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Transcript of the Testimony of Michael Bailey

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STATEMENT UNDER OATH

OF

MICHAEL BAILEY

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Thursday, August 19, 2010, beginning at 10:30 a.m.

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I N D E X

1		
2		
3	OPENING STATEMENT	
4	By Attorney Babington	7
5	DISCUSSION AMONG PARTIES	8 - 10
6	CONTINUED OPENING STATEMENT	
7	By Attorney Babington	10 - 15
8	STATEMENT	
9	By Mr. Farley	15 - 16
10	WITNESS: MICHAEL BAILEY	
11	EXAMINATION	
12	By Mr. Farley	16 - 38
13	EXAMINATION	
14	By Mr. Sherer	38 - 52
15	EXAMINATION	
16	By Ms. Monforton	52 - 55
17	CLOSING STATEMENT	
18	By Attorney Babington	55 - 56
19	CERTIFICATE	57
20		
21		
22		
23		
24		
25		

1
2
3
4
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6
7
8
9
10
11
12
13
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21
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EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

One

Subpoena

9*

Two

Return receipt

10*

* Exhibit not attached

P R O C E E D I N G S

ATTORNEY BABINGTON:

My name is Matt Babington. Today is August 19th, 2010. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is Erik Sherer, an accident investigator with the Mine Safety and Health Administration, MSHA, an agency of the U.S. Department of Labor. Also present are several people from the State of West Virginia. I ask that they state their appearances for the record.

MR. FARLEY:

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

MR. O'BRIEN:

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

ATTORNEY KOERBER:

Barry Koerber, Assistant Attorney General, representing the West Virginia Office of Miners' Health, Safety and Training.

MS. MONFORTON:

And I'm Celeste Monforton, with the Governor's independent team.

1 MICHAEL BAILEY, HAVING FIRST BEEN DULY SWORN,
2 TESTIFIED AS FOLLOWS:

3 -----

4 ATTORNEY KOERBER:

5 Sir, would you please state your full
6 name for the record and spell your last name?

7 A. It's Michael Siebert Bailey, B-A-I-L-E-Y.

8 ATTORNEY KOERBER:

9 And your address and telephone number?

10 A. [REDACTED]

11 Number is [REDACTED]

12 ATTORNEY KOERBER:

13 Do you have your own personal attorney or
14 personal representative?

15 A. No.

16 ATTORNEY KOERBER:

17 And we do have an attorney in the room.

18 I would ask that he identify himself and state his
19 relationship and firm name for the record.

20 ATTORNEY SILKWOOD:

21 Eric Silkwood, with Allen, Guthrie &
22 Thomas here on behalf of Performance Coal Company.

23 ATTORNEY KOERBER:

24 Just for the record, Mr. Bailey, would
25 you please state your job title as of April 5th, 2010

1 at the Upper Big Branch Mine?

2 A. Well, I wasn't working at the Upper Big Branch
3 Mine April the 5th.

4 ATTORNEY KOERBER:

5 Okay. My apology.

6 A. I was --- December the 25th was the last day I
7 worked.

8 ATTORNEY KOERBER:

9 The last day you worked at Upper Big
10 Branch Mine prior to the explosion, what was your job
11 title?

12 A. Belt man/fire boss.

13 ATTORNEY KOERBER:

14 Sir, are you appearing here today
15 pursuant to a subpoena?

16 A. Yes.

17 ATTORNEY KOERBER:

18 This is a copy of that subpoena, sir,
19 that I'd like to make as Exhibit One just to make the
20 record clear. That's a copy of the subpoena for today
21 at 10:30.

22 (M. Bailey Exhibit One marked for
23 identification.)

24 ATTORNEY BABINGTON:

25 And this is a copy of the green card with

1 your signature on it, signed for on August the 12th,
2 that I'd like to make Exhibit Two.

3 (M. Bailey Exhibit Two marked for
4 identification.)

5 ATTORNEY KOERBER:

6 Sir, prior to the interview, you
7 completed the proper paperwork for payment of the
8 witness fee and mileage; is that correct?

9 A. Yes.

10 ATTORNEY KOERBER:

11 Erik, I'll pass it over to you --- or
12 Matt, excuse me. Excuse me, Matt, back to you.

13 ATTORNEY BABINGTON:

14 Thank you, Barry. There may also be
15 several members of the investigation team that join us
16 in the room later in the interview. Erik Sherer will
17 be conducting the initial questioning.

18 MR. SHERER:

19 Actually, Terry will.

20 ATTORNEY BABINGTON:

21 Sorry. Terry Farley will be conducting
22 the initial questioning. All members of the Mine
23 Safety and Health Accident Investigation Team and all
24 members of the State of West Virginia Accident
25 Investigation Team participating in the investigation

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

15 Government investigators and specialists

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

24 You may have your personal attorney

25 present during the taking of this statement or another

1 personal representative, if MSHA has permitted it, and
2 you may consult with your attorney or representative
3 at any time. Since this is not an adversarial
4 proceeding, formal Cross Examination will not be
5 permitted. However, your personal representative may
6 ask clarifying questions as appropriate.

7 Just as a clarifying question on the
8 record, Mr. Silkwood, you said you're here on behalf
9 of Performance Coal Company?

10 ATTORNEY SILKWOOD:

11 Correct.

12 ATTORNEY BABINGTON:

13 And do you have a basis or justification
14 for the company being present during this particular
15 interview?

16 ATTORNEY SILKWOOD:

17 My understanding was the agreement was as
18 a belt man/fire boss, which is an agent under the Mine
19 Act, that you guys were permitting Performance to sit
20 in, unless the witness objected. I'm not his
21 representative personally.

22 ATTORNEY BABINGTON:

23 And is the witness objecting to Mr.
24 Silkwood's present?

25 A. No.

1 ATTORNEY BABINGTON:

2 Okay. Your identity and the content of
3 this conversation will be made public at the
4 conclusion of the interview process and may be
5 included in the public report of the accident, unless
6 you request that your identity remain confidential or
7 your information would otherwise jeopardize a
8 potential criminal investigation.

9 If you request us to keep your identity
10 confidential, we will do so to the extent permitted by
11 law. That means that if a judge orders us to reveal
12 your name or if another law requires us to reveal your
13 name or if we need to reveal your name for other law
14 enforcement purposes, we may do so. Also, there may
15 be a need to use the information you provide to us or
16 other information we may ask you to provide in the
17 future in other investigations into and hearings about
18 the explosion. Do you understand?

