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Statement Under Oath of **Benjamin Dulin**

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STATEMENT UNDER OATH

OF

BENJAMIN DULIN

taken pursuant to Notice by Danielle Ohm, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Beaver, West Virginia, on Wednesday, June 9, 2010, beginning at 1:15.m.

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I N D E X

EXHIBIT PAGE

NUMBER	DESCRIPTION	PAGE IDENTIFIED
	NONE OFFERED	

P R O C E E D I N G S

ATTORNEY HAMPTON:

My name is Polly Hampton. Today is June 9th, 2010. I am with the Office of the Solicitor, U.S. Department of Labor. With me is Eric Sherer, an accident investigator with the Mine Safety and Health Administration, MSHA, an agency of the United States Department of Labor. Also present are several people from the State of West Virginia. I ask that they now state their appearance for the record.

MR. MCGINLEY:

Patrick McGinley, Governor’s independent investigation team.

MR. FARLEY:

Terry Farley with the West Virginia Office of Miners’ Health, Safety and Training.

MR. O’BRIEN:

John O’Brien, West Virginia Office of Miners’ Health, Safety and Training.

ATTORNEY HAMPTON:

There are also several members of the investigation team also present in the room today. And Mr. Sherer will be conducting the initial part of the questioning today.

All members of the Mine Safety and Health Accident Investigation Team and all members of the State of West Virginia Accident Investigation Team participating in the investigation of the Upper Big Branch Mine explosion shall keep confidential all the information that is gathered from each witness who voluntarily provides a statement until the witness statements are officially released. MSHA and the State of West Virginia shall keep this information confidential so that other ongoing enforcement activities are not prejudiced or jeopardized by a premature release of information. This confidentiality requirement shall not preclude investigation team members from sharing information with each other or with other law enforcement officials. Your participation in this interview constitutes your agreement to keep information confidential.

Government investigators and specialists have been assigned to investigate the conditions, events and circumstances surrounding the fatalities that occurred at the Upper Big Branch Mine-South on April 5th, 2010. The investigation is being conducted by MSHA under Section 103(a) of the Federal Mine Safety and Health Act and the West Virginia Office of

Miners' Health, Safety and Training. We appreciate your assistance in this investigation.

After the investigation is complete, MSHA will issue a public report detailing the nature and causes of the fatalities in the hope that greater awareness about the causes of accidents can reduce their occurrence in the future. Information obtained through witness interviews is frequently included in these reports. You should know that if you request confidentiality, confidentiality will only be granted on a case by case basis. Your statement may also be used in other proceedings.

You may have a personal representative present during the taking of this statement and may consult with the representative at any time. Do you have a representative here today?

MR. DULIN:

Yes, I do.

ATTORNEY HAMPTON:

And who is this person?

MR. DULIN:

Charlotte Richardson.

ATTORNEY HAMPTON:

Richardson. What is her relationship to you?

MR. DULIN:
She is a mine representative for my meetings.
ATTORNEY HAMPTON:
Okay. Can we go off the record?
OFF RECORD DISCUSSION
ATTORNEY HAMPTON:
Your statement is completely voluntary. You may refuse to answer any question and you may terminate your interview at any time or request a break at any time. Since this is not an adversarial proceeding, formal Cross Examination will not be permitted. However, your personal representative may ask clarifying questions as appropriate.
A court reporter will record your interview. Please speak loud and clearly. If you do not understand a question, please --- a question asked, please ask me or whoever’s asking it to rephrase it. Please answer each question as fully as you can, including any information you have learned from somewhere else.
I would like to thank you in advance for your appearance here. We appreciate your assistance in this investigation. Your cooperation is critical in making the nation’s mines safer.

After we have finished asking questions, you will have an opportunity to make a statement and provide us with any other information you believe is important. If at any time after the interview you recall any additional information that you believe might be useful, please contact Norman Page at the telephone number or e-mail address provided to you in the letter. Can you swear in the witness?

BENJAMIN DULIN, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

ATTORNEY HAMPTON:

Mr. Sherer.

EXAMINATION

BY MR. SHERER:

Q. Thanks for coming down this afternoon, Mr. Dulin. Would you please state your full name and spell your last name for the record?

A. My full name is Benjamin C. Dulin, D-U-L-I-N.

Q. Okay. Thank you. How about your address and telephone number, please?

A. My address is [redacted]. My telephone number is [redacted]

Q. Thank you. Are you appearing here today voluntarily?
A. Yes.
Q. Do you currently work for MSHA?
A. Yes.
Q. Where is your duty station?
A. Mount Hope.
Q. Okay. How long have you been employed by MSHA?
A. Since September of 2006.
Q. And your current position is ---?
A. Field inspector, just inspect --- CMI, coal mine inspector.
Q. Coal mine inspector. Do you have any other mining experience aside from your tenure with MSHA?
A. Yes.
Q. Could you please give us a rough outline of that?
A. Yes. In 1977 I started with Armco at Robin Hood Number Nine. I worked a summer there. Then in --- I said ‘79? ‘77.
Q. ‘77.
A. Oh, okay, ‘77. In ‘78 I got transferred to Armco Montcoal 7. I worked at Montcoal 7 for Armco until Eastern bought the property in ‘85. I worked for Eastern until Massey bought the property in ‘94. In ‘94 Massey laid the entire workforces, union

workforce, they laid us all off, and at the time I was a fire boss. And they hired me as a foreman. And then I worked --- I had worked around the longwall some, and when Massey started this Upper Big Branch Mine and the longwall face of it in ‘96, they transferred me to this mines, UBB, in ‘96 as a longwall foreman.

Q. Okay.

A. And I worked for them until September of 2006 when I got the job as the inspector.

Q. Okay. Thank you. Do you have any specialized training or certifications?

A. Yes.

Q. What are those, please?

A. Well, I’m certified to run respirable dust, a certified shot fireman, a certified mine foreman. That’s probably it.

Q. Okay. Thank you. Have you inspected Upper Big Branch for MSHA?

A. Yes.

Q. When was the last time you inspected this mine, roughly?

A. Roughly a year ago.

Q. Okay. What sort of inspection did you do at that time?

A. Respirable dust.
Q. Have you ever done a triple A or a EO-1 at this mine?
A. No.
Q. Okay. Because you --- it's been a while since you've inspected this mine, and I'm a little more interested in your prior experience at Upper Big Branch. We're going to skip directly to that part rather than go into a lot of information about inspections and such, if that's okay with you.
A. Okay.
Q. Did you know any of the victims of the Upper Big Branch disaster?
A. Yes.
Q. Were you involved in the mine rescue and recovery effort after the explosion?
A. I took gas, air samples at boreholes.
Q. Okay. Going back to your time when you were employed at Upper Big Branch. You mentioned that you worked on the longwall.
A. Yes.
Q. Exactly what do you do on the longwall?
A. I was a third shift longwall move foreman.
Q. Okay.
A. I was responsible for power moves, track moves.

We did produce coal occasionally, and maintenance.
Q. Okay.
A. And then if you go on to say that I was, I guess promoted or --- to a face foreman.
Q. Okay.
A. A production foreman.
Q. Uh-huh (yes).
A. And since I had worked a lot outby and I had some experience running coal, also. They promoted me, if you want to call it that, to assistant coordinator.
Q. Okay.
A. And then sometime later I went back to production foreman.
Q. Okay.
A. Then I was a production foreman when I left.
Q. So you were fairly familiar with the longwall management structure ---
A. Yes.
Q. --- at this mine?
A. Yes.
Q. Could you please explain that to us? I've heard you mention several different positions. Could you explain what they are and how they relate to each other, who reports to who?
A. At the top you have the coordinator.

Q. Okay.
A. And then he has an assistant. And you generally have four production foremen and two outby foremen.
Q. Okay. And who does that coordinator report to?
A. The coordinator at the time reported to Chris Adkins.
Q. Okay. And what was his position?
A. I think Chris was vice-president of Massey Energy.
Q. Okay.
A. I know he reported to Don Blankenship.
Q. Sure. Do you know if a similar structure was in place at this mine around the time of the accident?
A. Yes, with the exception of there may have been a layer between the coordinator and Chris Adkins. There might have been another position there.
Q. Okay. And do you have any idea who that would be?
A. Yeah. Well, his last name was Fonda, I believe.
Q. Fonda; okay.
A. Gene Fonda.
Q. Okay.
A. And I'm not sure what his position was, but I think he was --- I think the coordinator and he --- I think the coordinator reported to Fonda.
Q. Okay. And that seems like it bypasses the mine superintendent-type positions?

