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Transcript of the Testimony of Charles Justice

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STATEMENT UNDER OATH
OF
CHARLES JUSTICE

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 & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Wednesday, June 23, 2010, beginning at 8:00 a.m.

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

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EXHIBIT PAGE

PAGE

NUMBER	DESCRIPTION	IDENTIFIED
One	Subpoena	8*
Two	Return of Service	9*

* Exhibit not attached

P R O C E E D I N G S

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ATTORNEY WILSON:

Good morning. My name is Bob Wilson.

I'm with the Office of the Solicitor, United States Department of Labor. With me is Dave Steffey, an investigator with the Mine Safety and Health Administration. Today is June 23rd, and we are here to conduct an interview of Charles Justice. Mr. Justice, can you please state your full name for the record.

MR. JUSTICE:

Charles G. Justice, J-U-S-T-I-C-E.

ATTORNEY WILSON:

And what is your address?

MR. JUSTICE:

██████████

The ZIP is ██████████

ATTORNEY WILSON:

And can you tell us your phone number?

MR. JUSTICE:

██████████

ATTORNEY WILSON:

There are several persons present with the State of West Virginia. I'll ask at this time

1 that they state their appearance for the record.

2 MR. FARLEY:

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

5 ATTORNEY KOERBER:

6 I'm Barry Koerber, I'm Assistant Attorney
7 General for the State of West Virginia, representing
8 the Office of Miners' Health, Safety and Training.

9 MR. MCGINLEY:

10 I'm Patrick McGinley, I'm with the
11 Governor's Independent investigation team.

12 ATTORNEY WILSON:

13 Mr. Justice, at this time I'm going to
14 ask that the court reporter swear you in. So if you'd
15 raise your right hand, please.

16 -----

17 CHARLES JUSTICE, HAVING FIRST BEEN DULY SWORN,
18 TESTIFIED AS FOLLOWS:

19 -----

20 ATTORNEY WILSON:

21 At this time I'll pass it over to Barry
22 Koerber.

23 ATTORNEY KOERBER:

24 Mr. Justice, you're here today pursuant
25 to a subpoena; correct?

1 A. Yes.

2 ATTORNEY KOERBER:

3 I have a copy of that subpoena as well as
4 the return of service signed by the sheriff's office
5 serving you with the subpoena. I will ask that these
6 be admitted into the record. If you'd like to take a
7 moment and glance at them to make sure you know what
8 is being put in the record, feel free.

9 A. Yeah, I know.

10 ATTORNEY KOERBER:

11 This is a two-page document, but what is
12 attached to it is simply another copy of the same
13 subpoena.

14 A. All right.

15 ATTORNEY KOERBER:

16 The notations on it are from the sheriff.

17 Okay. I would ask that the subpoena, the one-page
18 document that is labeled subpoena be Exhibit One or A,
19 whatever you're using.

20 ATTORNEY WILSON:

21 Sure. I'll mark that as Exhibit Justice
22 One.

23 (Exhibit Justice One marked for
24 identification.)

25 ATTORNEY KOERBER:

1 And then the two-page document that's
2 entitled return of service, I would ask that that be
3 marked as Exhibit Two.

4 ATTORNEY WILSON:

5 So marked.

6 (Exhibit Justice Two marked for
7 identification.)

8 ATTORNEY KOERBER:

9 Mr. Justice, do you have a personal
10 representative here today with you?

11 A. No.

12 ATTORNEY KOERBER:

13 Pursuant to the statute, witnesses
14 subpoenaed by the Director are entitled to a \$40 a day
15 witness fee as well as mileage and tolls if tolls were
16 applicable. You're going to be here for one day, so
17 that will be \$40. We have to complete this form in
18 order for you to get paid, and the money will come
19 from the State of West Virginia and it will probably
20 be two or three weeks before you get the check.

21 Anyway, the first question is roundtrip,
22 your house to here and back, can you give me your best
23 estimate?

24 A. I don't know, eight miles.

25 ATTORNEY KOERBER:

1 Eight? Okay. And that's roundtrip?

2 A. Yes.

3 ATTORNEY KOERBER:

4 On your way to or from here, did you go
5 through any toll booths?

6 A. No.

7 ATTORNEY KOERBER:

8 Give me a minute, sir. Your mileage
9 comes out, to my calculation, to \$3.24. Together with
10 the witness fee will make a grand total of \$43.24.
11 I'm going to hand you this document, and I would ask
12 that you sign it and write your Social Security number
13 here. We do not want your Social Security number to
14 be part of the record.

15 A. Right here?

16 ATTORNEY KOERBER:

17 Yeah. Right there, sir. And feel free
18 to look at that form to make sure that it is
19 satisfactory.

20 A. Yes.

21 ATTORNEY KOERBER:

22 Thank you, sir. Terry has a preliminary
23 statement that he would like to make as well and then
24 we'll get started.

25 MR. FARLEY:

1 Mr. Justice, I would like to advise you
2 that the questions you'll be commenting on are safety
3 regulations to protect coal miners from any potential
4 type of discrimination. And should you suffer such
5 treatment as a result of participating in this
6 interview, I will provide you with contact information
7 if you would need to file a complaint. Along with
8 that contact information, I'll be giving you my
9 business card and along with that, Mr. Bill Tucker,
10 who is also one of our lead investigators. We would
11 advise you that should you need to file a complaint
12 you must do so within 30 days from the time the event
13 occurs.

14 ATTORNEY KOERBER:

15 Do you have anything else preliminarily?

16 ATTORNEY WILSON:

17 Yes. Mr. Justice, again, my name is Bob
18 Wilson, and I'm with the Office of the Solicitor,
19 United States Department of Labor. Government
20 investigators and specialists have been assigned to
21 investigate the conditions, events and circumstances
22 surrounding the fatalities that occurred at the Upper
23 Big Branch Mine South on April 5th, 2010. The
24 investigation is being conducted by MSHA pursuant to
25 Section 103(a) of the Federal Mine Safety and Health

1 Act and by the West Virginia Office of Miners' Health,
2 Safety and Training.

3 After the investigation is complete, MSHA
4 will issue a public report detailing the nature and
5 causes of the fatalities in the hope that greater
6 awareness about the causes of accidents can reduce
7 their occurrence in the future. Information obtained
8 from witness interviews is frequently included in
9 these reports. Your statement today may also be used
10 in other proceedings. This is not an adversarial
11 proceeding. Formal Cross Examination type questions
12 will not be permitted. However each of the parties
13 may ask follow-up questions as appropriate.

