

01 EXAMINATION UNDER OATH
02 OF
03 DONALD R. HAGY, JUNIOR
04
05
06 Taken pursuant to Notice by Autumn D.
07 Furby-Pritt, a Court Reporter and
08 Notary Public in and for the State of
09 West Virginia, at Department of
10 Environmental Protection, 1101 George
11 Kostas Drive, Logan, West Virginia,
12 on Thursday, March 9, 2006, at 9:00
13 a.m.

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01 A P P E A R A N C E S (cont.)
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10

11 ALSO PRESENT:

12 STEVE COX

13 MICHAEL FINNIE

14 DENNIS A. BEITER

15 RONALD W. STAHLHUT

16 CHARLES W. POGUE

17 C.A. PHILLIPS

18 EUGENE WHITE

19 BETH SPENCE

20 DANNY COOK

21

22

23

24

25

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01 P R O C E E D I N G S

02 -----

03 MR. BURKE:

04 Good morning. My name
05 is Anthony Burke, and I
06 represent the Mine Safety and
07 Health Administration. We're
08 an agency of the United States
09 Department of Labor. I am a
10 member of MSHA's accident
11 investigation team and we're
12 charged with investigating an
13 accident that occurred at the
14 Aracoma Coal Company, Inc.,
15 Aracoma Alma Mine Number One,
16 on January 19th, 2006.

17 This is a joint
18 accident investigation that
19 MSHA is conducting with the
20 State of West Virginia. And
21 today I'll be asking the
22 questions for MSHA in today's
23 interview. With me here today
24 are other members of MSHA's
25 team and the State's team.

9

01 MSHA's team includes various
02 specialists and members of the
03 Solicitor's Office. And at
04 this time, I'd like to ask
05 each of the team members to
06 identify themselves for the
07 record. Starting with Keith.

08 ATTORNEY BELL:

09 Good morning. My name
10 is Keith Bell. I'm from the
11 Solicitor's Office in
12 Arlington, Virginia.

13 MR. WEBB:

14 I'm Anthony Webb with
15 MSHA in Pikeville, Kentucky.

16 MR. POGUE:

17 I'm Charlie Pogue,
18 MSHA, Hunker, Pennsylvania.

19 MR. FINNIE:

20 Mike Finnie, MSHA of
21 Madisonville, Kentucky.

22 MR. STAHLHUT:

23 Ronald Stahlhut, MSHA
24 of Vincennes, Indiana.

25 MR. FRANCCART:

10

01 Bill Francart,
02 Pittsburgh, Pennsylvania.

03 MR. BEITER:

04 Denny Beiter,
05 Triadelphia, West Virginia.

06 MR. MURRAY:

07 I'm Kenny Murray,
08 Pikeville, Kentucky.

09 MR. BURKE:

10 Thank you. Here with
11 me today representing the
12 State of West Virginia is Mr.
13 Bill Tucker. And Mr. Tucker
14 will be asking the questions
15 for the State. And at this
16 time, I would ask Mr. Tucker
17 to introduce his team members
18 and to read you a brief
19 statement.

20 MR. TUCKER:

21 The West Virginia

22 Office of Miners' Health,
23 Safety & Training is
24 conducting this interview
25 session jointly with MSHA.

11

01 We're in agreement with the
02 procedures outlined by Mr.
03 Burke. However, let me make
04 it clear that the Director
05 reserves the right, if
06 necessary, to call or subpoena
07 witnesses or require the
08 production of any record,
09 document, photograph or other
10 relevant materials necessary
11 to conduct this investigation.
12 My name is Bill Tucker and I
13 work for Miners' Health,
14 Safety & Training and I'm out
15 of the Oak Hill office.

16 MR. PHILLIPS:

17 Good morning, Don. My
18 name is C.A. Phillips. I'm
19 with the Miners' Health Safety
20 & Training in Charleston, West
21 Virginia

22 MR. WHITE:

23 Eugene White, District
24 Inspector, Region Three,

25 Danville.

12

01 MR. COX:

02 Steve Cox, Region

03 Three.

04 MR. COOK:

05 Danny Cook, Region

06 Three, Danville.

07 MS. SPENCE:

08 Beth Spence with the

09 Governor's Office.

10 MR. BURKE:

11 Thank you, folks. This

12 investigation is being

13 conducted by MSHA and the

14 State of West Virginia to

15 gather information to

16 determine the cause of the

17 accident and to help prevent

18 something like this from

19 happening in the future.

20 These interviews are an

21 important part of this

22 investigation. After the

23 investigation is completed,

24 MSHA will issue a written

25 report detailing the nature

13

01 and causes of this accident.
02 MSHA accident reports are made
03 available to the public in the
04 hope that greater awareness
05 about the causes of accidents
06 can reduce their occurrence in
07 the future. Information
08 obtained through witness
09 interviews, like yours, is
10 frequently included in these
11 reports. Your statement may
12 also be used in other
13 enforcement proceedings.

14 Don, can I call you

15 Don?

16 MR. HAGY:

17 Yes.

18 MR. BURKE:

19 I'd like to thank you
20 in advance for your appearance
21 here today. We deeply
22 appreciate your assistance in
23 this investigation. The
24 willingness of coal miners,
25 like yourself, and mine

14

01 operators to work with us is
02 critical in our success in
03 making the nation's mines

04 safer.

05 This interview with Don
06 Hagy is being conducted under
07 Section 103(a) of the Federal
08 Mine Safety & Health Act of
09 1977 as part of an
10 investigation by the Mine
11 Safety & Health Administration
12 into the conditions, events
13 and circumstances surrounding
14 the fatalities that occurred
15 at the Aracoma Alma Mine
16 Number One located at Route 17
17 North, Bandmill Hollow Road,
18 Stollings, West Virginia,
19 25646.

20 This interview is being
21 conducted at the West Virginia
22 State Department of
23 Environmental Protection
24 Division of Mining and
25 Reclamation. We're located at

15

01 1101 George Kostas Drive, here
02 in Logan, West Virginia, ZIP
03 Code 25601. Today's date is
04 March the 9th, 2006. And it's
05 currently 9:03 a.m. in the

06 morning.

07 Mr. Hagy, the interview

08 will begin by asking you a

09 series of questions. Feel

10 free at any time to clarify

11 any statements that you make

12 in response to any of our

13 questions. After we have

14 finished asking questions, you

15 will be given an opportunity

16 to make a statement of your

17 own and provide us with any

18 other information that you

19 feel that might be important

20 to this investigation. You

21 are permitted to have a

22 representative with you during

23 the interview, and you may

24 consult with your

25 representative at any time.

16

01 You may designate any person

02 to be your representative.

03 Following questions by MSHA

04 and the State, your

05 representative will be given

06 the opportunity to ask

07 questions for purposes of

08 clarification on areas that

09 we've already discussed.

10 Your statement is
11 completely voluntary. You may
12 refuse to answer any question
13 and you may end this interview
14 at any time. If you do not
15 understand a question, please
16 tell me and I will rephrase
17 it. If you need a break for
18 any reason, please let me know
19 and we'll take a break. You
20 may request an opportunity to
21 make a confidential statement,
22 which we will withhold from
23 the public to the extent
24 allowed by law. Should you
25 desire to give a confidential

17

01 statement, you should advise
02 me before I begin this
03 interview so that I can
04 reschedule your interview in
05 order to properly consider
06 your request. Do you desire
07 to have a confidential
08 interview?

09 MR. HAGY:

10 (Indicates no).

11 MR. BEITER:
12 You need to answer
13 audibly.
14 MR. HAGY:
15 I'm sorry. No.
16 MR. BURKE:
17 I'm getting to that.
18 Okay. Thank you. A court
19 reporter, she's here and she's
20 going to record your interview
21 and later produce a written
22 transcript of this interview.
23 Now, I ask that you state all
24 of your answers verbally
25 because she can't understand

18

01 nodding yes or shaking your
02 head no, so we have to answer
03 audibly.
04 Neither this transcript
05 of this interview nor the
06 content of the interview will
07 be released to the public or
08 to the media until MSHA's
09 final accident investigation
10 report is issued or until
11 required by a court order or
12 until a public hearing takes
13 place.

14 If any part of your
15 statement is based not on your
16 own firsthand knowledge but on
17 information that you learned
18 from someone else, please let
19 us know. Please answer each
20 question as fully as you can,
21 including any information that
22 you learned from someone else.
23 We may not ask the right
24 questions to get the
25 information that you may have

19

01 for us, so don't feel limited
02 by the precise question that
03 we ask. If you have any
04 information about that subject
05 area of a question, please
06 give us that information. We
07 appreciate it. Do you have
08 any questions in the manner
09 about how this interview will
10 be conducted?

11 MR. HAGY:

12 No.

13 MR. BURKE:

14 Thank you. Will you
15 swear in the witness, please?

16 -----

17 DONALD R. HAGY, JUNIOR, HAVING FIRST

18 BEEN DULY SWORN, TESTIFIED AS

19 FOLLOWS:

20 -----

21 BY MR. BURKE:

22 Q. All right. Thank you. And we

23 ask that you speak loudly so the

24 folks in the back of the room can

25 hear you. Don, would you state your

20

01 full name, address and telephone

02 number and spell your last name for

03 the record, please?

04 [REDACTED]

[REDACTED]

10 A. Yeah.

11 Q. Okay. Thank you. Are you

12 appearing here voluntarily today for

13 this interview?

14 A. Yes.

15 Q. Has anyone made promises to

16 you for giving this statement or

17 offered you any rewards in exchange

18 for making your statement?

19 A. No.

20 Q. Has anyone threatened you or
21 warned you not to provide a
22 statement?

23 A. No.

24 Q. Do you understand fully that
25 you may refuse to answer any question

21

01 or terminate this interview at any
02 time?

03 A. Yes.

04 Q. Okay. Do you have a
05 representative with you this morning?

06 A. Yes.

07 Q. And could you identify that
08 representative for the record,
09 please?

10 A. Dave.

11 Q. What is his name?

12 ATTORNEY HARDY:

13 You got the first name
14 right. Dave. Dave Hardy.

15 A. Dave Hardy.

16 BY MR. BURKE:

17 Q. Okay.

18 A. The names I'm not good with.

19 Q. When did you first meet Mr.
20 Hardy?

21 A. Last January.

22 Q. And tell us a little bit about
23 that meeting. What transpired in
24 that meeting?

25 A. We just talked about some ---

22

01 little bit about what had went on in
02 the accident and what little bit I
03 know and that's about basically it.

04 Q. Okay. Did you contact Mr.
05 Hardy or did he contact you for this
06 meeting?

07 A. He contacted me.

08 Q. Okay. Do you feel coerced in
09 any way that you have to use Mr.
10 Hardy as your representative?

11 A. No.

12 Q. Okay. It's of your own
13 freewill that you chose him ---

14 A. Yes.

15 Q. --- to be your representative?
16 Is he charging you any fees to
17 represent you today?

18 A. No.

19 Q. Okay. Have you been made
20 aware that Mr. Hardy also represents
21 the company in this matter and there
22 is a potential for a conflict of
23 interest to arise between yourself

24 and the company?

25 A. Yes.

23

01 Q. Do you want to proceed with
02 Mr. Hardy representing you despite
03 the potential of any conflicts that
04 may arise?

05 A. Yes.

06 Q. Okay. Did Mr. Hardy kindly
07 give you a little information about
08 what was going to transpire here
09 today in any way?

10 A. Yes.

11 Q. What did he tell you?

12 A. Just told me, you know, they
13 ask some questions about the Aracoma
14 accident and I'd be asked about
15 certain things that --- to do with
16 the accident, you know, what might
17 have caused it, to keep it from being
18 caused again somewhere else or
19 anything I know that we could do that
20 would keep from it.

21 Q. Okay. Where did that meeting
22 take place? Did you meet this
23 morning?

24 A. Yeah. Yes.

25 Q. Where was that meeting?

01 A. At the Holiday Inn Express.

02 Q. Okay. Was anyone present,
03 other than you and Mr. Hardy at this
04 meeting?

05 A. No.

06 Q. Okay. No MSHA representative
07 or representative from the State were
08 present during that interview with
09 Mr. Hardy at the meeting?

10 A. No.

11 Q. Did you happen to attend a
12 meeting at a local grade school?

13 ATTORNEY HARDY:

14 For the record,
15 Anthony, he didn't call it an
16 interview.

17 MR. BURKE:

18 Okay.

19 ATTORNEY HARDY:

20 I don't think that's a
21 correct characterization of
22 what it was.

23 MR. BURKE:

24 Okay. Meeting. We'll
25 rephrase that then for the

01 record.

02 BY MR. BURKE:

03 Q. Did you attend a meeting at a
04 local grade school after the
05 accident?

06 A. No.

07 Q. Now, basically what we're
08 going to do is run down some
09 generalized questions and then in a
10 few minutes we'll go up to the mine
11 map and talk to you a little bit
12 about your job and what you do on a
13 daily basis at Aracoma Mine. But for
14 the record, how long have you worked
15 there at the Alma Number One Mine?

16 A. I came back to work for
17 Aracoma November the 5th.

18 Q. November the 5th of 2005?

19 A. Yes.

20 Q. Okay. And you mentioned you
21 came back to work. Had you worked
22 there previously?

23 A. Yes.

24 Q. Did you quit for some reason?

25 A. Yeah.

26

01 Q. Would you elaborate a little
02 bit on that why you left?

03 A. I was offered what I thought
04 was a better job, a higher paying

05 job, and it wasn't what was promised
06 to me so then that's the reason I
07 came back.

08 Q. Where are you employed right
09 now, Don, at this current time?

10 A. Aracoma Coal.

11 Q. Okay. What is your job title
12 there at the mine?

13 A. I'm outby foreman.

14 Q. Okay. What was your position
15 on January the 19th, the day of the
16 accident?

17 A. Outby foreman.

18 Q. What other positions have you
19 held there since you've worked at
20 Aracoma?

21 A. Construction foreman and outby
22 foreman.

23 Q. So pretty well you've been
24 concentrating in outby areas
25 exclusively for the time you've

27

01 worked there?

02 A. Yeah, either --- well, I was
03 section boss for a while, too. And I
04 moved belt for a little while, but I
05 either worked outby on the belts on
06 the hoot owl or on the dayshift, yes.

07 Q. You talked about quitting

08 there before and then coming back in
09 November. How long did you stay away
10 at the other job?

11 A. A week.

12 Q. A week, oh, wow. I want to
13 take you back now and try to draw on
14 your memory on the day of the
15 accident on January the 19th and you
16 can kindly --- we'll walk through
17 this together. What shift were you
18 scheduled to work that day, on the
19 19th?

20 A. Dayshift, 7:00 to 4:00.

21 Q. 7:00 to 4:00?

22 A. Uh-huh (yes).

23 Q. Okay. About what time did you
24 arrive at the mine that morning?

25 A. Probably 6:30. I usually get

28

01 there between 30 and 40 minutes prior
02 to the shift.

03 Q. Okay. Who is your boss? Who
04 is your supervisor there at the mine
05 that you have to answer to directly?

06 A. Chris Herndon.

07 Q. Chris Herndon. So Chris is
08 over you?

09 A. Uh-huh (yes).

10 Q. Do you know who Chris' boss
11 would be?
12 A. Probably be Pepé and Gary
13 Goff.
14 Q. Okay. So you worked for Chris
15 and then Chris would work for Pepé.
16 What's Pepé's function there at the
17 mine? What's his official title?
18 A. Superintendent.
19 Q. Okay. And you mentioned Gary
20 Goff. What's Gary?
21 A. Vice-president I think.
22 Q. Okay. Is he the top
23 management official there onsite at
24 Aracoma? Is he the go-to guy?
25 A. Yeah.

29

01 Q. The top official that you know
02 of?
03 A. Yes. That's there on a daily
04 basis.
05 Q. Okay. On the 19th, Don, what
06 were you scheduled to do that day?
07 What was your job assignment?
08 A. We was working on setting the
09 mother drive belt head on Ten
10 headgate.
11 Q. Okay. So you was working on
12 the belt project at Ten headgate?

13 A. Uh-huh (yes).

14 Q. Who gives you your job

15 assignments? Who tells you, Don,

16 this is what I need you to do today?

17 Who pretty well organizes your work?

18 A. Chris.

19 Q. Chris. So he tells you where

20 you need to go and what you need to

21 be doing on a daily basis pretty

22 much. So you were working in the Ten

23 headgate area. Have you ever worked

24 in this area before?

25 A. Yes.

30

01 Q. Okay. Was you there any days

02 prior to January the 19th?

03 A. Ten headgate?

04 Q. Uh-huh (yes).

05 A. Yeah.

06 Q. What day was that?

07 A. We'd been working up there a

08 series of days.

09 Q. Okay.

10 A. I mean, I don't know what ---

11 the first day we worked. We were

12 between Ten headgate and the Nine

13 tailgate, either putting the

14 structure in or setting on the head

15 and the grids on the concrete for the
16 pads and well, we'd set structure in
17 a run-through and a tailpiece inby
18 Ten headgate, three breaks I think.

19 Q. So you were pretty much in
20 that area every day on a daily basis
21 working in some point between Nine
22 and Ten, in that general vicinity?

23 A. No, not between Nine and Ten,
24 no. Between Nine tailgate ---

25 Q. And Ten head ---.

31

01 A. --- and Ten, Ten headgate.

02 Q. Okay. We'll go to the map in
03 a few minutes and we'll get a rundown
04 of where you're at, get located and
05 everything. Does Dusty Dotson give
06 you any orders? Is he a foreman at
07 the mine there that would give you
08 any orders on what to do on a daily
09 basis?

10 A. Yeah, he's a mine foreman so
11 you know, if he come to us --- come
12 and told me to do something, then he
13 would outrank Chris.

14 Q. Okay. So Chris would actually
15 work for Dusty, in a manner of
16 speaking, him being the mine foreman?

17 A. Yeah, I'd say. I mean, to a

18 point, yeah.

19 Q. Okay. I want to take you
20 back. In your own words now, back to
21 that day, from the time you got to
22 the mine on the 19th, just walk me
23 through how your day started, how
24 your day went and what you done that
25 day. If you can remember.

32

01 A. Well, I come down the box cut
02 to start the shift to get a mantrip.
03 We got on the mantrip. We rode, we
04 took the mantrip to Ten headgate and
05 we got off. And there was some of
06 them went down, down Ten headgate and
07 went to bolt top. And then there was
08 a couple stayed up at the top of the
09 hill with me. One was doing some
10 welding, the other one was helping me
11 --- we was putting structure overtop
12 of the head I think what we was doing
13 that day.

14 And someone had called and
15 asked me to run down to Nine tailgate
16 to get a man that his wife had went
17 in delivery. So I went down and got
18 him and brought him down to Number
19 One Fourway where he caught a ride on

20 outside. Then I went back to Ten
21 headgate. I was gone probably 40
22 minutes. That's pretty much where I
23 stayed the rest of the day.

24 And the three of us, we had
25 --- when I come back by, I had picked

33

01 up an electrician to go down and work
02 on the pinner that day because they
03 had come --- they had told me when I
04 left going back up that the pinner
05 was down. So I picked up the nearest
06 electrician I found, which was Jesse
07 Jude. Picked him up there and then
08 me and him got off the mantrip. I
09 stayed there and he went on down to
10 work on the pinner, him and Shiner
11 and --- well, Chris Herndon and the
12 pinman went down there. I don't know
13 what went on, you know, they'd been
14 down there that morning. That's ---
15 I basically stayed up there at Ten
16 headgate, me and them two guys for
17 the rest of the day.

18 Q. Okay. Now, who's Shiner?

19 A. That's Chris Herndon.

20 Q. Oh, okay.

21 A. That's his nickname.

22 Q. Okay. When did you very first

23 start your employment there at the
24 Alma Mine? I may have asked you that
25 question. But definitively, the very

34

01 first time before you quit and came
02 back?

03 A. It was --- I don't know the
04 exact date, it was somewhere in
05 January of '01, I think.

06 Q. Okay. So 2001?

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

08 Q. You've been there with the
09 exception of a week and then you
10 kindly come back home?

11 A. Yeah.

12 Q. Okay. Now, I appreciate all
13 the information you've given us. You
14 normally --- you said you work from,
15 like, the Nine tailgate up to Ten
16 headgate. How many people are under
17 your supervision there on a normal
18 daily basis?

19 A. Two to three.

20 Q. And you are a company foreman?

21 You're not an hourly person, but
22 you're a company person; correct?

23 A. Yes.

24 Q. Okay. Why don't we come up

25 here to the map, and I've got some

35

01 questions that we need to discuss
02 with you and we're going to take some
03 of these pretty magic markers and
04 we're going to mark on that map.
05 Maybe you can give me an idea of
06 exactly what your job consists of.
07 Now, Don, to give you a little
08 bearing of where we're at, the actual
09 longwall, this map doesn't show where
10 it's actually at, but the longwall
11 faces somewhere right in here, just
12 about 40 inby crosscut 17 adjacent to
13 spad 3345 in the Number Two entry,
14 and this is on Nine headgate entries
15 in the Number One entry. That's
16 about where we know that the face of
17 the longwall is currently located.
18 This is the mother drive, what you
19 all call the mother drive. This is
20 Number Seven six-foot belt. This is
21 the 48-inch belt that goes up toward
22 Two section.