A. When I was there, that was my experience.
Q. Okay.
A. I think that's true. I think that the longwall coordinator and the mine superintendent were more equal than they were --- than the superintendent was ---. The superintendent was more over the continuous miner sections and general outby areas and the longwall coordinator was really --- had control of the longwall.
Q. So total control of the longwall?
A. I would say that, yes.
Q. Okay. Good. Now, that was very helpful. We appreciate that. When you were working at Upper Big Branch, what was your general impression on the conditions of the mine, and I'm talking ventilation, ground control, rock dust, cleanup. I know you've worked at several different mines and inspected probably quite a few mines since then.
A. Uh-huh (yes).
Q. How would you compare this mine to those mines?
A. Well, I was really limited to the longwall.
Q. Okay.
A. I almost --- while I worked at Upper Big Branch I would very rarely go to a continuous miner section.
Q. Sure thing.

A. I would either go to a longwall setup, a longwall tear down or a longwall production face.
Q. Uh-huh (yes). Were you involved in the layout and planning of the longwall development, the panel layout and such?
A. No.
Q. Who did that?
A. I guess the engineering department.
Q. Okay. Did Upper Big Branch have an engineering department onsite when you were employed there or did they use consultants or outside services?
A. I don’t know.
Q. Okay. Did you have much interaction with those engineers?
A. No.
Q. Does that seem odd to you?
A. No.
Q. Okay. So they just said here’s where you’re going to mine?
A. Yes.
Q. Okay.
A. That’s the level I was at, though.
Q. Okay, okay. So what happened if you ran into trouble. The entries started --- the roof had started caving, ribs rolling, things like that? Did you

interact with engineers any at that point in time?
A. No.
Q. Okay. Do you think you should have interacted with engineers?
A. I interacted with the coordinator.
Q. Okay. Do you think he interacted with engineers?
A. I don’t know. I suppose he did, but I don’t know.
Q. Okay. Well, let me ask you that in a slightly different format. When you did have problems on the panel, were those problems fixed in the next panels?
A. No.
Q. They were not?
A. I don’t think so.
Q. Okay. So you just kept having the same problems over and over again?
A. In my opinion, we would repeat problems, and I just felt like we didn’t learn our lesson.
Q. Sure.
A. And that’s a gripe that I had, and I guess people do have gripes, you know. And I felt like that, you know, that some of the problems we encountered we needlessly repeated them.
Q. Sure. We can certainly understand that. It seems like there was no what I call positive feedback in the system? In other words, if you’re having trouble, you

should change the design. And as an engineer I've always practiced that in many different mines. What sort of problems did you have when you were employed at Upper Big Branch on the longwalls?

A. Well, we would have trouble with water from time to time, and I think there was times that I felt like we should've been prepared for the water because we knew the water was coming, and there was --- we didn't have any pumps set, no discharge line, no power center. It's like we were just trying to run through it. We was just trying to mine coal through a flood.

Q. Uh-huh (yes). How successful were you?

A. Oh, it's horrible. It's horrible conditions.

Q. Are you aware of any water that people had to work in above waist-high?

A. Well, while I worked there?

Q. Yeah.

A. Yes.

Q. Was that common?

A. Not common.

Q. Okay. Any other problems come to mind?

A. Well, coal mining is a problem. I mean, coal mining's one problem right after the other. And you always have to adjust to new problems. I don't mean to simplify that, but I mean we did have ---. When we

would have a ventilation problem, we did have a few times when as we drove out, not on this part of the map but on other parts of the section, as we'd drive out towards the mouth, it was hard to get the air to go the direction that it should go, because it was so close to the mouth of the section that the air would want to travel the shortest route out instead of going back towards the bleeder ---

Q. Sure. Uh-huh (yes).

A. --- and things. So that was a problem. We solved it by doors, curtains, you know, whatever ventilation control we could erect.

Q. Sure. Did you have plenty of air on these panels that you drove?

A. Generally, yes.

Q. Okay. And when you left in '96, roughly where had you mined up to at that point?

A. Do you need me to show you on the map or ---?

ATTORNEY HAMPTON:

Yeah.

BY MR. SHERER:

Q. Sure.

A. Okay. Well, I mean it's real simple.

Q. We'll just describe it.

A. It's real simple because I was there from here

(indicating) down.
Q. Oh, okay.
A. All this.
Q. So you mined up to --- this is panel ---. This says Headgate 11, set 12?
ATTORNEY HAMPTON:
Can we clarify which map that we're looking at?
MR. SHERER:
This is the 1 to 500 scale map of the entire Upper Big Branch Mine. And this is the --- it's currently the northernmost panel of the seal area.
MR. FARLEY:
Pardon me. If I understand you correctly, you indicated that you'd been involved with the mining of every panel there ---
A. Yes.
MR. FARLEY:
--- except the panel existing at the time of the explosion?
A. I would say yes.
MR. FARLEY:
Is that accurate?
A. Yes, that's accurate. That's accurate.

BY MR. SHERER:
Q. While we're talking about all these panels. We notice that there's several panels stop short and coal left inside the panels. Do you know why they did that?
A. Yes.
Q. All right. Could you explain it, please?
A. There was cemeteries above some of the areas.
Q. Oh, okay.
A. I can't remember other reasons. I know cemeteries was one reason. I don't know if we --- we may have moved once because we lost the coal.
Q. Sure. It was pinched out?
A. We pinched out.
Q. Okay.
A. Maybe. I'm not positive about that. The cemeteries for sure.
Q. Okay.
A. That may be it, but there might have been a time we moved because of pinched out coal.
Q. We've also heard that there was a belt in an upper mine above this ---
A. Uh-huh (yes).
Q. --- that they didn't want to subside or --- do you remember that?

A. That what?
Q. There was a conveyer belt in one of the, I think ---.
A. Logan’s Fort?
Q. Yeah.
A. Uh-huh (yes).
Q. Are you familiar with that belt?
A. Not really.
Q. Okay. Okay. Thank you. Were there any problems with floor hoove while you were in these panels?
A. I don’t remember hooving ever being a problem to production.
Q. Okay.
A. Was there any methane outburst associated with any of the floor hoove?
A. I don’t know what the outbursts were associated with, but we did have, on two occasions, methane inundations.
Q. Could you explain those, please?
A. I can explain one of them.
Q. Okay.
A. I was on the face. I don’t know what shift I was working, but I remember I was standing between the headgate and Number One Shield alongside of the stage loader. And I heard a roaring noise, a very loud

roaring noise. And I felt the ground kind of vibrate.
Q. Uh-huh (yes).
A. And then all the power knocked across the face.
Q. Okay.
A. And the electrician came running off the face, saying, you know, we had gassed off. And gassing off is when methane rises above a certain percent, maybe two percent --- I'm not sure --- that the power would knock in the entire face. So the whole crew knew we had gassed off, see there wasn't, like, an order to leave the face. We all let the face, and on our way out we ---. About 1,000 feet outby we had a power center that powers the longwall up.
Q. Sure.
A. And we knocked the power and got in the mantrip and went outside.
Q. Okay.
A. And I guess management at that time reported the inundation.
Q. Sure. And you say that there was a roaring sound?
A. Uh-huh (yes).
Q. Would that be similar to a jet plane, ---
A. Yes.
Q. --- something like that?
A. Yes, very loud. I thought it was at the

tailpiece ---
Q. Uh-huh (yes).
A. --- at first before the power knocked.
Q. Uh-huh (yes).
A. I thought that the tailpiece was making that roaring noise. But you know, I couldn't quite place it.
Q. Did you happen to notice what your personal methane detector was reading as you tested the longwall?
A. I don't remember.
Q. Okay. Thank you. What about when you went back in there? Did you observe where the floor heaving was and how high was it, anything like that?
A. No.
Q. Can you describe that?
A. No, I didn't see any hooving.
Q. Oh, okay. You just heard it?
A. Yes.
Q. Did it sound like it was coming from back in the gob or was it under the shields?
A. I never could place it. It was just like all around me.
Q. Okay.
A. I thought it was --- you know, I just --- I didn't