14 We will be interviewing other witnesses
15 after you, and so therefore we ask that you not
16 discuss your testimony with anyone aside from your
17 personal representative or counsel. And you've
18 indicated that you do not have a representative today;
19 is that correct?

20 A. Right.

21 ATTORNEY WILSON:

22 A court reporter will be recording the
23 interview. So please speak loudly and clearly so that
24 she can take everything down. If you do not
25 understand a question asked, please ask that the

1 question be rephrased. Please answer each question as
2 fully as you can, including information that you may
3 have learned from someone else.

4 After we have finished asking questions,
5 we will provide you an opportunity to make a statement
6 or to provide us with any additional information that
7 you believe may be helpful to the investigation. If
8 at any time after the interview you recall any
9 additional information that you would like to provide
10 to us, I'm handing to you my business card and you can
11 contact me at the phone number or e-mail address
12 listed there.

13 As Mr. Farley had told you, the State
14 provides certain protections to miner witnesses. The
15 Federal Mine Act also provides similar protections.
16 Any statements given by miner witnesses to MSHA are
17 considered to be an exercise of statutory rights and
18 protected activity under Section 105(c) of the Mine
19 Act. If you believe that any discharge,
20 discrimination or any other type of adverse action is
21 taken against you as a result of your providing an
22 interview here today, you are encouraged to
23 immediately contact MSHA and file a complaint under
24 Section 105(c) of the Act.

25 Remedies under the Act include back wages

1 and immediate temporary reinstatement to your most
2 recent position with the company pending a complete
3 investigation of the complaint. In order to file such
4 a complaint, you should contact the MSHA district
5 office which is located in Mount Hope. You can find
6 additional information concerning your rights under
7 the Mine Act at MSHA's website at www.msha.gov.

8 Pat, did you have anything before we get
9 started with the questioning?

10 MR. MCGINLEY:

11 No.

12 ATTORNEY WILSON:

13 All right. Then at this time I'll pass
14 it over to Terry Farley to begin the questioning.

15 EXAMINATION

16 BY MR. FARLEY:

17 Q. Mr. Justice, are you currently employed?

18 A. I am.

19 Q. Where?

20 A. Massey Energy.

21 Q. I'm sorry.

22 A. Ellis Eagle Mine.

23 Q. How long have you been employed with the Ellis
24 Eagle Mine?

25 A. Since November of last year.

1 Q. November of last year.

2 A. '09.

3 Q. Okay. Prior to your employment at the Ellis Eagle
4 Mine, were you employed at the --- what was called
5 Upper Big Branch Mine?

6 A. I was.

7 Q. What was your time of employment there, when did
8 you first go to work at the Upper Big Branch Mine?

9 A. Approximately February of 2008.

10 Q. February 2008 until November of 2009? Okay. Now,
11 prior to going to work for UBB Mine, can you give us a
12 little of your mining history, how many years
13 experience have you had in the coal mine?

14 A. Approximately four years underground.

15 Q. Okay.

16 A. Mine electrician training.

17 Q. Where did you work before you came to the Upper
18 Big Branch Mine?

19 A. [REDACTED] ---

20 Q. Okay.

21 A. --- [REDACTED] .

22 Q. Now, when you worked at the UBB Mine from February
23 2008 to 2009, what was your job? What position did
24 you hold?

25 A. It was described as dispatcher.

1 Q. What was your normal shift, what were your working
2 hours at the UBB Mine during that period of time?

3 A. It varied anywhere from 8 to 12 hours a day.

4 Q. What time did you usually start every day?

5 A. It just depended on what shift you were on.

6 Q. Did you rotate shifts or did you ---?

7 A. I rotated, yeah.

8 Q. Did you rotate between the day and evening shifts?

9 A. Yeah.

10 Q. Okay. Who was your immediate supervisor when you
11 were at UBB Mine?

12 A. Everett Hager, who was our superintendent.

13 Q. Everett Hager?

14 A. Excuse me?

15 Q. You said Everett Hager?

16 A. Everett Hager, yes.

17 Q. Okay. Now, at what location did you portal?

18 A. I did not.

19 Q. At what location? Which office specifically?

20 Were you at Ellis Portal or were you at the UBB?

21 A. I was at the UBB.

22 Q. Okay. What were your normal job duties at the UBB
23 in addition to being dispatcher?

24 A. I was warehouseman, worked for Massey, jack-of-all
25 trades.

1 Q. Okay.

2 A. Load and unload trucks, stock. Dispatch. Janitor
3 and everything else.

4 Q. Okay. Do you have any West Virginia coal miner
5 certifications?

6 A. I do.

7 Q. What certifications do you possess?

8 A. West Virginia Mine certificate, and I've got an
9 underground in-service slip, which is not current, of
10 course, but I did obtain those in the past.

11 Q. Along with your duties as dispatcher, were you
12 responsible for manning the CP hardline telephone in
13 and out of the mine?

14 A. Yes, sir.

15 Q. Did your duties that you described when you loaded
16 supplies and so forth take you away from the mine
17 phone or COP telephone at times?

18 A. It did.

19 Q. How often did that occur?

20 A. It just varied, you know, depending on when the
21 trucks was coming in and so forth.

22 Q. Whenever you had --- whenever your duties took you
23 away from the mine phone, the COP telephone, did some
24 other person assume the role of communication person?

25 A. Normally, yes.

1 Q. Who would that normally be?

2 A. Greg Clay, the purchasing agent.

3 Q. What shift did Mr. Clay work?

4 A. He'd normally work dayshift.

5 Q. Okay. As part of your duties as dispatcher, did
6 you receive any reports from underground from the coal
7 producing sections about ---?

8 A. Dayshift, three times a day.

9 Q. What time during the shift each day?

10 A. I think it was like 9:00, 11:00 and 1:00.

11 Q. Did you receive reports from the continuous miner
12 sections and the longwall section?

13 A. Yes, sir.

14 Q. Now, ---.

15 A. To begin with, but then later on Greg Clay took
16 all the reports from the longwall section.

17 Q. Okay. Do you recall when Mr. Clay took over the
18 duties of receiving the reports from the longwall
19 section?

20 A. It was probably two to three months after they
21 started operation.

22 Q. If we're correct, longwall started operation at
23 UBB in September of 2009; is that accurate?

24 A. As best I can ---.

25 Q. Okay. Did Mr. Clay assume those duties before you

1 left UBB?