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

20 ATTORNEY BABINGTON:

21 Do you have any questions?

22 A. No, sir.

23 ATTORNEY BABINGTON:

24 Thank you. After the investigation is
25 complete, MSHA will issue a public report detailing

1 the nature and causes of the fatalities in the hope
2 that greater awareness about the causes of accidents
3 can reduce their occurrence in the future.

4 Information obtained through witness interviews is
5 frequently included in these reports. Since we will
6 be interviewing other individuals, we request that you
7 not discuss your testimony with any person aside from
8 a personal representative or counsel.

9 A court reporter will record your
10 interview. Please speak loudly and clearly. If you
11 do not understand a question asked, please ask the
12 interviewer to rephrase it. Please answer each
13 question as fully as you can, including any
14 information you've learned from someone else. I'd
15 like to thank you in advance for your appearance here.
16 We appreciate your assistance in this investigation.

17 A. I hope I can help.

18 ATTORNEY BABINGTON:

19 I'm sure you will. Your cooperation is
20 critical in making the nation's mines safer. After we
21 finished asking questions, you'll have an opportunity
22 to make a statement and provide us with any other
23 information that you believe to be important. If at
24 any time after the interview you recall any additional
25 information that you believe might be useful, please

1 contact any of us or Norman Page at the contact
2 information provided to you.
3 Finally, any statements given by miner
4 witnesses to MSHA are considered to be an exercise of
5 statutory rights and protected activity under Section
6 105(c) of the Mine Act. If you believe any discharge,
7 discrimination or other adverse action is taken
8 against you as a result of your cooperation with this
9 investigation, you're encouraged to immediately
10 contact MSHA and file a complaint under Section 105(c)
11 of the Act. Terry?

12 MR. FARLEY:

13 Mr. Bailey, on behalf of the Office of
14 Miners' Health, Safety and Training, I want to inform
15 you that the West Virginia Code, Chapter 22A, Article
16 One, Section 22, also offers protection to miners who
17 may suffer discrimination for participating in these
18 type interviews. I'm going to pass along some
19 information here. That information includes the
20 address for the West Virginia Board of Appeals. They
21 hear complaints from miners regarding discrimination
22 and other matters. Should you experience any problems
23 as a result of participating in this interview, feel
24 free to contact the Board and file a claim if you
25 wish. I would caution you that if you need to do so,

1 you need to do it within 30 days of the event.

2 A. I don't anticipate any problems.

3 MR. FARLEY:

4 Good.

5 EXAMINATION

6 BY MR. FARLEY:

7 Q. Let me begin by just saying we appreciate you
8 coming, and I'm sure you can appreciate the importance
9 of what we're trying to do here.

10 A. Yes, sir.

11 Q. Have you been interviewed by any persons or
12 organizations about the Upper Big Branch accident that
13 happened on April 5th?

14 A. Yes, sir. The company lawyers. I cannot remember
15 their names or anything like that.

16 Q. When did that interview take place?

17 A. Oh, Lord. Sometime in --- let's see. I went back
18 to work I think the 14th of May. Sometime the latter
19 part of May or early June.

20 Q. Okay. All right. Now, a little background
21 information if you don't mind. How long have you been
22 a coal miner?

23 A. I'm going on 39 years.

24 Q. You must have started early.

25 A. I did.

1 Q. What coal miner certifications do you have?

2 A. I have a mine foreman's certificate. I have a
3 shot firer's card and a miner certificate, EMT
4 certificate.

5 Q. How long have you had your mien foreman
6 certification?

7 A. Oh, Lord. Probably since --- well, I think I had
8 the card changed over in 1980.

9 Q. Okay. When did you start working for Massey?

10 A. This is my second trip working for Massey. I
11 started the first time in --- I think it was '93.

12 Q. Okay.

13 A. And I worked at --- Outpost East and Outpost West
14 up what is now Marfork. But then it wasn't Marfork.
15 And I went up to Blue Pennant. And then I went to
16 Upper Big Branch. About '94 probably I went to Upper
17 Big Branch.

18 Q. Okay.

19 A. I set the first longwall up before they ever had
20 it.

21 Q. When did the Upper Big Branch Mine actually open
22 up?

23 A. I'm not sure, but I'm thinking '92.

24 Q. Okay. So you helped set up the first longwall?

25 A. I helped set up the first longwall for them.

1 Q. Okay. Now, where are you working at the moment?

2 A. Slip Ridge.

3 Q. Now, if I understand correctly, you were injured
4 just recently; is that correct?

5 A. Well, I was injured December the 25th when I was
6 working at Upper Big Branch.

7 Q. But I think you had a problem --- had an incident
8 just here ---

9 A. Saturday.

10 Q. --- this past Saturday.

11 A. Yeah.

12 Q. Give me a brief description of what happened to
13 you, please.

14 A. Well, I had [REDACTED] and they sent me back
15 from [REDACTED] the doctor did. And I told him my
16 [REDACTED] And he --- all they say is it will
17 get better. Well, Saturday I was rock dusting along
18 the beltline, prettying it up for you all when you
19 come. It looked good, but you got to add a little
20 icing to the cake, you might say, and [REDACTED]

21 [REDACTED] . I went through a
22 flow-through, kicking and a fighting because I knew I
23 couldn't get ---. When I came out of the flow-
24 through, it drug me under a crossover, which is a
25 steel set of steps built across the belt. And when I

1 got out from under the crossover, I knew I only had
2 --- and surprisingly, my mind stayed clear the whole
3 time. I knew I only had two or three seconds to get
4 off that belt before it went up, over the track, and
5 the top was too low for me to fit. So I started
6 kicking and trying to roll, and I rolled off the belt,
7 fell six or seven feet and hit flat on my back.

8 Q. Was anybody around at the time?

9 A. Nobody. I had a ride about 30 feet away.

10 Q. You made it to the ride?

11 A. I made it to the ride. And I called Joe and told
12 him, get me an ambulance. I was going to try to get
13 myself out, but I couldn't, couldn't get myself out,
14 so I hollered at Mark Byrd, and he came up and got me
15 out.

16 Q. I take it you must have gone to the hospital then?

17 A. Yes, sir, Raleigh General.

18 Q. Did you spend a day or two there or ---?

19 A. Night. I got out --- they let me go six o'clock
20 the next morning. They said I had no broken bones.
21 They couldn't believe it. I couldn't either the way I
22 hurt. But no broken bones. I'm beat and bruised, but
23 no broken bones.

