019.

22 Given under my hand and seal this 13th day of  
23 March 2011.

24 -----  
Jenny Taylor  
Notary Public