2 A. For the longwall portion, yes.

3 Q. You left UBB in November of 2009; is that correct?

4 A. Right.

5 Q. Okay. This information that you received from
6 underground about production, what did you do with
7 that information once you received it?

8 A. I just handwrote it on a form that was faxed in
9 the office down at Marfork.

10 Q. What did that form look like?

11 A. It just had an area for the number of feet that
12 they had run, the number of shuttle cars that they'd
13 run, and showing any kind of downtime that they might
14 incur.

15 Q. Was it addressed to anybody in particular, any
16 person?

17 A. The form was not.

18 Q. Do you know what person received the report once
19 you faxed it?

20 A. Yes. It was the corporate secretary.

21 Q. Do you know who that person was?

22 A. Lisa Williams.

23 Q. Do you know who she might have reported to?

24 A. Chris Blanchard.

25 Q. Was he the president of coal at that time?

1 A. He was.

2 Q. Did you fax the production reports from the
3 underground section to another person or any other
4 location?

5 A. No. No.

6 Q. Do you know if Lisa or Mr. Blanchard would have
7 faxed or reported this information?

8 A. It's my understanding, yes, it was all --- the
9 pile was sent to corporate office, Mr. Blankenship.

10 Q. Now, when you say the corporate office, would that
11 be the corporate office located in the Julian area of
12 West Virginia?

13 A. Right. Uh-huh (yes). Or where his office is, I'm
14 not sure.

15 Q. Okay. Did anybody from the corporate level or the
16 upper management level ever call the mine and ask you,
17 as dispatcher, to relay information, message saying to
18 underground foremen that might have been considered
19 threatening, such as you'll be fired if such and such
20 is not fixed?

21 A. Not in that exact term. They didn't use the term
22 fire, but you could take that from their comments if
23 you wanted to.

24 Q. Who would have usually called you when information
25 was to be passed on?

1 A. Chris Blanchard.

2 Q. Did that occur frequently?

3 A. Yes.

4 Q. How frequently? Can you give me an idea?

5 A. Almost on a daily basis.

6 Q. As part of your duties as dispatcher, were you in
7 any way responsible for maintaining the CO monitoring
8 system?

9 A. We were.

10 Q. What did you do to include the terms of
11 maintaining the CO monitors?

12 A. They were all computerized and we serviced them.
13 If any of them ever went off we'd have an electrician
14 see what caused it and so forth, and then they would
15 ask you to record it.

16 Q. During your time at UBB from February of 2008 to
17 November of 2009, you have a CO monitor, what would
18 you actually do at that point? Can you take me
19 through that, please?

20 A. You would go to the phone and, you know, call
21 whoever was closest to that area and investigate it,
22 go check and see why it was going off and so forth,
23 and then have them correct it.

24 Q. Was it sometimes difficult to reach someone in a
25 particular area?

1 A. At times, right. Yeah.

2 Q. Once you were able to contact someone, did they
3 usually respond in a timely manner?

4 A. Right. Yes. Uh-huh (yes).

5 Q. Can you give me some sense of how often CO monitor
6 alarms a night go off while you were working as
7 dispatcher at UBB?

8 A. What do you mean?

9 Q. Well, was it daily, weekly? Some sense of how
10 often?

11 A. Sometimes you would go four or three days and they
12 have some days you would have something, you would
13 have somebody welding or cutting something on the
14 section and one would go off and --- just a
15 malfunction of some kind. It just --- it wasn't any
16 regularity.

17 Q. Okay. Were there times that alarms occur and
18 cause a malfunction, meaning the CO monitoring alarm?

19 A. Oh, yeah.

20 Q. Was there any particular reason usually for a
21 malfunction?

22 A. No. I would have to say mechanical or something
23 with the units itself.

24 Q. Okay. You have indicated that Mr. Blanchard would
25 have called frequently to inquire about production or

1 downtime underground. Would he sometimes tell you,
2 you have to pressure the foremen underground in some
3 way about the problem?

4 A. Well, he would use the words pressure, or you
5 know, any of his comments he would sound concerned
6 about it and wanted it corrected as soon as possible.

7 Q. When you were on evening shift and you were
8 unloading, who would be the person who would man the
9 phones; do you recall?

10 A. Normally on evening and midnight, you wouldn't
11 have incoming of trucks and so forth?

12 Q. Okay. I was asking about the CO monitors and how
13 often they might alarm. Can you recall an instance
14 where a CO monitor underground at UBB would
15 malfunction and not be repaired for a specified period
16 of time?

17 A. No. They were right at this --- I mean, they paid
18 a lot of attention to that. No, it wasn't ignored.

19 Q. You indicated that cutting and welding in the mine
20 on occasion that caused the CO monitor alarm to go
21 off. Did anyone from underground ever notify you in
22 advance, hey, we're going to be welding on the
23 longwall section?

24 A. They did. They did.

25 Q. Is that normal routine or just occasional?

1 A. Both. You know, sometimes they would tell you and
2 sometimes they wouldn't. You know, I'm sure if they
3 were on the area for that particular reason, yeah,
4 that's when they'd phone and notify you ahead of time.
5 Otherwise, you know, just something happened on the
6 section on the shift of something, you know, they
7 might start doing it and ---.

8 Q. Okay. Are you aware of any particular procedure
9 that those engaged in the welding and cutting might
10 have followed while underground?

11 A. I wouldn't know that.

12 Q. That's fine. Do you recall any instance where a
13 CO monitor alarm might have gone off because of a belt
14 roll or bearing was smoking or something like that?

15 A. Yeah. That would occur occasionally.

16 Q. As part of your duties as dispatcher, were you
17 also responsible for tracking any of the people
18 underground?

19 A. We were.

20 Q. Can you explain your tracking responsibility,
21 please?

22 A. We had a log we would all give everybody going and
23 coming underground.

24 Q. Okay. Was that during the period when you were
25 still engaged in the manual tracking?

1 A. It was, yes. Yeah, until they went to the
2 automated tracking.

3 Q. Was the automated tracking system in place before
4 you left UBB?

5 A. It was not.

6 Q. You indicated that you received production reports
7 three times a day in the continuous miner sections.

8 At UBB, was it also necessary for them to call you any
9 time a mining machine would be down for some reason in
10 addition to the three times they would ordinarily
11 call?