23 And just for the record,
24 kindly take this black magic marker
25 and show me the areas, draw me a line

36

01 where you all actually work on a

02 daily basis. This is the 72-inch
03 belt, the Number Seven belt, and this
04 runs parallel up to the Ten headgate.
05 You were talking about installing
06 some belt structure and working on
07 new drive unit and maybe you can mark
08 that on the map for us, show us where
09 that's located. Just mark a little
10 square if you want to and show us
11 that that's --- and label it head
12 drive.

13 WITNESS COMPLIES

14 BY ATTORNEY BURKE:

15 Q. Okay. That's the new drive
16 you're setting?

17 A. Yeah.

18 MR. BURKE:

19 And he's indicated in
20 the Number Two entry, and that
21 looks ---.

22 A. Well, wait a minute. I'm
23 sorry, I'm just nervous.

24 MR. BURKE:

25 Okay.

37

01 A. Right here.

02 MR. BURKE:

03 Okay.

04 A. At Number One, I was right
05 there, I was close to the side.

06 MR. BURKE:

07 That's actually the
08 Number Four entry. We
09 numbered them left to right.
10 If you don't care just cross
11 that out right there. Now
12 mark that up as head drive.
13 Okay. So that would be in the
14 Number Four entry and we're
15 looking in an outby direction
16 from spad 3627, approximately
17 one crosscut.

18 BY MR. BURKE:

19 Q. So basically what are we doing
20 in this area right here right now?

21 A. On the day of the 19th or just
22 in general?

23 Q. In general, just in general.

24 A. Okay. We've already set this
25 towards roller, A-frame, the drive

38

01 roller and the transition roller. We
02 set it right like that.

03 Q. Kindly draw us in a little
04 diagram there. It don't have to be
05 pretty. I'm not a good artist
06 either.

07 WITNESS COMPLIES

08 BY MR. BURKE:

09 Q. Now, describe exactly what
10 those pieces are that you've depicted
11 on the map?

12 A. These are belt wraps --- the
13 belt wraps around it to dump coal
14 onto the next ---.

15 Q. Kindly draw a little arrow up
16 at the discharge roller.

17 A. And that second you're seeing
18 is with a drive.

19 Q. The actual drive unit?

20 A. Yeah, that's where the drive
21 was and the mother sets.

22 Q. Okay. And what's that other
23 piece there in the picture?

24 A. Okay. That is the transition
25 roller. When they got --- when the

39

01 belt coming up from the drive roller,
02 it comes back on a roller on the
03 bottom, it comes around. It can go
04 up to this top roller, to tail it
05 high.

06 Q. It kind of lifts the belt up
07 in a higher direction?

08 A. Right.

09 Q. Now, I guess you're pretty
10 familiar with this area, since you're
11 here on a daily basis. There's an
12 extension of the belt project that's
13 been going on in this area.

14 A. Yeah.

15 Q. Could you maybe draw on the
16 map the extent of that belt project
17 and tell us about when you first
18 started that project?

19 A. You want the extent of the
20 whole thing or what we ---

21 Q. Yeah.

22 A. --- what we have gone and
23 worked on since I came back?

24 Q. You could give us the extent
25 --- have you been familiar with this

40

01 part? Was you here when they started
02 on this initial part?

03 A. I was here. We put structure
04 here.

05 Q. Okay.

06 A. We just worked on ---.

07 Q. Okay. That is the mother
08 drive head and that's Seven
09 tailpiece.

10 A. We had put structure in from
11 this break in the spaces, not all the

12 way just maybe --- maybe three
13 breaks, maybe four possibly. Four
14 breaks of structure from this point
15 to this --- to this point right here.

16 Q. Okay. Could you draw that on
17 the map for me? Just draw me a
18 straight black line if you want to
19 and then come right down under it.
20 That's belt structure.

21 WITNESS COMPLIES

22 BY MR. BURKE:

23 Q. Now, there's a break in that
24 structure on the other side.

25 A. Right, right there.

41

01 Q. Okay.

02 MR. BURKE:

03 So he's depicted on the
04 map about spad --- it looks
05 like 3266 would begin two
06 crosscuts inby that location
07 and go up to spad 3223. That
08 would extend one, two, three,
09 four, five, six. Six
10 crosscuts.

11 BY MR. BURKE:

12 Q. And is this where the break in
13 the structure's located?

14 A. Yeah.

15 Q. At this location?

16 A. It all wasn't in, it was just
17 inby, maybe had a few breaks actually
18 put in. Then there was some just
19 laid out, hadn't been put in yet.

20 Q. So it's a work in progress?

21 A. Yeah, it's a work in progress
22 at the mine.

23 Q. Why would we break that area
24 right there? Why is there a break in
25 that structure?

42

01 A. The roadway comes up through
02 here and comes up three breaks and
03 then back up the main intake.

04 Q. Okay. Can I get you to draw
05 that in for me in a blue ink here?
06 Draw that roadway in for me, the way
07 the actual roadway goes for Two
08 section.

09 MR. BURKE:

10 He's starting at the
11 airlock doors at spad 3333
12 going inby on the northeast
13 mains, drawing the roadway
14 toward Two section.

15 A. We get to right here and go
16 straight up and then come over here

17 and go straight.

18 BY MR. BURKE:

19 Q. So do they travel normally

20 both of those entries?

21 A. We always come in the lower

22 entry ---

23 Q. Okay.

24 A. --- when we would be going.

25 Some people did travel that upper

43

01 entry and some of them come in this

02 lower entry. I don't know ---.

03 Q. We'll draw them both in there

04 and then we'll draw a line that you

05 can travel both of those entries to

06 the section.

07 A. Okay. In the cribs they put

08 boxes. I'm pretty sure.

09 Q. Okay. And they also traveled

10 this roadway here, too?

11 A. Yes, some people did. I mean,

12 it wasn't a steady roadway. I mean,

13 for some reason or another, they

14 chose to stay up there yonder.

15 Q. Okay. So that's the main way

16 that they traveled in from the time

17 they come under the mother drive at

18 spad 3267 and through the double

19 airlock doors, they proceeded inby
20 for one, two, three, four, five, six,
21 seven, at the eighth crosscut in the
22 northeast mains, they would make a
23 left turn. There was no spad there.
24 And then go up the hill at spad 3223
25 and would go up two breaks to an area

44

01 one crosscut inby spad 3293 and they
02 would make a right. They would
03 proceed inby the northeast mains.
04 And on the fifth crosscut at spad
05 3546, they would hang a right and go
06 down into what would be --- that
07 would be, I guess, the Number Six
08 entry of the northeast mains at spad
09 3547. And would continue inby and
10 park immediately outby the working
11 section. Is that their basic travel
12 of roadway?

13 A. Yeah. Up over the
14 intersection, you know, they may come
15 on down and turn right-handed down
16 towards 11 headgate. I don't know
17 how far they're down in there.

18 Q. Okay. Now, I want to ask you
19 some specific questions about the
20 construction part of your job. And
21 try your best to remember if you can.

22 Do you remember when this
23 construction started at --- I think
24 that is spad 3532 --- 3332. We've
25 got it marked out there. I believe

45

01 that's where we're at. And that is
02 about a little over two and a half
03 crosscuts inby the Seven tail. Do
04 you remember when this construction
05 started on that belt extension?

06 A. Not really because --- as far
07 as a month and a date, I don't know
08 what time. The way it was, we would
09 --- the trackers we had, they would
10 break down quite a bit so while
11 they're hauling stuff up, we may ---
12 we may go over here and, say, take a
13 belt head out over here. And then
14 while they're hauling stuff over
15 here, then when they get some stuff
16 over, structure-wise, then we could
17 come over there and put it in, what
18 they hauled maybe for a day or two.
19 And then we go back on another
20 project somewhere else in the mines.
21 As far as a specific date, I couldn't
22 give you.

23 Q. Okay. Well, where they've got

24 this depicted, actually that's one,
25 two, three, four. That travel

46

01 roadway inby spad 3547, that would
02 actually be Number Five, because we
03 drop down because of that seal in
04 those entries there.

05 A. Right.

06 Q. I think we call that the
07 Number Five. I may have said that
08 was Number Six, but that is actually
09 the Number Five entry at the
10 northeast mains on that travel
11 roadway. Now, you've still got your
12 black magic marker?

13 A. Uh-huh (yes).

14 Q. How does this structure
15 extend? What's the extent, to the
16 best of your memory?

17 A. Okay. Like I said, we got, I
18 think --- we have two sections right
19 here at the return, 40 foot is the
20 extent.

21 Q. Just put a break there for
22 that structure and why don't you line
23 that out. We'll just mark it as a
24 break of the travel roadway.

25 WITNESS COMPLIES

47

01 BY MR. BURKE:

02 Q. And that's in the Number One
03 entry. Now, is there a break right
04 here?

05 A. Yeah, we left structure right
06 here so we could haul --- set the
07 ground and come down in here.

08 Q. Okay.

09 A. Because this is the only
10 roadway basically that's good for
11 coming up and down.

12 Q. Okay. This is the Number Six
13 entry of the northeast mains
14 beginning at about spad 3332 and
15 extending inby spad 3223, it looks
16 like, and this is the area you
17 depicted where there's a break.

18 A. Uh-huh (yes).

19 Q. Would you care to mark that as
20 a break in the structure right there?

21 WITNESS COMPLIES

22 BY MR. BURKE:

23 Q. Okay. And that is to allow
24 the travel --- the diesel equipment
25 to travel up the hill to get into the

48

01 roadway? That's what ---

02 A. Right.

03 Q. ---- the purpose of that is?
04 A. Right.
05 Q. Okay. From that point we
06 continue inby all the way up to spad
07 3609 in the Number Six entry. And at
08 this point, you've got a break of
09 approximately one crosscut inby and
10 where you're setting the new Ten
11 headgate head?
12 A. Right.
13 Q. And that is to facilitate
14 equipment and bringing your scoops
15 and structure and whatever supplies
16 you need into this area?
17 A. Right.
18 Q. Okay. Now, in the Number Four
19 entry over to Number One, is this
20 structure installed ---
21 A. Uh-huh (yes).
22 Q. --- in this entry? So there's
23 no spad numbers, but it continues
24 inby after the break at spad 3609,
25 one crosscut inby in the Number Four
49
01 entry of Ten headgate, from Four,
02 Three, Two over to the Number One
03 entry of Ten headgate; is that
04 correct?
05 A. Yeah.

06 Q. Okay.

07 A. There's a tailpiece ---

08 tailpiece right here sitting in that

09 intersection.

10 Q. Okay.

11 A. And there's a run-through that

12 sits right here, which is basically a

13 tailpiece without a tail roller ---

14 Q. Okay.

15 A. --- for a four-foot head.

16 Q. Okay. And would you mark that

17 on the map that that is a

18 run-through? And depict your

19 tailpiece there.

20 WITNESS COMPLIES

21 BY MR. BURKE:

22 Q. Now Don, while we're at the

23 map, I'm going to ask you some very

24 poignant questions. Through the

25 investigative process, we've learned

50

01 that this stopping immediately inby

02 spad 3249 was missing.

03 A. It was never there.

04 Q. That stopping has never been

05 there?

06 A. No stopping.

07 Q. All right. You've indicated

08 on the map at spad 3266 immediately
09 inby, and this is in the Number Six
10 entry, that there was a stopping
11 there. Is that stopping there today?

12 A. No.

13 Q. When was that stopping
14 removed?

15 A. The last week of October.

16 Q. The last week of October?

17 A. Uh-huh (yes).

18 Q. Why was that stopping removed
19 there?

20 A. Because the power boxes was
21 right here.

22 Q. Uh-huh (yes).

23 A. And we needed to put a
24 splitter box in right here beside of
25 it.

51

01 Q. Okay. Could you mark the
02 power boxes right there on the map,
03 where they're depicted? Either
04 color, that's fine.

05 WITNESS COMPLIES

06 BY MR. BURKE:

07 Q. And so you're depicting three
08 different electrical units in that
09 crosscut south of spad 3266?

10 A. This is the power box ---

11 Q. Okay.

12 A. --- that gives the power to
13 the mother drive.

14 Q. Okay.

15 A. This is the starter box for
16 the belt here.

17 Q. Okay.

18 A. This is the drive box for the
19 winch. You need a splitter box put
20 in here so you could kill --- put
21 power up here and knock the mains.
22 So you have to put a splitter box
23 right there. Now, when the
24 construction crew was up here putting
25 that in, there was no production

52

01 going on inby.

02 Q. So when that stopping
03 immediately inby spad 3266 was
04 removed --- and you said that was
05 sometime in October?

06 A. Some --- yeah, it was the last
07 week of --- two days before
08 Halloween.

09 Q. Okay. So that stopping was
10 removed in October?

11 A. The stopping was took out,
12 splitter box was put in, and build a

13 temporary back like that. We were
14 going to build it back and the guy
15 that was to take --- was going to
16 take my place built a structure
17 around here.

18 Q. And at what point in time was
19 the temporary stopping removed?

20 A. I don't know.

21 Q. Okay. Now, today knowing what
22 we know and knowing that I have
23 personally been to that location. At
24 this location, you've indicated --- I
25 can see the remnants of where a

53

01 stopping used to be, the plaster
02 marks.

03 A. Uh-huh (yes).

04 Q. And the belt extension
05 actually begins at that location
06 right in that vicinity because
07 there's structure located there?

08 A. There's structure down to that
09 box.

10 Q. Okay. Would you draw that on
11 in there, please, on down to spad
12 3266?

13 A. Here on that map?

14 Q. Yes.

15 WITNESS COMPLIES

16

MR. BURKE:

17

All right. He's drawn

18

the line back to spad 3266.

19

BY MR. BURKE:

20

Q. Now, about right here, a

21

little bit eastward of that spad in

22

the northeast mains, I saw remnants

23

of plaster marks right there. If I

24

was to take a rock and drop that rock

25

from the center of that location

54

01

where that stopping was at, it would

02

hit the center cradle of a piece of

03

belt structure right now.

04

A. Uh-huh (yes).

05

Q. And you said a temporary

06

stopping in time had been constructed

07

there. What are you calling a

08

temporary stopping?

09

A. A curtain, boards.

10

Q. Curtain and boards?

11

A. Yeah.

12

Q. A check board stopping?

13

A. Yes.

14

Q. Okay. Now, to back up a

15

little bit, we know that that

16

stopping is not there.

17

A. Right.

18 Q. We know the stopping at Seven
19 tailpiece inby spad 3249 is not
20 there.

21 A. Right.

22 Q. And you specified that that
23 stopping had never been there. It
24 shows it on a map.

25 A. To my knowledge, it's never

55

01 been there.

02 Q. Where your power centers are
03 located to the south and to the east
04 of spad 3267, there was remnants of a
05 stopping at that location because in
06 between the double doors and brattice
07 blocks, as we know it today are
08 stacked neatly on this inby corner of
09 this rib right there. Do you have
10 any idea why that stopping was
11 knocked?

12 A. No.

13 Q. Do you have any idea of when
14 that stopping was knocked?

15 A. No.

16 Q. In your opinion, as a foreman,
17 without that stopping, immediately
18 inby 3249 and where we've depicted
19 and talked about the stopping and the
20 temporary stopping that's not there

21 and this stopping right here, in your
22 mind as a foreman, what does that
23 depict to you? What could happen as
24 a result of those ventilation
25 controls not being in place?

56

01 A. Well, if you open these --- if
02 you open these doors here and you
03 open this door, well, the air coming
04 through that can go on up from this
05 out here. If you open these doors
06 up, the air's going to come up this
07 way.

08 Q. And in the event of a fire,
09 what would that do to Two section?

10 A. It would let the smoke go out
11 into the intake.

12 Q. Was you part of the crew that
13 constructed a temporary ---?

14 A. Yes.

15 Q. Okay. So that was just --- it
16 wasn't made of substantial materials.
17 It was just check curtain material or
18 boards or ---?

19 A. It wasn't meant to stay there.
20 We put that in and we built this back
21 and the guy that was taking my place,
22 he wanted to leave it out. He was

23 basically in charge because he knowed
24 in advance he was taking my place
25 when I was leaving. So everything we

57

01 done that week was basically on, you
02 know, his decisions. So we put a
03 temporary back up so he could put
04 structure on there like it is right
05 now. Okay. Now, when I came back,
06 he told me --- he said, take the
07 crew, go to Ten headgate and start
08 working the way back. I said, what
09 about the mother drive. And we was
10 on the mantrip and I said, what about
11 the structure --- the structure and
12 stuff over there. He said that's all
13 been taken care of, go on from Ten
14 headgate.

15 Q. Now, who was that that told
16 you that?

17 A. It was a bunch of people. The
18 whole crew was on the mantrip going
19 in. I mean, you know, we was all
20 there. The men that worked it, Chris
21 was on there. I don't know
22 specifics, you know, as far as names.
23 Darrick was on there and Ed was on
24 there, Ray Kingston, Anthony Perry
25 was on there. I think a couple of

01 red hats, I think two or three red
02 hats on there for that. I can't
03 remember what their names was or ---.
04 They're not working there anymore.

05 Q. So you personally, as a
06 foreman, you didn't knock that
07 stopping out initially?

08 A. You know, when we was down
09 here, we took the scoop and put it in
10 place there.

11 Q. Did you physically knock that
12 stopping out yourself or one of your
13 crew members knock it?

14 A. To be honest with you, I don't
15 remember who was on the set.

16 Q. Now, you also said that the
17 stopping inby Seven tailpiece inby
18 spad 3249, that stopping has never
19 been there?

20 A. To my knowledge, it hasn't.

21 Q. Okay. Would you circle that
22 and make me a notation that the
23 stopping has never been there, to
24 your knowledge?

25 WITNESS COMPLIES

01 BY MR. BURKE:

02 Q. Now, Don, you're doing good
03 and I appreciate your information.
04 You're saying that --- for us,
05 there's no such thing as a temporary
06 stopping; okay? I mean, you can hang
07 a ventilation curtain or a control to
08 direct air current, but by law, we
09 have to have a permanent fixture that
10 we call a stopping made of
11 substantial materials, such as
12 brattice blocks of something
13 specified under 333 of Title 30. Do
14 you have any idea who may have
15 initially taken out that original
16 stopping at that location?

17 A. It was somebody on the section
18 crew. No, I really don't. Everybody
19 was --- you know, took turns out
20 there in the set.

21 Q. Do you ever conduct
22 examinations in this part of the mine
23 for your crew members?

24 A. I do an on-shift.

25 Q. Okay. Explain a little bit

60

01 about that to me. What do you do on
02 an on-shift examination?

03 A. Every three hours I check for
04 any dangerous gas, check the work

05 areas, make sure everything's working
06 safe.

07 Q. As part of that examination,
08 do you ever record the results of
09 that examination in any type of a
10 record book?

11 A. On-shift/pre-shift.

12 Q. Pre-shift and on-shift record
13 book?

14 A. Yes. The hoot owl does the
15 pre-shift for us when we go in, then
16 I do an on-shift in the area that I'm
17 at.

18 Q. Have you ever found any
19 hazardous conditions that you would
20 have to note in your pre-shift and
21 on-shift record book in this vicinity
22 when you're doing those examinations?

23 A. As far as I remember, no. You
24 know, you might have no --- you don't
25 have no gases, you --- the ribs, you

61

01 know, they look pretty good and the
02 power boxes look good. They bolted
03 them all in front of us, you know.

04 Q. Would you consider the removal
05 of a permanent ventilation control a
06 hazard?

07 A. I would --- in my mind, it
08 would be if you had a working section
09 inby it at the time.

10 Q. Okay.

11 A. As far as no --- you know, not
12 a working section inby it, really
13 never have, you know, thought of it
14 that way.

15 Q. You mentioned that when this
16 project initially started that Two
17 section wasn't mining at that
18 location. About what time frame are
19 we looking at, was that in October?

20 A. Yeah.

21 Q. So when did Two section
22 actually start on coal here on ---
23 what would that be 11 ---?

24 A. Well, when they come from
25 here, they started right down around

62

01 in here.

02 Q. Okay. So they started
03 immediately inby Ten headgate and
04 they mined the northeast mains up to
05 where they could turn off. And what
06 would you call this?

07 A. Eleven (11) headgate.

08 Q. Eleven (11) headgate?

09 A. Yes.

10 Q. So they've actually started
11 there so basically in October when
12 you started this project, there was
13 no working section inby you?