24 Q. Okay. Sounds like you're fortunate you didn't get
25 killed?

1 A. It ain't my time.

2 Q. All right. Now, if you --- I think you also said
3 you were injured sometime in December at UBB; is that
4 right?

5 A. Christmas day, December 25th, my [REDACTED]

7 Q. Can you run through that for me?

8 A. Well, I hurt it on the 7th of December. Little
9 pain, stepped in a hole, nothing major. I went ahead
10 and worked. And I told Gary May two or three days
11 later I was going to have to check in and get my
12 doctor [REDACTED]. Well, I couldn't get a
13 doctor. You can't get an [REDACTED] around
14 here to look at you. But I kept on working. I went
15 to work on the 25th of December, rode it --- was going
16 in the mines, fire bossing my way in the mines, and
17 came to a power box that sits beside the track, a
18 little bit of water on the track. And we keep a
19 little pump over behind the power box because you've
20 got to pump it once a week. I walked around that
21 power box to put the pump in, and I thought [REDACTED]
22 [REDACTED]. And then that was another
23 50-foot hobble, crawl, whatever, to get back to my
24 ride again. I got myself out and then Glenn Ullman
25 and Greg Cole, they got my clothes off of me and I got

1 dressed. I drove myself home.

2 Q. Did they offer you an ambulance?

3 A. Yeah, they did offer me an ambulance. And then I
4 went --- well, after I got home I got my stepson to
5 drive me to the hospital that night.

6 Q. Which [REDACTED]

7 A. The left one.

8 Q. So I [REDACTED]

9 A. Yeah, automatic.

10 Q. Fortunately.

11 A. Fortunately. If it hadn't been an automatic, I'd
12 have rode an ambulance.

13 Q. Okay. Now, if I understood our conversation
14 correctly, you have been off from December 25th of
15 2009 until when?

16 A. I believe it was the 14th of May.

17 Q. Is that when you reported to work at Slip Ridge?

18 A. Yeah. Well, no, I went to --- had a company ---
19 back-to-work conference. I think I went to work for
20 Slip ridge the 16th.

21 Q. Okay. Now, what's a back-to-work conference?

22 A. What did you do wrong? You know, it's just a
23 safety thing. You know, what can you do to keep from
24 something like this happening again, which I don't
25 know what I actually could do. When a [REDACTED], it

1 goes. What could have happened --- you know, if I
2 could have got to see a doctor earlier, it might not
3 have happened. But you can't ---.

4 Q. Did you have the full major surgery?

5 A. [REDACTED]
I don't
7 know what he called it.

8 Q. All right. So at the time you were injured in
9 December, what was your job at UBB?

10 A. I was a belt man and fire boss.

11 Q. Okay. Now, how long had you been a belt man and
12 fire boss until that time?

13 A. February, I believe, is when I went down there.

14 Q. February of '09 ---

15 A. Yeah.

16 Q. --- until December, when [REDACTED]
17 you were belt man/fire boss at UBB. Okay. Had you
18 been somewhere else before that?

19 A. I had been at Slip Ridge prior to that for about
20 three weeks.

21 Q. Okay. So did you kind of go back and forth
22 between UBB and other places over the years?

23 A. No. No. See, I just went back to work for Massey
24 in February of '09.

25 Q. How long had you been gone from Massey?

1 A. Oh, I left there in --- I'm thinking '90 --- after
2 I set the longwall up. I believe it was '94. I can't
3 be exact. I left there and went to work for Chris
4 Cline.

5 Q. All right. So around '94 to 2009?

6 A. Right, I was away from Massey.

7 Q. Now, February --- January, February 2009 until
8 December the 25th, when you [REDACTED], what
9 area of the mine did you work at? What area of the
10 mine were you responsible to inspect and examine?

11 A. I had --- then this was called Two section. The
12 longwall panel they were driving, which would be the
13 headgate end at that time, was called One section.
14 And I had the Glory Hole and northeast mains.

15 Q. Some folks call that Eight North?

16 A. I don't know what they call it. It was on the
17 book as northeast mains.

18 Q. Well, it probably was northeast mains at the time.
19 A lot of folks now call it Eight North, and that's
20 what we've come to know it as.

21 A. Yeah. The longwall panel wasn't finished. They
22 finished --- well, it wasn't ---.

23 Q. Well, was the longwall operating in December?

24 A. Yeah. Yeah, the longwall was running in December.

25 Q. Okay. Now, would it be possible for you to take

1 one of them colored markers and trace the area that
2 you were responsible for examining on the belts,
3 please, ---

4 A. Well, ---

5 Q. --- at that time?

6 A. --- at that time, in December, ---

7 Q. Yes, sir.

8 A. --- the Two section was finished.

9 Q. Okay.

10 A. The tailgate of the longwall. That's the only
11 thing --- and we were driving --- they were driving a
12 panel across. I guess this is it right here. So I
13 was up to here.

14 Q. Okay. If you can, just try to trace the area that
15 you examined.

16 A. To there. And then I didn't have the --- I had
17 --- well, it wasn't the longwall belt then. I had One
18 Section belt, which went all the way down to the
19 tailpiece, this part ---. I'll say along here
20 somewhere, because I never was up in here.

21 Q. All right. Did you examine the belt for that
22 entire length of that headgate?

23 A. Yeah. That was prior to the longwall setting up.
24 But once the longwall set up, somebody else took the
25 longwall.

1 Q. When did the longwall start?

2 A. I'm trying to say --- I think in August.

3 Q. Okay. Now, in December where were you examining,
4 at the time you were injured?

5 A. Okay. At the time I was injured I had --- let me
6 think. I'll have to look. This map is different.
7 This was not here. This was not here. They were
8 driving this across and it was about right there.

9 Q. Okay. And you're referring to the crossover
10 connecting North from the longwall headgate entry?

11 A. Yeah, this. Yeah, they just had drove this over,
12 and it was about right there, because this wasn't
13 drove.

14 ATTORNEY BABINGTON:

15 When you say this, you mean the Tailgate

16 22 section was not being driven at that time?

17 A. Right. That hadn't even been turned or anything
18 at that time.

19 BY MR. FARLEY:

20 Q. Yeah.

21 A. So I had something like this.

22 Q. Okay. If you can, just trace the belts that you
23 examined at that time.

24 A. I didn't do the longwall belt. That's the
25 longwall belt. So it would come down --- I have to

1 figure out the track.

