



SARGENT'S
COURT
REPORTING

Quality Work. Quality People.

Statement Under Oath of Mark Gilbert

Date: June 26, 2010

Printed On: July 9, 2010

Sargent's Court Reporting Services, Inc.

Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

STATEMENT UNDER OATH

OF

MARK GILBERT

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 and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia on Saturday, June 26, 2010, beginning at 12:28 p.m.

Any reproduction of this transcript is prohibited without authorization by the certifying agency.

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

POLLY ANNA HAMPTON, ESQUIRE
U.S. Department of Labor
Office of the Regional Solicitor
1100 Wilson Boulevard
22nd Floor West
Arlington, VA 22209-2247

TERRY FARLEY
West Virginia Office of Miners' Health,
Safety and Training
1615 Washington Street East
Charleston, WV 25311

JASEY MAGGARD
Miner Safety Health Administration
3837 South U.S. Highway 25E
Barbourville, KY 40906

A P P E A R A N C E S

(Continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CELESTE MONFORTON, MPH, DRPH
West Virginia Independent Investigation
2100 M. Street, NW
Suite 203
Washington, DC 20037

BILL TUCKER
West Virginia Office of Miners' Health,
Safety and Training
Welch Regional Office
891 Stewart Street
Welch, WV 24801-2311

I N D E X

1		
2		
3	OPENING STATEMENT	
4	By Attorney Hampton	6 - 11
5	STATEMENT	
6	By Mr. Farley	11
7	WITNESS: MARK GILBERT	
8	EXAMINATION	
9	By Mr. Maggard	11 - 40
10	EXAMINATION	
11	By Mr. Farley	40 - 45
12	EXAMINATION	
13	By Ms. Monforton	45 - 51
14	RE-EXAMINATION	
15	By Mr. Maggard	51 - 66
16	RE-EXAMINATION	
17	By Mr. Farley	66 - 67
18	CLOSING STATEMENT	
19	By Attorney Hampton	68
20	CERTIFICATE	69
21		
22		
23		
24		
25		

1	EXHIBIT PAGE		
2			PAGE
3	NUMBER	DESCRIPTION	IDENTIFIED
4	One	Map	67*
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25	*exhibit not attached		

P R O C E E D I N G S

ATTORNEY HAMPTON:

My name is Polly Anna Hampton. Today is June 26th, 2010. I am with the Office of the Solicitor, the U.S. Department of Labor. With me here is Jasey Maggard, 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, and I ask that they state their appearance right now for the record.

MR. FARLEY:

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

MS. MONFORTON:

Hi, I'm Celeste Monforton. I'm with Governor Manchin's special team.

ATTORNEY HAMPTON:

There is at least one other member of the investigation team in the room present right now. Mr. Maggard will be conducting the initial component 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

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

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

1 You may have a personal attorney present
2 during the taking of the statement or another personal
3 representative if MSHA has permitted it. Your
4 statement is completely voluntary. You may refuse to
5 answer any question and you may terminate your
6 interview at any time or request a break at any time.
7 Since this is not an adversarial
8 proceeding, that means that no formal Cross
9 Examination of you will be permitted. Just so that
10 the record is clear, do you have a personal
11 representative with you here today?

12 MR. GILBERT:

13 No, ma'am.

14 ATTORNEY HAMPTON:

15 Your identity and the content of this
16 conversation will be made public at the conclusion of
17 the interview process and may be included in the
18 public report of the accident unless you request that
19 your identity remain confidential, or your information
20 would otherwise jeopardize a potential criminal
21 investigation. If you request us to keep your
22 identity confidential, we will do so to the extent
23 permitted by the law. That means that if a judge
24 orders us to reveal your name or if another law
25 requires us to reveal your name, or if we need to

1 reveal your name for other law enforcement purposes,
2 we may do so. Also, there may be a need to use the
3 information you provide to us or other information we
4 may ask you to provide in the future in other
5 investigations into and hearings about the explosion.

6 Do you understand?

7 MR. GILBERT:

8 Yes, ma'am.

9 ATTORNEY HAMPTON:

10 Do you have any questions?

11 MR. GILBERT:

12 No.

13 ATTORNEY HAMPTON:

14 After the investigation is complete, MSHA
15 will issue a public report detailing the nature and
16 causes of the fatalities in the hope that greater
17 awareness about the causes of accidents can reduce
18 their occurrence in the future. Information obtained
19 through witness interviews is frequently included in
20 these reports. Since we will be interviewing other
21 individuals, we request that you not discuss your
22 testimony with any other person aside from a personal
23 representative or an attorney.

24 A court reporter will record your
25 interview, so please speak loudly and clearly. If you

1 do not understand a question, please ask the
2 questioner to rephrase it. Please answer each
3 question as fully as you can, including giving any
4 information you have learned from someone else. I'd
5 like to thank you in advance for your appearance here.
6 We really appreciate your assistance with this
7 investigation. Your cooperation is critical in making
8 the nation's mines safer.

9 After we have finished asking questions,
10 you'll then have an opportunity to make a statement or
11 to provide us with any other information that you
12 think is important. If at any time after the
13 interview you recall additional information that you
14 believe might be useful, please contact Norman Page at
15 the telephone number or e-mail provided to you in the
16 letter that was sent to you earlier. And if you need
17 that, I can also give you that information again.

18 Any statements given by miner witnesses
19 to MSHA are considered to be an exercise of statutory
20 rights and protected activities under Section 105(c)
21 of the Mine Act. If you believe any discharge,
22 discrimination or other adverse action is taken
23 against you as a result of your cooperation with this
24 investigation, you are encouraged to immediately
25 contact MSHA and file a complaint under Section 105(c)

1 of the Act. Terry.

2 MR. FARLEY:

3 Mark, I'd like to advise you that the
4 West Virginia Code 22A-1-22 of the West Virginia Coal
5 Mine Health and Safety Regulations also protects
6 miners from discrimination in participating in these
7 kind of interviews. I want to give you some contact
8 information should you experience any such
9 discrimination and also my business card and the
10 business card for Mr. Bill Tucker, who is also one of
11 our lead investigators. Thank you.

12 ATTORNEY HAMPTON:

13 Okay. Could you swear in the witness?

14 -----

15 MARK GILBERT, HAVING FIRST BEEN DULY SWORN, TESTIFIED
16 AS FOLLOWS:

17 -----

18 EXAMINATION

19 BY MR. MAGGARD:

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

22 A. Mark David Gilbert, Jr. Last name's spelled
23 G-I-L-B-E-R-T.

24 Q. Could you provide us with your address and
25 telephone number?

1 A. My address is [REDACTED]

3 Q. Thank you. Are you appearing voluntarily today,
4 Mark?

5 A. Yes, sir.

6 Q. And where are you --- could you tell us a little
7 bit about your mining experience? When did you start
8 working in the mines and what all have you done?

9 A. When I started working in the mines, I was working
10 through a contractor recovering belt --- belt heads at
11 other mines. I got into Revolution, monitoring
12 equipment such as scoop. Come to UBB, learned to run
13 a bolter, hauler, fork truck. Started on the longwall
14 --- the longwall and utility over at UBB.

15 Q. And over this time period, how long have you
16 worked --- how many years have you worked, or months
17 or whatever?