recognize the sound. And I really never did --- by the time the power went off, I didn't really --- I don't know where it was coming from.
Q. Sure. Now, on that face you probably had methane monitors on the shearer.
A. Uh-huh (yes).
Q. Did you have any on the shields?
A. We had one at mid face and one at the tail, also.
Q. Do you happen to recall which sensor activated that kicked the power?
A. No.
Q. Okay, okay. Thank you. Any other major problem on the longwall that you recall?
A. We have plenty of them, plenty of major problems.
Q. Aside from normal maintenance sort of things or ---?
A. Yeah, we had some major roof falls ---
Q. Okay.
A. --- that would --- for example, it would fall from the stage loader.
Q. Uh-huh (yes).
A. Or it would actually fall on top of the stage loader maybe outby for a few extra feet.
Q. Okay.
A. Those falls were generally very high, rib to

rib ---
Q. Oh, jeez.
A. --- and very hard to clean up.
Q. All right.
A. And I can't tell you how many times that we --- that that happened. I can't remember. I would say more than four times.
Q. Okay. Did you ever tie any of the problems together? Was there a certain point along the development of the panel or a certain place in the mine that you seemed to have more problems than others?
A. No.
Q. Okay. Just kind of scattered out?
A. Yes.
Q. Okay. Thank you.
A. The water was a problem from time to time, too.
Q. Sure.
A. On one occasion we ran so much water we filled the silo up and it was hard to drain the water out of the silo.
Q. Okay.
A. That kind of problem, you know.
Q. Uh-huh (yes).
A. So falls and floods, that's ---.

Q. That's certainly enough to keep you busy.
A. Oh, yes. Yeah.
Q. We've heard a lot about programs called S1 and P2. Are you familiar with those?
A. I know about them. I've heard of them.
Q. Were they in place when you worked at this mine?
A. Yes.
Q. Could you please explain the S1 Program, as you understand it?
A. Well, S1 stood for safety first.
Q. Okay.
A. Now, P2 stood for production second. And we had an M3, material third.
Q. Okay.
A. And you know, safety first is kind of self-explanatory, but that's really all I know about it, is safety comes first.
Q. Okay.
A. I don't know of any specifics of the plan.
Q. Sure.
A. Production second, P2, had to do more with the continuous miner sections than it did the longwall. I don't think we ever had a P2 for the longwall that I can remember. And M3 was, you know, counting, being aware of the materials that you're using. Not to be

wasteful.
Q. Sure. As a longwall coordinator, did you have to make routine reports of production and down time and things like that?
A. Yes, to the --- I was the assistant coordinator and I would report to the coordinator.
Q. Okay. Do you know who he reported those to?
A. As far as I know, Chris Adkins.
Q. Okay. So did he wait until the end of the shift to report that or how did that work? Do you know?
A. Not really. I guess it would depend on how urgent the information was. I mean, he would --- you know, if it was urgent information he felt like Chris needed to know that morning, he would get ahold of him that morning so that he could wait until later on in his shift to see how the problem developed. Maybe he would wait until the --- near the end of the shift. But I don’t know of any pattern of reporting.
Q. Okay. Thank you. When you were working at Upper Big Branch and you were traveling into the longwall, do you remember going through equipment doors?
A. Yes.
Q. We’ve heard that they used equipment doors instead of overcasts in the locations up there. Was that true?

A. Not when I worked there.
Q. Oh, okay. So that's a more recent development, I guess?
A. Yes.
Q. Okay. Now, when you were running dust up there a year ago, did you notice more equipment doors?
A. Yes.
Q. Have you heard of any problem with those equipment doors?
A. No.
Q. Okay. Have you heard of any problems with ventilation at the mine or low air, anything like that?
A. Yes.
Q. Could you describe that, please?
A. My own personal experience, I ran dust. I ran the respirable dust survey in this area here. It looks like ---.
MR. SHERER:
You want him to mark a map up?
ATTORNEY HAMPTON:
Yes.
MR. SHERER:
We've got to get a different map. This is the previous --- why don't we go off the record.

OFF RECORD DISCUSSION

ATTORNEY HAMPTON:

This is Polly Hampton. At this time we are going to suspend our questioning of this witness. We will be taking a short break, or --- well, actually a long break. And then we will resume questioning later on this afternoon. Off the record.

OFF RECORD AT 2:00 P.M.

BACK ON RECORD AT 4:30 P.M.

ATTORNEY HAMPTON:

This is Polly Hampton. We have just taken an extended break and we are now back on the record and ready to resume questioning with Mr. Sherer.

BY MR. SHERER:

Q. Yes, Mr. Dulin. As I remember when we broke before, you were fixing to explain the water situation on the longwall panels?

A. No. Actually I think I was pointing out where I ran a respirable dust circuit.

Q. Oh, okay. Okay. Where was that, please?

A. This is the panel that they were on, and it was up this way. Do you see where the ventilation hole is?

Q. Is that the Bandytown fan?

A. Yeah, the Bandytown fan.

Q. It’s right here.
A. Okay. I couldn’t see it.
Q. Yeah, the 16-foot ---
A. Okay. I was ---
Q. --- return shaft.
A. --- I don’t know how far outby, but I know that they were close to where they wanted to drive the --- to drill the shaft. And on the day I went up to run the respirable duster, I noticed --- you know, the first thing we do as inspectors when we arrive on a section is we make an imminent danger run across the faces.
And I noticed that there was no --- I perceived very low air in the last open break. I can’t remember. I don’t have my notes. I can’t remember what my air reading was, but I did detect low air in the last open break, so as I went across the faces I was really watching for any methane ---
Q. Sure.
A. --- that might build up. And I found three percent methane in the face of maybe Number Three.
Q. When was this? I’m sorry.
A. I don’t know the date, probably a year ago. And it was up in this area.
ATTORNEY HAMPTON:

Just to clarify, we are referencing the 1 to 200 blowup of the longwall map.

MR. SHERER:

Do you want to put a mark on the map?

ATTORNEY HAMPTON:

Let's go off the record for a second.

OFF RECORD DISCUSSION

A. So anyway, I detected three percent methane in the face of Number Three. Gary May was the mine foreman traveling with me that morning, and I just informed him that we had methane over 1.5 percent, that by law he should remove everyone from the affected area, which is the section. And he did that. He ordered everyone off the section other than two or three people that he kept up there to help correct the problem.

BY MR. SHERER:

Q. Okay. And then you said you made that imminent danger run across the faces as soon as you got on the section.

A. Uh-huh (yes).

Q. Did you ride in with the crew that morning?

A. Yes. Yes.

Q. Had there been a pre-shift done prior to your going into that section?

A. Yes.
Q. Did it note low air or how methane was?
A. No.
Q. Okay. And did you check that?
A. Did I check ---?
Q. The pre-shift records.
A. Yes.
Q. Did you issue any violation for failure to make an adequate pre-shift?
A. I don't recall. I don't think I did. I don't recall.
Q. Okay. Do you think that was common to this mine?
A. Do I think the methane readings were common?
Q. No, the inadequate --- potentially inadequate pre-shift or failure to record the pre-shift?
A. I don't know if that was common or not.
Q. Thank you. You mentioned you spent a lot of time on the longwall itself. Do you know if someone had to call out the production on the longwall on a regular basis any time the wall was up or down or anything happened, basically?
A. Absolutely.
Q. Okay. Do you know who that was reported to outside?
A. Probably the --- what we called the dispatcher.

There’s usually one man outside and he’s got more than just dispatching jobs. But as a production foreman, he would usually have the headgate man --- the man that operates the headgate would generally call the reports out. The production foreman would call the headgate man and tell him what to report, and sometimes if everything was just average, normal, everyday, the headgate man generally knew what to report.

Q. Sure. Have you ever worked as a dispatcher on the Massey operations?

A. No.

MR. SHERER:

Okay. Thank you. That’s all the questions I have.

EXAMINATION

BY MR. FARLEY:

Q. Okay. I think we established at the beginning of your interview that during the time you were at UBB, which was from 1996 to 2006, that you had worked as a supervisor on all of the longwall panels in the UBB Mine except the one in operation at the time of the explosion; is that correct?

A. That’s true.

Q. Okay, all right. In discussing the --- I guess,

the organizational structure earlier, where you indicated that you had Blankenship, Chris Adkins and then a longwall coordinator reporting to Chris Adkins; was that correct?