14 A. No.

15 Q. Okay. Now, that we know that
16 we do have an active producing
17 section inby you, as a mine examiner
18 would you feel that those stoppings
19 and the condition that we know that
20 they're in several areas here that
21 have been knocked out, stoppings that
22 we know that are knocked out, would
23 you feel that that is a hazardous
24 condition that should be reported in
25 the record book?

63

01 A. No. I never did do on-shift
02 or no kind of reports down in here,
03 in this. Yeah, I wasn't up there.
04 From this point --- this point up is
05 what we were --- I never did come
06 back down through this way.

07 Q. Okay. Give me a time frame
08 and kind of draw you a little line on
09 the area that you actually conducted
10 your mine examinations for the
11 record. Do you have a general idea

12 from point A to point B, the part of
13 the mine that you was responsible for
14 examining?

15 A. You want to know like when I
16 done my on-shift ---

17 Q. Yes.

18 A. --- what part of the mine I
19 done it at?

20 Q. What part of the mine that you
21 actually conducted your examinations
22 in?

23 A. We would --- if we was working
24 on the six-foot belt that day, then I
25 did my on-shift in the area that we

64

01 was working. Like if we was working
02 from this break, one, two, three,
03 four, five breaks, six breaks ---

04 Q. Okay.

05 A. --- I would do it in that
06 area.

07 Q. Okay.

08 A. If I was working up here, if
09 we ground structure and I was working
10 up here, I would be like watching it,
11 you know, in this intersection back
12 down out through here, what we would
13 be working at.

14 MR. BURKE:

15 Okay. He's depicted or
16 the record that if they were
17 working in the Nine tailgate
18 area, about from spad 3223
19 over to spad 3350, in this
20 general vicinity that you
21 described to me on the map,
22 this would be the area that
23 you would do your on-shift.

24 BY MR. BURKE:

25 Q. And if you was in the area of

65

01 Ten headgate about from spad 3609,
02 how far inby would you go from this
03 point? Or would you go down in Ten
04 headgate?

05 A. We'd go, you know, to break
06 outby where we was working at, you
07 know, right through here. This was
08 in here, you know, we would be up in
09 there and we had a crew right in that
10 area.

11 Q. So the area you examined was
12 just specifically where people were
13 working ---

14 A. Right.

15 Q. --- on the next shift?

16 A. Uh-huh (yes). Yeah.

17 Q. Was Ten headgate an active
18 section in about October?

19 SHORT BREAK TAKEN

20 MR. BURKE:

21 Okay. We're back on
22 the record now.

23 BY MR. BURKE:

24 Q. Don, you've had a chance to
25 rest a few minutes. The question

66

01 that I asked before the little
02 problem with the computer, do you
03 remember in October was Ten headgate
04 producing coal at that time in
05 October? Anywhere in this area, was
06 there an active section?

07 A. Might have been the first week
08 of October, maybe, I'm not for sure
09 about that.

10 Q. Okay.

11 A. I know they moved from ---
12 they finished and they --- they moved
13 from down there up to here and they
14 had to move everything to another
15 head somewhere --- somewhere in here.
16 The reason I remember it is the
17 superintendent of the section asked
18 me to go up here and measure where
19 the front of that head was set in

20 order to put a cross overhead here
21 and not here to move the head again.
22 On my last day of work, I went over
23 and marked this up. They were still
24 in the process of moving. When I
25 came back, they still wasn't

67

01 producing coal, when I came back on
02 November the 5th.

03 Q. Okay. So you was actually
04 gone about a week?

05 A. Yeah.

06 Q. Somewhere in that vicinity,
07 about a week?

08 A. Quit on a Friday and came back
09 on a Saturday.

10 Q. Okay. Now, when we were
11 talking about the stoppings in this
12 general construction area when we
13 started immediately inby Seven tail,
14 you were referring to a conversation
15 that you had in the mantrip with a
16 whole group of people. And I know
17 maybe you may have not have been here
18 when that stopping was knocked, but
19 who was the foreman that took your
20 place?

21 A. Chris Herndon.

22 Q. Chris Herndon took your place?
23 A. Uh-huh (yes).
24 Q. Reflect back a little bit on
25 that mantrip ride when you was coming

68

01 in and you was talking to me earlier
02 about general areas that this is
03 okay, you can go on up to Ten
04 headgate and do what you need to do,
05 pretty much we'll take care of this
06 area. Who was that telling you that?

07 A. This was already took care of.

08 Q. Okay.

09 A. We was on the mantrip, we was
10 all sitting there, and we come
11 through the doors here, I said, what
12 about at over there. They said
13 that's been taken care of.

14 Q. Who said that?

15 A. I don't remember. I don't
16 remember who was on the mantrip that
17 said that. I don't know if it was
18 Chris or one of the guys sitting
19 beside Chris or ---.

20 Q. And what do you think they
21 were referring to when they said this
22 is all took care of?

23 A. To me, the structure had ---
24 they done got the structure in and

25 normally what you would do is lay a

69

01 20-foot section out and build the

02 stopping back before they started

03 producing.

04 Q. Had you ever physically walked

05 down there and looked at those

06 stoppings?

07 A. After I came back.

08 Q. After you came back?

09 A. No. I always came --- when I

10 come --- when I come this way, I

11 always come down this roadway because

12 there's a better walkway, come

13 through this airlock door --- these

14 airlock doors.

15 Q. As you was riding on your

16 mantrip inby on the northeast mains,

17 did you ever sit in the side seats or

18 in the back on the side to where you

19 could look out and see that

20 construction project and that belt

21 structure in that entry? You could

22 physically see it from your roadway?

23 A. Well, when you rode up through

24 there, if you looked over, you could

25 see structure. But I mean, if you

70

01 come up through here, you can't see
02 the stopping.

03 Q. Do you realize that as a
04 certified person, you was talking
05 about making your on-shift
06 examinations in the areas where you
07 worked, that if you see a hazard, as
08 a certified person, it's your
09 obligation to take care of that
10 hazard and do something to correct
11 it?

12 A. Yes, if you see it.

13 Q. Do you really feel that ---
14 knowing that stoppings were not
15 installed in critical areas of the
16 mine to establish the separation
17 between a belt entry and primary
18 intake escapeway, would you consider
19 that a hazard?

20 A. I never was back down in there
21 to see it. I wouldn't been in.

22 Q. You stated earlier that the
23 stopping at 3249, to your knowledge,
24 had never been intact and that at
25 some point in time, a curtain or a

71

01 temporary device control was placed
02 in this location that we specified on
03 the map just immediately inby the

04 crosscut where the power centers are
05 located.

06 A. Uh-huh (yes).

07 Q. Those stoppings are not intact
08 as we speak from the investigative
09 standpoint. We've looked at those
10 stoppings and they are not in place.

11 And had that area had those
12 ventilation controls, do you feel
13 that that smoke from that fire that
14 night could have migrated into the
15 Two section escapeway if those
16 stoppings would have been in place?

17 ATTORNEY BELL:

18 Which ones, for both of
19 them or one ---?

20 BY MR. BURKE:

21 Q. The stoppings at 3249 or the
22 stopping inby 3206 or the belt
23 project started where the remnants of
24 the stopping had been removed and the
25 stopping to the south of 3206 where

72

01 your power centers are located. If
02 that would have isolated that area,
03 that particular area of the coal
04 mine, do you think that smoke could
05 have gotten in the intake, if those

06 stoppings would have been in place?

07 A. It's possible.

08 Q. How would it be possible?

09 A. If you have leakage around
10 them, it would come out of them.

11 Q. In your recollection once you
12 came back to work at Aracoma and
13 started to work in this particular
14 area, do you remember when Two
15 section had an idea of when they
16 started producing coal again, about
17 the timeline?

18 A. I think --- I'm not positive,
19 I think it was like the second ---
20 the second week of --- the last part
21 of the second week of November. I'm
22 not positive on that.

23 Q. In doing your belt
24 installation projects here in this
25 Number Six entry, do you remember,

73

01 and I know you might have been gone
02 during this time frame or you may
03 have been working at Aracoma, when
04 they started this lower end
05 construction immediately inby Seven
06 tail when this project was started,
07 the extension of that belt structure.

08 A. You mean, from here up?

09 Q. Yes.

10 A. No. I told you earlier, I
11 don't remember because we may have
12 put up some structure, then we went
13 over here and maybe take a head out
14 here, then we had another head we was
15 working on pulling out back down
16 towards outside. As far as a date, I
17 don't know.

18 Q. Okay. We was talking earlier
19 about smoke possibly contaminating
20 the intake escapeway. With the
21 construction of these stoppings and
22 you said that it could possibly
23 migrate through there if there was
24 leakage. Would you think the smoke
25 would be more intense with those

74

01 stoppings in place or less intense
02 with those stoppings in place if you
03 had leakage, as you specified?

04 A. Less.

05 Q. Why would you say that?

06 A. Well, you got a bigger open
07 area.

08 Q. Is there anything else here
09 that maybe you haven't remembered
10 that you'd like to tell me about your

11 part of the examinations in this
12 area, anything that you would do or
13 remember that we haven't marked on
14 the map? I've got one more scenario
15 that I want to run by you here on the
16 map before we sit down. As a
17 foreman, have you ever actually just
18 walked this Number Six entry to
19 kindly take a note of how many pieces
20 of structure you would need or what
21 materials you would need to complete
22 a project? Just kind of a little
23 inventory?

24 A. This from right here up.

25 Q. Okay. So basically you're

75

01 working from Nine tail into Ten head.
02 So this is primarily your area that
03 you worked?

04 A. Yes.

05 Q. Now, what I'm going to talk to
06 you a little bit about --- have you
07 got a green marker? We need a green
08 marker. Where did that go? I think
09 I've got that in my pocket here.

10 Now, when you're working in this
11 area, are you familiar with your
12 airflow currents and your escapeways
13 and things of that nature in the

14 event of emergency?

15 A. No.

16 Q. Have you ever had an
17 opportunity as you come through these
18 doors, have you got off the mantrip
19 and actually opened them doors
20 yourself to see which side may have
21 more air pressure on the doors?

22 A. I probably have. I mean, to
23 say yes and what day I done it on, I
24 don't recollect that, but you know,
25 we come through. Uh-huh (yes).

76

01 Q. Which side of these doors do
02 you think would have the most
03 pressure or resistance?

04 A. (Indicates).

05 MR. BURKE:

06 And he's depicting the
07 door at 3238 and that'd be on
08 the intake side.

09 BY MR. BURKE:

10 Q. Why would that be?

11 A. As far as pressure, you know,
12 the intake's coming up, it hits them
13 doors and bounces off, goes over this
14 overcast and then goes up.

15 Q. Okay. So that side in your

16 opinion would naturally have the most
17 resistance or pressure to it because
18 of the force of the intake air
19 current?

20 A. Uh-huh (yes).

21 Q. Are you familiar with the
22 airflow directions on your belt lines
23 in this area?

24 A. It goes up.

25 Q. Okay. In what way are you

77

01 depicting, how your air flows down
02 the longwall belt so it goes in an
03 inby direction?

04 A. Yes.

05 Q. Any time on the 19th or in
06 that general vicinity of time, were
07 you ever --- or did you ever have an
08 opportunity to walk down this way to
09 see which way the belt air was
10 flowing?

11 A. No.

12 Q. You never was in that
13 particular part of the mine?

14 A. No.

15 Q. Okay. What I'd like to ask
16 you to do, if you're working at Ten
17 headgate --- let me have your green
18 pencil here. Let me mark this

19 scenario, if you've got a fire that
20 occurs right here, between survey
21 station 3653 and 3673 in the Number
22 Two entry, what would be your escape
23 route off of Ten headgate in the
24 event of such fire?
25 A. If I'm working right here?

78

01 Q. If you working right here
02 where I marked this green X between
03 these two survey station numbers.
04 Say you're bolting top and a roof
05 bolter catches on fire right there,
06 do you know your escapeway from that
07 location to fresh air?
08 A. Well, you got the intake right
09 here, come up, go on right here.
10 Q. Could you draw me a green line
11 from this location, say that fire is
12 right here, ---.
13 A. Like I said, we're working out
14 there and it comes ---.
15 Q. Uh-huh (yes).
16 A. Right here.
17 Q. Okay.
18 A. Right by the head, get on the
19 intake.
20 Q. Okay.

21 A. Since the fire's up there, you
22 could really only travel the regular
23 roadway and come down in this
24 overcast. That'd be the main intake
25 up.

79

01 Q. Okay.

02 MR. BURKE:

03 Now, for the record,
04 the fire that we've simulated
05 on the map was between spad
06 3653 and spad 3673 in Number
07 Two entry. He's proceeded
08 left of survey station 3673
09 over to the Number Four entry
10 in an outby direction three
11 crosscuts and turned
12 left-handed at spad 3640 and
13 proceeded outby to spad 3547
14 up one crosscut, up the hill
15 to spad 3546 and then in an
16 outby manner, all the way back
17 to the north mains.

18 BY MR. BURKE:

19 Q. And that would be your primary
20 escapeway ---

21 A. Right.

22 Q. --- from that area? What if
23 you were deeper in Ten headgate

24 panel, say, at about spad 3778 in
25 that same scenario, how would you

80

01 escape?

02 A. Come down here, get behind the
03 --- come down here and you get
04 behind, well, 036 to Four Right, you
05 get on --- you come through --- well,
06 at the time, there was stopping
07 across there and a man door. You
08 come through that man door and get
09 over on the track entry and come back
10 down here to the fresh air.

11 Q. Okay. Very good. Now, as a
12 foreman --- and I've got just a few
13 more map questions and then we'll sit
14 down. I'll not work you too hard
15 after that. As a foreman, on a daily
16 basis, you come in your normal haul
17 road, come through the double doors
18 and go underneath the mother drive
19 and you pretty well follow the blue
20 line that you've depicted on this map
21 all the way to your working station;
22 correct?

23 A. Yeah.

24 Q. Every day you pass through
25 those double doors and have you ever

01 questioned anyone why that they
02 haven't built that particular
03 stopping south of spad 3206 where the
04 power centers are at? Have you ever
05 asked anyone why they haven't
06 reconstructed that stopping when
07 you're passing by it every day?

08 A. When I noticed it being out I
09 asked the beltman. Now, I don't
10 remember who the beltman was. I
11 asked the beltman about that stopping
12 and he said it been out. So it had
13 been out.

14 Q. Have you ever reported that to
15 anyone higher up on the chain in mine
16 management that you have concern
17 maybe, possibly, that that stopping
18 should be constructed or
19 reconstructed at that location?

20 A. I don't remember.

21 Q. You depicted that where we had
22 our fire in that little simulation
23 that we drew out on the map. How is
24 the primary escapeway marked?

25 A. Green reflectors.

01 Q. How many of these entries in
02 the northeast mains have you had an

03 opportunity to travel outby, say, in
04 Four, Five, Six or Seven entries
05 outby toward the north mains? Have
06 you ever traveled in that direction
07 to look and see if those areas were
08 marked with green reflectors?

09 A. Yeah, I've seen them. When we
10 travel out there, you'd see the green
11 reflectors hanging.

12 Q. How many entries, if you can
13 kind of go back in your mind, do you
14 see the green reflectors in if you're
15 walking from Ten headgate out back
16 toward the mother drive and down the
17 north mains? How many of these
18 entries, in your mind, can you
19 remember seeing green reflectors in?

20 A. Just the one we travel.

21 Q. And that one you travel
22 specifically is the one that we've
23 got identified with the blue line?

24 A. Yes.

25 Q. And that blue line starts

83

01 immediately outby Two section,
02 proceeds outby up the hill at spad
03 3546 and then down the hill
04 immediately inby 3293 one crosscut

05 --- two crosscuts and the third break
06 we turn right and proceed outby
07 through the double doors and back
08 under the mother drive. Is that
09 specific roadway marked with green
10 reflectors?

11 A. I'm pretty sure but I'm not
12 100 percent sure.

13 Q. Okay. Now, before we sit
14 down, a couple more questions on the
15 map. Specifically, you indicated
16 that the air travels inby Number One
17 entry on the Number Nine headgate
18 toward the longwall face on that
19 belt. Do you think with those
20 particular stoppings that we've
21 discussed that that would create a
22 situation where maybe the air would
23 be reversed, that the air would flow
24 outby instead of going inby? Have
25 you ever seen that happen in this

84

01 area?

02 A. No, I haven't.

03 Q. Do you think that would be
04 possible if we don't isolate that
05 area and, say for instance, we may
06 have a blockage on Nine tailgate and
07 we've got an air reversal. In your

08 mind, would that be possible that the
09 air could reverse and come out by
10 instead of going the in by direction?

11 A. It's possible. There's a lot
12 of things possible there.

13 Q. So in your mind, you don't
14 feel comfortable in specifying which
15 direction the air would be flowing on
16 the day of the 19th on those
17 particular belts? I'm talking about
18 Seven main line, 60 --- or 72-inch
19 belt and then the five-foot belt, the
20 mother drive belt on the longwall.

21 A. No, because I didn't check the
22 air. I wasn't in that area other
23 than when I was going outside on the
24 mantrip.

25 Q. We were talking earlier about

85

01 this is your area basically where
02 you're working between Nine tail and
03 Ten head. When you do your
04 examinations, do you ever take an
05 anemometer and do an air reading in
06 that general area? Do you ever test
07 your air directions?

08 A. Up in that area, yeah. Well,
09 I don't use an anemometer, but I

10 check to see which --- the way the
11 air is going. The air comes --- it
12 comes up in all of these entries,
13 because you got these right here at
14 your tail. So basically all these
15 would be intake at the time until you
16 get ready --- you know, when you got
17 your belt put in, you build your
18 stoppings up. You build the
19 stoppings on this side and then you
20 put whatever ventilation changes they
21 want to make.

22 Q. The time you was working in
23 this area, have you ever operated a
24 scoop ---

25 A. Yes.

86

01 Q. --- as part of your
02 construction work? Have you ever
03 physically had to knock a stopping
04 out with a scoop? Do you know of any
05 instances where you've had to
06 personally knock the stopping for any
07 reason?

08 A. Once we got this --- yeah, Ten
09 headgate. Once we got this isolated,
10 we had a stopping down and then a set
11 of doors here and this was isolated,
12 so this was off --- this was off from

13 where the set of doors goes out. I
14 don't know if maybe right there is
15 the airlock doors.

16 Q. Okay. They've got a set of
17 airlock doors on Ten headgate between
18 Three and Four crosscut?

19 A. Between One, the Number One
20 entry.

21 Q. Okay. That would actually be
22 Number Four entry. We're numbering
23 them ---

24 A. Yeah.

25 Q. --- from left to right. It

87

01 would be Number Four entry.

02 A. Yeah.

03 Q. Okay. Have we got a set of
04 doors there at Ten headgate?

05 A. Yes, a set of doors there.

06 Q. Okay. So how about marking
07 those on the map then if you don't
08 care. It doesn't matter, you're
09 getting your fingers all dirty with
10 those markers.

11 A. That's the head, One, Two. I
12 think it's right here. It may not
13 be. It's somewhere right in there.

14 Q. Okay. It's approximate. You

15 don't have to be exact. And what was
16 the purpose, is it one door or two?

17 A. It's one door.

18 Q. Okay. What's the purpose of
19 that door?

20 A. To block air from coming down
21 to keep this all isolated into the
22 common. That's what this always is,
23 except for this Number One entry,
24 that's your return coming off Two
25 section, all your stoppings in a line

88

01 down through there as far as I know.

02 Okay. So you know, we knocked these
03 stoppings out, that's --- it's all
04 --- once you come back to these
05 doors, once you get past this, we've
06 got airlock doors here. No, I think
07 they would have been here. What you
08 need to understand is, even though
09 I'm a foreman, Chris Herndon, he is
10 there with us about all the time, and
11 he's the ranking ---.

12 Q. So Chris is the one that
13 directed you to do what you had to do
14 on a daily basis?

15 A. Yeah. He --- a lot of times
16 he stayed right with us.

17 Q. Okay.

18 A. And you know, if we'd go down
19 here and knock the stopping out down
20 here, which there's nothing wrong
21 with this stopping being out there,
22 because this is all ---

23 Q. Common?

24 A. --- common. As long as you
25 don't knock these stoppings over

89

01 here, you're all right because that
02 divides into your return.

03 Q. Okay. Well, we've had several
04 interviews and we've learned that
05 stoppings have been knocked. We have
06 also learned that you have knocked
07 stoppings on a scoop as well. Could
08 you show me on the map a specific
09 location maybe where you have knocked
10 a stopping as part of your job?

11 A. We probably --- probably
12 knocked this stopping, but after we
13 built this one and this one and this
14 one. We come around and built that
15 one.

16 Q. Okay. You're depicting the
17 stopping between One and Two and Ten
18 headgate and it looks like spad
19 Number 3652. Would you circle that

20 stopping there for us, please?