2 Q. Well, of course that map has changed considerably?

3 A. Yeah, that map changed considerably. But I didn't
4 do the longwall belt, so had something like this.

5 Q. Was there a section belt here that also went
6 outby?

7 A. No. This belt went over and dumped on the
8 longwall belt.

9 Q. Okay. All right. Okay. But you didn't examine
10 the longwall belt?

11 A. No, not unless somebody was off. Once in a while
12 I would have to do it.

13 Q. Did you examine belts outby there?

14 A. Six belt.

15 Q. Okay. Try to mark that if you can.

16 A. Seven belt wasn't running. It was there, this
17 belt, but it wasn't running.

18 ATTORNEY BABINGTON:

19 Mr. Bailey, you previously marked this
20 area down on the tailgate of the longwall. Were you
21 doing that? Were you examining those belts in
22 December of 2009?

23 A. No. They wasn't running in December. Yeah, they
24 was, too, from here down. There was a belt went over
25 this way. This is --- they drove this over to connect

1 this up, and they connected it up and they had started
2 driving these rooms when I got hurt.

3 ATTORNEY BABINGTON:

4 Okay. These rooms that are just outby
5 the mouth of the longwall?

6 A. Yeah. These weren't drove, weren't finished, when
7 I got hurt.

8 BY MR. FARLEY:

9 Q. Okay. All right.

10 A. They were probably somewhere --- let's see.
11 Probably somewhere along in there.

12 Q. Okay. Mr. Bailey, now, at the time that you were
13 injured, what was your work schedule now?

14 A. 6:00 in the evening until 6:00 in the morning. I
15 worked five on, two off.

16 Q. Okay. Now, did you have --- did you make one exam
17 during that shift or two?

18 A. Two. Two exams.

19 Q. All right. Did you call your reports out or did
20 you carry them out?

21 A. Most of the time I called them out.

22 Q. Okay. Now, did you ever experience any problems
23 with anyone questioning any hazards or violations you
24 entered in the pre-shift report?

25 A. No. Sometimes they'll ask you, you know, exactly

1 what --- or exactly where if you're not explicit
2 enough, but that's about it.

3 Q. Did anyone ever tell you not to enter violations
4 or hazardous conditions in the pre-shift and on-shift
5 book?

6 A. No, sir.

7 Q. Now, at the time you were injured in December of
8 2009, were you an hourly employee or a salaried
9 employee?

10 A. Hourly.

11 Q. Did you supervise anyone?

12 A. No.

13 Q. Who did you report to at the time?

14 A. Well, Andy Kolson. I had two or three. Andy and
15 then Gary May. And Everett Hager had just taken over
16 shortly there before.

17 Q. Now, what was Mr. Kolson's position at the time?

18 A. At that time, he was mine foreman on part of the
19 mines, and Gary May was a mine foreman on part of the
20 mines.

21 Q. Okay.

22 A. And then Andy left right about the time I got
23 hurt, just maybe a week or so before that, and Brandon
24 Bowling took over.

25 Q. Okay. Now, Mr. Hager at that point, what position

1 did he have?

2 A. He was superintendent.

3 Q. Okay.

4 A. Everett was there just, I don't know, two or three
5 weeks and I got hurt.

6 Q. Okay. Now, during the time you were a fire boss
7 in 2009, did you ever work on any of the coal
8 producing sections?

9 A. No.

10 Q. Did you ever travel --- ever work on the longwall?

11 A. No.

12 Q. Ever travel across the longwall face?

13 A. I traveled on the face a time or two.

14 Q. Okay. What was your impression of the mine's
15 ventilation system at the time?

16 A. After the Bandytown fan went down, cold. We had
17 air going everywhere.

18 Q. Okay. What about before?

19 A. Before it was a little weak. We didn't really
20 have --- you don't --- didn't really have the kind of
21 air that I liked, you know.

22 Q. Okay. Were you aware of any accumulations of
23 methane above one percent detected in any of the
24 working sections prior to your injury in December?

25 A. Not that I found. You hear rumors. You know, you

1 hear things, but personally I never found anything.

2 Q. Okay. Do you have any knowledge of any ignitions
3 or fires or ---

4 A. No.

5 Q. --- during that period of time?

6 A. No. Word like that spreads like wildfire. You
7 know, they say you can hide pops. You can't hide
8 pops. It goes around faster than a pop.

9 Q. Okay. Was there another --- did you examine the
10 same areas every day?

11 A. Pretty much every day, ---

12 Q. Okay.

13 A. --- unless I got blocked in or something, then
14 somebody might pick up the old Two section for me.

15 Q. Okay.

16 A. But otherwise, no.

17 Q. Now, during the latter part of 2009, before your
18 injury, were you aware of some water problems on the
19 longwall?

20 A. Yeah. I knew they had water problems in behind
21 the longwall.

22 Q. What do you know about that?

23 A. I knew they was bringing air pumps. That's about
24 all I knew. I never did go down in there.

25 Q. Okay. Now, when you say down in there, would that

1 have been somewhere in the longwall headgate entries
2 or on the face area?

3 A. They were going in on the longwall headgate
4 entries, and I was told they were setting air pumps.
5 That's all --- like I say, I never did --- I never was
6 down in there.

7 Q. Okay. Now, if you had left UBB --- I think you
8 said originally in '94 and came back in 2009.

9 A. Uh-huh (yes).

10 Q. During 2009 you never worked on any of the coal
11 producing sections?

12 A. No.

13 Q. Were you ever around the Glory Hole area?

14 A. Yeah, every day.

15 Q. All right. What was your impression of that?

16 A. Nasty place.

17 Q. Why is that?

18 A. It was just water, mud. But --- it's a hole in
19 the ground, water comes in.

20 Q. As you made your belt examinations, what kind of a
21 methane detector did you carry?

22 A. A Solaris.

23 Q. Did you ever detect any methane anywhere during
24 your examinations in 2009?

25 A. The only thing I ever got was --- once in a while

1 you get .2, but that's about it.

2 Q. Where would you find the .2 from time to time?

3 A. Mostly in your weak areas like returns, down here.

4 Down here you'd get a .2 once in a while, but that's
5 about it. Around the Glory Hole area you'd pick up a

6 .2. Prior to that, you'd get a little bit --- prior
7 to the Bandytown fan you'd get a little bit more than
8 that. But after that, .1, .2., lots of times zero.