12 A. For them to call me or me to call them?

13 Q. For them to call you.

14 A. Normally, it's me calling them.

15 Q. How would you know the machine was down if you
16 were calling them?

17 A. Well, they'd call outside, I mean, you know, and
18 tell me that they were having certain problems with
19 something and something, and there was a standing rule
20 with him that any time anything was down 45 minutes or
21 longer, that you would contact him personally, day or
22 night, any time, hour of the day.

23 Q. And that was the president?

24 A. That's right.

25 Q. Okay. Now, would that include all mining

1 equipment or anything in particular?

2 A. Yeah. Particularly if something had to do, you
3 know, with the production.

4 Q. Okay. Like the continuous mining machine?

5 A. Exactly, yeah. Or the belt system or whatever.

6 Q. Now, the document that you filled out with
7 production report and downtime, what did you do with
8 that document after you faxed it to the ---?

9 A. It was just maintained for that day, and then
10 after that it was discarded.

11 Q. Okay. You didn't maintain a filing system?

12 A. We did not.

13 Q. Did you enter any of the information on the
14 computer?

15 A. No. I didn't, no.

16 Q. Did anyone else that you know of?

17 A. They may have at the office, you know. Lisa may
18 --- that might have been how she --- she may have
19 taken that information and e-mailed it to Blankenship
20 or something. I don't know how she corresponded it,
21 no.

22 Q. Okay. When Mr. Clay took over the responsibility
23 of receiving the production reports from the longwall
24 section, how frequently was the longwall section
25 required to call Mr. Clay?

1 A. It actually started out every 15 minutes when they
2 first started production, and then it went to 30
3 minutes after that. I mean, you know, after a couple
4 of weeks or so.

5 Q. Okay. Now, how long did the --- was the periods
6 of time when they were calling out every 15 minutes?

7 A. I'd say that probably went on a month or so, a
8 month and a half, two months probably at the max.

9 Q. Now, when Mr. Clay received this information, did
10 he do the same thing you did, did he fax it to the
11 president's office or corporate?

12 A. He did at first, and then later on he started
13 e-mailing them all the reports.

14 Q. Okay. What person did he e-mail the reports to?

15 A. I would say it was to Lisa Williams also and
16 Blanchard.

17 Q. Okay. Do you know if Mr. Clay maintained any
18 written records of the production reports he would
19 receive?

20 A. No. Not after --- they have phones, he just ---
21 well, he might, you know, just jot down some notes or
22 something to complete the e-mail or something, but
23 nothing formal that I know of.

24 Q. After the month and a half when the reports came
25 every 15 minutes and then went to 30 minutes?

1 A. Probably.

2 Q. Would the procedure stay the same then?

3 A. Right. He'd e-mail the information to them.

4 Q. Now, what information did he actually receive from
5 the longwall section? Was it production, downtime,
6 what else, anything specifically?

7 A. Sometimes the rate of speed that they were running
8 the wall itself. I mean, the shearer and stuff, you
9 know.

10 Q. Okay. Did he ever report any injuries or any
11 methane concentrations or anything like that?

12 A. Well, he --- you know, of course he'd report an
13 injury or something if someone got hurt or something.
14 I never heard of any methane bumps in concentrations
15 being reported, no.

16 Q. Okay. Now, you were at UBB from February 2008
17 through November 2009. While you were dispatching,
18 did any supervisor foreman from underground call out
19 at any time and say, hey, we're having difficulty,
20 we're down, we're not able to produce because of
21 ventilation problems?

22 A. Oh, I've heard, you know, when they'd work on
23 ventilation, you know, at different times.

24 Q. Did any section foreman or longwall foreman call
25 out specifically at any time and say, hey, I do not

1 have enough air to operate?

2 A. They would state it like --- they'd just say they
3 were --- you know, that they had been working on the
4 ventilation, that they have substantial air in the
5 faces and stuff.

6 Q. Okay.

7 A. Yeah. But that's on the miner section. I didn't
8 hear anything like that from the longwall.

9 Q. Anyone --- any underground section or any of the
10 mining sections or the longwall section ever call out
11 and specify that they had problems with methane
12 accumulation?

13 A. Not that I can recall.

14 Q. You were a dispatcher, you monitored the CO
15 monitoring system, you unloaded supplies, were you
16 required to clean the offices and things like that?

17 A. Yes, sir. Bath house, offices.

18 Q. Did you feel like you sometimes had too much to do
19 and it affected your ability to handle your more
20 important responsibilities?

21 A. Yes. Continuously. Yeah, I was overwhelmed,
22 especially when you worked dayshift. I had 20-some
23 pieces of track equipment to keep the track up and
24 reports and all. Yeah.

25 Q. If you were, let's say, cleaning some part of the

1 building some place and somebody underground wanted to
2 move a unit of track equipment, how did that happen?
3 How did it --- how did they get ahold of the
4 dispatcher and say, hey, I'm going from here to there?

5 A. Ninety-nine (99) percent of the time it was by an
6 underground phone.

7 Q. Were you in a position to answer it when they
8 would call?

9 A. Yes. Uh-huh (yes). I mean, yeah, for the
10 janitorial part I was, yeah. But there was times when
11 if the --- you know, out in the yard or something on
12 the truck or something that, you know, that you may
13 not have contact. I mean, it would just be for a few
14 minutes, it wouldn't be for any extended period of
15 time.

16 Q. Okay. While you served as dispatcher, did you
17 keep a written log of the underground traffic and its
18 movements?

19 A. We did.

20 Q. What did you do with that written log at the end
21 of each shift usually?

22 A. They maintained them there in the files.

23 Q. Okay. Do you know how long they were maintained?

24 A. I don't know that there's any specific time that I
25 had seen them from months back really.

1 Q. Did anybody in particular attempt to man the
2 phones while you were performing your cleaning duties,
3 some other person that would help you?