A. Yes.

Q. Okay. And the longwall coordinator and the superintendent or something else, were essentially on the same level?

A. Yes.

Q. Something like that?

A. Yes.

Q. At the time you left the UBB Mine, left employment there, who was the longwall coordinator at that time in 2006?

A. Jack Roles.

Q. Jack Roles?

A. Uh-huh (yes).

Q. Okay. Do you recall who the assistant was, assistant longwall coordinator at that time?

A. I don’t think at that time they had an assistant longwall coordinator.

Q. Okay. Do you recall some of the other production bosses in addition to yourself?

A. When I was there, Tim Davis.

Q. Okay.

A. He might have been. This should be an easy question. It may take me a while to remember that, ---

Q. Okay. No problem.

A. --- because, you know, we had a few coming in and out.

Q. Okay. Now, you also said earlier that you were aware of people working in waste-deep water at UBB while you were employed there.

A. Yes.

Q. Do you recall where this location was where people were working in that type of water?

A. No, sir.

Q. Okay. All right. Are you familiar with an event that occurred in July of 2003 on the Number 16 Panel involving a methane inundation?

A. Yes, probably. I think there were two inundations.

Q. Okay.

A. And I’m aware of one of them.

Q. Okay. Which one are you aware of?

A. I don’t know. It may have been that date.

Q. Okay. We seem to be aware of two events, one occurring in July of 2003 and another in February of 2004.

A. Uh-huh (yes).
Q. Do those ring a bell?
A. Yes.
Q. Okay.
A. I'd say they were close together.
Q. Okay. Now, does one of them ring a bell or do both of them ring a bell with you?
A. One in particular, because I was present.
Q. Okay. Now, which one do you think you were present?
A. I think the second event.
Q. February 2004?
A. Uh-huh (yes).
Q. What panel were you working on at the time?
A. I don't remember.
Q. Okay. Well, could it have been 16 or would it have been 17?
A. It could have been either one. I don't recall.
Q. Okay. All right. Now, that would be --- would that be the instance where you were describing the noise like a jet engine?
A. Uh-huh (yes).
Q. Do you recall that event being investigated by MSHA and State agency personnel?
A. Yes.

Q. Okay. Was it investigated in the timely manner, within 24 hours, do you know?
A. I guess so. I suppose so, because I know production halted and, you know, of course we --- the power remained off ---
Q. Okay.
A. --- for quite a while.
Q. Okay. Now, that event, when you heard the noise like a jet engine, can you estimate how much time elapsed from the time you began hearing the noise until the time the power de-energized on the longwall face?
A. A minute.
Q. Okay. All right. Do you recall, approximately, what the air quantity in cubic feet per minute was on the longwall face at that time?
A. No, sir.
Q. What would you typically have had at that time?
A. You mean across the face or last open break?
Q. Across the face.
A. Typically 600 fpm at the head, 400 at mid face, 300 at the tail.
Q. Okay. What would your LO --- last open break reading typically have been at the time?
A. 60,000 to 90,000 CFM.

Q. All right. At that time when this event occurred, do you have any knowledge that you might have been mining underneath any type of creek, hollow body of water?
A. I know that we often did, but I can't say at that particular time if we were mining under anything or over anything.
Q. Okay. Do you recall the width of the longwall face at that time?
A. We had 1,000 foot block of coal.
Q. Okay. All right. In 2006 who was the president of Performance Coal? Who was responsible for UBB Mine?
A. In 2006 we had moved to Logan's Fort. That longwall was at Logan's Fort, and I was at Logan's Fort. And Barry Hale was --- I don't know if Barry had anything to do with Upper Big Branch at that time, but while we were at Logan's Fort, Barry Hale, I believe, was the president.
Q. Okay. I mentioned 2006 because that's the year you left.
A. Uh-huh (yes).
Q. What about 2004?
A. Who was the president in 2000 ---?
Q. Yes.

A. Maybe Bill Potter.
Q. Bill Potter. Okay.
A. Yeah, I'd stay --- I'd say Bill Potter was president.
Q. Now, in the event that you seem to recall from February of 2004 where we had the inundation of methane, do you recall any meetings after that event with State and/or Federal personnel to discuss that event?
A. No, sir.
Q. Okay. You didn't participate in any?
A. I didn't participate ---.
Q. Did anybody tell you of any such meeting?
A. No.
Q. Would you typically have been involved in those type of meetings?
A. Sometimes.
Q. Okay. Who typically would have been involved in a meeting of that nature with agencies to discuss a problem like that?
A. Mr. Potter and Bill Downey.
Q. Mr. Potter, Bill Downey. What position did Mr. Downey hold at that time?
A. Longwall coordinator.
Q. Okay. During the time you worked at UBB, were you

--- you obviously mined coal; is that correct?
A. Yes.
Q. Okay. Were you familiar with an underlying seam known as the Low Eagle Seam?
A. Not really.
Q. Okay. You ever hear of it at the time?
A. I may have. I don't recall.
Q. Okay. I want to show you a copy of a memorandum that --- an MSHA memorandum that was discovered sometime recently.
A. Okay.
Q. It's dated --- it has the date stamp of July 15, 2004 on it and somewhere on the first page it refers to a meeting at UBB Mine involving floor, methane floor outbursts encountered in the coal seams. Have you ever seen that memorandum?
A. No. I don't recall this memorandum.
Q. Okay. You didn't see it at any time during your employ with --- employment with UBB?
A. Uh-uh (no).
Q. Okay.
A. No.
Q. Have you seen it at any time during your employment with MSHA?
A. No.

Q. Okay. Memorandum on the same subject dated March 4, 2004. You ever see that one? Again, either during your employment with UBB or with MSHA?
A. No, I don't remember seeing this.
Q. Okay. Thank you. Now, this event that occurred in February 2004 where you had a methane inundation on the longwall panel where you were working, do you recall seeing any type of fracture, crack, et cetera in the mine floor which might have produced the methane?
A. No.
Q. Did anybody --- can you recall anybody from that time who might have known where the methane came from in the mine floor on the longwall panel?
A. No.
Q. During your employment with UBB at the time you left in 2006, was there an individual employed there by the name of Greg Clay?
A. Yes.
Q. What was his position?
A. Purchaser. I guess you could say purchaser.
Q. Okay. What position --- pardon me, what shift did he typically work?
A. Dayshift.
Q. Okay. Would he typically receive calls from

underground regarding production reports?
A. Yes.
Q. Okay. And who would he typically pass those reports along to, if you know?
A. I don't. I don't really know.
Q. Okay. The event in February of 2004 involving the methane inundation on the longwall section, how long was the longwall down as a result of that event? Do you recall?
A. Best of my recollection, two weeks.
Q. Two weeks?
A. Yeah.
Q. Okay. Now, do you recall if the longwall was down for two weeks because the methane continued to release into the mine atmosphere or because of other reasons? Was it necessary to wait two weeks because you had to take remedial measures?
A. It just --- we would typically take gas readings and as long as we had methane on the face, you know where I guess it was still coming, coming in from the gob area. It was coming out from in back of the shields, from behind the shields. You could step on the face and each shield has a reflective number on it identifying which shield it is, 1 through 176. And you can look down through there and you could see,

like, a vapor coming out from behind the shields, and it would show up on that reflective white identification tag. So you knew you could walk down from where you could see that vapor and just stick your arm out and get a gas reading, you know. You were okay up to that point.

Q. Okay. Can you identify the location on the longwall face, which shield it was?

A. Mid face.

Q. Okay. And how many shields were you using at that time approximately?

A. 176.

Q. 176.

A. Mid face was considered --- 88 was considered mid face.

Q. Okay, all right. And you think your reading was coming from the gob ---

A. Yeah.

Q. --- through the shield?

A. Yes, sir. Yeah.

Q. During this time period, did you ever experience any burning sensation in your eyes, anything unusual that you recall?

A. No.

Q. Any peculiar odor at any time as these events

occurred?
A. Probably no, but I have smelled, like, a kerosene smell before underground around the longwall. And sometimes when you smell that kind of like an old kerosene smell, you'll pick up a small percentage of --- well, what the gas detector reads as methane, but some kind of explosive gas, a low amount, .2, .3. But you know, because we've always said, you know, you can't --- methane has no odor. Yet when you smell that old kerosene smell, you pick up some kind of a explosive gas. You know, I guess it wasn't methane. It could have been some other type of explosive gas that was making the detector read a little high or.2, .3.
Q. As this event unfolded in --- February 2003, did you notice that kerosene smell at any time, that old kerosene smell at any time?
A. I may have, but nothing comes to mind. I may have.
Q. Okay. Well, I think I asked you if you noticed any cracks or any fractures in the mine floor.
A. Uh-huh (Yes).
Q. And you said no; correct?
A. That's correct.
Q. Is it possible that there could have been

fractures or cracks in the mine floor on the gob side of the shield?