18 A. At this particular mine?

19 Q. Altogether and then at this particular mine also.

20 A. I'm pretty sure it's right at two years.

21 Q. And when you started working at --- I guess, was
22 Revolution your first job?

23 A. No, sir, it was the old Candice Mine, Patriot
24 Mine. First active coal mine was Revolution.

25 Q. Okay. Revolution, is that also a Massey mine?

1 A. Yes, sir.

2 Q. Okay. And when did you --- about what time period
3 did you start at Revolution? How long ago?

4 A. I'm not sure.

5 Q. Okay. How long ago was it when you started at
6 UBB?

7 A. Around September of last year.

8 Q. And who was the contractor that you used to work
9 for?

10 A. Mountaineer Labor.

11 Q. And how long did you --- how long can you estimate
12 that you worked for Mountaineer Labor?

13 A. About a year, about a year and a half, somewhere
14 like that.

15 Q. And when did you become a Massey full-time
16 employee?

17 A. I believe in about February of this year.

18 Q. Okay. And what's your current job title?

19 A. My current job title is still longwall utility,
20 but I'm shoveling belt.

21 Q. Do you have any mining certifications?

22 A. I got my black hat and I've got my EMT card, EMTM,
23 excuse me.

24 Q. And what shift do you work, Mark?

25 A. Dayshift.

1 Q. And what time does it start?

2 A. 6:30.

3 Q. And what time does it end?

4 A. About 3:30.

5 Q. About what time do you --- is that 6:30 that you
6 enter the portals or ---?

7 A. Yes, sir.

8 Q. And 3:30 you try to exit the portals?

9 A. Yes, sir.

10 Q. Okay. How long does it take you to get to --- I
11 assume you work on the longwall; is that correct?

12 A. Yes, sir.

13 Q. Okay. How long does it take you to get from where
14 you start to the longwall, and where do you start?
15 Where do you portal at?

16 A. Are you talking about when I was at UBB?

17 Q. Yes.

18 A. I portal at the main office UBB. It takes about
19 an hour, an hour and 15 minutes. When I was at UBB,
20 we usually start about 6:30 and end about 4:30.

21 Q. So you leave the longwall at what time?

22 A. Probably about 3:00.

23 Q. Okay. You said you're a utility man and also
24 shovel some belts. Can you kind of tell us what day-
25 to-day work you have to do as a utility man and a belt

1 man?

2 A. Usually the crew I was on, we set all the belt
3 heads for the longwall and done longwall work such as
4 take care of the belt and make sure the belt was
5 dusted properly and shoveled and just make sure the
6 longwall could run. We set belt heads for the next
7 longwall and we never quite finished that one.

8 Q. Is there anything else you might --- that you did
9 from time to time?

10 A. When I got up there, we had there at one point in
11 time had to bolt the top, hung prop line. We had to
12 bolt top down there.

13 Q. And how often do you have to bolt top up on the
14 longwall?

15 A. Not very often.

16 Q. How many bolt machines did they have?

17 A. I'm not for sure. I just bolted from one time or
18 another. I wasn't up there all the time.

19 Q. Did someone help you when you bolted top?

20 A. Yes, sir.

21 Q. Who was your boss on the longwall crew that you
22 was on?

23 A. At the time, it was Mark Ferrell. He no longer
24 works for Massey.

25 Q. And why? Do you know why?

1 A. No, sir. He quit Massey a couple months before
2 the explosion.

3 Q. Who took his place?

4 A. Mike Kiblinger.

5 Q. How many guys worked on your crew?

6 A. Six. It was six when Mike Kiblinger had it. When
7 Mark Ferrell, the old boss, had it, it was just four
8 of us.

9 Q. Okay. Can you tell us about the last day that you
10 worked on the longwall and tell us when that was?

11 A. The last day I worked up there at the wall was the
12 day it happened, 4/5/10. That morning I went in and
13 we was all ready to roll and ready to go underground.
14 It was abnormal that day. Usually a couple guys that
15 was on the one section crew would be fooling around
16 and we'd all be standing around laughing at them,
17 having a good time. They wasn't arguing that morning.
18 It was unusual. It was just like we were saying
19 goodbye to them and went underground. We had to run
20 motor that day as a matter of fact and supply the
21 Number Two section. When we took the supplies up
22 there, it seemed like we was saying goodbye to them
23 guys, too, because they was always talking to us
24 whenever we went up there to run the motor, if we had
25 to run it. It was just weird, an abnormal feeling.

1 And we was going out that day, and one of the fire
2 boss we usually holler at was sitting there and we
3 said goodbye to him and we went outside when we got
4 called off from going to the longwall. We went
5 outside, I was supposed to haul something in and wound
6 up that the forklift was broke down. And they got it
7 fixed. We were getting ready to go back in. We was
8 told no and we just went in the drift mouth and ate
9 our lunch. We come out, went around to the company
10 truck. We was all getting ready to leave, and I was
11 heading out, going off the hill and the mine blowed
12 up.

13 Q. What time did you get there on the 5th?

14 A. That morning?

15 Q. Yeah.

16 A. My usual time, 4:30 in the morning.

17 Q. And let's talk about where you --- what you first
18 did. You went to the --- what section did you go to
19 first?

20 A. The One section, we got called off the One
21 section.

22 Q. Okay. You went to One section delivering
23 supplies. And when you say One section, you're
24 talking about Headgate 22?

25 A. Headgate 22.

1 Q. And where did you drop those supplies off at?

2 A. Down there at their supply hole.

3 Q. Could you kind of show us on the map here where
4 the supply holes are at?

5 A. There should be double doors about somewhere, not
6 where you enter the One and Two section, but there's
7 another set of doors right in this area that we had to
8 drop them off, somewhere about up in there. I cannot
9 remember, it's been so long.

10 Q. Okay. You're talking about --- are you talking
11 about man doors?

12 A. No, supply doors.

13 Q. Supply doors.

14 A. They brought doors up in this area, so right along
15 about in here.

16 Q. How many breaks up there do you recall?

17 A. About 20 or so.

18 Q. About 20 breaks.

19 A. As far as the track was running up to there, at
20 least.

21 ATTORNEY HAMPTON:

22 Would it be helpful to mark on the map
23 where he's talking?

24 MR. MAGGARD:

25 Yeah.

1 ATTORNEY HAMPTON:

2 I'm going to hand you a blue marker. If
3 you could mark on the map the area you were just
4 talking about, maybe identify the doors.

5 A. Uh-huh (yes).

6 ATTORNEY HAMPTON:

7 You could circle the area where you think
8 it is.

9 BY MR. MAGGARD:

10 Q. Just a rough estimate of where you --- where the
11 supply hole is and the track and stuff.

12 A. The track was about in this area, if I'm not
13 mistaken, and the supply hold was probably about right
14 in here.

15 Q. Could you just mark off in here?

16 A. I'm saying that's about where it was at.

17 Q. Mark supply hold there.

18 A. That is about ---.

19 Q. Okay. That's fine.

20 ATTORNEY HAMPTON:

21 The witness just marked the area with an
22 S-H for supply hold in blue.

23 BY MR. MAGGARD:

24 Q. Okay. And then about what time was it when you
25 delivered the supplies?

1 A. It was roughly about 10:30, 11 o'clock.

2 Q. Okay. And what was you delivering up there?

3 A. Roof bolts, dust, monkey faces, glue, fly boards,
4 block, belt stoppings with it.

5 Q. Who was with you?

6 A. My buddy. Well, the two guys that was on the
7 regional crew, John Cox and Jerry Weeks.

8 Q. And then where did you go?

9 A. And then we got called off One section to go
10 outside the Ellis Punchout to load up something to go
11 to another setup on the lower end --- on the lower end
12 of the mines because they was supposed to moving this
13 panel right here, supposed to be moving it onto
14 another panel.

15 Q. When you're talking, when you say right here, the
16 Tailgate 22 section crew?

17 A. No, sir.

18 Q. Oh, are you talking about the longwall was moving
19 over to the Ellis Portal?

20 A. Yes. Well, this was after they got done with this
21 panel right here, there was a move to another smaller
22 panel until they got Headgate 22 drove up.

23 Q. Okay. And you went to Ellis. Did you take ---
24 you took some supplies to --- in and over there for
25 that?

1 A. (Indicates no).

2 Q. What did you do over at Ellis?

3 A. We was supposed to take a part for a head in over
4 there.

5 Q. When you say head, are you talking about a head
6 drive?

7 A. A belt head. Just some of the smaller parts that
8 could be hauled in that way without being illegal
9 about it. And it wound up that the forklift was broke
10 down over there. We got to doing some measuring and
11 the parts that we were supposed to haul in were too
12 tall for the drift mouth.