21 WITNESS COMPLIES

22 BY MR. BURKE:

23 Q. And you think you may have
24 knocked that after you constructed
25 the other stoppings ---

90

01 A. Yeah.

02 Q. --- around it?

03 A. Yeah, I know we did. This
04 stopping was already in.

05 Q. Okay.

06 A. This stopping was already in.
07 All we done --- this stoppings not
08 back here, it's right there on the
09 edge. We built that one, then we
10 come here and knocked this one and
11 put a tailpiece in.

12 Q. Have you knocked any more in
13 the Ten headgate panel that you know
14 of?

15 A. There's some down through here
16 that's been knocked in order to get,
17 you know, past these doors. There's
18 been some down here I possibly
19 knocked or noticed it's been knocked.
20 As far as any stoppings being
21 knocked, as far as on the intake, I
22 mean, to interfere with the air, no,

23 not intentionally. Now, we may have,
24 you know, pushed --- been cleaning
25 and pushed gob out there and it

91

01 accidentally get knocked over, you
02 know. I don't know. You know, it's
03 possible that happened. But as far
04 as intentionally going and knocking
05 them, no.

06 Q. So pretty much if Chris
07 determined that something needed to
08 be done in a specific area, he would
09 come to you and say, Don, I need ---?

10 A. He'd say take a couple men, go
11 over there and put up this one set of
12 doors here and you know --- or he'd
13 say, you know, take a couple men with
14 you and go over here and build this
15 stopping over here.

16 Q. Okay. So during the process,
17 you've actually constructed stoppings
18 as well?

19 A. Yes. We've built them. At
20 one time, we put up --- we had put up
21 doors right there. We put up doors
22 there and then the section come and
23 they moved the doors back, back to
24 --- I think it's right there. It was

25 up here, then they come down and move

92

01 them back to here. This was
02 isolated. They moved these doors
03 back here, took that stopping out,
04 which had --- keeps it off, because
05 there's a head going to set right
06 there. Yeah. I don't know who
07 knocked that stopping out down there,
08 but I know it had a set of doors here
09 and some men off the section come
10 back and come down and moved the set
11 of doors back.

12 Q. As you were traveling your
13 roadway and looking down, do you
14 remember that --- now, this map may
15 not depict the actual location of
16 ventilation controls, but do you
17 remember if any of these stoppings to
18 the south of you, as you was tramming
19 out on your mantrip and riding out
20 the mine, do you --- looking down
21 toward the Number Six and Seven
22 entries, past your belt installation,
23 could you see the belt from your
24 roadway here in any of these areas
25 that show stoppings intact?

93

01 A. Yes.

02 Q. So that stopping line, to the
03 best of your knowledge, was intact?

04 A. Yes.

05 Q. Have you ever participated in
06 an escapeway drill, a fire drill, a
07 mock fire drill?

08 A. Yeah.

09 Q. Could you describe that a
10 little bit for me, what the scenario
11 was and how you --- how many people
12 were involved in it? I know it's
13 tough, but remember if you can.

14 A. I don't remember how many
15 people, I don't remember who they
16 was. Most likely I'd always use the
17 scoop as the --- the scoop we got on
18 the floor or one of the two. And we
19 would go down there, our escapeway.
20 You know, we'd --- what we do, if you
21 find a fire, we'd go to the last
22 intake at the stopping that we could
23 get to, take a headcount. And then
24 from there, we'd process them on out.

25 Q. Have you ever walked your

94

01 primary escapeway out with your crew
02 members?

03 A. Yes. The ones we have right

04 now, I don't know. But the ones I'm
05 on charge of. They change it. That
06 crew there changes pretty often
07 because nobody will stay on that
08 crew.

09 Q. It's hard work I guess?

10 A. Yeah.

11 Q. I think we've pretty well ---
12 as a foreman knowing what you know
13 now and looking at this big picture,
14 would you give the order to knock any
15 one of these stoppings to facilitate
16 your work effort?

17 A. No.

18 Q. Do you have any idea who gave
19 that order to knock those stoppings
20 to proceed with that construction
21 work?

22 A. No.

23 Q. If something happens and you
24 was working at Ten headgate this
25 morning and the dispatcher calls in

95

01 and says we've got a fire and we've
02 got smoke coming up on you, how would
03 you evacuate your crew?

04 A. Where's the fire? Coming in
05 from?

06 Q. Same scenario of January the

07 19th.

08 A. Knowing what I know now?

09 Q. Uh-huh (yes).

10 A. I'd come over here and get on
11 the secondary four-foot belt line,
12 come down the secondary.

13 Q. Since you've been a foreman in
14 that area, has the dispatcher ever
15 called you and asked you to maybe
16 respond to a CO alarm somewhere in
17 the mine?

18 A. No.

19 Q. You've never had to do that?

20 A. No.

21 Q. Are you familiar with your
22 evacuation plan in the event of
23 emergency, what you would do as a
24 foreman in the case of an emergency,
25 they call in and say fire at this

96

01 specific location on the northeast
02 mains inby the mother drive, smoke's
03 coming your way? Are you familiar
04 with your evacuation plan?

05 A. Gather my men up, get them on
06 a mantrip --- either get on a mantrip
07 and take off down this way over and
08 go over to the four-foot belt and go

09 down the secondary. Gather your men
10 up first.

11 Q. Are you pretty much a dayshift
12 person, employee?

13 A. Yeah.

14 Q. Do you know who your
15 responsible person is according to
16 your Mine Emergency Evacuation
17 Program of Instruction? Who that
18 responsible individual would be in
19 the event of an emergency, who would
20 you contact?

21 A. Outside?

22 Q. Yes.

23 A. It'd be Pepé or Dusty.

24 Q. Okay. Now, what's Pepé's or
25 Dusty's positions at the mine?

97

01 A. Superintendent and mine
02 foreman.

03 Q. Anything else you want to put
04 there before we sit down?

05 A. No.

06 Q. Okay. Let's have a seat. I
07 appreciate your patience. Did you
08 ever work in the Ten headgate area on
09 December the 29th? Was you in that
10 area sometime during the week of
11 Christmas?

12 A. I was up by there.

13 Q. Okay. So you was working
14 during that time frame?

15 A. Yes.

16 Q. Did you ever get a call or
17 hear that there was a fire in the
18 mine on that day somewhere?

19 A. No.

20 Q. Was you aware that maybe there
21 might have been a fire on the 29th of
22 December, somewhere in the coal mine?

23 A. No.

24 Q. No one never did call you ---

25 A. No.

98

01 Q. --- and inform you? Did you
02 have people, other than yourself,
03 working in that area that you can
04 remember?

05 A. No. What day was that on?

06 Q. December the 29th, that was
07 the week following Christmas.

08 A. Was Christmas on Sunday?

09 Q. That would have been a
10 Thursday.

11 A. I don't --- I don't think so.

12 But I can't --- I can't swear to it.

13 Q. Looking back on that map

14 behind us that we've talked so much
15 about over the last probably, the
16 best part of an hour, why would two
17 separate entries be marked with green
18 reflectors or maybe even three
19 entries? Why would they mark
20 multiple entries?

21 A. I don't know.

22 Q. Would that be a little bit
23 confusing if you was a visitor on
24 that section on that particular day
25 that if someone called in and said

99

01 we've got an emergency and we need to
02 evacuate, and you start proceeding
03 outby and you looked and just about
04 every entry you go in down there has
05 got a green reflector in it, would
06 that kind of confuse you a little
07 bit?

08 A. Probably would if I didn't
09 know the mine, if I was, like you
10 said, a visitor.

11 Q. Looking at the construction
12 part of your job that you do, the
13 waterline for Ten headgate and the
14 waterlines around Seven belt head,
15 did you install any of those
16 waterlines in that area or your crew

17 perhaps?

18 A. On the six-foot belt?

19 Q. Yes. On Number Seven belt,
20 which would be the six-foot belt?

21 A. The construction, yeah. The
22 construction crew would have
23 installed that four-inch waterline up
24 through there.

25 Q. Okay. Now, what size of

100

01 waterline --- do you have any
02 knowledge of what size waterline
03 would T off of that four-inch line
04 and go down past the mother belt
05 toward the longwall? What size
06 waterline did they have in that area?
07 Could you remember?

08 A. What I seen come past that
09 intersection we'd go through to the
10 airlock doors looked like a two-inch
11 waterline they had going down through
12 there. We never installed that.

13 Q. Okay. Now, the blue waterline
14 that's a four-inch line and then I
15 think some of that is a yellowish
16 color on inby up to Ten headgate, do
17 you or your crew install all of that
18 waterline in that general vicinity?

19 A. The crew, yeah, construction
20 crew did that.

21 Q. About what time frame are we
22 talking during that installation
23 process?

24 A. Probably about the same time
25 they put the structure through.

101

01 Q. And that would have been
02 starting in --- sometime in October
03 or thereabouts?

04 A. Thereabouts. I don't know the
05 exact time frame.

06 Q. Looking at that map behind one
07 and say you was a brand new employee
08 at that mine, never been up on Two
09 section and that was your first day
10 on the job, would it be somewhat
11 confusing for you if there was a
12 smoke filled entry in one of those
13 entries and the other entry was clear
14 and that you had green reflectors in
15 that clear entry, which way would you
16 go?

17 A. I'd go down and follow the
18 green.

19 Q. Do you think it would be
20 really confusing if you had more than
21 one entry marked as a primary

22 escapeway if you're a brand new
23 person that just comes to that mine
24 on that specific day? To look down
25 that entry and see green reflectors

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01 here and green reflectors here, what
02 would that do to your mind? Would
03 you actually have a firm knowledge
04 the way to get me outside, the way to
05 get me out of here? Being that
06 you're a veteran coal miner and
07 knowing that we mark our escapeways
08 in green ---?

09 ATTORNEY HARDY:
10 Anthony, your question
11 is about five compounds. I
12 mean, I don't know how anybody
13 could answer that question
14 because it --- before he could
15 answer it, you added another
16 question.

17 ATTORNEY BELL:
18 David, you'll be
19 allowed to ---.

20 ATTORNEY HARDY:
21 Well, ---

22 ATTORNEY BELL:
23 --- ask clarifying

24 questions.

25 ATTORNEY HARDY:

103

01 --- but you do need to
02 ask --- you do need to ask
03 questions.

04 ATTORNEY BELL:

05 Okay. But ---.

06 ATTORNEY HARDY:

07 He's got like quadruple
08 questions going here.

09 ATTORNEY BELL:

10 But it's the same thing
11 as it is in deposition. The
12 question is not whether you
13 understand that question.

14 ATTORNEY HARDY:

15 Well, I'll object to
16 the form of the question,
17 which is a permissible
18 discovery deposition
19 objection. Be fair to the
20 witness, ask him one question
21 at a time.

22 ATTORNEY BELL:

23 We're trying to be fair
24 to the witness, but these are
25 our proceedings. You know the

104

01 ground rules. We've gone over
02 them with you before. I sat
03 here, I didn't say anything
04 before. But either you're
05 going to play by our rules or
06 if you and Mr. Hagy would like
07 to leave, you're dismissed.
08 But if you're going to sit
09 here, you're going to sit here
10 and play by our rules.

11 ATTORNEY HARDY:

12 I need to talk to Don
13 for a minute.

14 ATTORNEY BELL:

15 You do that.

16 SHORT BREAK TAKEN

17 ATTORNEY BELL:

18 Please let the record
19 reflect that during the break,
20 Mr. Hardy took Mr. Hagy out
21 into the hallway to confer
22 with him.

23 ATTORNEY HARDY:

24 Indeed I did. And let
25 me tell you why I conferred

105

01 with him.

02 ATTORNEY BELL:

03 I have no interest in
04 knowing why you conferred with
05 him.

06 ATTORNEY HARDY:

07 Well, I'm going to
08 state it for the record.

09 ATTORNEY BELL:

10 Either you're going to
11 answer the questions according
12 to the terms ---.

13 ATTORNEY HARDY:

14 Don't raise your voice.

15 ATTORNEY BELL:

16 I just did.

17 ATTORNEY HARDY:

18 That's very
19 unprofessional.

20 ATTORNEY BELL:

21 It might be, but either
22 you're going to answer the
23 questions according to the
24 terms or you and your witness
25 are dismissed. This is not a

106

01 custodial interrogation Make
02 up your mind. You do not get
03 to choose and you do not get
04 to run this federal
05 investigation, David.

06 ATTORNEY HARDY:
07 Well, as a
08 representative, I'll say ---.

09 ATTORNEY BELL:
10 Are you going to answer
11 the questions or let your
12 witness answer the questions?
13 If not, you are dismissed.
14 Thank you.

15 ATTORNEY HARDY:
16 We'll see what the
17 questions are. The last
18 question was about a quadruple
19 compound. The record will
20 speak for itself. I've sat
21 here through hours ---

22 ATTORNEY BELL:
23 David, I don't care how
24 long you've sat ---.

25 ATTORNEY HARDY:

107

01 --- I've barely said a
02 word.

03 ATTORNEY BELL:
04 Excuse me, we're off
05 the record.

06 SHORT BREAK TAKEN

07 BY MR. BURKE:

08 Q. All right. Don, the question
09 that we were discussing, if a new
10 person looked down those entries and
11 saw multiple entries marked with
12 green reflectors, would that be
13 confusing?

14 A. Most likely.

15 Q. The second part of that
16 question ---.

17 A. Let me --- can I finish?

18 Q. Go right ahead.

19 A. Also I mean, it probably would
20 be confusing, but in my mind, I would
21 look down through there and I'd say
22 well, either way would lead me to
23 safety. And most likely it would.

24 Q. Now, the second part of my
25 question, you being a veteran coal

108

01 miner, and experienced coal miner,
02 would that be confusing for you if
03 you looked down and saw multiple
04 entries marked with green reflector?

05 A. I might --- if I looked down
06 --- if I had two entries to look down
07 and I seen green reflectors, knowing
08 green means, you know, go to safety,
09 in my mind, I could take either route
10 and be safe.

11 Q. Okay. So you would feel
12 comfortable in escaping in either of
13 those entries ---

14 A. Right.

15 Q. --- that was marked with a
16 green reflector?

17 A. Right.

18 Q. Okay. Going back to a
19 question about our four-inch
20 waterline that was continued from
21 Seven tail all the way up to Ten
22 headgate, why did they extend that
23 waterline up through there? In your
24 opinion, why? Were you actively
25 using that waterline? That's two

109

01 questions.

02 A. You would --- the reason the
03 waterline was put up through there,
04 you got to put it up --- you have to
05 have it with your waterline --- with
06 your structure and belt line anyway.
07 So why not put it in as you put the
08 structure in, that way you wouldn't
09 have to pack and carry, drag. And to
10 answer the second question, yeah, we
11 --- the construction crew did use the
12 water to pour the concrete pad for

13 the belt head.

14 Q. Okay. Do you know of any
15 cutoff valves on that waterline from,
16 say, Seven head drive going inby?
17 Did you have any cutoff valves that
18 you could remember?

19 A. There's a cutoff valve inby
20 it. I don't know exactly where, but
21 there's one inby the mother drive
22 head that would cut the water off
23 from going on up in case it busted
24 and nobody would be around going
25 towards the inactive belt line.

110

01 Q. Okay.

02 A. And there should have been a
03 cutoff valve outby the mother drive
04 somewhere close, in that vicinity.

05 Q. Okay. Do you have any idea
06 that maybe --- on January the 19th,
07 do you know or have knowledge that
08 the water valve may have been cut off
09 at that location?

10 A. The one outby the mother
11 drive?

12 Q. The one outby the mother
13 drive?

14 A. No, it should not --- to my
15 knowledge, I do not know of any

16 reason why it should have been cut
17 off or if it was cut off. I have no
18 idea one way or the other if it was
19 or if it was not. And if --- or what
20 reason it would have been cut off.

21 Q. Okay. When we're talking
22 about our escapeway drills --- and
23 you kind of led me through one of
24 those in a scenario earlier at the
25 map. What does --- your training for

111

01 the escapeways and those escapeway
02 drills, how do you go about telling
03 your miners what that training
04 consists of, the people that work for
05 you on a daily basis?

06 A. Other than we're leaving, you
07 know, gathering up everybody and we
08 leave you mean?

09 Q. Are they familiar, you think,
10 with your emergency evacuation plan?
11 Say they call in and give you the
12 order to evacuate, maybe you're not
13 even there, would those men
14 understand how to get out of the
15 mine, do you think?

16 A. Yeah.

17 Q. They've been trained well

18 enough that they would know their
19 escapeway routes in and out of the
20 mine?

21 A. I think they have.

22 Q. Looking at that construction
23 project --- and I know we've looked
24 and we've got concrete pads set for
25 your Ten headgate head drive and all

112

01 that. When was the last time that
02 you actually used any water from
03 those four-inch water lines to work
04 in that general area? Do you have
05 any remembrance of that?

06 A. It's been a long time. I
07 don't really remember, I don't know
08 the date or I couldn't tell you even
09 around the date.

10 Q. In your mind you can't
11 remember if it was a month, two
12 months, a week, general proximity of
13 time when you might have used water
14 last out of that four-inch line?

15 A. Last time we used it was when
16 we poured the pads and I really don't
17 know a date or --- it would be.

18 Q. When you train your people on
19 the use of escapeways and emergency
20 procedures, do you have one area that

21 you designate as a primary escapeway?

22 A. The primary escapeway that's

23 marked on the map. We travel --- we

24 designate it as the one to take out.

25 Q. And that's the route of travel

113

01 normally that you all take when you

02 have a drill or ---?

03 A. Yeah, follow the escape route,

04 the primary escape route.

05 Q. Have you ever had the

06 opportunity to look at an escapeway

07 map? Do you have one available to

08 you at the location where you're

09 working?

10 A. No, not that I can remember.

11 Q. Going back to the stoppings

12 and ventilation. To your knowledge,

13 have they ever made an attempt to

14 replace any stoppings that you know

15 of that have been knocked out as a

16 result of that construction project?

17 A. Could you explain yourself a

18 little bit more?

19 Q. If we knock a stopping to

20 facilitate the extension of that

21 structure and we're building that

22 structure as we go up through there,

23 did anyone ever tell you, that you
24 could remember, that we need to
25 construct stoppings back in some

114

01 configuration in the areas where
02 we've knocked them?

03 A. Okay. The last day I worked,
04 me and Chris was walking through the
05 shop and Terry, Terry Shadd, come to
06 us and said, you need to build that
07 stopping back down there. And I
08 said, well, today's my last day,
09 Shiner can build it, you know. You
10 need to tell Shiner to build it back
11 there --- or Chris Herndon to build
12 it back. Chris was standing there
13 beside of me. And he said, we're
14 going to have to build that back,
15 Shiner. And when he did that, I
16 walked on off, so I don't know what
17 --- to the extent what that
18 conversation was.

19 Q. Okay. So now explain that to
20 me again that we knew that we had
21 some stoppings out and Chris --- is
22 that one you're calling Shiner?

23 A. Yeah.

24 Q. Okay. Who was he talking to
25 at that point?

01 A. When me and Shiner --- when me
02 and Chris Herndon walked through the
03 shop, Terry Shadd stopped us and said
04 that that stopping's going to have to
05 be built back. Okay. I said today's
06 my last day, you can talk to Chris.
07 Chris was standing beside of me.

08 Q. What stopping are we talking
09 about now, the one at Seven tail or
10 ---?

11 A. Yeah.

12 Q. Okay.

13 A. Or --- yeah.

14 Q. It's the one immediately inby
15 or the one at Seven tail so we can
16 clarify it for the record?

17 A. The one inby the power boxes.

18 Q. Okay. Gotcha.

19 A. And you know, he told him, you
20 know, we're going to have to build
21 that back. So I walked on off, so I
22 don't know to what extent that
23 conversation went.

24 Q. Okay. Do you even know if
25 they ever even attempted to construct

01 any stoppings back in that general

02 location of the mine?

03 A. I don't know. You know I was
04 gone for that week and when I come
05 back, I assumed they built them back.

06 Q. How do you think that Mr.
07 Shadd was aware of the fact that he
08 had a stopping or stoppings missing
09 in that general area?

10 A. He probably walked that area.

11 Q. Is that something he would do
12 on a normal daily basis, walking that
13 part of the mine?

14 A. He's the --- he's that section
15 --- he's over that section so ---. I
16 don't know if he did it on a daily
17 basis or not, but you know, he was up
18 through there. I don't know what he
19 done during the day or what his
20 normal routine is.

21 Q. Now, as part --- do you ever
22 actually do a pre-shift exam in that
23 specific area that we're talking
24 about in the northeast mains?

25 A. No, there's no crew fellow

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01 that says that.

02 Q. So basically all you do is an
03 on-shift examination for your people?

04 A. Yeah.

05 Q. Do you remember in talking
06 about those stoppings when Terry and
07 Shiner were discussing that, can you
08 remember about when that was in your
09 mind? Was it before Christmas, after
10 Christmas? A month, a week?