A. Yes, it’s possible.

Q. Okay. Would that be typical?

A. I wouldn’t know if it was typical.

Q. Okay. I believe we asked --- did we ask you earlier if you experienced any floor hooving at the time?

A. We never had production problems with hoovage.

MR. FARLEY:

Okay. I think that’s all I had for the moment.

MR. MCGINLEY:

Thank you.

EXAMINATION

BY MR. MCGINLEY:

Q. Mr. Dulin, I’m going to read your description, and you tell me if this sounds familiar.

A. Okay.

Q. This deals with the floor burst of methane. Floor burst occurred approximately 40, 41 Crosscut. Gasses issued from a fracture in the floor behind the shields. It was reportedly up to 240 feet long. The crack was most prominent at Shields 106 and 107, just to the tailgate side of mid face. The fracture was a

line parallel to the face that occurred within approximately three crosscuts. Over the longwall face was plan to cease extraction in the panel. Bottom heave was reported at the face, tearing the longwall shearer away from the face toward the shields. At the time of the outburst employees were said to have heard a big thump that they associated with the sound that the overlying sandstone usually emits from failure. But before and after the outburst it was noticed that the shields were taking weight and yielding. Does that sound familiar to you?

A. No.

Q. That’s not what happened in the --- with regard to the outburst that you were discussing in this testimony?

A. What I remember about the outburst is I was at the --- alongside of the stage loader between the headgate and Number One Shield and I heard a, like, a jet engine and the floor shaking, you know, vibrating. And when the power --- you know, a few seconds later the power went off an we all left the section. After that, you know, we had two gas inundations. I may, I may --- I don’t remember. I’m having a hard time distinguishing one from the other.

Q. Sure.

A. Because basically you do the same thing.
Q. I understand.
A. But the beginning events, I do, I remember that clearly.
Q. Well, the description that I've just read to you, that doesn't describe the situation you're referring to in your testimony; is that correct?
A. I would say that doesn't just describe my experience.
Q. Was the methane outburst that you experienced, was the shearer running at the time, if you recall?
A. Probably.
Q. Do you recall what shift you were working back in 2003, 2004 ---
A. No.
Q. --- nightshift or ---?
A. I really don't remember. We typically was on swing shifts, so --- which means that we worked maybe a month of dayshift, then a month of evening shift and alternate.
Q. I see. Okay. Have you ever heard any report that there were floor bursts of methane in the Harris Mine?
A. No.
Q. Or let me read you another description of a floor burst of methane, and tell me if this sounds familiar.

A. Okay.
Q. High pressure floor burst occurred in a previous mine, adjacent panel at approximately 49 Crosscut. Mine personnel reported that this outburst of methane was associated with formation of a floor crack, was parallel to the face and in the approximate center of the face behind the shields. Mine personnel described this outburst as a very high pressure event, comparable to the sound of a jet engine. Mine personnel indicated that although accompanied by a high level of noise and rapidly rising methane levels, the coal outburst or coal injections were not associated with the events. Does that sound familiar to you?
A. Does it sound familiar to me, as if I've read that before?
Q. No, no, no, as if that you experienced that?
A. Yeah. Yes.
Q. Do you think that better describes the situation that you were testifying about earlier in response to Mr. Farley's questions?
A. Well, like I said before, I didn't know where it came from. I didn't know if it was the top, the bottom, inby, outby. It was --- just surrounded me. It was just a noise that surrounded me, and we

departed from the section just seconds later. So I didn't really ever find out where it came from. And afterwards I was surprised by the lack of --- we never talked about it. I mean, we all went in there to fix the problem. MSHA was there. State inspectors was there, but we never discussed it. We never had meetings on it or talk about it or --- it was just kind of like we waited a couple weeks and we hung our ventilation devices and got rid of it and started mining again.

Q. Were you on the first shift that went back to produce after you were down for the two weeks?

A. I don't remember.

Q. I'm just wondering about in the description of a outburst event that talks about a floor crack that was parallel to the face in the approximate center of the face behind the shields. Does that sound familiar to you or would you have seen that if that was the event you were discussing earlier?

A. No, I wouldn't have seen that.

Q. Okay.

A. You know, if you've been on a longwall before, it's really difficult to see in back of the shields. The rock --- usually the top falls right in back of the shields. If you are able to see behind the

shields, it’s only, like, maybe five feet.
Q. Right. Well, the ---.
A. So you know, that ---
Q. Some of the ---.
A. --- descriptions of people seeing cracks in back of the shields, I don’t understand how they’re seeing those cracks behind the shields, because the ones along the row ---.
Q. One of the descriptions even reports the length of a fracture by the shields to be 240 feet, and there’s a drawing.
A. Yeah.
Q. So in any event, there were no gas inundation events, including the one that you personally experienced that were ever discussed with you by any management personnel; is that correct?
A. That’s correct.
Q. When you experienced this one event, did that concern you?
A. Yeah. Yes.
Q. And you wondered why no one talked about it?
A. Yes.
Q. Did you talk about it with anyone? I mean, did you --- who were you reporting to at the time, your immediate supervisor?

A. Bill Downey was my immediate supervisor.
Q. Did you talk to him about that?
A. No.
Q. You were concerned --- or there were safety concerns wasn't there?
A. Yes.
Q. And you were concerned ---?
A. Yes, I was actually concerned we were going back in the mines to take samples and set up the ventilation controls. And I was thinking, wow, we still have, you know, an explosive atmosphere up there. And we did for several days. We would stop at the end of the track, which is typically 1,500 feet from the face. We'd stop at the end of the track and take our hammers off our belts and lay our hammers down because we didn't want any hammer hitting a piece of metal and sparking. I mean, we were that concerned about it. But you know, at the time I thought, gosh, you know? We're going up here to get gas readings, you know. But there wasn't a whole lot of talk about where it came from or anything that I was involved in.
Q. If you can, can you account for the --- your supervisors not discussing this, what you considered obviously was a serious event with you and the other

--- there must have been another assistant longwall coordinator and other folks that were conceivably in jeopardy. Well, was there a lack of communication that was common in your experience there at UBB and that would lead ---?

A. Yeah, I think it was a lack of communication, but I guess that's some --- you know, that's just my opinion.

Q. Well ---?

A. Some people might think it was great, but I felt ---.

Q. It wouldn't be great to not discuss such a serious event and what actions would be taken with ---.

A. No, I was referring that some people may not share my opinion that there was a lack of communication.

Q. Oh, I understand. Well, let's just focus on this one event, then. There was obviously a lack of communication or lack of concern. I mean, you worked in that mine for a long time. Do you have any sense of what the management perspective was that there was no follow-up to an event like this?

A. Well, no, I really can't explain that, other than to say that we were really concerned about keeping the longwall running, you know. You always heard how many dollars a minute that it was costing us when the

longwall was down, and you've heard all kind of figures, but the one that sticks in my mind is $750 a minute. So we were always concerned when the longwall wasn't running.

Q. Why were you concerned about that? Why was that a concern?

A. Why was it a concern that the longwall was down? Well, that's what made the money. As I understand it, that was what kept this mine alive, was the longwall. And it had a lot to do with Massey's bottom line.

Q. So this is --- did you feel it was more like Production One, Safety Two?

A. Oh, sure. Yeah. I mean, I did.

Q. Sure.

A. I personally did.

Q. Well, in light of the silence of your supervisors about this gas outburst, were you concerned at all that there might have been other similar outbursts that you didn't know about?