13 Q. Okay.

14 A. So we did not take them in.

15 Q. Okay. And then what did you do?

16 A. We took the motor inside the drift mouth and sat
17 out the motor and ate lunch.

18 Q. And about what time did you eat lunch?

19 A. That was about 2:30.

20 Q. Okay. And was it you and Cox and Weeks that were
21 together eating lunch?

22 A. Yes, sir. John had rode up on another mantrip, on
23 a mantrip that was following us down through there,
24 and Jerry and I was on the motor.

25 Q. So you never went to the longwall the day of the

1 accident?

2 A. No, sir. We were supposed to, but we never did.

3 Q. What did you know about what was going on on the
4 longwall that day? What did they tell you outside
5 before you went in as far as the longwall's condition?
6 Was it ready to run?

7 A. It was running good. They was already up and
8 running.

9 Q. Okay.

10 A. And we had to stay outside for a while that day
11 because we was getting our motor loaded, and there was
12 about two or three of us trying to get loaded up.

13 Q. Did you normally not go in with the longwall crew?

14 A. Yes, sir.

15 Q. So you usually loaded supplies and done stuff like
16 that before you went in; is that right? Or what did
17 you normally do?

18 A. Normally we would find us a ride. We always had
19 to wait on a ride and we'd go up to where Headgate 22
20 is, the new mother drive for the next longwall panel
21 would be working on that, that's what we were supposed
22 to be working on that day. We wound up moving
23 supplies up on that section, and two motor men run the
24 motors. One of them was off --- or no, he was there,
25 but he was doing something else and we had to haul

1 supplies to some other section up in the mines and
2 went in to run the motor that day.

3 Q. When you went to Headgate 22 to the supply hold,
4 you mentioned that you felt that things just felt
5 abnormal that day?

6 A. It was an unexplainable feeling. It wasn't the
7 conditions of the mine, it was just something didn't
8 feel right that day.

9 Q. Did you see anything that popped out to you that
10 may have --- you know, like let's talk about when you
11 come up the track entry, did you see anything damaged
12 or ---?

13 A. Everything was in proper shape.

14 Q. Brattices looked okay?

15 A. Yes, sir.

16 Q. Were any doors damaged when you come up through
17 there?

18 A. No, sir, everything was in its usual shape.

19 Q. Did you have to close any doors that were open or
20 anything when you come up through there, see any doors
21 that was open that should have been closed or ---?

22 A. No, sir. Everything was the way it was supposed
23 to be.

24 Q. About how many doors do you have to go through to
25 get to Headgate 22?

1 A. Just to the longwall or all the way through?

2 Q. Let's say --- well, let's say going up to the
3 Headgate 22 section, the belt section, how many sets
4 of doors do you remember you have to go through?

5 A. Just on that section, you only had to go through
6 two, two double doors, two sets of doors, that's all
7 in that section. But if you're talking about all the
8 ways through the mine starting from UBB punchout, ten.
9 That's not including if you go up on the longwall.

10 Q. On the longwall, when was the last day that you
11 was on the longwall?

12 A. To be honest with you, I'm not for sure because we
13 was down there setting up the belt head. We had been
14 setting up the belt head ---.

15 Q. You're talking about the mother drive?

16 A. The new mother drive.

17 Q. The new mother drive. Okay. When was the last
18 day you worked on setting that new mother drive?

19 A. The day prior.

20 Q. The day prior?

21 A. We had passed forward the wench.

22 Q. So you're saying that you worked that Sunday, the
23 day prior?

24 A. Yeah, it was that Saturday.

25 Q. Saturday. How many guys worked on that Saturday?

1 A. On that crew or ---?

2 Q. Yeah, on that crew and ---.

3 A. We all worked on that Saturday, all of us, all six
4 of us.

5 Q. All six of you. Wasn't anybody else working that
6 day other than your crew?

7 A. On that mother drive, or throughout the mines?

8 Q. Throughout the mines.

9 A. Everybody was working.

10 Q. All of the sections had people working on them?

11 A. Yes, sir.

12 Q. About how many people would you say was working, a
13 guess?

14 A. Just an estimated guess, I'd say right around 100
15 people or so.

16 Q. Which sections were running that day, on Saturday?

17 A. One and Two section was running, the longwall was
18 running. If I'm not mistaken, Three section was
19 pulling out, was supposed to be moving so they wasn't
20 running. And I guess it would be Four section where
21 the barricade section was running.

22 Q. Now, was there any --- now this was Easter
23 weekend. Was there anybody off that weekend or ---?

24 A. There was a couple people who took two days and
25 whatnot. It's been a long time. I don't want to

1 think about it.

2 Q. But are you sure that you --- I understand that.

3 Are you sure that you worked Saturday on the mother
4 drive before the accident?

5 A. That Saturday, it wasn't Easter weekend when we
6 worked. It was that Friday or the last day we worked
7 up there.

8 Q. Friday?

9 A. Yeah. It would have been the last day we worked
10 up there before Easter weekend.

11 Q. Okay. Did some of the guys work on Saturday on
12 the longwall Easter weekend?

13 A. No, they worked on that longwall Saturday. The
14 only people that was in there, if I'm not mistaken,
15 would be the fire bosses.

16 Q. Did you know of anybody working Sunday in the
17 mines that weekend, Easter weekend?

18 A. Not that I know of.

19 Q. So is it --- you got an estimate of maybe the last
20 time, the last work you had to do at the longwall,
21 what day it was or ---?

22 A. No, sir. We was here and there and everywhere
23 where we was running.

24 Q. When is the last time you had to shovel some belt
25 in this mine?

1 A. I can't remember if it was a state or federal
2 wrote a violation on the longwall belt. No, it was
3 the Two section --- or One section belt.

4 Q. And you're talking about Headgate 22 belt?

5 A. Yeah. They wrote a violation talking about
6 excessive amount of gob being under the belt, and we
7 shoveled it plumb to the bottom.

8 Q. Was there a lot of gob under that belt?

9 A. No, not real bad. It was just a lot of float
10 dust. Some coal had come off the belt.

11 Q. About how long ago was that? Do you know?

12 A. No, sir. It would have been about two, maybe
13 three weeks before the mine blowed up.

14 Q. How many people had to clean on the belt, was you
15 all down --- was you there when the inspector was
16 there or do you remember?

17 A. No. We was told we had to go to shovel Headgate
18 22 belt or else they was supposed to be shut down over
19 it.

20 Q. So how many breaks did you have to shovel, do you
21 remember?

22 A. The whole belt.

23 Q. The whole belt?

24 A. The whole belt line, there was quite a few of us
25 shoveling.

1 Q. How long did it take?

2 A. It took about four days.

3 Q. Four days. How much rock dusting did you have to
4 do?

5 A. We had to do a lot of rock dusting. We had to ---
6 the superintendent had us with a duster that you put
7 in the scoop and put it on the belt line and had two
8 pillars on the belt line dusting.

9 Q. When you first saw it, does it --- did it look
10 like it needed a lot of attention? I assume it did
11 after four days.

12 A. Yeah, it did. It was one of the belts that's
13 pretty long and where we had to shovel her to the
14 bottom.

15 Q. When was the last time you seen the longwall belt?
16 Have you traveled it very often?

17 A. We didn't really travel it very often. We worked
18 on the mother drive right on it and then we went and
19 checked everything out to make sure it was running
20 right behind where the storage unit was and just make
21 sure the belt was running on center, not off to one
22 side or the other.

23 Q. Was it maintained fairly well or ---?

24 A. Yes, sir.

25 Q. Did you do a lot of work on it?

1 A. Yes. It wasn't only me. It was everybody who had
2 to go up there and look at the mother drives. We
3 generally greased it and took care of it and dusted
4 it, made sure everything was right with that mother
5 drive and it was running, very well-maintained.

6 Q. It was in a lot better shape than Headgate 22
7 or ---?

8 A. No. We had just got done setting that one. It
9 was in really good shape. The only problem we had,
10 there was a little bit of water right there in front
11 of the head frame right underneath the plates and
12 underneath the belt.