9 You know, when you're walking along, all I do is just
10 pick it up every now and then and look at it. If it
11 doesn't go off, I just turned it up and looked at it
12 and go on.

13 Q. Okay. Now, during the year 2009, before you were
14 injured, did you ever hear about any methane monitors
15 on any of the mining machines being bridged out,
16 defeated or overridden in any way?

17 A. No, sir. Now, I was around the --- these two
18 crews on the hoot owl.

19 Q. Now, when you say these two crews, you're pointing
20 to the ---?

21 A. Two section and One section. What I called Two
22 section.

23 Q. You crossed over between the longwall headgate and
24 the section of the mouth of the longwall?

25 A. I would be around the hoot owl maintenance crews

1 and the belt crews. And every time I was around ---
2 I've always looked, do they have their rock dust, do
3 they have their fire extinguishers, and do they have a
4 methane detector. And they did.

5 Q. Now, obviously you were off injured on April
6 5th, ---

7 A. Yeah.

8 Q. --- 2010; is that correct? How did you learn of
9 the UBB explosion?

10 A. Somebody called me. I couldn't even remember who
11 called me at the house. See, I was supposed to go
12 back to work, we thought, the next day, but then the
13 doctor didn't release me. So I had called --- I
14 called Berman about one o'clock on Monday, the 5th,
15 and I told him I had to go back to the doctor, and I
16 thought he would release me. And he said, well, you
17 got to have a back-to-work conference, so call me when
18 you get back. Well, then, when I got back, somebody
19 called me and told me this had happened. And I told
20 them, no, you're wrong. It's somewhere else. It's
21 not Upper Big Branch. They said, yeah, it is. I
22 said, no, it's not Upper Big Branch. I couldn't
23 believe it, that Upper Big Branch blew up.

24 Q. Why could you not believe it?

25 A. Because we had --- like I said, we had plenty of

1 air everywhere. And if you've got plenty of air, you
2 don't expect something like that.

3 Q. Okay. Now, ---.

4 A. When I left there, there was air everywhere. When
5 I left there in December there was air everywhere, a
6 lot of it going in directions I didn't want, but ---.

7 Q. When you say it was going in directions you didn't
8 want it, what do you mean?

9 A. Well, this used to be a return. After the
10 Bandytown fan fired up, it all pulled in. Your track,
11 it pulled in. It used to go out.

12 Q. Okay. What did you think of that system of
13 ventilation, of the push and pull?

14 A. I don't like it.

15 Q. Why?

16 A. It's too hard to control.

17 Q. Okay. How so?

18 A. Well, I mean, it's too hard to control when you
19 can fire up one fan and reverse all that ventilation
20 on the whole way into the mines just about. That
21 tells you right there's you've got --- it's too hard
22 to control.

23 Q. Okay.

24 A. My opinion. That's my opinion.

25 Q. Okay. Now, prior to your injury in December of

1 2009, did you encounter a number of doors along the
2 track haulage way?

3 A. Oh, yeah. Yeah. All kinds of doors.

4 Q. Any particular reason why so many doors were used
5 that you know of?

6 A. Well, a lot of them --- some of them were added
7 after the --- after the fan to try to cut down on the
8 air going up the track. The other doors ---.

9 Q. When you say after the fan, do you mean after the
10 Bandytown fan was put on line?

11 A. After the Bandytown fine, yeah. There was a set
12 of doors added down here that led out at Upper Big
13 Branch right below Ellis Switch. That was to cut down
14 on the track air and keep the other air going the
15 other --- outside, the other direction, those doors
16 right --- the doors here ---.

17 Q. Now, when you say the doors here, you're pointing
18 to the area around 78?

19 A. Yeah. That was two sets of doors because the
20 intake went across the track and not across the
21 overcasts.

22 Q. Okay. Was there any particular reason why doors
23 were used in that area as opposed to overcasts?

24 A. I wasn't there when it was done, you know, but
25 I've heard, hurry up and get it done. That's what ---

1 but that's only what I heard. I wasn't there when
2 that area was done. All I know is that we had two
3 sets of doors, and the intake went across the track
4 between the doors.

5 Q. Okay. Now, when you examined your belts, did you
6 have any high places along your belts?

7 A. Yeah, the belt heads and things.

8 Q. Okay. How high were they?

9 A. Ten foot.

10 Q. Did you have an extendable probe you used with
11 your methane detector?

12 A. No. I had a ladder.

13 Q. Did you routinely climb a ladder to test the
14 methane in high places?

15 A. Yeah. You'd just go up the ladder. And I had a
16 big hole up toward the Glory Hole in no man's land
17 because nobody ever went up there, and we had a probe
18 there we kept leaning up against the rib. And when I
19 went up through there I could hang my methane detector
20 right up in the hole. Everything else was either
21 reachable --- like I said, we had a ladder at the belt
22 head. And down at the glory Hole you had a ladder
23 that went up in the Glory Hole and you had a crosswalk
24 that went up close and stuff. So I had no problems
25 with the holes, checking them.

1 Q. Okay. Now, back to the doors. As you traveled in
2 and out of the mine, how often did you encounter doors
3 that were apparently left open?

4 A. Not regular, but often, let's put it that way.
5 You'd come up on the two sets of doors, one set would
6 be open. You would still have one set closed or one
7 set --- I'm talking about a set of doors being two
8 doors. You'd find one set not closed or something.

9 Q. Now, about once a week, twice a week?

10 A. Probably twice a week.

11 Q. Okay. Any particular reason why they were open?

12 A. No. Some people are so lazy. That's all I'll
13 say. Some people are lazy. And some people think you
14 can turn your back and slam a door and that's it. You
15 know, if it falls back open, that's tough.

16 Q. Did you ever experience situations where the doors
17 reopened?

18 A. Yeah.

19 Q. How often did that occur?

20 A. Well, that happened pretty regular with one set of
21 doors.

22 Q. What set of doors would that have been?

23 A. That would have been this set of doors right here.

24 Q. Around 78?

25 A. Right below 78, where the intake crosses the

1 track.

2 Q. Okay. On the outby side of where the intake
3 crosses the track?

4 A. It would be on the inby side of the intake outby
5 door.

6 Q. Okay. All right. I got you.

7 A. Glenn Ullman and I fixed that I don't know how
8 many times. Two or three times we fixed it.

9 Q. Okay.

10 A. Because when we'd find them and the doors wouldn't
11 stay closed, we'd take a sledgehammer and beat the
12 jack out our, you know, the bottom of it or something
13 to put a different tilt on the doors so the doors
14 stayed closed.