A. It hadn't occurred to me.

Q. Do you think it's possible?

A. Well, as you can see, the longwall panel's often over a mile long and it's 1,000 feet wide. Typically we'd move anywhere from 40 to 100 feet a day, so there could be events back in the gob that I would never

know about.
Q. No, no, I understand that, but if there are liberations or inundation of the mine with methane, you would have wanted to know about that, wouldn't you?
A. Yes.
Q. And you didn't know about the inundation in --- reported in the Harris Mine which is adjacent to UBB? You would have wanted to know that, wouldn't you ---
A. Yes.
Q. --- when you were working there?
A. Yes.
Q. And if there were mitigation measures that could be taken, given the knowledge that there was a possibility of further methane outbursts in the Upper Big Branch Mine, you would have wanted to know about that and whether they would be implemented; is that correct?
A. Yes.
Q. Did anything change after your experience with this methane outburst in terms of how the longwall operated or ventilation or training of people that worked on the longwall team?
A. Not that I'm aware of.
Q. And you'd be aware of it, because you worked there

for how many years?
A. I think I would be aware of it.
Q. You said that in your experience working on the longwall that it wasn't unusual to run into trouble. That's part of the mining process of running the longwall; right? There were problems that come up?
A. Yes. Yes.
Q. If there was some trouble, how would you --- what would you do in terms of informing your supervisor, the longwall coordinator. Was that your immediate supervisor?
A. Right. Generally you'd call outside and, like, if you had some top on the face that was heavy enough to yield the shields to a dangerous level --- when I say dangerous, I mean, to where you can't clear the shield of the shear --- you would call out and say, I'm going to have trouble getting by mid face. The shields are yielding. And generally you'd take cuts out of the middle, try to advance it as quickly as possible to leave the weight in back of you.
Q. What would you see, using that as an example as a possible safety problem?
A. Is that a possible safety problem? Production problem, definitely. A safety problem in that if you got to the point where you couldn't go by the shield

with the shearer, then you'd have to stop drilling and shoot top and --- I mean, it would be a more dangerous job at that point.

Q. What about other --- what kind of safety problems did you encounter when you were working on the longwall over a period of time that were clearly not just production, were safety problems?

A. Well, let me think about that. Well, from time to time you would have a blocked tailgate. Your escapeway off the tail would be blocked, but we had a special --- we had a provision in our escapeway plan that allowed the tailgate to be blocked. So when we would have a fall in the tailgate, we'd go to that special provision, so that would be an example of a --- it wouldn't necessarily hold us back from running coal, though. We'd still be able to run the longwall. It's just that we wouldn't be able to escape off the tail.

Q. What are the waiver --- did you say waiver or exception?

A. A provision on our --- what would that be? That would be on our methane dust control plan, I believe. We had to have a certain number of SCSRs on the tail and take extra gas readings on the tail, had a special safety meeting informing the crew that the tailgate

was blocked, that type of thing.
Q. Are there other safety --- serious safety issues that you encountered in working on the longwall over that considerable period of time that you worked at UBB?
A. I don't know of anything specific. I mean, everything would deal with safety. I mean, just about anything. I don't know of any instances where I can tell you anything specific.
Q. Did you ever have any accidents on the longwall crew that you were supervising over time, lost-time accidents?
A. I think maybe a back injury to Scott Sickles. He was a shearer operator. He bent down to pick up a rock that was in the trough that carries the cable and he hurt his back. But he was lost time.
Q. One of the things that we're trying to understand about UBB is that --- and you're familiar to some extent of this. There were ventilation problems in the last year or so.
A. Uh-huh (yes).
Q. And it's been publicly reported that some miners were saying, well, there wasn't air in the --- adequate air in the 22 Headgate section, for example. And there are changes in the ventilation plan ---

A. Uh-huh (yes).
Q. --- but there's nothing in the pre-shift reports that reflect inadequate air.
A. Uh-huh (yes).
Q. That seems inconsistent. Do you have any sense of how that could be?
A. I can't really comment on that, because, you know --- on headgate --- is that Headgate 22 where the explosion occurred?
Q. Well, we don't really know.
A. Were they calling that Headgate 22?
MR. SHERER:
That was the next headgate being driven.
Q. Okay. Which headgate was this, then? Was this Headgate 21, then?
MR. SHERER:
Actually, this was referred to as Headgate One North, the headgate of the current longwall panel, and then the next headgate that they were developing was referred to as Headgate Number 22.
A. Okay. I can't really comment on any of the reports that the foreman would give on the pre-shift on Headgate One North or 22.
BY MR. MCGINLEY:
Q. Well, I understand that, and I'm just ---

A. Okay.
Q. --- trying to get ---. You know, I --- you know, my first mine safety case was 1972 in Pennsylvania and it was about falsification of fire boss books. And so and this is always an issue.
A. Yeah.
Q. And we're trying to figure this out, that, you know, that we've got ventilation plan changes. We got people saying inadequate air, people saying there's adequate air, but there's no indication in the pre-shift examination of the fire boss of inadequate air, and I'm ---.
A. Uh-huh (yes).
Q. Does that make sense? Should we look into possible --- you know, keeping two books, you know, the ---?
A. No, there's not two books.
Q. Somebody --- the air readings, for example, being called in but different numbers being written down in the reports? I mean is that --- should we be looking at that, do you think?
A. I would say this, that it would be --- it is possible that as a foreman or a pre-shift examiner you might take a last open break reading and find it to be low, and you walk over one or two breaks and somebody

had tore a curtain down, you know. You may hang the curtain back up and go back to the last open break and you would have enough air. So if somebody left doors open or curtains down, you know, it's possible that you may have low air for a time until you correct the problem.

Q. Well, it's possible, as well, that there's just not enough air getting to the section ---

A. Yeah.

Q. --- not because of what's going on on that section but because of the ventilation plan; is that ---?

A. Yes.

Q. Is that fair?

A. Sure. Yeah.

Q. And should that be written up?

A. Yes. If you can't correct it, if you go to the last open break and you wouldn't have enough air and you couldn't correct it, then you would --- on your report you'd tell them that, you know, you got low air on the last open break and report what your air was.

Q. And if you had something like that when you were working there, would you --- you would call the longwall coordinator and say, hey, we don't have enough air?

A. Yes.

Q. And if that would have happened, what --- you know, what would the response be? I mean, would they document that?

A. Probably not document it. They'd probably find out. They'd make phone calls. Hey, if you got this door open --- is this door open? So and so just went through some track doors. Ask the dispatcher if --- you know, make sure that whoever went through the track doors closed the doors and ---.

Q. So when you were there, were there occasions when the doors wouldn't be closed and that would short-circuit the air, cause inadequate air on occasion.

A. I don't remember any specific time.

Q. Did they have doors? I'm trying to remember all this testimony. It's kind of ---.

A. Yes, sometimes we did and sometimes on some panels we did. Sometimes as we moved out towards the mouth of the panel we would actually build belt checks and doors to hold the air up to the face, because it would want to change. As we moved out toward the end of the panel, you might have to tweak your air a little bit to go in the direction you wanted it to go. So we may build some track doors and belt checks to do that.

Q. When you were asked about the water problems, you said there were places where the --- horrible

conditions, I think, were the words that you used.
A. Yeah.
Q. Can you describe that a little more?
A. Well, when you start getting water on the longwall, it seems like it would follow you, you know? It'd just follow you. And if you didn't --- if you couldn't put coal in the conveyor, then there's nothing to carry the water out.
Q. Uh-huh (yes).
A. And it would just build up. If you let it build up to a certain amount, it would go up over the junction boxes of the tail drive. And once that got wet, the tail drive was gone.
Q. That was big trouble?
A. That was big trouble. So we kept the conveyer running even if it was dry, dry of coal. Even if there was no coal in the conveyor, we kept the conveyor running to get the water on the belts so it'd get off the longwall face.
Q. So horrible conditions would be an appropriate way to describe the effect of while we're on production; is that fair?
A. Yes. Yeah.
Q. The term horrible condition that you used, did it also describe, in any way, the working conditions that

some miners had to endure?
A. Yes.
Q. Do you know of any instances where miners had to wade through water up to the neck?
A. Yes. Not on the face.
Q. No, on the ---?
A. In the back entries.
Q. And did that trouble you?
A. Yeah, because I was wading it.
Q. So you were one of those people?
A. I was one of them, yeah.
Q. Did you ever ---?
A. Didn't like it.
Q. Did you ever ---?
A. I complained about it. I didn't like --- I didn't like the fact that we knew we were going to be in water before we got there and then we get in water and then everybody's in a panic about the water, but we knew we were going to be in the water. And I didn't understand why we didn't have pumps and a discharge line in place to handle it.
Q. So they're repeating the same errors ---?
A. It happened several times, yeah. And it seemed like that we would get the brunt of the criticism for not being able to produce coal.