13 Q. Did you go up on the longwall very often and watch
14 them run?

15 A. No, sir, not very often. When I did go up there,
16 I did look and see how they was running.

17 Q. What kind of problems do you recall that they've
18 had in the past on the longwall?

19 A. Water.

20 Q. And where's the worst location --- tell us about
21 the water. What do you remember about it?

22 A. Well, on the longwall itself up there on the face,
23 they had water up on the back boards on the panel
24 line. From what I understand, from what I was told
25 that when the shearer would go down, the whole shearer

1 would be under water when they was running and they'd
2 come up out of the water. The worst locations would
3 be on the tailgate or the Headgate 21. It would be
4 the worst locations.

5 Q. And have you seen the water, how much water it
6 was?

7 A. Yes, sir.

8 Q. When you seen the water on the --- you're talking
9 about the tailgate end of the longwall. Did you
10 notice it bubbling or doing anything unusual?

11 A. No, sir. It wasn't doing nothing unusual. It was
12 just --- it had roofed out three out of four entries
13 back there on the tailgate. The fourth entry was
14 halfway ripped out and we had to go back there and set
15 pumps.

16 Q. But you said the shearer would get --- you'd get a
17 lot of water around the pan line and stuff?

18 A. Yes, sir.

19 Q. How many pumps would they have to set to pump that
20 water out?

21 A. I don't know about up there on the longwall face.
22 I know once we got the problem taken care of on the
23 tailgate end of the longwall, it solved the problem on
24 the face.

25 Q. Okay. And how many days was it --- was it having

1 water problems at the time of the, you know, up around
2 the 5th or was that ---

3 A. No, this was prior.

4 Q. --- weeks prior?

5 A. This was months prior.

6 Q. Okay. Could you estimate about how far up the
7 Tailgate One North it was that you had the water
8 problems? Do you know what breaks you was at?

9 A. I'm not sure what breaks, but it was right after
10 we pulled the tripper drive out. And the trippers is
11 up above it so long, the three driver motors we had on
12 the mother drive couldn't pull it so we had to set the
13 tripper. The tripper has three more drive motors on
14 it to help turn the belt. And we had just pulled it
15 out. It was about a month later that they had water
16 trouble after we pulled it out. I'm not sure what
17 breaker was sitting at on the tripper.

18 Q. Okay. How was the roof conditions back in ---
19 have you been very far up the tailgate?

20 A. Yeah, it was all the way back to the fan.

21 Q. All the way back to the fan. How was the roof in
22 that area?

23 A. In good condition.

24 Q. Which way did you normally travel?

25 A. I'd go up old Two section, which would be

1 tailgate.

2 The track would split two different ways. If you went
3 towards the tailgate of the longwall, you'd be at the
4 longwall. If we went and took the left and went back
5 towards the fan, it would have been safer than --- a
6 longer walk, but it would have been safer.

7 Q. Okay. So you tried to stay toward the --- like
8 the Number One entry or something all the way down?

9 A. Yes, sir.

10 Q. Okay. Had you ever --- when you say it's a whole
11 lot safer, had you seen any of the entries closer to
12 the longwall and what kind of condition they was in?

13 A. Well, if you've ever been on a longwall, you know
14 what a longwall goes through. It takes everything out
15 once it goes to the head and the shield broke. Once
16 the roof starts falling, it falls everywhere. It
17 ain't just in one place. It starts collapsing on the
18 ribs and the roof and you've got to stay away from
19 that.

20 Q. Is there a lot of cribs down through there?

21 A. They had props.

22 Q. Props?

23 A. They had cribs on the longwall, they had cribs, a
24 lot of the longwall and had props, too.

25 Q. Had you noticed a lot of --- what places in this

1 mine had a lot of bottom heaving?

2 A. It was just at the longwall. Some were on the One
3 section.

4 Q. How bad do you recall that the bottom had heaved?

5 A. On the longwall or One section?

6 Q. Both.

7 A. The longwall pretty bad because it was the
8 longwall. After they took the block out or they're
9 cutting --- their shield advance, it has nothing to
10 support it other than two breaks.

11 Q. Had you ever seen it crack while you were working?

12 A. No, sir.

13 Q. Did you ever see the methane monitors on the
14 longwall, readouts and stuff, ever notice them?

15 A. I never paid no attention to them. I just watch
16 that shearer.

17 Q. Tell us about the shearer. Did you notice they
18 was having any problems with sandstone top or ---?
19 Tell us about that, what you know about it.

20 A. Sandstone top?

21 Q. Yeah.

22 A. Sandstone top was at the face.

23 Q. Was they cutting a lot of that?

24 A. Well, no, they wasn't cutting a lot of it. The
25 shearer operator cut the wall off and up there have a

1 little bit of problems, have to sit there and re-angle
2 after he cut so much and get back in the coal.

3 Q. Where was they having the most trouble with ---
4 was it hard cutting where they was at right now?

5 A. If I remember right, it was.

6 Q. Where was they having the most trouble at?

7 A. All the way across the face.

8 Q. Huh?

9 A. All the way across the face.

10 Q. All the way across.

11 A. It was the sandstone top. They got a little bit
12 off and they was having a little bit of belt trouble
13 shutting off, and we was having problems with Ellis
14 Eagle belts. We'd run good one day and the next day
15 we'd run off really bad.

16 Q. Was it having a lot of gob offs?

17 A. Yeah, when they got an Ellis Eagle belt, they did.

18 Q. Did that happen about every day?

19 A. No. Usually if they --- if we was running pretty
20 decent, we wouldn't gob them out real bad. It wasn't
21 gobbing nothing out.

22 Q. Do you remember them having any problems with any
23 of the electrical equipment, cables or anything on the
24 shearer?

25 A. No, sir.

1 Q. Did they have any problems with the shearer cable
2 or anything?

3 A. Not that I remember, but if they did, they fixed
4 it right because it was longwall mines and we had all
5 kinds of longwall parts up there. There wasn't a
6 reason why they would be needing to do something the
7 wrong way instead of the right way.

8 Q. What do you recall about the air up there on the
9 longwall? Did it seem sufficient or what do you ---?

10 A. To be honest with you, we'd have good air one day
11 and then they'd do a ventilation move because we was
12 told to, and you'd been hearing over the mine phone,
13 we ain't got no air up here, we need more air. And
14 then the next day we'd have too much air. It was
15 something else.

16 Q. What was they trying to --- was they trying to
17 adjust some things to get more air up on the longwall
18 or what was they trying to do? Do you know?

19 A. I don't know. All I know is we was --- they had
20 done ventilation moves and they had done them quite
21 often there.

22 Q. Who was trying to work on the air, trying to get
23 more air up there?

24 A. I don't know.

25 Q. Was any of the other sections complaining about

1 air or ---?

2 A. Yeah, you heard Number One and Number Two section
3 complaining about not having enough air. It's just
4 one after another, your section is complaining about
5 not having enough and you hear the longwall
6 complaining they have too much and then one day not
7 enough, and it was just back and forth.

8 Q. Do you remember a new set of doors being installed
9 up on the ---

10 A. Longwall?

11 Q. --- longwall?

12 A. Yes. There was four doors up there, four. You
13 had one set and you had another set and you had
14 another set. They had four sets of doors you had to
15 go through.

16 Q. That last set had four doors or you mean you had
17 four ---?

18 A. Four doors you had to open to get through.

19 Q. Four doors. Did the closest set to the longwall,
20 did it have regulators installed in it? Did it have
21 openings in it or do you know?

22 A. I'm not for sure because I never did go to that
23 one. As I said, we was all the time running elsewhere
24 in the mines doing what needed to be done as far as
25 outby, trying to take care of some stuff outby, trying

1 to make sure that stuff is right.