11 A. It'd be before Christmas. It
12 was the last day I worked --- would
13 be whatever that Friday was before
14 November.

15 Q. Did Terry state why that
16 stopping needed to be replaced?

17 A. To my knowledge, no. He just
18 said he wanted it built back.

19 Q. Do you know who done the
20 pre-shift exam for you and your crew
21 before you went on, on January the
22 19th at that location?

23 A. It'd either been Tom Adkins or
24 Linsey Whited probably. They're the
25 one that usually give the pre-shift

118

01 in that area.

02 Q. Okay. Did they ever report
03 any hazardous conditions to you and
04 pass it along to you that you needed
05 to address a specific issue ---

06 A. No.

07 Q. --- or a problem they may have
08 encountered?
09 A. No.
10 Q. Are you on a ---?
11 A. Wait. There was one. There
12 was a rib inby the --- at --- inby
13 the mother drive, Ten headgate mother
14 drive, there was rib there, they had
15 cut it out, they said there was a rib
16 there and we corrected that. We
17 bolted it up.
18 Q. Okay. So that was a
19 corrective action he reported to you,
20 that you had a loose rib ---
21 A. Yeah.
22 Q. --- and you all took a roof
23 bolter and actually put on some spot
24 bolts and bolted it?
25 A. Yeah. Yeah.

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01 Q. Okay.
02 A. Other than that, I don't
03 remember none.
04 Q. Do you ever feel pressured to
05 get your specific job done?
06 A. Excuse me. Pressure as in to
07 the point of what? That you're going
08 to get fired if you don't get it
09 done?

10 Q. As the Cable Guy would say

11 git-r done in a hurry?

12 A. Well, you know, you always

13 want to get your job done as quick

14 and safely as possible. But you

15 know, did I feel that I would lose my

16 job if I didn't get it done in a

17 certain time, no. I mean, they ---.

18 MR. BURKE:

19 I need an exhibit

20 numbered, please.

21 (Hagy Exhibit B marked

22 for identification.)

23 BY MR. BURKE:

24 Q. I'd like to offer you Exhibit

25 ---.

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01 MR. BURKE:

02 What would this be?

03 MR. TUCKER:

04 B

05 BY MR. BURKE:

06 Q. Exhibit B Hagy. And for the

07 record, I would like to first ask if

08 you've ever seen this memorandum to

09 all deep mine superintendents from

10 Mr. Don Blakenship? This was dated

11 October the 19th, 2005, the subject

12 is running coal. Could you please
13 read that aloud for the record? I
14 would ask you, could you read that
15 aloud for us, please?
16 A. If any of you have been asked
17 by your work --- excuse me, by your
18 group president, your supervisor,
19 engineers or anyone else to do
20 anything other than run coal, build
21 overcasts, do construction jobs or
22 whatever, you need to ignore them and
23 run coal. This memo is necessary
24 only because we seem not to
25 understand that the coal pays the

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01 bills.

02 Q. What's your take on that, Don?

03 A. Well, it sounds as if they
04 don't want you to shut production
05 down to go build an overcast or do
06 construction jobs.

07 Q. Have you ever seen that
08 memorandum prior to today?

09 A. No.

10 Q. Have you ever had knowledge or
11 heard anyone, your bosses at the
12 mine, talk about that memorandum in
13 any way?

14 A. All I ever heard was there was

15 some people talking about a memo come
16 across the fax that didn't want the
17 miner sections to shut down to do
18 construction work. That's all I ever
19 heard on it. I mean, I don't even
20 remember who was talking about it.

21 Q. You don't remember who?

22 A. No. I mean, how you'll walk
23 by and there will be four or five
24 sitting at a table and you know, you
25 just kind of hear it out --- about

122

01 it. I mean, no, I don't have no
02 specific ---.

03 Q. Two more questions and I'll
04 turn you over to Bill for the State.
05 Are you aware of how that practice
06 described in that memorandum affects
07 you in your job and what do you think
08 about it?

09 A. Can you enlighten more on, in
10 my job?

11 Q. In performing construction
12 work, how do you take that memo
13 specifically directed towards you and
14 your crew? Do you think --- and like
15 a series of questions --- I'm not
16 going to ask you multiple questions,

17 but how does that affect you in
18 general? Do you feel pressured
19 because of that in any way?
20 A. The way I take it is that he
21 don't --- they didn't want you to
22 take the coal production crews and do
23 the construction jobs. You know, I
24 don't feel they're putting no
25 pressure on the construction worker,

123

01 construction people, to get the job
02 done any faster. I mean, you know, I
03 don't know what their meaning was by
04 this. Did that answer your question?

05 Q. In a sense. In a sense. If
06 they give you a timeline and say we
07 want this belt project done by such
08 and such a date, say, you can't get
09 people to work to fulfill that order,
10 do you feel pressured by that,
11 knowing that you've got a deadline to
12 beat without people to help you do
13 that work?

14 A. There's pressure to a point,
15 but I mean, you know in your mind
16 what you can get done and get done
17 safely without anybody getting hurt,
18 you know. That's what I said on it,
19 I mean, if we get done by that

20 deadline, then we get done. If we
21 don't, you know, if the company don't
22 like it, whether it's this company or
23 any other company I've worked for,
24 then you know, I can move on. That
25 is my, you know ---. But as far as

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01 me putting the pressure on other
02 people to meet a deadline, you know,
03 I don't --- we don't do that.

04 Q. Was that memo ever discussed
05 in your boss meetings, staff
06 meetings, management meetings that
07 you remember?

08 A. No.

09 Q. If you was that mild mannered
10 section boss up on Two section trying
11 to run coal and a memo like that came
12 across your desk, how would you take
13 it?

14 A. I really don't know how to
15 answer that. I mean, the way I look
16 at things and the way somebody else
17 looks at things, they might let
18 things bother them more. Probably
19 wouldn't like it.

20 Q. Do you feel threatened if you
21 was a section boss by that last

22 statement, this memo is necessary
23 only because we seem not to
24 understand that coal pays the bills?
25 A. Could you repeat that again?

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01 Q. To look at it as a section
02 boss, you was up there running coal,
03 maybe you're having downtime, maybe
04 you're having problems, do you think
05 --- I know it would me, I've been in
06 your position and I know. I've been
07 there, I've done that. This memo is
08 necessary only because we seem not to
09 understand that the coal pays the
10 bills. Doesn't that seem to be
11 inclusive that we need to run coal
12 regardless of whatever? If you was
13 that section boss, how would you feel
14 if that memo was laid across to you
15 and you read it for the very first
16 time?

17 A. You would feel that you wasn't
18 running enough coal from the way it
19 sounds, you know, for what reason.

20 Q. A couple quick questions and
21 I'll turn it over to Bill. Do they
22 sometimes use people from the
23 sections to help you guys on
24 construction projects?

25 A. Yeah, they pull people off

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01 section to help --- to actually build
02 overcasts or build stoppings.

03 Q. Okay. Has it been that way

04 since you've been back, since you

05 come back in November that they have

06 had to rob people to help you?

07 A. They don't really --- per se,

08 help us, but they'll do outby jobs.

09 You know, they'll pull people off to

10 go back down and build plaster

11 stoppings or if there's an overcast

12 that has to be built, they'll send

13 the --- I'm sorry, the miner section

14 crew to build overcasts before they

15 start running. They have shut the

16 miner section down to shovel belt.

17 MR. BURKE:

18 Okay. Bill?

19 BY MR. TUCKER:

20 Q. Don, I'll ask for your

21 patience before we start, because I'm

22 going to be bouncing around a lot on

23 you. You've covered a lot of

24 information already and I'll probably

25 be trying to get some clarification

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01 on some of the things you've already
02 told us, so just bear with me.

03 What was your total mine
04 experience? You mentioned you had
05 started at Aracoma in 2001. How much
06 experience did you have prior to
07 that?

08 A. You mean, from the time I
09 started in the mines until today?

10 Q. Yeah, your total mine
11 experience, yeah.

12 A. Right at 25 years.

13 Q. When was the last time you
14 were at the mother drive prior to
15 January 19th?

16 A. I was at --- I was --- the
17 18th.

18 Q. What were you doing on the
19 18th there?

20 A. They had --- he had --- the
21 beltman that was there, he had showed
22 up on the screen that winch extension
23 fault and he didn't know what that
24 meant. I tried to explain it to him
25 and then I walked down there, which I

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01 walked down through the double doors
02 there and walked over to where the
03 screen was and I told him --- I said,

04 it's probably that little switch on
05 the storage unit right there at the
06 winch. I walked over and I checked
07 it and checked the cables and that
08 wasn't what it was, and then I
09 hollered and told him --- I said push
10 fault reset and try it again. So he
11 did and it ran and then it ran for
12 probably, I don't know, 15 minutes.
13 Then I got on the mantrip and rode
14 --- the mantrip pulled up and I got
15 on there and rode on out. They never
16 did have no more trouble with as far
17 as I know.

18 Q. Who was the beltman you talked
19 to and walked through that?

20 A. That was Brandon Conley.

21 Q. And that was on the 18th?

22 A. Yeah.

23 Q. Were you there on the 19th for
24 anything or ---?

25 A. No.

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01 Q. Did you hear any conversations
02 about any problems with the mother
03 drive belt on the 19th?

04 A. Yeah, they had a, I don't
05 know, a breaker or something, and

06 they called for the longwall
07 electrician who walked up there to
08 it. And I don't know what --- what
09 was took, you know, --- what was done
10 or nothing like that.

11 Q. Do you know who that longwall
12 electrician was?

13 A. Chad Neal.

14 Q. After he left or any time
15 after that, did you hear of any other
16 problems?

17 A. No.

18 Q. Okay. Did they --- was Jesse
19 Jude working for you on that day?

20 A. He was down the hill there
21 with Chris Herndon and the pinmen
22 working on a pinner.

23 Q. Did you receive a call for his
24 assistance at the mother drive?

25 A. Yeah, they called and wanted

130

01 to know if he was --- they needed him
02 down there, and I said, well, he all
03 the way down the hill. I can get get
04 him but it'd take probably, I don't
05 know --- didn't know what --- exact
06 where he was. By the time I walk
07 down the hill and get back, you know,
08 it'd probably take an hour, hour and

09 a half or so. And then somebody got
10 on and said, Chad will go up there
11 and check, and I don't know who that
12 was.

13 Q. Okay. Were you aware of any
14 other problems with the mother drive
15 belt?

16 A. That day?

17 Q. Say within the week prior to
18 the 19th or up to the 19th, any
19 problems that you were aware of.

20 A. That winch extension file,
21 which that turned out to be nothing I
22 guess because when he --- I didn't go
23 over there but he pushed reset fault
24 and got it going. Then they had to
25 --- him come up there.

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01 Q. Anything else that you can
02 think of?

03 A. Not right now at the time.

04 Q. But if you think of something
05 later, you can always interrupt me
06 and share it with us. Did your crew
07 install the Nine headgate ---

08 A. Yes.

09 Q. --- belt line?

10 A. Yes.

11 Q. Do you have any problems with
12 the installation with the elevations
13 there or anything different
14 installing that from, say, another
15 setup that you might have ran into?
16 A. The only thing, it really
17 didn't cause no big problem was where
18 your sitting on that slant, it would
19 --- the dollies was set up with four
20 rollers, you understand what I'm
21 saying? Underneath the dollies, you
22 have like four rollers, that makes it
23 slide --- well four of them --- four
24 of them did, the other four had skids
25 on them. Okay. They had one time

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01 that all I know of, they had rolled
02 back and they let the belt run off
03 and tear a splice up and ordered ---
04 I talked to Continental, what to do
05 for that. We ordered some long bolts
06 that bolted in, screwed in to the
07 --- and locked, used as a brake for
08 the wheels. After that, I don't know
09 of no problems they had with that.

10 Q. Did your crew go and make
11 those corrections as far as putting
12 the bolts in?

13 A. No. The hoot owl did.

14 Q. Did you have to go back and do
15 any other work on the setup after
16 they started back in production,
17 yourself, you and your crew?
18 A. The only thing we did was ---
19 I don't remember, one or two days
20 after it started running, the dollies
21 did slide back down and run the ---
22 run the belt off because it got
23 cocked just a little bit and let your
24 belt run off and it tore a splice up.
25 They hollered for us to go fix the

133

01 splice. We took chain ratchets and
02 pulled the dolly back in place.

03 Q. How do you secure them down?

04 A. At that time, how did we
05 secure them down to keep them in
06 place?

07 Q. Yes.

08 A. Well, we took chains and
09 hooked onto them until they could get
10 the bolts, took the chains and hooked
11 down to the --- in place so they
12 won't move after that unless you rob
13 it. And then if you rob it, you
14 know, you would have to take the
15 chain loose and let it slid back as

16 far as hit that --- doing anything as
17 far as the running of it, it wouldn't
18 do nothing. It'd just keep
19 everything in station until it got
20 the wheels locked down.

21 Q. Do you remember what
22 Continental rep that you talked to
23 about the problem and what you needed
24 to correct? Do you remember his
25 name?

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01 A. Mike Williams, I believe is
02 what his name was. He's usually the
03 one there all the time. It had to be
04 him or Dave Nance, but I'm pretty
05 sure it was Mike.

06 Q. Are you familiar with the trip
07 levers on the storage unit, the trip
08 levers for the dolly system?

09 A. The trip levers --- what are
10 you calling --- I mean, I think I do,
11 but I'm not for sure exactly what
12 you're calling the trip levers, the
13 --- are you talking about like on the
14 dollies, where that thing will flop
15 up?

16 Q. You've got the handle that
17 comes up, you can release that catch?

18 A. On each side of your dollies,

19 you've got a latch there. When it
20 comes up on that ---
21 Q. Right.
22 A. --- slide there, it pops it up
23 and lets the rest of them goes up and
24 that drops off right there. Okay.
25 Yeah, I know what you're talking

135

01 about.
02 Q. And you explained it some but
03 can you just explain for us, you
04 know, how they operate and basically
05 what they're for?
06 A. When you rob your storage unit
07 --- and you do that every how often,
08 you know, it's up to the people that
09 takes care of it, I don't know. When
10 you rob it, it's like a harmonica
11 (sic), it all comes back together.
12 Okay. As the longwall mines coal,
13 every time it moves up, that's three
14 and a half foot, so it would take ---
15 that would give you seven foot of
16 belt into your storage unit; right?
17 Okay.
18 As it --- all them dollies,
19 they latch into each other, you know,
20 like so. Okay. As that storage unit

21 gets full, then dollies, they come up
22 and every 20, 30 feet, whatever you
23 choose for them to drop off, then
24 they'll come up and they'll --- that
25 latch will run up on a pedestal. I

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01 call them --- I'm trying to think
02 what you would call them. Drop bars
03 is what I call them. I don't know
04 what the name of them is. But for
05 the drop bar. But when it comes up,
06 that latch will rise up on that
07 slant. Okay. And then he'll drop
08 off right there and stay there. Then
09 the rest of them will go on up to the
10 next one and then one will drop off
11 there. That keeps that belt from
12 swaying down, not having --- you
13 following me?

14 Q. Yes.

15 A. You don't want the belt to
16 sway because that puts --- from my
17 experience on it, if you get them too
18 far apart, then it will --- that will
19 let it run back and forward on you,
20 so you want to try to keep them
21 within 20, 30-foot space dropping
22 off.

23 Q. What would happen if, say, one

24 side of the dolly unlatched, one
25 side's latched and the other side

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01 comes unlatched? What problems would
02 that create?

03 A. It could do probably one or
04 two things, maybe more, but off the
05 top --- you know, I'm trying to
06 think. If it comes up there and this
07 one side unlatches and this other
08 side don't, then it could possibly
09 --- where this side's still latched,
10 it would force it on up and overtop
11 of them drop bars and it would bend
12 your drop bars. You know, I don't
13 know for sure.

14 Q Right.

15 A. And another thing it would do,
16 where that dolly right there is
17 cocked a little bit where this one
18 side would drop out, if it didn't
19 latch back, wouldn't force its way
20 through, it would make your belt ---
21 it could cause your belt to run off.

22 Q. Cause some misalignment
23 problems?

24 A. Yeah.

25 Q. When you put the --- put all

01 that together, do you recall if all
02 the trip levers were operating
03 properly when you put it in or was
04 any of them broken or ---
05 A. No, they was all ---.
06 Q. --- any damage at all?
07 A. It was all dropping off right
08 because we tested it. What we done
09 when we come up through, we had some
10 belt left and we filled the storage
11 unit up to make sure they would drop
12 off where they're supposed to and
13 then we took it out. Then we shoved
14 it on through with a winch, a belt
15 winch, if you follow me. So it would
16 close it back and then when we closed
17 it back out, they all went right back
18 to the way it's supposed to be.
19 Q. Have you been back since
20 initial installation to check any of
21 them, see if --- maybe make any
22 repairs or ---?
23 A. No, that's --- they've got
24 --- men on the hoot owl takes care of
25 that.

01 Q. So if they have any problems
02 with that system, the midnight shift

03 would take care of that?

04 A. Right.

05 Q. Is the construction crew

06 dayshift only pretty much?

07 A. Yes.

08 Q. Has that been like that for a

09 while or ---?

10 A. The way it works is you'll

11 have the dayshift crew, okay, then if

12 it gets like you don't look like

13 you're going to meet your deadline,

14 then they'll put another crew on, on

15 the next shift.

16 Q. As far as the belt setup,

17 having it ready for the longwall, you

18 mean?

19 A. Yeah.

20 Q. That type of deadline?

21 A. Yeah. It's been a long time

22 since we've had another crew but I

23 mean, ---.

24 Q. Right. How many of those

25 drop-off units do you usually have on

01 the storage unit, those drop-off

02 dollies?

03 A. Eight, I think.

04 Q. Do you happen to recall how

05 many was on the Nine headgate?
06 A. Should have been eight.
07 Q. Eight? And you may have
08 already --- you have answered this
09 somewhat. But you had mentioned you
10 had a problem on the storage units
11 and you had gotten the bolts. But
12 just describe for us, if you will,
13 how the storage units are secured to
14 keep them in alignment? How are they
15 normally secured on your installation
16 to keep them in alignment?
17 A. I think this might be
18 answering your question. Each
19 section, you've got a ten-foot
20 section, and there's usually anywhere
21 from 18 to 21 sections. Okay. It's
22 got like a guide bar down the center
23 or it for them wheels to sit right
24 down in. Plus on your dolly, on the
25 inside, of all four corners, it's got
141
01 a bracket made like that, it bolts
02 on. And it keeps that dolly from
03 coming off at the rail. That pretty
04 much keeps it from going either way
05 unless there's a large force that
06 would cock it. Is that ---?
07 Q. Yeah, pretty much, I guess.

08 I'm not that familiar with the system
09 myself, so I'm just trying to
10 understand, get a better
11 understanding.

12 A. See, it's got a guide. It's
13 got its own guide down the top of it.
14 It looks like a piece of --- it look
15 like an A-frame --- I mean, an A like
16 that (indicating), that it's welded
17 down to the flat of that section.

18 And then them wheels, the wheels on
19 it, it's got a indent. Do you
20 follow? And you know, it sets right
21 down on that A-frame, that piece of
22 A-shaped metal.

23 Q. And that's welded down the
24 ---?

25 A. The A-shaped metal is welded

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01 down. It sets down on that. Then
02 you know, it just runs up and down
03 that guide.

04 Q. What if that weld became
05 broke? What if it broke? Have you
06 ever had that happen where that ---

07 A. No.

08 Q. --- where that's welded down
09 and ---?

10 A. I've never known that to
11 happen.

12 Q. You've never known that to
13 happen. Do you ever install the
14 storage units, say, on cinder blocks
15 or how is --- what's that ---?

16 A. No. We cut metal beams and
17 weld legs onto the bottom of it.

18 Q. And those sit directly on the
19 ---

20 A. On the floor.

21 Q. --- mine floor?

22 A. Yeah. You'll clean it out
23 down to the rock, then you'll put
24 your --- you'll get your measurement
25 right after you've done the leveling,

143

01 all level. When you install it,
02 before you anchor it down or put any
03 legs under it, you make sure it's all
04 level side-to-side from left to
05 right. It's got to be, you know,
06 level. And then you'll run --- the
07 way I always done, and you know,
08 everybody does it different, I'm
09 sure, you run you a string from this
10 end to that end that's like laying
11 masonry blocks, I guess, run you a
12 string, and then you raise this side

13 here up to that string so it'd be
14 level, you know, up and down. Then
15 you level it from side to side. So
16 it will all be level. Then you go
17 under the --- it's under the sections
18 where it bolts together, then you'll
19 put your --- what you use, your crib
20 blocks and wedges to get it like that
21 temporary before you --- then you'll
22 come down after it's all level and
23 everything. Then you'll take the
24 crib blocks out and you'll cut you a
25 piece of H-beam, eight inch, six

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01 inch, whatever you --- you know,
02 whatever you want to use. Then
03 you'll weld it to that frame and it
04 will lay down there and then you take
05 anchor pins and turn buckles and
06 anchor it all down, so it will be
07 level and straight and tight.