15 Q. Okay.

16 A. We repaired the stopping part around the doors
17 several times.

18 Q. Okay.

19 MR. FARLEY:

20 Erik, do you have anything here?

21 MR. SHERER:

22 I've got a few questions, some follow-
23 ups.

24 EXAMINATION

25 BY MR. SHERER:

1 Q. You were talking about the Glory Hole. Were they
2 using that Glory Hole back in December?

3 A. No.

4 Q. Do you know about when that was --- they ceased
5 using that?

6 A. I shut it down. It was on my shift, and they
7 hollered at me and told me to go shut the Glory Hole
8 down. The longwall is finished at Logan's Fork. That
9 would have probably been in April or May.

10 Q. Okay. Do you know what happened to it after you
11 shut it down? Was there any filling or sealing of
12 that Glory Hole?

13 A. They sealed the Glory Hole from Logan's Fork side.

14 Q. What did they fill it full of?

15 A. I don't know.

16 Q. Okay.

17 A. They just told me that the Glory Hole was full.

18 Q. Okay.

19 A. That's all I know. I know one thing, for three
20 days there was water gushing out of everywhere.

21 Q. Oh, yeah.

22 Q. Any crack, bolt holes or anything it can get out
23 of, it gushed, and then quit.

24 Q. Would it surprise you to find out that during the
25 --- or right after the explosion there was so much

1 carbon monoxide went up that Glory Hole, it drove
2 everybody out of Logan's Fork?

3 A. Went up the Glory Hole?

4 Q. Yeah.

5 A. If the Glory Hole is full, how did it get up the
6 Glory Hole?

7 Q. That's why I'm asking the question. I don't know.

8 A. Because I was told the Glory Hole was full.

9 Q. Thank you.

10 A. I shut the Glory Hole down. They called me
11 underground, said, go shut the Glory Hole down. The
12 longwall is finished. We're going to fill the hole
13 up. And I was told the Glory Hole was full.

14 Q. Thank you. Now, when you were doing your fire
15 boss runs, did you call your results out or did
16 you ---?

17 A. Most of the time I called them out.

18 Q. Okay. And when you got out and you signed your
19 books, was what was put down pretty much what you
20 called out?

21 A. Yeah. Yeah. I never had a problem with people
22 not doing books right.

23 Q. Okay. Did you ever go back and check those books
24 later to see if they were still the way they were
25 originally?

1 A. No. No, I didn't do that.

2 Q. Okay.

3 A. I might go back and check the day before to see
4 what was on the day before, but ---

5 Q. Sure.

6 A. --- I didn't go back very far.

7 Q. Okay. Sure. Let's talk about rock dust a bit.

8 You said you had done some rock dust just recently
9 just to pretty things up?

10 A. Oh, yeah, along my belt.

11 Q. I appreciate that. We like that.

12 A. It looked good, but you know, everybody runs the
13 belts too wet to suit me, so you get a little black
14 stream down the side of your belts. You know what I'm
15 talking about?

16 Q. Sure.

17 A. So I would take a bag of rock dust down there and
18 pretty that up a little bit.

19 Q. Okay. We're big fans of rock dust.

20 A. I am, too.

21 Q. Good.

22 A. I like my rock dust.

23 Q. Good deal.

24 A. I think that's a big fault in the coal industry
25 right now.

1 Q. Sure.

2 A. Every place I've worked, they never did dust
3 enough to suit me.

4 Q. Now, you say that the wall started up in
5 September.

6 A. August or September, somewhere along in there.

7 Q. And you also indicated that you did certain belts.
8 Did you ever get an opportunity to go back on the
9 tailgate side of the wall once it started running?

10 A. I went back to a pump they had at --- I believe it
11 was 69 Break there was a pump.

12 Q. Okay.

13 A. The longwall hadn't got up there yet.

14 Q. Sure.

15 A. But I would go back and check that pump.

16 Q. What did the rock dust look like back there?

17 A. I can give you my personal opinion. That's all I
18 can do.

19 Q. That's all ---.

20 A. I'm sure they had rock dust surveys done. My
21 personal opinion, I didn't like it. Just my personal
22 opinion.

23 Q. Was it starting to get gray?

24 A. Yeah.

25 Q. Did you see any float dust?

1 A. No, not no float dust, really. Wet. A lot of Two
2 section was wet.

3 Q. Okay. Now, the areas that you did your belt work
4 and your fire boss run, how were those primarily rock
5 dusted?

6 A. Most of those were pretty good. The beltlines and
7 up --- well, me and John Neely rock dusted this. And
8 we rock dusted, we didn't fool with it. This was ---
9 the beltline going up on One section was well rock
10 dusted. The longwall belt, the time or two I traveled
11 it, it was well rock dusted.

12 Q. Did the fire bosses rock dust it or did the belt
13 people rock dust it?

14 A. They had people rock dust it. But lots of times
15 if you found it dirty, you know, a spot where it's
16 dirtier than other places, you'd just throw a bag of
17 rock dust on your belt while you're trucking down the
18 belt and dumped it.

19 Q. Sure. Now, you say they had people rock dusting.
20 Was there a particular crew or ---?

21 A. Yeah, they had a rock dust crew. I was trying to
22 think. One of them was a colored guy. His name
23 was --- we called him Nate. That's all I can tell you.

24 Q. Jeter.

25 A. Nate Jeter, that sounds about right.

1 Q. Did they use scoops or how did they do that?

2 A. They had a bulk duster, track duster.

3 Q. A track-mounted ---.

4 A. They'd drag the hose over.

5 Q. Okay. A track-mounted duster?

6 A. Uh-huh (yes).

7 Q. Did you ever see them do that?

8 A. Oh, yeah. Yeah.

9 Q. Did they do a good job?

10 A. Yeah, did pretty good.

11 Q. Did you ever get off away from the track of the
12 belt entry, out in the intakes or the returns?

13 A. I did from --- I had some rooms that weren't
14 connected that I had to check. One was right here.
15 One was right there. Let's see. Let me think here.
16 There's one right in here. Let's see. Where's the
17 Glory Hole. There's one right in here somewhere.
18 It's not on the map. Right here somewhere, let's see,
19 there's an entry not connecting. I think it's that
20 one.