Q. When you say we, you mean ---?
A. We, the men on the longwall face actually operating the equipment. We were, I felt like, unfairly criticized. I was criticized quite harshly for putting water on the belt, on the conveyor belt. And Eddie Lester was superintendent at that time, and he said he was going to fire me for putting water on the belt. I said, well, Eddie, what am I supposed to do, because I knew if water got up over top of that junction box, we'd be --- the longwall would be down until we changed the tail drive out.
Q. And somebody would get fired if that happened; right?
A. The tail drive's like 12 tons and you're trying to move it 1,000 feet across the space, you know, less than 7 feet high and seven feet wide, you know, it just ---.
Q. What did, what's his name, Lester ---?
A. Eddie Lester. He was superintendent at that ---.
Q. So how did he respond to that?
A. How did I respond?
Q. No, how did he respond.
A. He respond. Well, he made me --- I had to --- I was working the third shift then. He made me go down to the tip or to the silo, which was full of water.

And as you tried --- if you'd open the gates to empty some of the coal, it's just a big flood, you know.

Q. That was a safety hazard; right?

A. You'd cover up the tail --- oh, my goodness.

Q. Yes?

A. Yes. And so after working a third shift soaking wet, he made me go down to the load-out, and you know, keep the belts clear, and I worked there all day, too, which I kind of resented that. But a funny thing was Chris Adkins was at the mines that day, and Eddie looked up at the silo belt and he saw water splashing off the belt. And he called underground and wanted to know who was running the longwall. Well, Chris Adkins was.

He said, okay. And that was all that was said about it. And I thought here, I got the third --- you know, I got the act read to me. But you know, Chris Adkins was --- I don't know, he was president or something at that time, so ---

Q. Well, so ---

A. --- above Eddie.

Q. --- is there any doubt that Chris Adkins knew about these ongoing serious water problems?

A. Absolutely. Sure he did.

Q. And do you think he knew that people were wading

through water sometimes up to their necks?
A. Yes.
Q. So you actually waded through water that deep. Did you ever slip and go under?
A. No.
Q. Did you ever hear about anybody doing that? Would that be really bad to do that?
A. Yeah.
Q. Do you think somebody could have drowned in that water?
A. Well, sure. I mean, anybody could drown, but I never heard of anybody slipping or falling or anything.
Q. Do you think that was really taking significant risk to have people do that, that they ---?
A. No, I never --- I myself didn't feel like at the time it was a significant risk. I really didn't think that much about it. I just --- I was just miserable from being wet and cold.
Q. Okay. Would red hats ever be ---
A. No.
Q. --- called upon to go through that kind of water? No?
A. I don't see why, no.
Q. Would you be shocked if they were ---

A. No.
Q. --- red hats were told that they had to go through neck-deep water ---
A. No, I would not.
Q. --- continuously for days?
A. I would not be shocked, no.
Q. Why not?
A. Oh, because generally --- I mean, it depends on what you're trying to get accomplished. I mean, if you're going through the water to get something accomplished, maybe to pump the water, I don't know. You know, I don't know why they would have red hats going through the water, but it would be for a good reason. I mean, a reason to correct a problem. But I mean sometimes that's what you do. You go through water to correct a problem. I mean, if you didn't go through the water, there was no other avenue.
Q. Would you ever put a red hat through neck high water on the first day on the job?
A. I don't think so. I'm not saying it wouldn't happen, but it would be very unusual.
Q. Would that be a safety concern, to ---?
A. Yeah, I think. Maybe so for somebody that inexperienced.
Q. What kind of training was given to people when

they had to go through neck-deep water?
A. None. And that wasn't the typical thing to happen.
Q. I understand.
A. Neck deep water is not typical.
Q. I understand.
A. But the reason why I did it was to travel an airway. We had weekly airways that have to be traveled. And so I would travel this airway that --- you know, a belt like this. And there was screen on the top. You'd kind of hold on to the screen, and it just be a little swag area. And then the rest of it might be waist deep.
Q. You were at UBB, what, a year ago for a --- to just ---? You went and you did an inspection. Was this one day or how long were you there?
A. I went to run the respirable dust at Upper Big Branch a total of, I'm going to guess five times.
Q. And where were you taken five times over a period, what?
A. Over a period of a year and a half.
Q. Okay. And where would you go in the mines to do that testing?
A. On the production sections, but I never ran --- excuse me, I never ran dust on the longwall. The

longwall wasn't there while I was inspector. That's why I never did run on the longwall.
Q. It started up after you stopped going?
A. Yeah, yeah. Yeah. By the time this --- the Headgate One North Panel started producing coal, Group Two had Upper Big Branch. And I inspect out of Group One. So I was actually kind of looking forward to next quarter when I could run dust on the longwall, because I knew the people and, you know ---.
Q. Right. So when you went in there, did you ever have any occasion to go behind the longwall, the one that's ---?
A. Yes, I ran dust. I forget the name of the section, but I ran dust on the panel in back of the longwall that was driving towards Bandytown Fan.
Q. Did you have occasion to learn that some of the tailgate entries were topped out with water?
A. No, I didn't know that.
Q. Would that have been a concern, had you learned that?
A. Yes.
Q. At one point in response to a question you were talking about if there was something urgent, there would be a call out of the mine or otherwise wait until the end of the shift? Do you remember that?

I'm trying to ---.
A. Uh-uh (yes).
Q. My notes aren't terribly clear. Can you ---?
A. You might be referring to when the coordinator would contact Chris Adkins, for example, or maybe Mr. Blankenship. I mean, I don't think the coordinator --- I think the coordinator, Bill Downey, waited for Mr. Blankenship to call him, which he did on occasion.
Q. Did you notice Blankenship was keeping close track of production by every, you know, so many hours?
A. Every --- yeah, like --- yeah.
Q. How frequently?
A. It seemed like he kept track every hour.
Q. Did he ever call you?
A. I talked to him a couple of times.
Q. And what would he call about?
A. The flood that I was talking to you about. He said it was insane to put something in a silo you couldn't take out.
Q. And what did you think he meant by that?
A. He said not --- he thought it was crazy to run water into a coal silo. I agree, but what --- I just didn't know what anybody else wanted to do.
Q. Did you feel like you could talk to Mr. Blankenship?

A. No.
Q. You couldn't tell him, well, look, if you had the pumps out here and you have them running, then you ---?
A. I couldn't, no. No.
Q. Why not? Why is that? Why didn't you feel comfortable talking to Mr. Blankenship about what was obviously a serious production problem if not a safety problem?
A. He decided when the conversations started and ended, so I mean even if I did try to engage him in a conversation, he might just hang up.
Q. What about Chris Adkins? Did you have conversations with him when there were problems?
A. Yeah, occasionally.
Q. And what about --- did you feel like you could talk to him and tell him the sort of things we're discussing here, you know, you know?
A. No, I never could. I mean, I never could understand. I mean, I felt like it was more of a --- well, he just wanted the problem fixed, you know. I was more onto the idea of let's fix the problem before it's a problem.
Q. Right. You didn't want to get the call?
A. Yeah. And like I said, you know, I agree that

it’s insane to put something in a silo you can’t take out. But I also know that if you’re --- if the longwall face is flooding and you let the tail drive go, go, go down, it’s going to flood worse because you can run --- then you can’t run any coal or any water off the face. Then you’re going to --- then you are going to start pumping. And then you got to bring pumps in, bring power centers in, run water line and ---.

Q. A big, terrible problem and what they’re concerned about, production would be significantly interfered with; right?

A. Absolutely. And then you’d lose ---. I mean, you may lose more than the tail drive. You know, if the longwall face actually roofs, I mean, you got the shearer underwater, the head drive underwater. I mean ---.

Q. Did you think there was a real concern that that might happen?

A. Yeah, I was concerned about that. Yeah.

Q. Was there anybody at UBB that you could talk straight with and say, look, let’s --- let’s get this organized and do as you were suggesting? Let’s --- we know there’s going to be water. Let’s get it set up and let’s prevent this from occurring.

A. No, I never felt like that. And I got pretty fed up with it.
Q. You know, but did ---?
A. That’s actually why --- I was the assistant coordinator, but I could never get anybody on my side with looking ahead. And when a fellow by the name of Virgil Joyce quit --- he retired. He was a production foreman. I asked Bill Potter if I could be put back on the face, because I was through with it.
Q. So there wasn’t anybody you really felt comfortable talking straight to about correcting the kind of problems you’ve been discussing?
A. That’s correct.
Q. Do you think that --- is that because the response would’ve been just take care of the problem? It’s up --- it’s your ---?
A. Don’t worry about it. Just, you know ---.
ATTORNEY HAMPTON::
Can you just go off the record for a minute?
OFF RECORD DISCUSSION
BY MR. MCGINLEY:
Q. Okay. You said that anything that happened on the longwall, I guess anything significant happened on the longwall, you were to call out to dispatcher?