2 Q. The last set of doors you recall, do you remember
3 when they installed them? Was it recently or ---?

4 A. It was pretty recent. It was the last time I was
5 up the wall, there was only two doors up there.

6 Q. Okay.

7 A. Two sets of doors, or one set of doors.

8 Q. Who would have installed the doors?

9 A. I don't know. They do it on different shifts.

10 Q. Did you ever see any of the --- you know, any
11 additional people come up on the longwall when they
12 was trying to get more air up there, trying to figure
13 out what the problem was?

14 A. No, it was just longwall people. They would pull
15 off as far as the bosses and stuff, going up there
16 trying to figure out the air and what they was doing.

17 Q. And you said Mike Kiblinger was your boss?

18 A. Yes. After Mike Ferrell left, they put Mike
19 Kiblinger over us to help out as far as the belt
20 stuff.

21 Q. But was he --- did you have to do a lot of work?
22 You done the mother drive. Did you have to do the
23 work done at the Ellis Portal any?

24 A. We was getting ready after we got everything taken
25 care of as far as the Glory Hole. That belt drive, we

1 was supposed to go down to the Ellis Punchout where
2 they was supposed to be setting up down there and set
3 up that head real quick and get that ready to run.

4 Q. Who was Mike Kiblinger's boss?

5 A. I'm thinking Everett.

6 Q. I'm going to switch gears a little bit here. When
7 you first --- let's talk about when you first started
8 at UBB. What did they have you do when you first
9 started as a --- I guess, was you a red hat when you
10 started?

11 A. No, sir. I was a black hat.

12 Q. What did they have you doing the first day?

13 A. The first day, I was helping them set a belt head
14 and that was supposed to be the setup, start driving
15 on the Two section.

16 Q. Okay. Who traveled with you the first day, can
17 you remember?

18 A. I honestly can't remember who he was.

19 Q. Was he on dayshift?

20 A. Yes, sir. And I was with Mike Ferrell at that
21 time.

22 Q. How far into the mine did you go, do you know?

23 A. All the ways up to --- about halfway to the
24 longwall.

25 Q. And did you stay in the --- did you go up the

1 track entry?

2 A. To get to the longwall?

3 Q. Yeah.

4 A. Yes.

5 Q. Did you start working full shift?

6 A. Yes, sir.

7 Q. Trying to set a head drive, you said; right?

8 A. They was showing me what everything was, about
9 what they was doing, having me do stuff like that to
10 get me familiar with the equipment, what was going
11 what --- what this was.

12 Q. Okay.

13 A. Just showing me what everything was so I could get
14 familiarized with it.

15 Q. Okay. And I assume they kept somebody with you
16 then the entire time?

17 A. Yes. I was around the boss and stuff all day.

18 Q. Did they show you where rescue chambers were?

19 A. They had done that all the ways up the track.

20 Q. Did they take you to any of the sections?

21 A. No, sir. They showed me the area I would be
22 working in and the usual route we would be traveling.

23 Q. When you took your new miner training with
24 Mountaineer, can you recall how many hours you had to
25 take and how that --- a little bit about that training

1 that you received?

2 A. I honestly can't remember any of it. I have got
3 so much stuff, the accident and stuff in my mind, I
4 just ---

5 Q. I understand.

6 A. --- can't remember.

7 MR. MAGGARD:

8 Terry, do you want to ask something and

9 I'll ask you some more later? Thank you.

10 EXAMINATION

11 BY MR. FARLEY:

12 Q. You were talking about when you were working the
13 longwall and you had good air one day and the next
14 maybe not good?

15 A. You know, when they do the ventilation moves and
16 switch gears on the ventilation, that's when they were
17 trying to set up the mines on that end.

18 Q. Okay. When was the last time you worked on a
19 longwall face?

20 A. It would have been when we was building the
21 Kennedy stoppings that was going up the longwall, side
22 of the longwall because the stoppings back in there
23 was crushing out.

24 Q. Would that have been this year?

25 A. Yes, sir.

1 Q. Okay. January, February?

2 A. It would have been right along January or
3 February.

4 Q. Okay. You haven't been up there since?

5 A. No, sir. We just moving out, trying to find our
6 scoop. We had a 255 workforce that was personally our
7 scoop because it was the only thing big enough to lift
8 up the parts other than getting the shield hauled.

9 Q. On April 5th when you were coming out the track
10 entry towards the outside from Headgate 22, did you
11 notice any dust in the track entry anywhere that you
12 didn't ordinarily see?

13 A. Not that I can remember.

14 Q. Okay.

15 A. Yes, actually I do now that I think about it. We
16 was going out Ellis, we had just come out from Ellis
17 Switch going out to Ellis Punchout. It wasn't up
18 towards the longwall or anything like that, it started
19 at Ellis Switch.

20 Q. On the way out?

21 A. Yes, sir.

22 Q. Where you were going?

23 A. Yes, and going down towards Ellis Punchout, it was
24 so dusty you couldn't see from me to her in front of
25 you, not even that.

1 ATTORNEY HAMPTON:

2 And just so the record is clear, that is
3 a distance of maybe four feet or so.

4 A. Yes, ma'am. Sometimes it would get so dusty down
5 there that you couldn't even see that. You couldn't
6 even see a foot in front of you sometimes.

7 BY MR. FARLEY:

8 Q. Okay. Now, was this just on April the 5th it was
9 like that in that area, or did this happen more than
10 once?

11 A. If I'm not mistaken, they was cutting the new head
12 hole or something down in there ---

13 Q. Okay.

14 A. --- and we was supposed to be getting parts for
15 them to bring down there for after they got done
16 cutting. I don't know what the problem was down there
17 or if there was even any problems or that was just the
18 way they was cutting in there or what.

19 Q. Okay. But on your way out, you didn't run into
20 the dust until you passed Ellis Switch; is that right?

21 A. Yes, sir. When I got to Ellis Switch, there was
22 the dust.

23 Q. Okay.

24 A. I know from 78 --- well, from Ellis Switch to
25 longwall or Headgate 22, there was nothing.

1 Everything was like it was supposed to, but as soon as
2 I got down to Ellis Switch, that's when the dust got
3 so thick.

4 Q. I think you said earlier that you had traveled the
5 longwall tailgate side, and I think you said you
6 traveled the Number One entry?

7 A. Yes, sir.

8 Q. Because it was the safest?

9 A. It was the safest route.

10 Q. Do you remember the last time you traveled that
11 area?

12 A. It would have been about two months before we
13 started setting the new mother drive, about a month
14 before we started setting the new mother drive.

15 Q. When you started setting the new mother drive?

16 A. Yes, or two.

17 Q. When did you start setting the mother drive?

18 A. We started setting that because it took us a while
19 to get everything ready for that, it took us about a
20 month just to set the head to flow through and the
21 drive and the pad for the drive to get the structure
22 up overhead. So it would have been March, I would
23 say.

24 Q. Okay. So you would have traveled the tailgate,
25 longwall tailgate entries up towards Bandytown within

1 a couple of months prior to March?

2 A. Yes, sir. That's when everything as far as the
3 water problems happened up there at the longwall.

4 Q. Okay. Now, when you traveled the longwall
5 tailgate entry, was the Number --- was the Number One
6 entry the only entry that was passable or could you
7 --- was there other entries you could travel at the
8 time?

9 A. There was other entries you could travel at the
10 time. We chose the Number One entry.

11 Q. Okay.

12 A. Because it had the props in the travel, we just
13 walking.

14 Q. Okay. When you traveled that Number One entry in
15 the longwall tailgate through Bandytown, did you
16 notice any of the roof bolt heads that might've been
17 sheared or shot off or anything like that?

18 A. (Indicates no.)

19 Q. Did they look normal?

20 A. They looked normal.

21 Q. Okay. Now, I'm not sure I heard you right
22 earlier. You said that on April 5th, during the day
23 when the explosion occurred, you said something didn't
24 feel right that day, but based on what you actually
25 saw, things were normal.