4 A. At times, normally, no.

5 Q. Okay.

6 A. And if there was somebody up there, yeah, they
7 would. If not, then they didn't.

8 Q. Did you have to take your log sheet with you when
9 you went in other parts of the building?

10 A. I would.

11 Q. Were a sufficient number of phones in the other
12 parts of the building to enable you to respond?

13 A. There was, yes. Mine phones there was.

14 Q. At any time, did you have to order supplies or do
15 any purchasing work?

16 A. On occasion, yes, sir. Particularly on the
17 evenings and midnight shift.

18 Q. Did some other person handle those duties on the
19 dayshift?

20 A. They did.

21 Q. Now, during your time as a dispatcher at UBB, do
22 you recall a time when the ventilation fan would
23 malfunction and go down? When I say go down, cease
24 operation. Do you recall an instance where a mine fan
25 would be coming up or ---?

1 A. There was one time after they --- or a couple of
2 times really after they installed that fan over at
3 Bandytown that they had a couple of instances when
4 they first installed it they had some trouble with it.
5 It was hooked up to an alarm that would come to our
6 mine if it ceased operation.

7 Q. Did any of the fan outages ever last longer than
8 15 minutes, if you recall?

9 A. I don't recall over there, whether it did or not.
10 We had an instance there, I don't know, we were down
11 for two or three days one time, you know. The motor
12 burned up on the fan at the UBB Portal. There was the
13 --- I guess not because you were required to call
14 underground and evacuate the mine at any time, if the
15 fan was down more then 15 minutes.

16 Q. Now, obviously you were not employed at the UBB
17 mine on April 5th, 2010.

18 A. I was not.

19 Q. Okay. How did you hear about the explosion at the
20 UBB Mine on that day or did you?

21 A. As a matter of fact, I was out of town. I heard
22 it on TV.

23 Q. Did it surprise you in any way?

24 A. Excuse me?

25 Q. Did it surprise you?

1 A. I wouldn't say surprised me, it was just, you
2 know, a horrific instance, you know, it startled me.

3 Q. Since that time, have you had any conversations
4 with any of your friends or former employees of UBB
5 about what might have caused the explosion?

6 A. Just, you know, general conversation or something,
7 you know, just speculation that ---.

8 Q. Okay.

9 MR. STEFFEY:

10 Yeah. I got a few questions.

11 EXAMINATION

12 BY MR. STEFFEY:

13 Q. Mr. Justice, has anyone else interviewed you
14 concerning the accident and your knowledge of mine
15 conditions?

16 A. Anybody else?

17 Q. Yes. Anyone from the company?

18 A. Oh, not from the company, no, sir.

19 Q. What about the company's attorneys?

20 A. No, sir.

21 Q. When you said these production reports that you
22 sent to, I believe it was Lisa Williams, and then she
23 sent them on to Chris Blanchard and then went on to
24 Mr. Blankenship; is that correct?

25 A. I said that's how I understand it went.

1 Q. How soon did they go on to Mr. Blankenship? Did
2 he get them daily or was it every other ---?

3 A. Oh, he got them three times a day.

4 Q. Three times a day?

5 A. Uh-huh (yes). I guess more so when they had
6 serious problems, you know, he was ---.

7 Q. Okay. So if --- you said something about there
8 was a rule that if something was down related to
9 production for more than 45 minutes that Mr. Blanchard
10 had to know?

11 A. Exactly.

12 Q. So did that information then get --- I guess that
13 information went on to Mr. Blankenship, or did it, do
14 you know?

15 A. I don't know. I'm not sure.

16 Q. Okay. You said that when they would call inside
17 Chris would --- or Mr. Blanchard would call up and
18 you'd call inside that the comments that he would make
19 --- that he would make, that you would pass on to the
20 foreman didn't directly threaten them with being
21 fired, but you could take that from the comments,
22 those were your words. Now, what kind of comments
23 were these?

24 A. Well, just the fact that, you know, that they were
25 down and we needed to do any and everything you could

1 to get the situation rectified and ---.

2 Q. But what could be taken from that, that by being
3 --- if someone would tell me we need to do anything
4 and everything to get the situation rectified, I
5 wouldn't take that as a threatening comment. What
6 was ---?

7 A. Well, it's just the tone and stuff that he said it
8 in, you know.

9 Q. So it was a threatening tone?

10 A. Well, you could call it that if you want.

11 Q. How often did he call there and use this tone?

12 A. Oh, he was known to do it frequently.

13 Q. Frequently?

14 A. Yeah.

15 Q. On your first day as dispatcher, did you travel to
16 all the sections in the mine?

17 A. On my first day, no.

18 Q. You didn't or you did?

19 A. I did not.

20 Q. What sort of training did you receive as a
21 dispatcher?

22 A. Just how to communicate with everybody, you know,
23 underground and so forth. And procedures, too, in
24 case of an accident or something, you know, in case
25 somebody got hurt or, you know, who to contact and so

1 forth.

2 Q. Okay. Do you know if your mine had an MSHA
3 approved mine emergency evacuation and firefighting
4 plan?

5 A. They did. Yeah, we had a copy of that.

6 Q. Did you receive training in that plan?

7 A. Just for the reporting part of it, yeah.

8 Q. Okay.

9 A. Yeah. We was supposed to report to MSHA and State
10 and Federal and all that, all emergency agencies.

11 Q. And who gave you that training?

12 A. It probably was given --- probably Greg Clay. I
13 don't recall.

14 Q. What about an emergency response plan, did you
15 have one of those that was approved by MSHA?

16 A. I would say it was. We had a booklet that we went
17 by, yeah.

18 Q. Did you receive any training in that plan?

19 A. Yeah. It was part of the training.

20 Q. You mentioned that you were trained in the AMS
21 system; did I understand that correctly?

22 A. Yeah.

23 Q. What was your alert level within this mine?

24 A. What do you mean alert level?

25 Q. You have a given level of CO in the air your alarm

1 system goes into alert level, do you remember what
2 that alert level was?

3 A. It would alarm at one or two parts per million.

4 Q. Okay.

5 A. Just alarm, you know, and then I've seen, you
6 know, when detecting stuff, it would go, you know, up
7 in the 80s and 90s.

8 Q. What were you supposed to do when it hit the alert
9 level?

10 A. Well, you'd tell somebody in the area and have
11 them investigate to see what was causing it to alarm
12 or whatever.

13 Q. What about in --- now, that's a two-tiered system.
14 What about the alarm level? What about when it went
15 into the alarm status? Do you know --- do you
16 remember what level that was?