A. Uh-huh (yes).
Q. Were you and the other folks in the same position, were you calling out numbers or narrative or what would be the nature of the reporting? Would it be production? We're down now and such and such is broken?
A. Yeah, yes. You might call at --- let's see, the best of my recollection we started at 7:00. We'd called out at 9:00, 11:00, every two hours, turn in 15 minutes for setting bits, a half an hour for taking slack out of the conveyer chain, two and a half cuts.
Q. Now, did you write anything down yourself or was it just calling out and they would be writing it out, out at the dispatcher's office?
A. Well, I had a production report filled out at the end of the shift, so I kept note. I mean, I kept my own little notebook of my downtime and ---.
Q. Did most of the assistant coordinators keep similar personal notes?
A. Oh, I'm talking about when I was a production foreman.
Q. Oh, production. Okay.
A. Yeah. And my assistant --- when I was assistant coordinator, I was just doing ---. Well, first of all, when Bill Downey would work Monday through

Friday, I would generally work Wednesday through Monday. I would take, like, maybe Tuesday and Wednesday. I'd take a couple of days off during the week. And I was the --- I guess, essentially the coordinator on the weekends.

Q. So the production foremen on the longwall, would they keep notes?

A. Oh, yes.

Q. Yes.

A. Uh-huh (yes).

Q. And would they turn them in or just that's a personal sort of ---?

A. That's personal. Just throw them away.

Q. Would you ever write down problems, you know, anything other than production?

A. You mean, like, a diary? No. I mean, I never did. I don't know of anybody who ever, who ever did that.

MR. MCGINLEY:

Well, that's all the questions I have.

A. Okay.

MR. MCGINLEY:

Thank you.

ATTORNEY HAMPTON:

Is there any follow-up?

MR. FARLEY:

A couple real quick.

RE-EXAMINATION

BY MR. FARLEY:

Q. While you were employed at the Upper Big Branch Mine, did you know of anybody, an engineer by the name of George Levo?

A. Yeah.

Q. Okay. What about Mike Milo?

A. Yes.

Q. Did you see him on a regular basis?

A. No.

Q. Okay. Under what circumstances did you usually see him, if you did see him?

A. Times I remember those two, we would have a pre-move get together, meeting, I guess you'd say. And we'd discuss where we're moving to and I'd show them where I thought we should put the power box and the charger, kind of just where electrical equipment and other --- the pullout ramp, different things should set.

Q. Okay. During your employment with the UBB Mine, did you know a guy named Tim Comer?

A. Tim ---?

Q. Tim Comer?

A. Tim Comer.
Q. C-O-M-E-R.
A. No.
Q. Okay. Are you aware of any coal seam degasification that took place or was conducted in the Eagle Seam in the UBB Mine at any time while you worked there?
A. No.
Q. Okay.
RE-EXAMINATION
BY MR. SHERER:
Q. I've got just a few questions. When you were explaining to Mr. Farley that there was methane coming out about mid face after that methane inundation ---
A. Uh-huh (yes).
Q. --- you specifically mentioned Shield Number 88. Was it --- the methane just in that region or did it continue on down toward the tailgate? Do you recall?
A. Yeah, it continued on down.
Q. Okay.
A. After that inundation or during the inundation of that and right after that, do you recall if any of the Massey engineers came into the longwall to try to find out what was going on?
A. No.

MR. MCGINLEY:
You don’t recall or they didn’t do that?
A. Well, I don’t recall them doing it.
BY MR. SHERER:
Q. Do you think that would have been prudent engineering?
A. I can’t answer what prudent engineering is to tell you the truth.
Q. Do you think they needed to know and understand that event to plan the next longwall panel?
A. Yeah, I think it would probably be a good idea, but ---
Q. Okay.
A. --- to figure out where it came from. Like I said, I don’t know where it came from and I don’t ever remember ever finding out where it came from.
Q. Okay.
A. It just kind of happened and we got rid of it and started running again.
Q. Are you familiar with the term shoot the messenger?
A. Yeah.
Q. Do you think that applied with problems at this mine? Do you feel if you call out a problem, you would get some sort of repercussion?

A. Let me think on that just a ---
Q. Sure.
A. --- second; okay? No.
Q. Okay.
A. I wouldn’t say that.
Q. Okay.
A. You’re more likely to be ignored ---
Q. Okay. Sure.
A. --- than shot.
MR. SHERER:
Okay. Thank you. That’s all the questions ---.
MR. MCGINLEY:
Well, let me have a --- ask a follow-up on that.
RE-EXAMINATION
BY MR. MCGINLEY:
Q. So you know, when I was asking questions a little earlier about if you had somebody to talk to in a supervisory capacity ---.
BRIEF INTERRUPTION
BY MR. MCGINLEY:
Q. You felt like it just wasn’t worth the effort because you wouldn’t get any kind of positive response; is that a fair statement?

A. Oh, I might have felt that way toward the end of my employment, though. I was anxious to leave.
Q. And you know, we've talked about that, you know, that ongoing water problem as an example. And you really --- I think you said there wasn't anybody you felt like you could talk to that was in a supervisory position and suggest how to resolve the problem. Is that simply because that you felt they just didn't want to hear it? They knew about the problem and they weren't doing anything and they wouldn't do anything?
A. I don't know why they didn't do anything about it. I mean, because it always impacted production significantly. I mean, to me it was a lot cheaper to set a couple P60s up there, you know, and be ready for it and try to run through it real quick, you know, with the help of those pumps.
Q. Yeah, but what I'm trying to get to is the --- you know, the communication that's going on there. You just knew that this had been going on and on and on and you felt like they knew how to handle it and they weren't doing it, so you weren't --- no sense in you raising it?
A. No, I just felt like they just weren't really concerned about it.
Q. So if you called, they wouldn't --- nothing would

happen?
A. Yeah. Yes.
Q. There wouldn't necessarily be any repercussions, but it just would be a wasted effort?
A. Right.
MR. MCGINLEY:
Okay. Thank you.
A. Okay.
ATTORNEY HAMPTON:
All right. Looks like we're done. On behalf of --- do you want to say something?
A. No.
ATTORNEY HAMPTON:
Okay. On behalf of MSHA and the Office of Miners' Health, Safety and Training, I want to thank you for appearing and answering questions today. Your cooperation is very important to the investigation as we work to determine the cause of the accident. We request that you not discuss your testimony with any person aside from your personal representative. After questioning other witnesses, we may call you if we have any follow-up questions.
A. Okay.
ATTORNEY HAMPTON:
If at any time you have additional

information regarding the accident that you would like to provide to us, please contact us at the contact information that was previously provided to you in that letter. If you wish, you may now go back over any answer that you've given during this interview and you may also make any statement that you would like to make at this time. Is there anything that you would like to say?

A. No.

ATTORNEY HAMPTON:

Okay. Again, I want to thank you for your cooperation in this matter.

A. Okay.

ATTORNEY HAMPTON:

Off the record.

OFF RECORD DISCUSSION

ATTORNEY HAMPTON:

Okay. Back on the record. We've just had a conversation off the record regarding the status of the transcript, and a request has been made on behalf of Mr. Dulin that he would like an opportunity to review the transcript at the time that it is --- it will be appropriate for it to be made available to him.

MS. RICHARDSON:

Yes.

ATTORNEY HAMPTON:

Okay. Thank you very much.

* * * * * * * * *

STATEMENT UNDER OATH CONCLUDED AT 6:00 P.M.

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STATE OF WEST VIRGINIA)

CERTIFICATE

I, Danielle Ohm, a Notary Public in and for the State of West Virginia, do hereby certify:

That the witness whose testimony appears in the foregoing deposition, was duly sworn by me on said date and that the transcribed deposition of said witness is a true record of the testimony given by said witness;

That the proceeding is herein recorded fully and accurately;

That I am neither attorney nor counsel for, nor related to any of the parties to the action in which these depositions were taken, and further that I am not a relative of any attorney or counsel employed by the parties hereto, or financially interested in this action.