1 A. Normal.

2 Q. Is that what you said?

3 A. Yes, sir. It was just one of them abnormal
4 feelings. It's just unexplainable.

5 Q. Okay. All right. I just wanted to make sure I
6 followed you.

7 A. I hope I never get that feeling again, too.

8 ATTORNEY HAMPTON:

9 What's that?

10 MS. MONFORTON:

11 What was that, Mark?

12 A. I hope I never get that feeling again.

13 EXAMINATION

14 BY MS. MONFORTON:

15 Q. Yeah, I hope you don't either. I just want to ask
16 you a couple questions to make sure that I took the
17 notes properly. After the April 5th explosion, are
18 you working now?

19 A. Yes, ma'am.

20 Q. And where are you working now?

21 A. Marfork Mine at Marfork Coal.

22 Q. And when did you start working there?

23 A. It would've been two weeks. It would've been on
24 Wednesday.

25 Q. Uh-huh (yes).

1 A. I went to work for Ellis for two days two weeks
2 after the explosion. And then that third week I went
3 to work for Ellis for two days. I was on move crew
4 and the third day they told me to go ahead and go to
5 Marfork Mine.

6 Q. Mark, have you been interviewed by anyone else
7 about the explosion?

8 A. Massey lawyers.

9 Q. And do you recall when that was?

10 A. No, ma'am.

11 Q. Can you tell us a little bit about what happened
12 during that interview, what type of questions they
13 asked?

14 A. The same type of questions as you all are asking
15 me.

16 Q. Uh-huh (yes). Did they make an offer to you to
17 accompany you to this interview?

18 A. No, ma'am. They just doing the same thing you all
19 are doing.

20 Q. Okay. On April 5th, I think that you testified
21 that they were running coal ---

22 A. Yes, ma'am.

23 Q. --- that day? So it would have been the Monday
24 after the Easter holiday?

25 A. Yes, ma'am.

1 Q. And your crew would've been the first production
2 crew after the holiday; is that correct? Because they
3 weren't operating on the Easter Sunday; right?

4 A. Yeah, they wasn't operating on Easter Sunday.

5 Q. Okay.

6 A. We was all off.

7 Q. Everybody was off. So the time that you were in
8 the mine, do you remember about what time they
9 would've got the longwall running?

10 A. They usually checked it so it would've been about
11 an hour after they got to the longwall.

12 Q. Okay.

13 A. Which there ain't no telling how long it took.
14 Normally due to mantrip might've wrecked or such
15 things as that.

16 Q. So would you say that by the time you delivered
17 the supplies up to Headgate 22, they were ---

18 A. Yes, ma'am.

19 Q. --- they were running coal at that time? Could
20 you hear it?

21 A. No, you can't hear the longwall running from
22 Headgate 22.

23 Q. Okay.

24 A. Too far away.

25 Q. When you told us a little bit about having to

1 shovel the belt maybe two or three weeks before the
2 explosion on Headgate 22, and it took a few days to do
3 that, who was the --- you mentioned a superintendent
4 was kind of directing that. Who would that have been?

5 A. Everett Hager.

6 Q. Mark, you also described some of the water
7 problems up on the longwall. Were you part of crews
8 from time to time that were primarily responsible for
9 pumping that water?

10 A. Yes, ma'am.

11 Q. And do you recall some of the other men that you
12 worked with pumping water?

13 A. Jason Thomas. He was the boss, and I can't
14 remember the other fellows' names.

15 Q. Okay. Were they red hats?

16 A. Some were red hats. The rest of us were black
17 hats. I think there was only one or two red hats.

18 Q. Okay. Were any of them contractors?

19 A. Two of them at that time was contractors.

20 Q. Okay.

21 A. They was hard workers ---

22 Q. Okay.

23 A. --- and reliable.

24 Q. Do you know, do you have any idea what contractor
25 they were working for?

1 A. I think it was David Stanley.

2 Q. Okay. When you were working up in the water in
3 that area, trying to pump out the water, how deep did
4 it get?

5 A. There at one point it was waist deep.

6 Q. Waist deep.

7 A. Sometimes chest deep.

8 Q. Sometimes chest deep? And what type of equipment
9 was provided to you to be working in that type of
10 water?

11 A. We had chest waders.

12 Q. And how did they work for you?

13 A. They worked good until you got a hole in them, and
14 then you was wet.

15 Q. And how long would that take?

16 A. About an hour.

17 Q. Okay. On April 5th when you said the dust got
18 really thick, can you recall for what period of time
19 you remember that dust? Can you describe a little bit
20 more about that dust situation?

21 A. Well, we was coming down through there and it was
22 thick, thick, thick. I mean, it was --- there was
23 point in times I couldn't see my hand out two foot in
24 front of my face, it was so thick, because they was
25 doing some punch cutting down there. And you know

1 what I mean, after you got right up there where the
2 switch is where you go down towards where they were,
3 you took the switch to the outside and it was clear.

4 Q. Clear. And were you on the motor at the time?

5 A. Yes, ma'am.

6 Q. Okay. You were on the motor. And did you run
7 into the --- did it kind of gradually happen or you
8 hit an area where it was all right ---?

9 A. It gradually happened and it just --- you know,
10 the further you went, the thicker it got.

11 Q. Okay. And who were you with that would've also
12 experienced this?

13 A. It would've been Jerry Weeks.

14 Q. Okay. And what was it like to breathe in that
15 dust?

16 A. It was hard. You know, I mean, you couldn't
17 hardly --- I couldn't hardly breathe myself. I don't
18 know about Jerry or any of them.

19 Q. Uh-huh (yes).

20 A. I put my shirt up over my face, trying to block
21 some of it out.

22 Q. Okay. Did it feel hot or did it have an odor?

23 A. It just felt like rock dust.

24 Q. Felt like rock dust. Okay. But it was strong
25 enough that you felt like you wanted to cover your

1 mouth?

2 A. (Indicates yes.)

3 Q. And what time would that have been? You were on
4 your way out?

5 A. Well, I'd say probably about 12:00, 12:30.

6 Q. 12:00 or 12:30. Okay.

7 A. We went outside and then we just went back
8 underground, what, 2:30, because the forklift outside
9 was broke down.

10 Q. Okay. And when you went out, since this was such
11 a --- this was a weird experience for you, did you
12 mention it to anybody?

13 A. Well, we had asked everybody. They said it was
14 just where they was cutting down there.

15 MS. MONFORTON:

16 Okay. All right. Thanks.

17 RE-EXAMINATION

18 BY MR. MAGGARD:

19 Q. When you said you was pumping water, where was you
20 pumping? Did you say at Headgate One North?

21 A. Well, yeah, we was on ---.

22 Q. Or tailgate?

23 A. We was on the tailgate.

24 Q. Oh, okay. Was that in the Number One entry or
25 what entry was it in that you pumped?

1 A. It would've been back, back in this area right
2 here. There should've been a sump somewhere back up
3 in there where they pump it outside.

4 Q. Okay. And when you say right in here, you're
5 talking about past the ---?

6 A. Past where the longwall was ---.

7 Q. Okay. About 95 Break or 100?

8 A. About 100 to 120.

9 Q. 120?

10 A. From 100 to 120, 100 Break right in this area.

11 Q. Would you have to ---?

12 A. These ---

13 Q. Go ahead.

14 A. --- three entries right here was roofed out. This
15 entry we was traveling, and we'd come up right here
16 and we'd go through all this. Once you got to 100
17 Break, that's when it got chest high at times.

18 ATTORNEY HAMPTON:

19 Can you describe --- when you say we came
20 through right here, can you describe?

21 A. Go in through some mine doors, through some
22 stoppings.

23 ATTORNEY HAMPTON:

24 Okay. I mean the area on the map.

25 MR. MAGGARD:

1 He's talking about the 45-degree panel

2 past the Headgate --- or Tailgate One North.

3 A. And we was pumping water between 100 to 120, and

4 there should've been a sump somewhere back in this

5 area.

6 ATTORNEY HAMPTON:

7 What do you mean by this area?

8 BY MR. MAGGARD:

9 Q. Near Bandytown fan?

10 A. Yes, near the fan. There's a sump back in there

11 and they --- you generally pump all water to the sump

12 to get it out. That's where they was punching.