17 A. I don't, no, sir.

18 Q. Do you ---?

19 A. No, because we contacted somebody every time it
20 went off.

21 Q. What was your action at the alarm level, do you
22 remember that?

23 A. Well, we'd contact somebody every time it went
24 off, you know, to find out what was setting it off.

25 Q. Did anyone ever go over that plan and say

1 specifically this is our plan that's approved by MSHA?

2 A. Yeah. We were trained by the electrician there.

3 Q. Who was your responsible person?

4 A. I was at times, you know, when I was on duty.

5 Q. Now, how did you know who the responsible person
6 was? How did the miners know who the responsible
7 person was?

8 A. They had it posted on the wall there.

9 Q. It was posted on the bulletin board. And if that
10 person changed ---?

11 A. They would change it, yeah. Because they
12 frequently had people coming and going, you know.

13 Q. Okay.

14 A. Yeah. It was posted.

15 Q. Did Mr. Blankenship ever call the mine?

16 A. I never spoke to a man, no.

17 Q. Okay. What about Chris Adkins; did he ever call
18 the mine?

19 A. He did after we started the longwall.

20 Q. What was the nature of those conversations?

21 A. Normally any time I ever talked to him it was just
22 after shift and wanting to know, you know, how they
23 did, just that day, the tonnage and footage or
24 whatever they ran.

25 Q. Did he ever call when they were down?

1 A. He did not, no.

2 Q. So mainly it was Mr. Blanchard calling?

3 A. Yes.

4 Q. While --- when the longwall began, why were they
5 calling out every 15 minutes?

6 A. I couldn't tell you. They were just that
7 concerned about the run as far as I know.

8 Q. Was it having trouble starting up?

9 A. Oh, yeah, they had some trouble. I mean, you
10 know, it was just like any new operation.

11 Q. Well, what kinds of problems were they having?

12 A. Just mostly mechanical and stuff, yeah.

13 Q. Problems with the roof or the floor or anything?

14 A. That I wouldn't know.

15 Q. Okay. You made a statement earlier you said that
16 they would --- they would frequently work on
17 ventilation or they would work on ventilation and you
18 were talking about the sections, who worked on
19 ventilation? Who were you talking about?

20 A. Just the crews on the section.

21 Q. Okay. What types of problems were they having
22 with their ventilation?

23 A. Well, that I wouldn't know because I --- you know,
24 it was just a statement they made being that they were
25 just ---.

1 Q. They never said if they had low air or ---?

2 A. Well, I assumed that. If they --- you know, if
3 they were working on the ventilation that they had low
4 air.

5 Q. Did they ever say how they corrected it?

6 A. Well, just, you know, by using the curtain and
7 stuff.

8 Q. Okay. What is --- you mentioned that you worked
9 --- you were in --- that you made purchases of
10 supplies for the mine?

11 A. Uh-huh (yes).

12 Q. What is Massey's procedure for purchasing
13 supplies?

14 A. Well, when I did it, it was just to --- you know,
15 on an emergency basis. You know, on the second and
16 third shift. You just --- they would --- the
17 electricians would give you part numbers.

18 Q. Did you work first shift?

19 A. Excuse me?

20 Q. Did you work first shift also?

21 A. I did.

22 Q. Did you ever have to purchase supplies on first
23 shift?

24 A. Only if Greg Clay wasn't there for some reason,
25 and normally he was there.

1 Q. Okay. Well, when you purchased them on first
2 shift, what was the procedure?

3 A. Just the same as it was, you know, any other time,
4 just they had a list there, you know, normal supplies
5 and stuff, you just called vendors and ordered it.

6 Q. You didn't have to fill out a requisition or ---?

7 A. Yes. On a lot of the stuff you did.

8 Q. And who signed that requisition?

9 A. Blanchard.

10 Q. Blanchard. He approved all supplies at the mine?

11 A. Exactly.

12 Q. Did he ever deny anything that was requested?

13 A. Oh, yeah.

14 Q. Such as what?

15 A. Oh, it was just various things. I mean, you know,
16 there was times that he was hesitant to buy anything.

17 Q. Well, why was he hesitant to buy anything?

18 A. I have no idea. That was his ---.

19 Q. Was he ever hesitant to buy anything that was
20 related to the safety of the men in the mine? Pumps,
21 anything like that?

22 A. Not specifically. I wouldn't think. You know, he
23 just --- his demeanor, I guess, when he --- I don't
24 know. Maybe he was looking at his budget or
25 something, I don't know.

1 Q. You mentioned that you weren't --- you said you
2 weren't surprised at the explosion, you were --- what
3 did you say, startled or what was the word you used?

4 A. Yeah. Overwhelmed. You know, that something like
5 that would happen.

6 Q. Was this something that you expected to happen
7 or ---?

8 A. Well, no, nobody expected it to happen. No. I
9 wouldn't think.

10 Q. Was this something that you suspected could
11 happen?

12 A. Well, it can happen any time you mine underground,
13 yeah.

14 Q. Well, if you have an approved ventilation plan
15 that you're following ---.

16 A. Well, I mean, you know, that's to be found out.

17 Q. Were you involved in any weekly testing of the CO
18 system?

19 A. Yeah. I would monitor COs when the guys --- you
20 know, when they were checking them, of course. You
21 know, when they would go around and ---.

22 Q. Okay. Can you go over that, what all that
23 entails?

24 A. Well, just the fact that they would tell me they
25 were going to a certain area, you know, and do a test

1 or something for them. Make sure they'd get an alarm
2 and stuff.

3 Q. Okay. Let's see here, we covered --- were there
4 any sensors that had to be set at a higher value in
5 relation to the alarm setting?

6 A. Not that I'm aware of.

7 Q. Who was responsible for editing the CO system
8 computer map or adding a CO sensor on the computer?

9 A. The electricians.

10 Q. Anyone else besides the electricians do this at
11 UBB?

12 A. Not that I'm aware of.

13 Q. Were there any CO sensors or other sensors that
14 would alarm that the sensor couldn't be seen on the CO
15 map on the computer?

16 A. Not that I know of. I don't know how it would
17 alarm if there wasn't a sensor or something setting it
18 off.

19 Q. Did you ever go underground?

20 A. No. No, my job was outside.

21 Q. What kind of mine training have you received?

22 A. As I stated, I have four years underground mining
23 experience, and I'm a certified electrician.

24 Q. Did you get the Massey Initial Training?

25 A. I did.

1 Q. What does that entail?

2 A. Just going over all the maps and sketch ways and
3 stuff. You know, just the normal procedures that they
4 would do for handing in a report.