21 Q. Can I get you to circle that for us?

22 ATTORNEY BABINGTON:

23 Let me give you --- you used a pink
24 highlighter the first time. Let me give you ---

25 A. Now, I can't be ---

1 ATTORNEY BABINGTON:

2 --- use the blue highlighter.

3 A. --- exact on that. Let's see here. I went
4 through the doors.

5 ATTORNEY BABINGTON:

6 An approximately would be okay.

7 A. I believe it was right there. I don't believe
8 that's connected.

9 ATTORNEY BABINGTON:

10 Could you circle the other two areas that
11 you pointed out to Mr. Sherer?

12 A. Yes.

13 ATTORNEY BABINGTON:

14 Thank you so much.

15 A. There were rooms that I checked. You know, you go
16 through a door and walk up through here.

17 BY MR. SHERER:

18 Q. Uh-huh (yes). Sure.

19 A. Well, I went through a door and walked down
20 through here and go through a door and walked up
21 through here when that occurred. This one --- that's
22 probably about right, that door.

23 Q. Okay.

24 A. I'd go through that door and then I checked it.

25 Q. Okay.

1 A. But I swear I don't believe that's there. Matter
2 of fact, there's cribs sitting right there.

3 ATTORNEY BABINGTON:

4 Just to clarify, you circled areas in the
5 Glory Hole area, as well as an area up in --- up along
6 Eight North; ---

7 A. Yeah.

8 ATTORNEY BABINGTON:

9 --- is that right?

10 A. Uh-huh (yes).

11 BY MR. SHERER:

12 Q. Thank you.

13 A. And I checked those rooms because there was
14 nothing up there then.

15 Q. And you're pointing to the end of what we're
16 calling Eight North and you're calling it ---?

17 A. Yeah. I always heard it called northeast mains.

18 Q. Northeast mains, okay. When you got off the main
19 belt and track entries, what was the rock dust like?

20 A. Up in here it was good.

21 Q. Okay. And that's the northeast mains area?

22 A. Yeah. I was surprised that it was as good as it
23 was.

24 Q. Okay.

25 A. I don't know how long they had pulled out of

1 there, but it was still good. The rock dusting looks
2 good. Up through here looked good. Around the glory
3 Hole, there was mud, water. It was nasty.

4 Q. What about back along the ---?

5 A. Six belt --- Seven belt was well dusted. I was
6 over in this entry here a time or two, and it looked
7 good. It had a lot of water in it.

8 Q. Okay.

9 A. Six belt was well dusted.

10 Q. Okay. Thank you.

11 A. And there's two seals. I used to go over and
12 check those seals for Harley Taylor every now and
13 then. That area, what I went through over in there
14 was dusted good.

15 ATTORNEY BABINGTON:

16 Just for the record, you're pointing to
17 the seals that are marked set 15 on the back?

18 A. Yeah. And I think we called them 73 and 74 or 74
19 and 75. I can't remember the numbers on them.

20 BY MR. SHERER:

21 Q. Sure. Sure.

22 A. I checked them once in a while. If I came out
23 here and Harley hadn't got there yet, I'd holler at
24 him because he was way down here. He'd have to come
25 all the way up there to check two seals. I'd holler

1 at him and tell him, don't worry about it, I'll get
2 the seals. I'd get the seals and write them in the
3 book.

4 Q. Now, I've got a slightly different question. When
5 you were down there around those seals, 73, 74 Break,
6 did you ever notice any fog or any unusual conditions?

7 A. No.

8 Q. Okay. Thank you.

9 A. Upper Big Branch I thought was a good mine. I
10 mean, it had areas that I didn't like. They had the
11 way they do things that are different that I didn't
12 particularly like, but overall I thought Upper Big
13 Branch was a good mine. That's what shocked me so
14 much when they said it had blown up. I couldn't
15 believe it.

16 Q. Sure.

17 A. I'd have argued until I was blue in the face. I
18 thought it was something close to it.

19 Q. Let me ask you a question about ventilation. When
20 you were there in December and then prior to December,
21 who was in charge of the ventilation?

22 A. Well, the mine foreman is in charge of the
23 ventilation in the whole mines. But as far as who
24 called what, Chris Blanchard probably did more calling
25 than anybody down there. He more or less ran, let's

1 put it that way.

2 Q. Okay. And Chris Blanchard was the president?

3 A. Yeah. Jamie Ferguson was the vice-president.

4 MR. FARLEY:

5 Did you say ranted?

6 A. Ran. And ranted and raved, too, if you want to
7 put it that way. You're about right there.

8 BY MR. SHERER:

9 Q. Were you ever involved in any ventilation changes?

10 A. No.

11 Q. Did you know about any ventilation changes that
12 took place while you were in there?

13 A. Let me think. The only ventilation changes I knew
14 anything about was when they were getting ready to
15 start the fan up. Okay. And I was never involved in
16 any of them, so I don't really know what they did
17 other than put the doors down at Ellis for the
18 ventilation when the fan started up. I know they had
19 some ventilation problems once the fan started up,
20 which you will any time you start a fan up.

21 Q. Sure.

22 A. But as far as working on them, no, I never was
23 involved in them.

24 Q. What about when you're underground, do you ever
25 hear anybody call in on the mine phone or somebody

1 tell you that inspectors are on the property?

2 A. Oh, why sure. Everybody's heard that.

3 Q. Sure. Okay. Thank you.

4 A. You got one a coming or you got two. Where are
5 they going? Well, I don't know. Okay.

6 Q. Thank you.

7 A. I mean, that's everywhere. That's not a ---
8 that's a --- if you got security guards, it's when
9 they hit the gate. If you've got five mines running,
10 five mines get a phone call.

11 Q. Okay. Terry mentioned methane detectors --- or
12 methane monitors. Excuse me. Did you ever hear of
13 anybody bridging those out?

14 A. No, sir, absolutely not. I never heard that one
15 time ---

16 Q. Okay.

17 A. --- at Upper Big Branch.

18 Q. Do you think the ventilation in this mine was
19 adequate back in December?

20 A. December I thought it was --- yeah, I thought it
21 was more than adequate. I mean, once in a while I'd
22 have to fire boss One section. Now, this is what I
23 call One section, driving across here. Had plenty of
24 air in the faces. Up here I'd have to fire boss once
25 in a while on Sunday nights, two section. Had plenty

1 of air, plenty of air. No air problems whatsoever.
2 No methane. I never picked up any methane on those
3 two working sections.