08 Q. All right. On the Nine
09 headgate system there, is that pretty
10 much how you did it or did you have
11 to block any of it with any types of
12 blocks, other than what you've ---?

13 A. No. When we put it in, it had
14 all metal beams in the bottom, I

15 mean, for legs.

16 Q. On the Nine headgate unit
17 there, it has some bracing into the
18 ribs. Is that something that you did
19 on initial installation or did that
20 come later?

21 A. No. That's just --- that is
22 not --- that's mostly my idea to keep
23 it from --- that's just extra braces
24 to keep it from, if it did want to
25 move or anything, you know, you just

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01 --- just extra braces to go with,
02 you've got your anchor pins and turn
03 buckles to keep it from sliding side
04 to side or bunching up or whatever it
05 might be. I mean, I never had wanted
06 to do it, but that's what I was told
07 the way you did it. The guy came and
08 showed me, you know, when I first
09 started doing it. And then the
10 braces from the rib, that's just
11 something extra I added, too. I felt
12 comfortable with, you know, to keep
13 it extra reinforcements.

14 Q. Have you ever been personally
15 involved, say, with a unit being out
16 of alignment and making any
17 adjustments, something cocked

18 sideways or whatever? Have you had
19 any personal involvement in a
20 situation like that?

21 A. The one time I told you that
22 --- after it run a couple days ---

23 Q. Right.

24 A. --- and it got cocked and we
25 made the --- well, there was a bunch

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01 of different people there making the
02 splice and then we --- I don't know
03 what happened, you know, for it to
04 got cocked, but that's what happened,
05 it got cocked and it --- just a
06 little bit, and that's all it can
07 cock, because of the braces, the
08 brackets on the side and the way the
09 wheels fall into it. It can cock a
10 little bit and then there's a
11 possibility of that cocking. And
12 what we done is we took chain ratchet
13 and pulled them back up, put them in
14 place there and then made the
15 splicing, then we got the bolts and
16 hoot owl put the bolts into the ---
17 screw them in to where the wheels is
18 to lock the wheels down, because like
19 I told you, there's four of them, it

20 has four wheels and I'm pretty sure
21 there's four of them that has two
22 wheels and two skids. Them skids
23 keeps them from sliding back on you.
24 And that's basically what we done
25 with the bolts into it to lock the

147

01 wheels down.

02 Q. Right.

03 A. That's the only time I know

04 of.

05 Q. Do you recall after that when

06 they went back in and made those

07 repairs, if they --- then would they

08 have removed the chain ratchets?

09 A. Yeah. Yeah. I asked the guy

10 --- Tom was the one that done it. I

11 asked him --- I said, did you get the

12 bolts took care of and released

13 everything to see if everything was

14 took care of.

15 Q. That would have been Tom ---?

16 A. Adkins.

17 Q. Adkins, okay. Have you heard

18 of any --- have you just heard of any

19 other problems with the storage unit

20 drop off dollies or trip levers

21 recently?

22 A. No.

23 Q. What if the storage unit was
24 completely full with belt, what
25 effect would that have on the dollies

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01 or ---?

02 A. The extension slip --- the
03 extension switch at the end, it would
04 kick the belt off.

05 Q. Have you ever seen it --- seen
06 that?

07 A. No.

08 Q. Do you know if there was a
09 Continental conveyor rep in the mine
10 on the 18th or the 19th of January?

11 A. He was there on the 19th, he
12 was up there at Ten headgate with us.
13 He was aligning one of the motors up
14 for that Ten headgate head.

15 Q. Okay. Do you know if that's
16 the only place that he went to as far
17 as ---?

18 A. Yeah, he stayed there all day.

19 Q. Stayed with you all day. Did
20 he ride out with you?

21 A. Yeah.

22 Q. You mentioned there's a crew,
23 a midnight crew that would repair the
24 trip levers or do maintenance on the

25 longwall belt?

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01 A. Yeah.

02 Q. Do you know who's over that
03 crew or a couple of people that's on
04 that crew?

05 A. No, not really. At one time I
06 know --- at one time, Tom was over
07 the crew, but now as far as who he
08 had up there to done it, I really
09 don't know. I mean, you know, I
10 don't how they worked their
11 workforce. They've got so many
12 people, I don't know if he's got
13 certain ones that go certain places
14 every night or if he's got two that
15 he depends on more that he sends into
16 the most extreme job or I don't know
17 how he does it. I only know --- if
18 he's got ten people in there, I
19 probably don't know two of them.

20 Q. Right. Okay. Going back to
21 the 19th there, when you came out at
22 the end of your shift, did you notice
23 anybody at the double doors when you
24 come through there at the mother
25 drive?

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01 A. I don't remember.

02 Q. Do you ever fire boss any of
03 the belts?
04 A. No.
05 Q. What type of detector do you
06 carry?
07 A. Explorer 4.
08 Q. Explorer 4. Did you ever have
09 any problem getting one or do you
10 have one every day or do you have any
11 problems?
12 A. I have one every day. If ---.
13 Q. I think you --- oh, I'm sorry,
14 go ahead.
15 A. If all the Explorer 4s is out,
16 then I'll go up and get a 270 out of
17 the mine foremen's office. They
18 always have one.
19 Q. Okay. If I understood you
20 correctly, you mentioned that Chris
21 Herndon was going to take your place
22 when you quit.
23 A. Uh-huh (yes). Yes.
24 Q. Who was your immediate
25 supervisor at that time?

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01 A. Pepé and Dusty and Gary, I
02 guess. I mostly answered to Pepé and
03 Gary, you know.

04 Q. So after you quit, they put
05 Chris Herndon in over ---
06 A. Yes.
07 Q. --- the construction crew?
08 A. Uh-huh (yes).
09 Q. Could you explain to us how
10 the northeast mains area of the mines
11 was developed as far as --- as which
12 way --- or how many crews was used to
13 develop it and which way they were
14 mining? Do you recall that?
15 A. You mean ---?
16 Q. As far as ---.
17 A. You want to know what Eugene
18 was talking about when I came in
19 earlier? Is that what you're talking
20 about?
21 Q. Well, at one time was there a
22 crew mining from the Nine headgate
23 side toward Two section and maybe
24 another crew --- was there another
25 crew mining in another direction or

152

01 ---?
02 A. Best I can remember, what had
03 been going on was, the Two section
04 was mining straight over the
05 northeast mains; okay? They drove
06 up, I don't know where at, but I know

07 they drove up, you know, two or three
08 breaks inby Nine headgate; okay, and
09 they butted off.

10 Q. See, would you show me on the
11 map? You lost me there just a
12 second. If you'd just show which
13 direction that the --- where the Two
14 section crew was at. We'll use red
15 to show that.

16 A. Like I say, I don't know the
17 exact butt-off point. They was
18 mining this way. Okay. This was Two
19 section mining this way. You had
20 Three section mining up Nine
21 tailgate, okay. Do you follow me?

22 Q. Okay.

23 A. They was up in here, all
24 right? They had butted off here and
25 started down this way and then this

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01 --- they hit water up here.

02 Q. Was that Three section crew?

03 A. Three section drove up and hit
04 water.

05 Q. Do you remember when that was,
06 just roughly?

07 A. I couldn't even --- I couldn't
08 even give you a year.

09 Q. Okay. So to develop this Nine
10 headgate, Nine tailgate, Two section
11 was mining ---
12 A. They mined this way.
13 Q. --- part of northeast mains,
14 they butted off and then they started
15 ---
16 A. They started down this way.
17 Q. --- down Nine headgate? Three
18 section came up ---.
19 A. Well, they was mining this
20 area and they hit water.
21 Q. They hit water.
22 A. Okay. Then when they --- when
23 they mined --- when they got turned
24 loose, which you know, was flooded
25 out and they had to do drilling and

01 all that, when they got turned loose,
02 then they started mining this way,
03 this section. This Two section had
04 done started down this Nine headgate,
05 best I can remember.
06 Q. Okay. So then they made the
07 connection, the Three section made
08 the connection, there around just
09 inby where the Number Seven belt
10 tailpiece is at?
11 A. Yeah, best I can remember

12 somewhere in this vicinity and I
13 don't know how many breaks they drove
14 up before they butted off.

15 Q. Well, which direction was Ten
16 headgate belt?

17 A. Down.

18 Q. Okay. So after, Two section,
19 did they finish Nine headgate?

20 A. Yeah, they drove on back down
21 this way. Three section drove out
22 this way. When they punched through,
23 butted off and all that, this section
24 come off of here. They came all the
25 way back down to the bottom and then

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01 drove on up this way.

02 Q. So Three section is driving
03 north. Was this on the bottom end of
04 Nine tailpiece?

05 A. What they call Four Right.

06 Q. Four Right, yeah.

07 A. And they drove up. They come
08 by this, they drove up and they
09 turned here and went up and then I
10 don't know where they was at and then
11 they butted off, but that's the base
12 of it. And when they butted this
13 off, then they went back down here at

14 Four Right and drove on in. And when
15 they got down here, they just moved
16 all the equipment right up here and
17 started here.

18 Q. Two section started this inby
19 Nine tailgate driving north?

20 A. Yeah, right here. After they
21 finished this, Nine tailgate was
22 already drove up, so when they come
23 --- they come back out here, they
24 come right here and started driving.

25 Q. So they drove northeast mains

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01 up and then they turned Ten headgate
02 and drove it from northeast mains
03 down toward Four Right.

04 A. Right.

05 Q. So when you started on the
06 construction project with the belt
07 line, where would Two section have
08 been? I mean, would they have been
09 on Ten headgate or
10 ---?

11 A. They was going to Ten
12 headgate. They was either finishing
13 up on Ten headgate or pulling out. I
14 mean, according to what part you're
15 talking about.

16 Q. Well, when you originally

17 started here, when you put the power
18 centers in here and basically when
19 the stopping was removed.

20 A. When the stopping was removed,
21 they was moving the section. They
22 was out.

23 Q. They was out during the time
24 they was moving the section?

25 A. Yeah.

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01 Q. Do you remember how long that
02 took?

03 A. I don't --- I can't remember
04 what exact date they started, but
05 they was --- they were moving through
06 the last week --- I'm thinking they
07 moved between the last two weeks of
08 October and they was moving the first
09 week of November when I was gone,
10 when I left. When I came back, they
11 still ain't got back into coal yet
12 because it was sometime in the second
13 week of January --- second week of
14 November.

15 Q. When Two section got back into
16 coal?

17 A. Yeah, to my knowledge. I
18 mean, I can't swear to that.

19 Q. Right.

20 A. Yeah. When they quit down
21 here, it was sometime the first to
22 middle of October when they first
23 started.

24 Q. You had mentioned that Terry
25 Shadd had mentioned to you and Chris

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01 Herndon as you was walking by that
02 the stopping had to be put back.
03 Would you just mark with a red X on
04 the map the stopping that he was
05 talking about? Just draw a line down
06 here and make a notation of that
07 stopping if you don't mind.

08 A. What do you want me to put,
09 the stopping that was to be built
10 back?

11 Q. Yeah.

12 WITNESS COMPLIES

13 BY MR. TUCKER:

14 Q. Thank you. Do you know of any
15 problems with the storage unit full
16 and the extension switches knocking
17 off, knocking the belt off?

18 A. Do I know of any time it ---?

19 Q. Any time it's happened.

20 A. That it filled up and knocked
21 off?

22 Q. And knocked the switch off?
23 A. No, I don't know of none.
24 Q. Okay. Just in your opinion,
25 just assuming that that would happen,

159

01 what would happen --- what problems
02 would that create if the storage unit
03 was full and the switch didn't work
04 and the belt kept running?

05 A. Oh, if it didn't?

06 Q. Right. If it didn't kick it
07 off.

08 A. Oh.

09 Q. If you have an idea of what

10 A. I've never seen it happen and
11 I really don't have a idea what it
12 would do. I mean, the only thing I
13 could think it would do would --- if
14 it kept running and the longwall
15 would keep pushing the tailpiece
16 back, you know, as it does when they
17 take their swipes, ---

18 Q. Right.

19 A. --- then that would put slack
20 in the belt and then that would cause
21 your slip to kick out.

22 Q. Right. Okay.

23 A. That would be the only thing I

24 know would, you know ---. But once
25 you got slack on it, your slip would

160

01 kick it out.

02 Q. Right. Okay . Thank you.

03 Fire drills when you mention that, it
04 means different things to different
05 people, but have you ever
06 participated in any type of drill
07 where --- that you'd say a fire --- a
08 certain piece of equipment is on fire
09 and you'd demonstrate the various
10 types of firefighting equipment that
11 you have?

12 A. To actually go in, no.

13 Q. Say to demonstrate hooking up
14 a waterline and what this person
15 would do and demonstrate the proper
16 way to use a fire extinguisher or
17 anything of that nature?

18 A. No.

19 Q. Okay.

20 A. Just went through it, you
21 know, you get the firefighting hose
22 and hook it up. You get a fire
23 extinguisher. You know, tell each
24 man what he would do.

25 Q. Has it been a practice to take

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01 construction people and place them on
02 a production crew?

03 A. No.

04 Q. Do you keep personal notes
05 pertaining to your --- the work that
06 your crew does or your examinations
07 and daily work assignments?

08 A. Personal notes, I mean, ---?

09 Q. Personal notebook or something

10 A. I keep a notebook and I can
11 only --- you know, I might jot down
12 like if I count --- say, I'm going to
13 need 25 top or 10 rails or something
14 like that, I'll jot down in that
15 notebook what I need.

16 Q. Do you happen to have it with
17 you?

18 A. No. I either throw them away
19 after I skirmish through all of them,
20 you know.

21 Q. Okay. Prior to the Two
22 section mining into northeast mains,
23 do you recall what the air courses
24 inby Seven tail was like at that
25 point, at the time, say, that you

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01 knocked the stopping in October?

02 A. Which way the air course was

03 going? In what entry? In the main
04 air course?

05 Q. Yes.

06 A. It was going towards Two
07 section.

08 Q. Okay. Have you ever had to go
09 down to the Seven tail to clean the
10 rock box maybe if the longwall belt's
11 ---

12 A. Seven?

13 Q. --- gobbed off or ---? There
14 where the mother drive dumps onto
15 Seven belt, have you ever had to go
16 down and clean that rock box out?

17 A. Probably have. I mean, at
18 some time or another, we probably
19 have, you know. All your rock boxes
20 usually at some time or another gob
21 out. You know, we'll --- if we're
22 going by there and it gobs out, you
23 know, we'll jump in there and help
24 them.

25 Q. Do you recall anytime, say, in

163

01 the last couple months that that's
02 happened?

03 A. The last couple of months?

04 There was one time where it gobbed
05 out. We stopped there and helped

06 them, but I don't remember the date
07 or nothing like that on it.

08 Q. Do you think it was maybe
09 after the first of the year or after
10 November or December or ---?

11 A. I really --- I can't remember.

12 Q. Do you recall when you did
13 that if the stopping was in at the
14 power center?

15 A. No, I didn't go over in that
16 area. I mean, I didn't go over
17 there. It was just right there,
18 right there at the drive rollers in
19 as far as I went. The best I can
20 remember, the beltman, he was over
21 there. We was over at the rock box,
22 me and --- I can't remember. Shoot.
23 There was two other guys there and
24 then Rod Morrison and C.W. was there.
25 I never went past the drive rollers

164

01 there.

02 Q. Okay. C.W. is?

03 A. He's the longwall coordinator.

04 Q. Do you know his name?

05 A. Clarence Workman.

06 Q. Okay. Do you happen to have a
07 map, a work map, that you use on your

08 construction site that you make

09 notations on and ---?

10 A. No.

11 Q. The stopping that we've talked

12 a good bit about inby the Number

13 Seven belt tail, ---

14 A. Uh-huh (yes).

15 Q. I guess you looked at

16 different maps maybe, probably

17 different mine offices or ---. Of

18 any of the maps that you looked on,

19 is that stopping on all of the maps

20 that you looked at, that you can

21 recall, or is there any maps when

22 it's not shown?

23 A. I don't recall.

24 Q. Have you ever came up on the

25 doors there at the mother drive and

165

01 expected them to be closed to travel

02 through and they were open, somebody

03 left them open?

04 A. I'm trying to think. I mean,

05 I don't want to just shoot out an

06 answer.

07 Q. No, that's fine. Just take

08 your time, Don. You know the doors

09 I'm talking about, though, ---

10 A. Yeah, you're talking about

11 right there ---.

12 Q. --- the travelway doors?

13 A. I can't think of no time that

14 I've come through and them doors

15 being open.

16 Q. Okay. Do you know where the

17 fire taps are located on the Nine

18 haulage belt?

19 A. Which belt now?

20 Q. I'm sorry, Nine headgate.

21 A. The mother drive itself?

22 Q. Yes.

23 A. No, we never did install the

24 waterline for the mother drive. The

25 longwall always did that.

166

01 Q. Okay. Are you familiar with

02 the monorail where they might be on

03 it, or is that --- do you fool with

04 that?

05 A. I don't fool with that.

06 Q. Okay. Do you know if they

07 have a ventilation foreman at the

08 mine?

09 A. They got a --- I mean, he

10 walks the airways weekly. Other than

11 that, I mean, no, I wouldn't --- I

12 wouldn't think ---. I wouldn't call

13 none of them ventilation foremen. I
14 mean, you know, you got your
15 superintendent, mine foreman, section
16 superintendent and you got your
17 airway walker.

18 Q. Say if you had a major
19 ventilation problem on a section or
20 with the low air or whatever, who do
21 you think they'd call? Who would be
22 the top man, as far as knowing the
23 ventilation of the mines?

24 A. I would say --- well, it's
25 according to what are you're in. I

167

01 mean, probably Dusty.

02 Q. Okay. Do you know of any
03 fires at the mines, other than on
04 January the 19th?

05 A. As far as the belt goes, on
06 the belt?

07 Q. Any fire.

08 A. The only thing I know of, we
09 had a tail roller bearing go bad.
10 And there was a little blaze there
11 and they put it ---. I wasn't there.

12 Q. Right.

13 A. The guy that found it come up
14 on it. He threw some rock dust on
15 it and put it out, so I don't know

16 how big an actual fired it was, you
17 know, to put it out with rock --- you
18 know, a bag of rock dust. And they
19 called for me to come there and
20 change the bearing out.

21 Q. Where was that at?

22 A. That's at Four tail face.

23 Q. Do you remember when that was?

24 A. It was sometime after
25 November. I mean, when I came back

168

01 sometime after that.

02 Q. Okay. Who was the guy that
03 put it out?

04 A. John McNeely.

05 Q. John McNeely?

06 A. Yeah.

07 Q. Was there any damage, other
08 than the bearing?

09 A. Just the bearing itself.

10 Q. Right. Okay. If you had a
11 fire outby, say if you had your crew
12 up on Ten headgate working, and you
13 had a fire outby you, let's say it
14 was burning 15, 20 minutes, and
15 people was working to put it out, do
16 you think that they should call and
17 alert you about that situation? Is

18 that something you'd expect to get a
19 call and be notified about?

20 A. Yeah. I'd hope they would
21 call and let me know.

22 Q. That would be so that you
23 could do what?

24 A. So I could pull my people out
25 and get them in the fresh air and

169

01 then see what extent it's going to
02 be, whether to pull them back or not.

03 Q. Okay. Thank you, Don.

04 MR. BURKE:

05 Don, we've going quite
06 a while. How about a
07 five-minute break for a good
08 cup of coffee?

09 A. I don't drink coffee, but
10 we'll take a five-minute break.

11 BY MR. BURKE:

12 Q. Don, we're back on the record.
13 I appreciate your patience today in
14 answering our questions. Just a few
15 follow-up questions and we'll try to
16 get wrapped up here shortly. You
17 mentioned earlier in the interview
18 that you quit Aracoma in about
19 October of 2005. Do you know
20 specifically when that was, the date?

21 A. It was the last --- the last
22 week of October. I don't know what
23 date, the last date I worked,
24 probably the 28th, 29th, somewhere
25 around in there. Whatever Friday

170

01 was.

02 Q. Okay. That would have been
03 the last Friday in the month of
04 October?

05 A. Yeah.

06 Q. Going back to the day of the
07 19th, when you came out, about what
08 time in your mind can you remember
09 you came by the mother drive at
10 quitting time that evening?

11 A. It was somewhere between 2:30
12 and 3:00, thereabouts. I don't know
13 --- we had got out what we considered
14 early. We got outside at ten 'til
15 4:00. So it would have probably been
16 --- yeah, it was right around three
17 o'clock I'd say we come through
18 there.