5 Q. Okay. Have you had the annual refresher training?

6 A. I have, every year, yes.

7 Q. How long was this course?

8 A. How long?

9 Q. Uh-huh (yes).

10 A. Eight hours. Each year, eight.

11 Q. Did any of the working sections use belt air?

12 A. Not that I'm aware of. I can't tell you the
13 sensor locations.

14 Q. And where was it located?

15 A. They're in the office.

16 Q. How accurate was the computer screen, in your
17 opinion?

18 A. They was accurate as far as in they would have
19 given you --- they were giving you the break numbers
20 and everything.

21 Q. Okay. Who would have decided where and when rock
22 dusting was to be done?

23 A. I believe the superintendent or mine foreman.

24 Q. Did you ever seem them do any ---?

25 A. No. I was outside.

1 Q. Did you ever see them tell the rock dust crew
2 where to go?

3 A. Oh, yeah. They told them where to go. You know,
4 gave directions.

5 Q. How often did that happen?

6 A. Any time that --- you know, normally it's done on
7 the midnight schedule. You know, it was constant they
8 were doing rock dusting.

9 Q. How many rock dust crews did this mine have?

10 A. Just the one that I know of. You know, that was
11 done --- basically on the nightshift.

12 Q. Was it always done on the midnight shift? Was it
13 always done on the same shift, rock dusting?

14 A. As far as, you know, the big rock dust machines
15 that they use normally, yeah, because they had big
16 ones.

17 Q. Okay. How often was this rock dusting actually
18 done?

19 A. It was continuously. I mean, they --- almost
20 nightly.

21 Q. Who was responsible for rock dusting activities?
22 Do you know any names?

23 A. They just had various ones, you know, on the third
24 shift that did it.

25 Q. How often was welding performed underground?

1 A. Oh, there was no specific --- you know, it was ---
2 it could be done on a daily basis, I mean, you know,
3 if need be. It was a normal thing to be done.

4 Q. If someone was going to weld underground, were
5 they required to put something in writing?

6 A. Not that I know of.

7 Q. Were there work orders --- were there work orders
8 filled out to indicate that --- to indicate work that
9 was needed --- that was done underground? Did they
10 fill out work orders for the work that they needed to
11 do underground?

12 A. That would have been the foreman stuff. I'm not
13 aware of that. I'm not sure.

14 Q. A few more questions here. When the governing
15 would run dust, would run respirable dust, did you
16 ever see a dust pump out in the office that was ready
17 to go underground?

18 A. Yeah. Yeah, quite often, you know, they would be
19 sitting there when they were bringing them up from the
20 safety department.

21 Q. Did you ever see a dust pump that should have went
22 underground but was left in the mine office?

23 A. Not that I know of, no.

24 Q. Did you ever hear of them hanging a dust pump in
25 the intake that should have been on an equipment

1 operator?

2 A. Not that I know of, no.

3 Q. Were miners subjected to threats or retaliation
4 for reporting safety concerns either to MSHA or the
5 company?

6 A. Not to my knowledge.

7 Q. Was the ventilation in this mine adequate at all
8 times?

9 A. That I wouldn't know of. I couldn't say.

10 Q. Were you there when the pre-shift was called out?

11 A. Yeah. But it wasn't part of my job to do that,
12 that was always done by one of the foremen.

13 Q. Did you ever see them write down the information
14 in the book?

15 A. No. I just --- I didn't know that. I wasn't
16 paying attention to that. I noticed they did keep
17 record of all that, you know.

18 Q. Were ventilation changes ever made in this mine
19 with men underground?

20 A. It may have, I'm not sure, you know.

21 Q. Do you remember any specific instances?

22 A. Not that I can recall.

23 Q. Did you ever know of Chris Blanchard going in the
24 mine and making a ventilation change?

25 A. No, not that I'm aware of. He could have been ---

1 I mean, you know, I don't know that he'd been there
2 specifically for that.

3 Q. Did miners underground and the foremen underground
4 receive prior notification of inspectors when they
5 were on the property?

6 A. They did.

7 Q. Did you call and tell them?

8 A. I did.

9 Q. What instruction did you call and tell them about?

10 A. I'd get the foreman to step outside.

11 Q. And who was that?

12 A. Well, whoever happened to be out there at the
13 time, you know, the mine foreman, the superintendent,
14 whatever.

15 Q. Who was the superintendent?

16 A. Everett Hager.

17 Q. And who was the foreman?

18 A. It would have been Gary May, or --- I can't think
19 of some of the others, but just --- you know, just
20 whoever happened to be out there at the time.

21 Q. Why would they tell you to call inside and tell
22 them the inspector was coming?

23 A. It was just a normal practice.

24 Q. And did anybody call up the hill and tell you when
25 an inspector was on the property?

1 A. At times they did.

2 Q. And who did this?

3 A. The security down at the gate.

4 Q. Did they do it when the inspector first came
5 across the bridge at UBB and say we got an inspector
6 on the property or did they wait until after they
7 cleared the gate?

8 A. I wouldn't know, you know.

9 Q. And who are these security guards?

10 A. Just various ones. I mean, you know, I don't ---.

11 Q. Are they employed by Massey or ---?

12 A. The contractor and Massey.

13 Q. And who's the contractor?

14 A. I know it, but I can't think of it right now.

15 Q. So you'd call inside then and you let them know
16 the inspectors were coming. Then what happened? Did
17 you ever tell the inspectors that you let them know
18 that they were on their way?

19 A. Did I tell the inspector ---?

20 Q. That the crews underground knew that they were en
21 route?

22 A. No. But there was times that they would know
23 that.

24 Q. How would they know that?

25 A. They would tell, you know, if they were going to a

1 certain section after they got there.

2 Q. Are you aware the Mine Act expressly forbids prior
3 notification?

4 A. Excuse me?

5 Q. Are you aware that the Mine Act expressly forbids
6 prior notification?

7 A. I do now. I didn't at the time.

8 Q. You didn't at the time? Do you think the
9 superintendent, which you said his name was Everett
10 Hager, I believe?

11 A. Yes, sir.

12 Q. Do you think he's aware of that?

13 A. He could have been. I wasn't. I mean, it was
14 just everyday practice.

15 Q. Just an accepted practice?

16 A. Exactly.

17 Q. Is that accepted practice where you're at right
18 now?

19 A. It was until I brought their attention to it, when
20 they started this blitz and that started firing the
21 outside people for doing it. I told them not to call
22 and ask me any more, that I wouldn't notify them. You
23 know, I wasn't going to be subject to a fine.