4 Q. Now, you mentioned that you were at UBB back in, I
5 think, '94?

6 A. Uh-huh (yes).

7 Q. And then you left and came back in 2009?

8 A. Yeah.

9 Q. Did anybody ever mention methane outbursts to you?
10 Ever hear of that?

11 A. No.

12 Q. Massive amounts of methane coming out of the mine?

13 A. Well, you know, you read in the paper and
14 everybody I know has heard the big crack theory. I
15 don't abide that theory myself. I've never seen an
16 instant crack. To liberate the kind of methane that I
17 think caused that, I can't see a crack doing that.

18 Q. Sure.

19 A. I know I took an air reading a time or two on the
20 longwall face, and there was always 50,000 plus, you
21 know, up until the time I left. I didn't fire boss
22 the longwall but maybe twice the whole time I was
23 there, but I always had, you know, I'm thinking at
24 least 50,000 plus.

25 Q. Let me ask you a little different question about

1 the ventilation. When you were in the mine, did you
2 ever notice the ventilation dying out and then
3 starting back up?

4 A. Uh-uh (no).

5 Q. Okay.

6 A. I didn't.

7 MR. SHERER:

8 That's all the questions I've got.

9 Celeste? Thank you.

10 EXAMINATION

11 BY MS. MONFORTON:

12 Q. Mr. Bailey, I have just a couple of clarifying
13 questions. You mentioned these back-to-work
14 conferences. Who did you have the back-to-work
15 conference with or who would a miner have ---?

16 A. Safety department.

17 Q. Safety department?

18 A. Right.

19 Q. Thank you.

20 A. Any time you're off on an injury pretty much, when
21 you come back --- they probably got a different name
22 for them. It's a back-to-work conference. And the
23 one I had with Berman, when I went back to Slip Ridge,
24 you know, we went over the --- my injury. We went
25 over the accident report, and you know --- and not

1 just --- you know, we sat there and talked about it
2 and is there anything we can do to keep this from
3 happening again? Well, I don't know how you can keep
4 a [REDACTED] from happening again, you know,
5 unless ---. The one that happened to me Saturday, you
6 know, I've been complaining about [REDACTED] for ---
7 ever since I've been back to work. You tell the
8 doctor about it and they tell you, oh, it will get
9 better. It will get better. Well, another two
10 seconds, I wouldn't have had to worry about it getting
11 any better. It wouldn't have mattered, because the
12 top is too low going over that track.

13 Q. When I read the abstract of information about your
14 original [REDACTED], you were walking through some
15 water, maybe some of the water.

16 A. Yeah, three or four inches of water. But there
17 was nothing in the water. You know, it's not like I
18 stepped on a rock or I stepped on a crib block or
19 anything like that. It just went. It just --- I
20 actually looked down to see (b) (7)(C)
21 because it felt like it (b) (7)(C) .

22 Q. You mentioned at one point that Glenn Ullman and
23 yourself, you had to fix those --- the doors around
24 78 ---?

25 A. Yeah. If you ran across them and something is

1 wrong with them, you fix them.

2 Q. Can you elaborate a little bit about what you
3 think --- why do they need to be fixed so many times?
4 What was happening to the doors that they needed to be
5 fixed?

6 A. Well, they were set on a little bit of a hill.
7 And if you're not careful and the track gets a little
8 bit slick, when you aim to stop, you don't get stopped
9 quick enough. You hit the doors. Well, if you don't
10 tear the doors down, you shake the stopping, you knock
11 a few blocks out of it. And it's every man. I don't
12 care. It ain't --- it should not be, George, go fix
13 the stopping. When you come by there and it needs
14 fixed, if you --- like me, I had time to do it. Me
15 and Glenn had time to do it, so we'd do it. We would
16 fix it.

17 Q. My final question is you mentioned that you shut
18 down the Glory Hole.

19 A. Yes, ma'am.

20 Q. Could you just elaborate? What does it mean to
21 shut down the Glory Hole?

22 A. I closed the gates of the Glory Hole and shut the
23 feeders down that feed the coal out of the bottom of
24 the Glory Hole.

25 Q. Thank you.

1 A. That's what shutting the Glory Hole down was.

2 Q. Thank you, sir.

3 MS. MONFORTON:

4 That's all.

5 A. I took the power off of them after I shut them
6 down.

7 ATTORNEY BABINGTON:

8 Terry, you're good?

9 MR. FARLEY:

10 Yes.

11 ATTORNEY BABINGTON:

12 Erik?

13 MR. SHERER:

14 I'm good.

15 ATTORNEY BABINGTON:

16 Okay. Well, there's two documents at the
17 beginning. One was a copy of the subpoena, and that
18 will be marked M. Bailey One. And there was a copy of
19 the return receipt. That will be marked M. Bailey
20 Two.

21 On behalf of MSHA and the Office of
22 Miners' Health, Safety and Training, I want to thank
23 you for appearing and answering questions today. Your
24 cooperation is very important to the investigation as
25 we work to determine the cause of the accident. We

1 request that you not discuss your testimony with any
2 person, aside from your personal representative or
3 counsel.

4 A. No problem.

5 ATTORNEY BABINGTON:

6 After questioning other witnesses, we may
7 call you if we have any follow-up questions. If at
8 any time you have additional information regarding the
9 accident that you'd like to provide to us, please
10 contact us at the contact information previously
11 provided.

12 If you wish, you may now go back over any
13 answer you've given during this interview. You may
14 also make any statement that you'd like to make at
15 this time.

16 A. I have nothing to add.

17 ATTORNEY BABINGTON:

18 Okay. Thank you. And again, I want to
19 thank you for your cooperation in this matter. Off
20 the record.

21 * * * * *

22 STATEMENT UNDER OATH CONCLUDED AT 11:25 A.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Alison Salyards, a Notary Public in and
for the State of West Virginia, do hereby certify:
That the witness whose testimony appears in
the foregoing deposition, was duly sworn by me on said
date and that the transcribed deposition of said
witness is a true record of the testimony given by
said witness;
That the proceeding is herein recorded fully
and accurately;
That I am neither attorney nor counsel for,
nor related to any of the parties to the action in
which these depositions were taken, and further that I
am not a relative of any attorney or counsel employed
by the parties hereto, or financially interested in
this action.



Alison Salyards