13 Q. What kind of pumps would you use?

14 A. We used air pumps because we had no electric back

15 there, so we used air pumps.

16 Q. And how deep did you get in water back there, up

17 to your chest?

18 A. Chest.

19 Q. Okay.

20 A. And I just got to the point at times where I

21 didn't even wear chest waders because we knew we was

22 going back to get wet.

23 Q. How big of a --- how far did you have to go into

24 the water when you was ---?

25 A. We only went in up to our waist, just far enough

1 where we could take our tiger floats and slide the
2 filter out there and just hook it up to the pump.

3 Q. Okay.

4 A. We only went so far out in there because we didn't
5 want to go further.

6 Q. And it didn't --?

7 A. It pumped it. It pumped it out.

8 Q. Did any guys have detectors?

9 A. The boss did, I did.

10 Q. Did they get wet?

11 A. Yes, sir. He worked alongside of us. He didn't
12 let us do something he wasn't going to do.

13 Q. Did the water affect his detector? Did he have
14 it ---?

15 A. He kept the detector in an area where it wouldn't
16 get wet.

17 Q. Okay.

18 A. And I did the same. I generally took my detector
19 and put it up around my neck somewhere.

20 Q. So you wore one also?

21 A. Every black hat back there had one and the boss
22 did. Except the red hats. In general we kept the red
23 hat with us. And usually they stayed around the boss.

24 Q. And what about your SCSR? Did you have that?

25 A. Yes, sir.

1 Q. Did any of them --- any of you guys run through
2 the water with your SCSR on?

3 A. Well, we always did. We didn't think it would
4 affect it any.

5 Q. Okay. Since you had a detector, have you ever had
6 it go off in the longwall anywhere in the mines?

7 A. Nowhere. I've never had no methane at least.

8 Q. Do you still have that detector?

9 A. No, it had to be sent off.

10 Q. Okay.

11 A. The sensors inside of it burnt up and I was never
12 told that I had to turn it back into UBB, and I just
13 called them and I had sent it off, because I got it in
14 some water up at Marfork and forgot about the detector
15 being on my side, and I got it in waist deep water
16 without thinking. And it burnt the oxygen and methane
17 sensors and all that stuff up in it.

18 Q. Okay.

19 A. So I turned it into Marfork and had them send it
20 off ---

21 Q. Okay.

22 A. --- to be rebuilt because it got too much water
23 and burnt the sensors up in it.

24 Q. Did you ever get it back?

25 A. No, they never gave it back to me.

1 Q. Okay.

2 A. And that's been two or three weeks ago.

3 Q. Did you occasionally take it off your belt and
4 look and see what kind of readings you had?

5 A. Yes. It usually kept about 20.8 oxygen.

6 OFF RECORD DISCUSSION

7 A. It generally kept 20.8 oxygen and it never went
8 off and never had any kind of CO or methane or
9 anything show up on it.

10 BY MR. MAGGARD:

11 Q. You never noticed anything on it?

12 A. No. It did occasionally when we was using our
13 cutting torches, the metal burning it. You'd have
14 ours hanging up where it was supposed to be, a file
15 where it was supposed to be when we was cutting,
16 detect any unusual gases or anything like that that
17 would be around.

18 Q. Okay.

19 A. It wasn't just when we was doing our cutting,
20 welding and doing stuff like that, doing our job,
21 setting mother drives, belt heads.

22 Q. Have you ever been up to the Glory Hole or any way
23 up that area?

24 A. The farthest I've been is right there at the
25 mother drive at the Glory Hole.

1 Q. Okay.

2 A. I've been to the Glory Hole.

3 Q. Okay. Have you ever been up this Eight North
4 panel?

5 A. No, sir, I've never went up there.

6 Q. Okay. What do you recall about the Glory Hole
7 area? What was you doing up in there?

8 A. We was just walking out of the belt. We just
9 start walking alongside the belt line and we was
10 looking for some Heisman's jacks, so we could mount
11 them on top the mother drive.

12 Q. Have you ever been at the Glory Hole right at the
13 seam?

14 A. I've been to the --- yes, sir.

15 Q. How long ago has that been?

16 A. Been about five or sixth months ago.

17 Q. Did you ever detect any methane in that area?

18 A. No.

19 Q. Did you have a spotter when you went in that area?

20 A. Yeah.

21 Q. How was rock dusting in that area?

22 A. It was okay. It wasn't the greatest.

23 Q. Was it just kind of dark gray or ---?

24 A. It was a dark grey. It looked dark.

25 Q. Was it very thick? Was it very thick or ---?

1 A. Yes. It was thick, but it was rock dusted.

2 Q. Had you ever been down Seven North belt or Six
3 North belt?

4 A. No, I ain't never traveled them.

5 Q. But could you see them from the track?

6 A. Yeah, because there wasn't stoppings between the
7 track and the belt entry.

8 Q. All right. How did they look from the track or
9 could you tell?

10 A. Looked good.

11 Q. Which belt in the mine normally looked the best?

12 A. The longwall belt, the longwall One --- Headgate
13 22 belt, the belt running from the Glory Hole to
14 Ellis, or 78 Break switch.

15 Q. And which one normally looked the worst?

16 A. They all looked about the same, to be honest with
17 you. Generally it would be the longwall belt was
18 worse because they run more coal than anybody.

19 Q. Okay. Is anything else that you could think of
20 that you think that was unusual about the mine or
21 something you think that might've --- that you've
22 thought about since the accident that might ---
23 would've caused it or anything you know of?

24 A. No, sir. I know about as much what happened up
25 there that day as you do.

1 Q. Have you heard any of the guys with any theories
2 that sounded logical to you that ---?

3 A. Yeah, I've got one theory that might be logical,
4 and everybody's been talking about it, too.

5 Q. And what do you think it is? What is it?

6 A. Where we was underneath the strip mines or
7 whatever we was under, where they were shooting, they
8 shot so much they shot that mountain apart. When they
9 come across the face with the longwall shearer they
10 uncovered a crack with methane in it and caused the
11 explosion on the face. It's the only logical thing
12 that happened, because One and Two section weren't
13 running. The only panel that was running was the
14 longwall.

15 Q. Did you hear about them being down on the longwall
16 during that day of the 5th?

17 A. No. If they was, I didn't pay no attention to it.

18 Q. After the accident occurred, you was down ---
19 where was you at right when it --- the explosion
20 occurred?

21 A. I was on Route Three, heading home.

22 Q. Okay. And when did you find out about the
23 accident?

24 A. When I got down to Glenn's Hardware in Sylvester.

25 Q. About what time did you leave?

1 A. I left right about 3:00, 3:15, somewhere in that
2 nature if I'm not mistaken.

3 Q. And did anybody --- nobody say anything to you
4 before you left? Did you see any dust or anything
5 outside the Ellis?

6 A. I didn't see.

7 Q. Did you leave from Ellis or did you leave from
8 UBB?

9 A. I went up from UBB because Everett had told us,
10 take the mother back across because they might use it
11 this evening. Take the company truck around UBB and
12 go home, and we said okay.

13 Q. Okay. So you rode the company truck from Ellis
14 to ---?

15 A. UBB and we went --- went and got changed, tagged
16 out, put our radios on charge lights and come back
17 around and got changed and went home.

18 Q. Who took you over there in the company truck?

19 A. We drove ourselves over there.

20 Q. And who was at Ellis when you left? Who was
21 outside?

22 A. Everett. When I left it was Everett and Mike and
23 Mike Kiblinger, and there was two red hats just doing
24 stuff outside and they was getting ready to get
25 changed and leave, too. It was one of them days that

1 we was actually getting to leave on time instead of an
2 hour or two later.

3 Q. Had you ever been in this mine when an inspector
4 arrived?

5 A. Yeah, all the time.

6 Q. I assume you would, because you're on dayshift.
7 When was the last time you remember an inspector
8 coming in the mine?