19 Q. Did you notice anything out of
20 the ordinary that day, any haze or
21 smoke or ---?

22 A. No. I didn't notice nothing.

23 I mean, you know ---.

24 Q. Was the belt running when you
25 all came through?

171

01 A. Yeah, the belt was running.

02 Q. Okay. Did you happen to see a
03 beltman or anyone in that general
04 vicinity when you came through your
05 doors there?

06 A. No, I didn't see nobody.

07 Q. Knowing the knowledge that you
08 have on these conveyor systems, four
09 or five questions I know to follow up
10 on what Bill was asking about the
11 mother drive area. If the belt
12 misaligns for whatever reason and it
13 would rub against a bearing there on
14 that dolly, is there any way that
15 that could happen? Kindly describe
16 if that dolly cocks, what scenario
17 would that do to that belt line?
18 What would it do to that belt?

19 A. Well, if you --- I think I
20 understand your question. If your
21 belt's running and a dolly gets
22 caught for whatever reason ---. Like
23 I said, it ain't going to cock much
24 because it's got so much to hold it
25 in place it might cock it a half an

01 inch or an inch, maybe. I don't know
02 if it would cock it an inch.

03 But if that dolly cocks, then
04 that's going to cause --- if it goes
05 this way, it's just like riding a
06 bicycle, if I'm thinking right. You
07 know, you turn your bicycle wheel
08 this way, you're going to go this
09 way. So if that dolly cocks like
10 that, then your belt should --- if
11 I'm thinking right, it should go over
12 this way. If it cocks like this,
13 then your belt should go over ---.

14 Q. Okay. And describe ---.

15 A. It's really hard to say. The
16 dolly has got like one, two, three,
17 four rollers.

18 Q. Uh-huh (yes).

19 A. You know, your belt goes over
20 and it comes around a big roller and
21 it comes up over and then it goes
22 back down through and then it lays on
23 this other roller and then it comes
24 back. I call it a stationary tripper
25 roller. I don't know what the

01 Continental --- if I was going to

02 order a part for it, I don't know
03 what it's called, but you got three
04 rollers back there and you got three
05 rollers on a movable dolly. And then
06 you got them four rollers on your
07 dollies, your eight float dollies, I
08 guess is what you call it, because
09 they'll float up. They'll come up
10 through and drop off in designated
11 areas.

12 So you got --- it will come
13 across it and then it will come back.
14 And then it comes back, and then it
15 comes back and goes out. So with all
16 them rollers on there, it's really
17 hard to say which way ---. In my
18 knowledge, it's hard to say which way
19 it will go, but on a normal basis,
20 your rollers, if it cocks this way,
21 the belt's going to go that way. If
22 it cocks this way, your belt's going
23 to go this way. So it would rub to
24 whatever side ---. Does that answer
25 your question?

174

01 Q. Yeah. So for the record, if
02 the belt dolly cocks to the right,
03 the belt would run off to the right?

04 A. It should.

05 Q. It should. And if it cocks to
06 the left, it would bear more to the
07 left side?

08 A. Right.

09 Q. Is there any potential that
10 that belt, if it were to cock, could
11 rub a component and generate heat,
12 anything in your mind that would ---?

13 A. Well, if it cocks over and it
14 gets over against the frame or a
15 bearing housing, you know, it would
16 heat up. I mean, to what extent, I
17 don't know. You know, this kind of
18 damage, I've never known it to do
19 that kind of damage on one, but ---
20 to catch on fire like that. But I'm
21 sure --- you know, I've caught them
22 --- I've seen them not on a storage
23 unit but like on a belt head or a
24 small takeup, I've seen them where
25 something would --- something

175

01 somewhere --- somebody ---. I don't
02 know what you would say, maybe a
03 bottom roller got cocked some way or
04 another going into it and would cause
05 it to ---.

06 I've seen it go over to where

07 the bearing would get hot where you
08 couldn't touch it for a while after
09 you got the belt back over. But, you
10 know, even the belt would be hot as
11 far as you'd see a little bit of
12 steam off of it, but, you know,
13 nothing to this extent. I've never
14 seen nothing like that.

15 Q. Have you ever paid any
16 attention to the longwall belt
17 itself? I'm going to use my glass
18 case here as an example. When the
19 belt sits on your cradles, it kindly
20 gives it this effect and it folds it,
21 and the cradles kindly give that belt
22 the arching effect, to allow the coal
23 the room ---.

24 A. Top structure?

25 Q. Yes, your top cradle.

176

01 A. Uh-huh (yes).

02 Q. Have you ever looked at that
03 belt to see the edges, how the edges
04 were damaged in any way on the
05 longwall belt? Have you ever paid
06 attention to that? Have you ever
07 been in that area to look at that, to
08 see the actual damage to the belt,
09 like if it is was cut or strips

10 hanging from the belt conveyor as
11 it's running? Anything bear in your
12 mind of any type of damage?

13 A. On Nine headgate?

14 Q. On Nine headgate.

15 A. Not as far as I can remember,
16 I've not seen no strings or no ---.
17 I know what you're saying, like if it
18 gets caught somewhere and it will
19 pull a little gas, maybe, ---

20 Q. Yeah.

21 A. --- like that. I've seen
22 belts do that, but not on this
23 particular mother belt I've not seen
24 that, no. You know, I don't pay much
25 --- I don't have that much to do with

177

01 the mother drive after we put them
02 in, you know. But driving by, you
03 know, I'll usually look up at it when
04 I drive by under it, you know, just
05 to see if there's any damage or ---
06 you know, for whatever reason you
07 just kind of look up and glance at
08 it. But I've never seen nothing
09 flopping off of it or strings hanging
10 off of it, to my knowledge.

11 Q. Thank you. Do you know if

12 they robbed the extra belt on the
13 19th or any time in the days before
14 the fire?
15 A. I personally don't know that
16 they did, but most likely they have
17 robbed that within probably a week of
18 that date. I mean, you know,
19 normally it would take --- that's
20 about what it takes, you know, on a
21 normal basis. I would say they have
22 within a week of that. I don't know
23 how often they rob that one. I mean,
24 but when I was on the hoot owl, about
25 two, three years ago, that's what I

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01 done, robbing it. We normally robbed
02 it twice a week, if they run good.
03 If they didn't run good, you know, it
04 varies. But the most I can ever
05 remember robbing it was ---. The way
06 we done it, I can say three time's
07 we'd rob it but we actually didn't
08 rob it the full amount all three
09 times. What they would do if you'd
10 rob it and then towards the weekend,
11 you know, you're going --- before you
12 start floating people out for the
13 weekend, you're going to be a little
14 bit shorthanded, so if you thought

15 you was going to be close, you'd go
16 ahead and rob out 100 foot or 200
17 foot. That way it would put you
18 through to the weekend 'til all your
19 crews come back.

20 Q. And talking about those
21 dollies, I've got four or five
22 questions pertaining to them, just
23 basically to follow up what Bill was
24 talking about. Do you know if the
25 hold-downs for the inby end of the

179

01 movable dolly, and that's the dolly
02 that's hooked to the winch, were they
03 in place at the time that that unit
04 was installed?

05 A. What are you calling a
06 hold-down?

07 Q. The hold-downs for your dolly.
08 Any movable component of that
09 apparatus, was it installed per
10 manufacturer's specifications, I
11 guess, would be the best way to ask
12 that question?

13 A. I'm not really following you.

14 Q. When your dolly units are
15 installed, when you install your
16 storage drive and those dollies, the

17 movable dolleys are all ---.

18 A. The ones that drops off?

19 Q. Yes, your drop-offs, were they

20 installed properly when that belt was

21 first put on line?

22 A. Yes.

23 Q. Okay. Have you ever had any

24 problems of those dolleys actually

25 wrecking and cocking the belt in any

01 way? Have you ever physically seen

02 anything like that yourself?

03 A. For the dolly to actually

04 wreck ---

05 Q. Yeah.

06 A. --- off the ---? No, I have

07 never seen a dolly wreck.

08 Q. You've never seen them?

09 A. I have seen them cocked. And,

10 you know, like I told you earlier,

11 you take a chain ratchet and you'll

12 cock it back around, whatever you

13 need to do, get it straight across.

14 And it puts the belt right back where

15 it's supposed to be. But as far as

16 seeing a dolly wrecked off of the ---

17 no, I've never ---. See, you got ---

18 I may not ---. It's hard to describe

19 this stuff.

20 On the bottom of the dollies,
21 on the inside, okay, you got your
22 wheel, on each corner, okay? And
23 then you got this bracket, it's an
24 L-shaped bracket, it bolts right into
25 that. Okay? That bottom --- that

181

01 bracket, that L shape, it folds up
02 under that ---. I don't know what
03 the --- the ten-foot section that
04 that roller's on, ---

05 Q. Uh-huh (yes).

06 A. --- it's flat, okay?

07 Q. Uh-huh (yes).

08 A. It's about --- I don't know
09 exact measurement, let's say four
10 inches, okay? And then you got that,
11 like I said that eight-foot. Well,
12 that bracket that bolts in the side
13 of your dolly, it comes down and laps
14 back up under that phalange. So you
15 really can't --- I mean, like when
16 we're putting them on, if you got a
17 --- you know, you may have to work on
18 them a little bit. You might have
19 this bin or that bin or whatever. And
20 if you take a jack and try to raise
21 that up off there, it will only come

22 up to where that bracket catches and
23 it won't come --- it won't come up
24 high enough for that wheel to come
25 off that phalange. It's still got

182

01 part --- you know, that phalange will
02 stop that wheel from going either
03 way, so it's just about impossible
04 for one to wreck.

05 Q. And do those brackets that
06 you're describing there prevent that
07 dolly from, you know, cocking too
08 much? There's only certain
09 amounts ---.

10 A. It's only going to cock so
11 much, because the way the wheel is,
12 you know, it's a round wheel and it's
13 inbedded, live a V shape. Okay? And
14 then on that flat of that storage
15 unit, it's V shaped, okay, and it
16 just fits right down on that. So you
17 got a little bit --- you got a very
18 little bit of leeway there for it to
19 move. You got that plus you've got
20 that bracket that's going to keep it
21 from coming up or moving too much.
22 So like I said, I've seen them cocked
23 probably at maximum maybe, you know,
24 it would cock an inch. That's

25 maximum. But it ain't going to come

183

01 off there. I mean, if something come
02 off there, your whole storage unit's
03 pretty well going to buckle. I mean,
04 something gotta really be a hard pull
05 on it for it to ---.

06 Q. So if one of those ---? Yeah.

07 If one of those brackets were to
08 break, it would still be impossible
09 for that dolly ---?

10 A. Well, no, if the bracket would
11 break, we're talking about a pretty
12 hefty piece of metal. And you got
13 four of them. It's going to have to
14 break this one and this one in order
15 for it to cock a substantial amount
16 for that wheel to come off of that.

17 I mean, I'm not going to say it's
18 impossible for it to be, but, you
19 know, you're going to have to be
20 looking at some pretty harsh
21 circumstances, I guess you would say.
22 Something's really going to have to
23 take a toll and hit that. I've never
24 known one of that brackets to even
25 --- I've never known one to fall off

184

01 and I've never known one to break.
02 But now I've not got that --- you
03 know, I ain't no ten-year veteran on
04 this, you know, I've only been doing
05 it for a couple of years.

06 Q. I'm trying to place in my
07 mind, after being there, those
08 brackets that hold down that movable
09 dolly with the three big rollers, is
10 that what the retractable winch hooks
11 to? Is that the part of that takeup
12 unit that the big cable and the winch
13 hooks to?

14 A. I think I don't --- you got a
15 big old dolly. The winch comes down
16 and hooks on to that big dolly. It's
17 got three rollers on it, kind of
18 stairstep, right?

19 Q. Uh-huh (yes). That's the part
20 that the winch cable actually ---

21 A. Pulls, yes.

22 Q. --- pulls?

23 A. Yes. And the rest of the
24 dollies that clamp down in that ---.
25 It's shaped like that. It's got a

185

01 tooth like that and it will fall
02 down. There's a --- I call it a
03 piece of K steel that looks like it's

04 been welded on there.

05 Q. Uh-huh (yes).

06 A. And that tooth, it'll clamp
07 down on that. And then that dolly
08 pulls them --- that triple-roller
09 dolly, it'll pull them all up through
10 and then they drop off as ---

11 Q. As it comes?

12 A. --- it comes.

13 Q. In your mind, the maximum
14 amount of belt that that unit would
15 hold before they rob it? You may
16 have answered that earlier, but just
17 a rough guesstimation of about how
18 much extra belt that that would hold
19 in that unit?

20 A. It was set up to where they
21 could rob 500 foot at a time. But it
22 probably would hold a little bit more
23 than that, because completely empty,
24 your belt still has to go through all
25 them dollies and around that triple

186

01 roller and then go back. So, you
02 know, you got that X amount of space
03 there that you're not going to put
04 excess belt into. And you ain't
05 going to --- you know, that belt

06 right there's going to stay in that
07 storage unit. But we put 21 sections
08 in it. That's supposed to --- that's
09 supposed to be able to put you to rob
10 anywhere between 480, 500 foot, right
11 at 500. That way you don't have this
12 many --- you don't cut your belt up.

13 Q. Is there any chance, when that
14 thing's operating, that --- with an
15 extra amount of belt line to that
16 capacity, could the belts come in
17 contact one with another and create
18 friction or a rubbing in any way, in
19 your mind? Could you see that ever
20 happening, or does ---?

21 Two questions. Does the
22 rollers hold that up to the point
23 that it can't come in contact belt to
24 belt?

25 A. If your rollers, for some

187

01 reason, don't drop off the way
02 they're supposed to go, that would
03 let your belt slope down and rub the
04 next bottom belt. I don't know how
05 it would create friction or anything
06 like that. That's beyond my
07 knowledge.

08 Q. Okay. I'm just trying to play

09 these out in my mind, how with all
10 this loops in that unit, and all this
11 extra belt in there, would there be
12 any contact between belt conveyor to
13 --- rubber to rubber?

14 A. That would be the only time,
15 if your dolly was ---. Like the one
16 time I mentioned, I think it was to
17 you, where the dollies had slid back
18 down, okay, now that's what happened.
19 Where the dollies slid back down and
20 the storage --- and the tripper
21 rollers probably --- I don't know, it
22 was up through there, you know, a
23 decent distance for those rollers to
24 slide back down. But what caused
25 them to slide down, I don't know.

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01 Why they slid down, I don't know.
02 But they slid back down and that let
03 that ---.

04 Now, the belt was dragging
05 each other, you know, each loop was
06 touching one of the other. And then,
07 you know, like I said, they called
08 and we went up there and we put the
09 dolly back, put them in place, made
10 the splice. And to my knowledge,

11 that's the only problem we ever had
12 with that part.

13 Q. Do you remember about when
14 that as?

15 A. It was a couple days after it
16 started up. And I don't remember
17 when it started up. I mean, dates
18 that far ---. I mean, it was
19 probably sometime in ---. It was
20 probably sometime in the last part of
21 September or first part of October,
22 somewhere in there.

23 Q. If that dolly mechanism became
24 lodged, could that cause that winch
25 motor to trip out? What would create

189

01 a winch trip situation in that, would
02 be a better question, in your mind?

03 A. Are you talking about the
04 switch there that's supposed to kick
05 it up ---

06 Q. Yeah.

07 A. --- when it gets full?

08 Q. Yeah. Or what would cause it
09 to knock the breaker on the power
10 center?

11 A. I really don't know about
12 that, I mean, as far as what would
13 cause the breaker to knock, anything

14 like that. I can't think of nothing
15 that the belt would do that would
16 cause your winch motor to kick out,
17 other than ---. I don't even
18 know ---. No. You're saying short
19 of filling up, ---

20 Q. Uh-huh (yes).

21 A. --- let's say it ain't filled
22 up, right?

23 Q. Uh-huh (yes).

24 A. What would cause that winch
25 motor or the drive motors?

190

01 Q. The winch motor.

02 A. The winch motor ---

03 Q. Uh-huh (yes).

04 A. --- that keeps constant
05 pressure on your winch, right? What
06 would cause that to kick out? I
07 really don't have no idea. That
08 would --- you'd probably ask --- some
09 electrical guy might be able to tell
10 you something like that. I mean,
11 sure it may get hot, overheat, but I
12 don't know what would cause it to do
13 that.

14 Q. What about that winch
15 extension thought that we talked

16 about earlier? What would cause a
17 situation along those lines?
18 A. Some rock could have fell and
19 hit that switch and knocked it. You
20 know, some piece of dry rock could
21 have fell and knocked on it, you
22 know, just barely tipped that.
23 That's all --- to my understanding
24 ---. I've never seen one actually
25 kick off, but from what Continental's

191

01 told me and other people I've talked
02 to, it don't take much, it touches
03 that switch and it would kick your
04 breaker or kick it out under.
05 Winch extension fault, I think
06 that's the way it shows up on the
07 computer. That or if for some reason
08 maybe something was on the belt got
09 loaded out from --- got loaded out
10 and it's sticking over too far and it
11 reached and grabbed one of them
12 cables and pulled it in two. Them
13 two things there, that's the only
14 things I would know. And, you know,
15 it's very possible that either one of
16 them could happen, because if ---
17 when that shear cuts out on the head
18 side, if somebody ain't out there,

19 you know, there's a very possibility
20 there could be a piece of metal
21 laying there and it loaded out and
22 loaded on to the belt. And it may
23 stick over or a big piece of flat
24 rock could have jumped out.

25 I don't know how familiar ---.

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01 I'm not real familiar with the
02 longwall, but I do know, you know,
03 that dry rock, it will cut it up
04 real ---. It may not cut it up, it
05 may just --- it will lay on a flat
06 piece of rock, it could be sticking
07 out over the belt and grab ahold of
08 the cable. That's the only two
09 things I would really even come close
10 to even suggesting would happen. I
11 mean, I don't know nothing else.

12 Q. That would automatically trip
13 a breaker or shut the belt down in
14 some way, though, if that was
15 contacted in any way?

16 A. Yeah, from what I can
17 understand, the way it works, it
18 shuts your belt down. And it's got
19 --- that breaker will knock. And I'm
20 not positive on that.

21 Q. Okay.

22 A. But the way I understand it,
23 that breaker will knock when that
24 winch --- when that winch switch gets
25 hit.

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01 Q. Okay. Why is there a cooling
02 motor on the winch motor? Is there
03 some type of a cooling apparatus on
04 that winch motor? Do you know
05 anything about that, why they would
06 have that configured in that manner?

07 A. It would keep that --- see
08 where that winch keeps constant
09 tension all the time. If you didn't
10 have some way or another to cool that
11 motor, then it's going to get hot and
12 burn up on you, that's the only thing
13 I know.

14 Q. So that motor has to run quite
15 frequently to keep the tension on the
16 belt line?

17 A. It keeps tension on that all
18 the time. That motor that runs the
19 winch, it keeps tension on it all the
20 time, because when your longwall
21 pushes back, like I said, it swipes
22 three and a half feet, if --- I'm
23 pretty sure. So that would give you

24 twice your belt, when that tailpiece
25 pushed back. Now, if that winch

194

01 ain't constantly pulling, when that
02 tailpiece pushed back, just like it
03 hit down, and it would go on and
04 slip, right?

05 Q. Yeah.

06 A. But where it keeps all --- it
07 keeps tension and it constantly ---.
08 If you ever watched one, you can see
09 it hit. You can tell when they push
10 out on the head because that dolly
11 will move forward, you know, so you
12 got constant tension on your winch.
13 And that roller --- that motor has to
14 have run --- you know, you even hear
15 it running all the time, where it's
16 got that pull against it. Then you'd
17 have that fan on top to keep that
18 motor cool.

19 Q. Okay. I understand. On the
20 day of the accident, the Continental
21 conveyor representative was
22 underground. Have you ever had a
23 chance to talk to him about the way
24 the Nine headgate is configured,
25 about the angle and the slope or

01 degree of how that head drive unit's
02 installed in there? Did they ever
03 make any recommendations that maybe
04 we needed to modify that in some way?
05 A. I asked them about it, where
06 we got that grade there. We had
07 talked to Mike and Lance both. And
08 they both said that there's really
09 nothing --- there's nothing wrong
10 with it, as long as you didn't get it
11 too steep. Then if you --- I don't
12 know if you paid attention when you
13 was up there. Even if you could, it
14 fell in on it and whatever. You
15 know, we didn't take the exact
16 contour of the bottom, you know. He
17 went and started up here and it's
18 real high back here in the back, so
19 you didn't go straight down with it.
20 You kind if just kept it easy ---
21 what's the word I'm looking for?
22 Even slope, I guess, is what you'd
23 say. So he says, as long as you keep
24 it like that and you don't --- up
25 here on your drive motor, as long as

01 you don't get too much of a steep ---
02 your oil won't run out of it. The

03 only thing that would cause you ---
04 he said, where all your oil and stuff
05 would run downhill away from your
06 gears and it could get low. In order
07 to get enough oil in it, you know,
08 you'd have to overfill it and that
09 would be bad on you and stuff like
10 that. But as far as the storage
11 unit, he said there's no problem to
12 that, because I was concerned about
13 the grade coming off that hill, you
14 know, what it would do.

15 And I talked to Mike and Lance
16 both, and they both said there's
17 really nothing that would cause it as
18 long as we locked them rollers down.
19 That's how I knowed about to lock ---
20 to get the bolts and lock the rollers
21 down.

22 Q. We talked earlier --- just a
23 couple more questions on that dolly,
24 then we'll get wrapped up here. You
25 mentioned something about the number

197

01 eight, like eight different
02 components or eight dollies in that.
03 If there were any less than those
04 eight individual units you were

05 talking about, would that do
06 something for the operation of that
07 system?

08 A. I wouldn't think so. The
09 longer you make your storage unit,
10 like I told you, 18 to 21, ---

11 Q. Uh-huh (yes).

12 A. --- okay, say for some reason
13 you wanted to go 25 or 26, then you
14 would have to add extra dollies
15 because what that would do, the eight
16 dollies that you got, you would be
17 spreading them out too far. That
18 would let that belt rub, droop down.

19 If you extended your storage
20 unit, you would have to add more
21 dollies. If you shrunk your storage
22 unit, you wouldn't necessarily have
23 to drop off no dollies, you could use
24 the same amount, they would just be
25 closer.

198

01 Q. Okay. I can understand that.
02 Who manufacturers your mother drive
03 belt units? Who's actually the
04 manufacturer of those units?

05 A. It's Continental Heads.

06 Q. Continental, everything?

07 A. Yeah, everything is

08 Continental, every --- takeup,
09 storage unit, belt drives, remote,
10 structure, it's all Continental.
11 Q. Winch? Everything's
12 Continental?
13 A. Winch. Everything's
14 Continental.
15 Q. Would you think it would be
16 safe to operate that storage unit and
17 that mother drive belt if the dolly
18 brackets were missing or broken in
19 any way?
20 A. I wouldn't want to do it. It
21 would cause your belt to run off. I
22 mean, plus it would cause ---
23 probably --- if them brackets broke
24 off, then it would ---. Like I said,
25 you know, with the brackets broke

199

01 off, it's a possibility it would
02 wreck and then it would tear your
03 dolly up, plus it would do damage to
04 the belt. Plus numerous things
05 probably could happen. I mean, you
06 know, it's ---
07 Q. Do you know who may have
08 examined that longwall belt on the
09 dayshift, done the pre-shift or

10 on-shift examinations on the day of
11 the accident? Would you have any
12 idea who would be responsible for the
13 exams in that area?

14 A. Whoever's down there on the
15 belt. I don't remember who was on
16 the mother drive belt. That would be
17 his belt ---. The belt examiner,
18 whoever was on the mother drive that
19 day, that would be his job, as far as
20 I know.

21 Q. Okay. Doesn't a foreman or
22 management person come and do those
23 examinations? It's just specifically
24 a belt examiner in that area?

25 A. I'm not sure. I mean, you

200

01 know, I'm not with that --- in that
02 department. I don't do no
03 examination of the belts and I don't
04 know how they really do it. To my
05 knowledge, the belt examiner is the
06 one that does it. You know, if they
07 have one of the foremans come up
08 there and check it, I don't know.

09 Q. Okay. Who is your mine
10 examiner, the one that walks your
11 airways and does all that?

12 A. Big Johnny Mack. Johnny

13 McNeely.

14 Q. John McNeely?

15 A. Yeah.

16 Q. Okay. Do you see him quite
17 often up in your neck of the woods
18 when you're working?

19 A. Yeah, you see him up there
20 usually twice a week, because of the
21 way he has to do his airways, it
22 takes ---. I don't know exact
23 routes, but he'll go by in and you'll
24 ask him, you know, where you going?
25 He'll say, down such and such an

201

01 area. And maybe the later part of
02 the week you see him again and he's
03 going in some other airway. He's got
04 it all broke down. He's got him a
05 map there that has certain colors on
06 his travelway. And at the bottom,
07 I've noticed that he'll have Monday
08 for red, Tuesday for maybe black,
09 Wednesday for green. And then you'll
10 look on that map and he's got an area
11 that he covers each day like that.

12 Q. It is a job, isn't it?

13 A. Yeah. He seems like he does a
14 lot of walking.

15 Q. When production sections are
16 closed or shut down to shovel belts,
17 to your knowledge, is it because of
18 an MSHA inspector or West Virginia
19 state inspector has issued a citation
20 or some type of paperwork to cause
21 them to shovel their belts or do the
22 maintenance?

23 A. No, not necessarily. There
24 was one example. The new
25 vice-president came in there and he

202

01 didn't like the way the belts was and
02 he shut the section down and told
03 them to go ahead and start cleaning
04 them, but they wouldn't run coal
05 until the belt lines got shoveled or
06 cleaned.

07 Q. Okay. Who was that you was
08 talking about that done that?

09 A. That was Gary Goff.

10 Q. Gary Goff. So how long has
11 Gary been there, do you know?

12 A. I don't know. He come in
13 September, I guess, probably. He
14 come somewhere --- August, September.
15 Probably somewhere around August,
16 September. It was before the
17 longwall started up, before we even

18 got that belt drive even put in,
19 because we was still working on that
20 head when he shut it --- when he
21 first got there. So I'd say it was
22 probably somewhere in August. I
23 don't really know.

24 Q. A couple more questions and
25 then I'll turn it over to Bill. If

203

01 you happen to come upon a dolly there
02 and you saw the brackets on the
03 movable dollies were broken, what
04 would you do, being a foreman?

05 A. Shut your belt down first and
06 get your dolly back over. Then you'd
07 have to either --- what you would
08 have to do, because it's not
09 something that you keep in stock,
10 because it's not something I've ever
11 known happen. What you would
12 probably do is go get you a piece of
13 metal and make you a bracket and put
14 it back up before you start your belt
15 back up. That's what I would do.

16 Q. One more question. When you
17 were talking with Shiner and Terry
18 about those specific stoppings that
19 were knocked, and I think for Bill

20 you marked it with a red X, was Terry
21 Shadd with you during that
22 conversation? Was he present at that
23 time when you was conducting that
24 conversation, about reconstruction of
25 that stopping?

204

01 A. Yeah, Terry's the one that
02 brought it up, when we walked by.
03 He's the one that told us ---. When
04 we come out, he's standing there and
05 he said, you're going to have to
06 build with that stopping back. I
07 said, which stopping? He said, right
08 there inby the mother drive. I said,
09 okay. I said, today's my last day.
10 Shiner's standing there. I said, you
11 better talk to Shiner. He said,
12 Shiner, that stopping's going to have
13 to be built back. And I walked away.
14 I don't know to what extent that
15 conversation --- I don't know if he
16 said, well, you know, okay, we'll
17 build back as soon as we do this or
18 we'll be back first thing in the
19 morning or do you want me to go in
20 right now and build it back. I don't
21 know. I don't know what was said.
22 Q. Okay. Did you hear any

23 conversations about the stopping that
24 had been taken out at the power
25 centers immediately to the south of

205

01 those power boxes?

02 A. No.

03 MR. BURKE:

04 Bill.

05 MR. TUCKER:

06 I've got a couple, Don.

07 BY MR. TUCKER:

08 Q. Does the storage unit get
09 rebuilt after each longwall is set
10 up?

11 A. Rebuilt as in ---? See,
12 they're ---.

13 Q. Somebody got through ---.

14 A. Sometimes we set them up,
15 sometimes we don't. If there's
16 something on there that I see that
17 needs to be fixed ---. Like we had
18 --- say the Nine headgate, that
19 storage unit come from Seven
20 headgate, because we got two and you
21 flip-flop them. We pulled out Seven.
22 So on Seven headgate, if we had a
23 bearing go down on any of that stuff,
24 then we took them off and sent it off

25 and had all the bearings either

206

01 repacked or new bearings put on.

02 They would check that we sent them

03 to. We'd check the bearings and see

04 if any of them needed replaced or

05 repacked. Now, to what extent they

06 done, I don't know, you know, that's

07 between upper management. They

08 always give us a free hand on sending

09 off whatever we felt needed to be

10 sent up.

11 As far as the dollies go, if

12 they looked like if they're beyond

13 the point where we can't fix them,

14 you know, it would be something

15 simple like straightening a piece of

16 metal out or something simple, then

17 we'd send them off. The sections, if

18 they get bent or anything --- you

19 know, it's more of a look and see.

20 If you see any blemish in it, any

21 reason that you need to send it off,

22 then we send them off. The one I

23 took of Eight headgate, I sent all

24 that off.

25 Q. Would trip levers being

207

01 damaged or broken, would that be

02 something that you would fix or would
03 that trigger anything in your mind to
04 have it sent off?

05 A. The trip levers, usually I
06 never known nothing wrong with the
07 trip levers. They'll get muddy and
08 then in between the time you turn
09 them --- they'd finish running and
10 the time you go up there and take it
11 out, that mud and stuff will cake on,
12 well, you dig all that out and then
13 you pull oil overtop of them and get
14 them working good. As far as your
15 drop bracket that sticks up, that
16 drops them off, we have ordered ---
17 we ordered --- if there's any damage,
18 we will order new ones to replace
19 them. Nine headgate, we put mostly
20 new brackets on that, drop brackets
21 that sticks down in there, ---

22 Q. Right.

23 A. --- with that T on the top of
24 it, on an angle. Well, we ordered
25 --- we had all new brackets for that.

208

01 And for Ten headgate, I don't know if
02 they were sending them up or not, but
03 I know they was --- the drop brackets

04 was ordered for that one, new ones,
05 just ordered for them.

06 Q. Is that something that usually
07 kind of gets --- throughout the
08 process of the setup, is that
09 something that usually gets ---? Do
10 you replace that pretty commonly
11 or ---?

12 A. I've probably replaced them on
13 two of the --- you know, you don't
14 replace all of them, because all of
15 them won't be damaged or whatever.
16 And they may get bent somewhere
17 sometime through the running of that
18 wall, of that panel. They'll get ---
19 and, you know, I won't know about it
20 until we go to tear them out and if
21 they're reusable, we'll use them. If
22 they're not, we'll order new ones.

23 Q. Okay. Are you aware of any
24 devices being bridged out to get the
25 longwall section back in production?

209

01 A. No.

02 Q. I have one more question for
03 you, Don. Is there anything that you
04 can think of, or any recommendations
05 that you might have that would
06 prevent a similar occurrence like

07 this from happening?

08 A. You know what I think would be
09 good, if on your self-rescuers, if
10 you could have, I guess, a hands-
11 on ---. You know, I mean, it ain't
12 going to give you the same ideal, but
13 we took our annual retraining class.
14 Now last year they brought in a
15 trailer, filled it full of smoke and
16 you walked through it. You know,
17 that's kind of weird not knowing
18 where you're going to go, right?
19 Okay.

20 This past year, they took us
21 --- normally, you know, you go
22 through your rescuer and you tell
23 them how the proper way is to put it
24 on. And, you know, you put it on all
25 except putting the piece in your

210

01 mouth, right? You're sitting in a
02 room just like we are and the
03 instructor he said, show me how you
04 don your rescuer. Okay. You're in a
05 lighted area, no pressure. You go
06 through the --- okay, you know, you
07 take the cap off, you put the --- put
08 your nose clip on here and you put

09 your glasses on your arm, so you ---
10 you know, go through the basics.

11 This past year they took us in
12 a bathroom, no windows in it and
13 turned the lights out, shut the door,
14 give you two minutes to go in there.
15 Now, that's a big difference. And
16 I'll tell you what, it scared me,
17 because some of them guys didn't make
18 it out of there in two minutes. They
19 couldn't get it on. But, you know,
20 they had to keep doing it until it
21 did.

22 Q. Right.

23 A. I think it would be good if
24 there's some way or another that you
25 could have a mine replicate to where

211

01 you would go in, fill it full of
02 smoke and you would actually have to
03 don your rescuer on, to get a feel of
04 what it would be like to come out, to
05 actually put it on and come out. I
06 mean, that's just one of the things,
07 you know.

08 Q. Right. And that's a good
09 idea. It's different when you're in
10 a pressure, ---

11 A. Oh, yeah, ---

12 Q. --- a pressure situation.

13 A. --- because, you know, like

14 when we was in that bathroom there.

15 And it is a little bathroom. It's

16 probably what, a five-by-five room.

17 You know how a small bathroom is in

18 those little office places. And a

19 guy out there beating on a door or

20 hollering at you. And you know

21 everybody's out there. And, you

22 know, if you don't get it on there,

23 it's a --- I don't know, a male

24 thing, I guess. You don't want

25 somebody else to get it on and you

212

01 don't get it on in two minutes, you

02 know. That plus it's a scary

03 thought. I had never thought about

04 it but it's a scary thought to think,

05 there you are in the dark, you

06 couldn't ---.

07 I mean, it was so dark in

08 there you couldn't even see your

09 hands. And you're sitting there and

10 you're feeling with that thing.

11 You're trying to put that on there.

12 Luckily, I got out in two minutes

13 with mine on, but then there was some

14 people that wasn't. But still even
15 though I did, it still threw a great
16 fear in you. I think that would help
17 out a lot, if you had a hands-on
18 replicate mine where you could
19 actually go through that.

20 Q. All right. Anything else you
21 can think of?

22 A. Something kind of like --- you
23 know, if you had a --- like when you
24 left the section there and you know
25 there's a mine ---. If everybody

213

01 would be able to hook to one rope
02 some way or another, to where you
03 wouldn't get away from your crew.
04 You know, that might --- I mean, you
05 say that and then you think, well,
06 one way you look at it, it would keep
07 everybody together. If one got out,
08 everybody got out. But at another
09 way you look at it, if one faltered,
10 that might cause the whole crew to
11 not make it out. So that right
12 there, that's kind of like iffy
13 either way.

14 Q. All right. I guess --- I'll
15 just ask you ---. I was just sitting
16 here thinking, you know, what you're

17 mentioning are real good ideas and
18 things that we've all talked about
19 probably at one time or another. But
20 hypothetically, say, if this accident
21 never occurred and somebody were to
22 ask you if you had a fire at the
23 mother drive and you had a crew that
24 was inby on Ten headgate or Two
25 section, up in that area. And you

214

01 had smoke coming your way, would you
02 --- how would that have registered
03 with you? Would you have felt like
04 that you should have been able to get
05 out of the mines, if you had a fire
06 at the mother drive without a
07 problem?

08 A. You would think so. Yeah.
09 Until this, you know, you hear
10 somebody say, we've got a fire at the
11 belt head, we automatically think it
12 slipped the slip. The tailpiece
13 gobbed out and the belt kept going
14 and burnt the belt tail, and a little
15 bit of smoke. I mean, that's to the
16 extent of a mine fire --- I mean a
17 belt fire that I've ever knowed of.
18 And really you couldn't call that a

19 belt fire, it's just a lot of smoke,
20 you know.

21 MR. TUCKER:

22 Right. I appreciate,
23 Don, your comments and your
24 patience today.

25 MR. BURKE:

215

01 A couple --- three
02 follow-ups and we'll be done.

03 BY MR. BURKE:

04 Q. What do you classify as a mine
05 fire, in your opinion?

06 A. When there's a full-blown
07 blaze. I mean, you got a blaze
08 actually --- a lot of smoke, you
09 know, just a little bit ---. If you
10 got smoke, myself, I wouldn't
11 consider it as a fire, but if you
12 seen a blaze, then it would be a
13 fire. That could erupt into
14 anything, smoke, you know. Yeah, I
15 wouldn't classify smoke as a fire, I
16 mean myself.

17 Q. What would you classify as a
18 reportable mine fire?

19 A. If you had a fire that had a
20 blaze on it, and you couldn't put it
21 out with simply throwing a bag of

22 rock dust on it or one fire
23 extinguisher, that would be a ---.
24 Q. Looking back at your comments
25 that you gave Bill about what you'd

216

01 do to prevent an accident, in your
02 opinion, what would you do to
03 actually prevent the accident, to
04 where you wouldn't have to don a
05 rescuer? What could have been done,
06 in your opinion?

07 A. If everything was air tapped
08 in that area, all along the stopping
09 lines and your doors and --- you
10 know ---.

11 Q. Do you think --- you
12 classified smoke as not being a fire.
13 Do you think that smoke could still
14 hurt people if people were working
15 inby that location?

16 A. Yeah. If you have an
17 excessive amount of it.

18 Q. One last question. Do you
19 know who's responsible for doing the
20 electrical checks or maintenance on
21 the longwall mother belt? Who would
22 that person be?

23 A. I would say Jesse. I mean,

24 he's the --- what would you call it,
25 six-foot belt electrician, Jess Jude.

217

01 MR. BURKE:

02 Could I get you to come
03 up here and sign my map for me
04 up here. Put today's date on
05 it.

06 WITNESS COMPLIES

07 MR. BURKE:

08 Put today's date
09 wherever you want to.

10 A. Anywhere?

11 MR. BURKE:

12 Yeah. That would be
13 fine.

14 BY MR. BURKE:

15 Q. Don, did you have any other
16 comments or anything that you would
17 like to add to your statement?

18 A. No.

19 Q. One final question just came
20 up. Who is responsible for the
21 mechanical maintenance of the belt
22 there at the mother drive? Not the
23 electrical aspect but the mechanical
24 aspects of it.

25 A. I don't really know.

218

01 Q. Did you have anything else
02 that you'd like to make mention of?

03 A. No.

04 MR. BURKE:

05 Mr. Hardy, do you have
06 any clarifying ---?

07 ATTORNEY HARDY:

08 Just a couple of
09 follow-up questions.

10 MR. BURKE:

11 Okay.

12 BY ATTORNEY HARDY:

13 Q. The memo that you were shown
14 there, the October 2005 memo ---

15 A. Uh-huh (yes)

16 Q. --- that Mr. Burke showed you,
17 had you seen that prior to today?

18 A. No.

19 Q. Now, you mentioned that you
20 heard some sort of conversation about
21 a fax or something to that effect.

22 Did that affect, in any way, the way
23 you conducted your job duties in
24 October or November of 2005?

25 A. No.

219

01 ATTORNEY HARDY:

02 That's all the

03 questions I have.

04 MR. BURKE:

05 Don, it's been a long
06 day. On behalf of MSHA, I
07 thank you personally for
08 appearing here today and
09 answering all these questions
10 that we've thrown at your, for
11 sharing your information about
12 the mine and the accident we
13 had on January 19th. Your
14 cooperation is very important
15 to us as we work to determine
16 the cause of this accident.

17 If you wish, you may
18 now go back over anything that
19 you told us, anything that you
20 might want to reflect on, any
21 additional comments, any
22 clarifications. We'll give
23 you an opportunity to do that.
24 Feel free to say anything
25 that's on your mind. I'll

220

01 give you that opportunity.

02 A. No, I have nothing.

03 MR. BURKE:

04 We ask that you not
05 discuss your interview today

06 with any person who may have
07 already been interviewed, or
08 may be asked to give a
09 statement in the future. This
10 will ensure that we obtain
11 everyone's independent memory
12 of the events surrounding the
13 accident.

14 After questioning other
15 witnesses and obtaining
16 additional information, we may
17 be asking you back for further
18 questions.

19 If at some point later
20 you have additional
21 information regarding the
22 accident that you would like
23 to provide to us, please
24 contact --- and I have some
25 business cards here, Mr. Kenny

221

01 Murray. He's our chief
02 accident investigator, and his
03 staff assistant, Mr. Arlie
04 Anthony Webb. Anything that
05 may pop up in your mind that
06 you might want to talk about,
07 you give one of those

08 gentlemen a call.

09 The Mine Act provides
10 certain protection for
11 individuals who participate in
12 accident investigations. If
13 at any time, you believe that
14 you've been treated unfairly
15 because of your cooperation in
16 this investigation, please
17 immediately contact one of
18 those individuals. And we'll
19 offer you help. And, Bill, I
20 think you have a closing
21 statement as well?

22 MR. TUCKER:

23 Yes. State law offers
24 you protection also against
25 discrimination against

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01 reporting any type of safety
02 hazard or violation. And I'd
03 like to express our gratitude
04 for you coming in today and
05 your patience with us. And
06 here's one of my cards if you
07 would ever need to contact me
08 about anything. And here is
09 C.A. Phillips' card. He's our
10 deputy director out of our

11 Charleston office. Again,
12 thank you.

13 MR. BURKE:

14 Don, we appreciate you,
15 buddy. It's been a long day.

16 * * * * *

17 EXAMINATION CONCLUDED AT 12:52 P.M.

18 * * * * *

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