9 A. We heard about two or three men up there that day.

10 Q. Okay.

11 A. They went to the longwall and ---.

12 Q. Did any --- inspector didn't travel in with you
13 that day, did they?

14 A. No, sir.

15 Q. Do you remember seeing any inspector up there?

16 A. No, sir. We just was told there was an inspector
17 underground and went outside and we was told there was
18 a couple. And we just heard a lot of stuff.

19 Q. Did you ever --- was you ever underground and an
20 inspector arrived at the mine and you was contacted on
21 the phone that there was an inspector there or ---?
22 Ever have to go out and get one?

23 A. No, sir. Usually one of the --- one of the mine
24 men would take them in, into the mines like they're
25 going to and take him back out.

1 Q. Did you normally --- I mean, did you know of ---?
2 Did they contact inside the mines trying to figure out
3 how to give them transportation or did they normally
4 just ---?

5 A. I believe they had about 26 rides outside, and
6 that was total rides and we just had enough rides for
7 whatever sections had what, so there was all --- all
8 the time either at Ellis or either on the UBB side
9 there was rides, if I'm not mistaken. And Roger said
10 there was, like, 29 rides, 26 rides that he had that
11 was operating at that mines.

12 Q. Uh-huh (yes). That's quite a bit, ain't it?

13 A. And six motors.

14 Q. Had you ever been up on the --- in the face of
15 Headgate 22 and watched them run coal on dayshift?

16 A. No, the closest I've come is about five breaks
17 from the face, and that was when I went and got a
18 scoop, got some stuff on a scoop outby.

19 Q. Could you see the equipment in the face when you
20 got up there?

21 A. No, they generally had their curtain hung and
22 blocked the face and stuff like that. You really
23 couldn't see up through there.

24 Q. Had you been to the tailgate section to the face?

25 A. I never went on that section, not one time. The

1 only time I went up there is when we set up their belt
2 head just to dump onto Headgate 22.

3 Q. Did you have a radio that you used daily?

4 A. Yes, sir.

5 Q. Did you have a tracking tag?

6 A. Yes, sir.

7 Q. Do you remember, was most of these areas --- could
8 you use it pretty well or ---?

9 A. Yes. You could use just about anywhere in the
10 mines that you wanted to, there on the track, there on
11 the tag, and the radios as far as they'd go as far as
12 the track went.

13 Q. But you never went to any of these faces that you
14 can recall?

15 A. Not on a section.

16 Q. All right. What's the farthest you've been up in
17 the Tailgate 22 section?

18 A. If I'm not mistaken, it's been to that belt head
19 right there, the belt head that dumps onto that belt.

20 Q. Dumps on the crossover belt?

21 A. Yeah.

22 Q. Okay. Had you ever heard anybody express any
23 safety concerns prior to the accident in the mine?

24 A. No, sir. We was there to do one thing. That was
25 just run coal and get out. That's the way we all

1 felt.

2 Q. Was there a lot of pressure to run coal at the
3 mine? Was that what you'd consider your top priority?

4 A. Yes, a lot of pressure.

5 Q. Why do you think there was a lot of pressure?

6 A. Because that's the highest dollar coal you can get
7 your hands on in the state, what I understand. That
8 and the fact we had a bunch of coal orders come in and
9 had to get them filled.

10 Q. Had they recently had a lot of coal orders or ---?

11 A. I'm not sure. I didn't pay no attention to it.
12 The only thing we always heard over the radio, to get
13 that shearer in the coal. Get them miners in the
14 coal. Start running coal. The only thing you heard.
15 Something went down, what's wrong, what parts do you
16 need?

17 Q. How did you all normally --- prior to the shift,
18 what do you all normally ---? Just get ready and go
19 or did you all discuss anything with anybody
20 or ---?

21 A. Usually when our week started we had our usual
22 safety meetings with our crew before we wend down.

23 Q. When do you usually have a safety meeting?

24 A. We had ours morning time when you go underground.
25 We had a safety meeting underground or whatever.

1 Q. Who would give that?

2 A. The boss.

3 Q. And would that be Mike or who would normally give
4 a safety meeting?

5 A. It'd been Mike Ferrell when he done it, and once
6 Kiblinger got it, we met Kiblinger underground. And
7 usually we were just standing outside, floating around
8 and we all three talked amongst ourselves and head on
9 in.

10 Q. And some of the guys that you work with now, did
11 they used to work at UBB?

12 A. Well, on the crew I'm on now, I'm shoveling. It's
13 just me. The mines I'm at, some other boys, yes.
14 Some of the guys that's up on the section running
15 equipment, they used ---.

16 Q. Have you talked to them recently?

17 A. I've talked to a couple of them.

18 Q. Have any of them been interviewed here already?

19 A. One of them has, and he won't talk to you about
20 anything.

21 Q. Had he mentioned that any Massey's attorneys had
22 contacted him after he'd been interviewed by us?

23 A. Not that I know of.

24 Q. Have you heard of any others that have?

25 A. No. I only talked to that one fellow which is a

1 preacher and a real good fellow and he don't curse a
2 lot. He don't raise Cain and he's all around a good
3 fellow. Generally I ain't around people that likes to
4 raise Cain, loud mouths and stuff like that. It gives
5 me a headache real easy.

6 Q. I understand that.

7 A. I don't like being around loudmouths.

8 Q. Had you ever heard of methane monitors not working
9 properly in the mine? Anybody talk about it or
10 anything?

11 A. No. Nobody wanted to talk about it, not that I
12 know of. I wasn't up on the face running coal or
13 anything like that, so I honestly wouldn't know.

14 Q. Is there anything else that you would like to tell
15 us before you leave here today?

16 A. Not really.

17 MR. MAGGARD:

18 Okay.

19 RE-EXAMINATION

20 BY MR. FARLEY:

21 Q. When you were pumping water back here toward
22 Bandytown fan, were you provided with waders?

23 A. Yes, sir.

24 Q. Okay. Did they fit?

25 A. They fit, but they was so many times that you had

1 holes in them. We was in sharp rocks. You had to sit
2 down on them and you run a --- or you'd bump into
3 things. You'd get holes in them real easy. And I
4 just chose not to wear them. They were useless to me.
5 The waders fill up and then there you are, still wet.

6 MR. FARLEY:

7 That's all.

8 ATTORNEY HAMPTON:

9 Let's just take a two-minute break real
10 fast. If you need to use the restroom, there's one
11 out in the hallway.

12 SHORT BREAK TAKEN

13 ATTORNEY HAMPTON:

14 Let's go back on the record. Are there
15 any more follow-up questions?

16 MR. MAGGARD:

17 No.

18 ATTORNEY HAMPTON:

19 No? Okay. Before we finish, I would
20 like to mark the map that we've been discussing. This
21 is a map of the longwall area, scale 1/200. This is
22 going to be marked as Exhibit One, 6/26/10, Gilbert.
23 (Gilbert Exhibit One
24 marked for identification.)

25 ATTORNEY HAMPTON:

1 On behalf of MSHA and the Office of
2 Miners' Health, Safety and Training, I want to thank
3 you for appearing and answering questions today. Your
4 cooperation is very important to the investigation as
5 we work to determine the cause of the accident.

6 We do request that you not discuss your
7 testimony here today with any person aside from a
8 personal representative or an attorney. After
9 questioning other witnesses, we may call you if we
10 have any follow-up questions. And if at any time you
11 have additional information regarding the accident
12 that you'd like to provide to us, please contact us at
13 the contact information for Norm Page.

14 If you wish, you may now go back over any
15 answer that you've given us or give us any additional
16 information or make any other statement. Is there
17 anything else that you'd like to say?

18 A. No, ma'am.

19 ATTORNEY HAMPTON:

20 Okay. Again, we'd like to thank you for
21 your cooperation. Off the record.

22

23 * * * * *

24 STATEMENT UNDER OATH CONCLUDED AT 1:50 P.M.

25 * * * * *

1 STATE OF WEST VIRGINIA)

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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