24 MR. STEFFEY:

25 That's all I got right now.

1 ATTORNEY WILSON:

2 Are you okay? Do you want to take a
3 break, ---

4 A. I'm fine.

5 ATTORNEY WILSON:

6 --- use the restroom, water, something to
7 drink?

8 MR. MCGINLEY:

9 Just a few questions, sir.

10 EXAMINATION

11 BY MR. MCGINLEY:

12 Q. You mentioned when they started the blitz. They
13 started the blitz, that MSHA was coming in and
14 inspecting the mine?

15 A. Uh-huh (yes).

16 Q. That's what you were referring to?

17 A. Right. Yeah.

18 Q. And that would have been the fall of 2009?

19 A. No, that was just here a couple months after the
20 explosion when they started boosting these fines, you
21 know, at various locations.

22 Q. Okay. So you were talking about when you told
23 them that you didn't want to do that anymore, that was
24 after the explosion?

25 A. Right.

1 Q. At your current place of work?

2 A. Right.

3 Q. Were you aware of any significant level of
4 inspections at UBB when you were dispatcher?

5 A. Any level?

6 Q. Yeah. An increased level. Were there more MSHA
7 or State inspectors that were coming in and issuing
8 citations?

9 A. There was several. They had State and Federal
10 assigned there quarterly. So they were there on
11 almost on a daily basis. There was time that others
12 would have come in if they were running doubles or
13 doing survey or whatever.

14 Q. Were you aware that between April and October of
15 2009, there were 47 serious violations issued to UBB?

16 A. I was.

17 Q. What did you think about that? Was that a matter
18 of concern to you?

19 A. Yeah, it was a concern to everybody.

20 Q. And was part of the concern ventilation?

21 A. It was, yeah.

22 Q. Did you talk to any men that work in the mine
23 about their concerns regarding ventilation?

24 A. Nothing but just general conversations.

25 Q. Was there a level of concern among those who

1 worked at the mine about the ventilation problem that
2 they could result in injury?

3 A. I would have thought so by the way they worked on
4 the ventilation stuff at the time, yeah.

5 Q. While you were a dispatcher, did you have any
6 knowledge of concerns about damage to mobile airlock
7 doors?

8 A. It would happen occasionally. Yeah, you know,
9 especially if one's still on the track.

10 Q. What do you call it with regard to ---?

11 A. They would transport equipment and supply
12 underground, sometimes, you know, they would get
13 damaged.

14 Q. Would someone call out and say, well, the doors
15 are damaged, for example, at the Ellis Switch and they
16 won't close?

17 A. Yeah, at times they --- any time they would have
18 problems with something, they would notify management
19 and stuff.

20 Q. Would they do that through you as dispatcher?

21 A. Not necessarily, no.

22 Q. Do you know what --- they'd be repaired or
23 replaced; do you have any sense of that? Did you ever
24 order the doors?

25 A. Yeah, they replaced them quite often, you know.

1 And they were set up to be automatically opened and
2 shut and they would have to replace the jacks and
3 stuff on them, you know.

4 Q. Did you know that the doors --- I mean, some of
5 the doors were set up to be automatically operated,
6 didn't work?

7 A. That they didn't work?

8 Q. Did not work and had to be opened manually?

9 A. At times they would, yeah.

10 Q. And did you order doors as part of your purchasing
11 supplies?

12 A. Not normally, no.

13 Q. Did you ever do that?

14 A. Not that I recall.

15 Q. Do you know where the doors were ordered, who was
16 the vendor?

17 A. Not specifically, no.

18 Q. You said you didn't receive the foreman's
19 pre-shift report, someone else did?

20 A. Right.

21 Q. And you said it was usually a foreman?

22 A. (Indicates yes).

23 Q. You have to say yes or no for the court reporter.

24 A. Yes, it was a foreman.

25 Q. And were they receiving those reports in the same

1 room where you were located?

2 A. At times they were. And other times they were in
3 their offices or whatever.

4 Q. And so they wrote those down?

5 A. Yeah. They had books that they reported all this
6 information.

7 Q. In your experience, were the pre-shift reports ---
8 did they have a report of lack of adequate
9 ventilation?

10 A. They could have. I'm not sure. I'm sure they did
11 at times.

12 Q. Right. Why do you think --- why would you say
13 you're sure at times they did?

14 A. Because they were, you know, having to work on it
15 and stuff from time to time. I'm sure, you know, that
16 they would.

17 Q. It would just be logical that if they were working
18 on ventilation frequently, that they --- that was
19 because they had inadequate air?

20 A. I would think so.

21 Q. How long did you say you worked underground, how
22 many years?

23 A. Four years.

24 Q. And all in the Massey mines?

25 A. No, none of them.

1 Q. Where else did you work?

2 A. I started at Eccles back in the '70s.

3 Q. And so that's when you worked underground four
4 years, and then you didn't go back to work for a coal
5 company until you went to Massey?

6 A. No, I worked for myself. I used to do independent
7 appraisals and stuff for mines and coal companies and
8 landowners and so forth. I was in a lot of different
9 mines.

10 MR. MCGINLEY:

11 That's all. Thank you.

12 RE-EXAMINATION

13 BY MR. FARLEY:

14 Q. I have a couple more. Again, during your time at
15 UBB that you were responsible for monitoring the
16 carbon monoxide monitoring system, were there times
17 when a CO --- carbon monoxide sensor would need to be
18 repaired or more than one sensor might need to be
19 repaired when it became necessary to initiate some
20 type of hand instrument monitoring underground? Do
21 you recall any of that?

22 A. Not that I recall, no.

23 Q. Okay. Did the folks underground report to you
24 that the CO sensors at specific locations were not
25 malfunctioning?

1 A. They would.

2 Q. Could you determine that on your own system
3 outside?

4 A. You could, both. Yeah, both. Both ways.

5 Q. Okay. Back on the phone calls that you received
6 from time to time from Blanchard and possibly others
7 about production and downtime, when there might be a
8 problem or if there was a mechanical breakdown or a
9 problem with ventilation or any number of other
10 reasons, did anybody ever call and say --- and tell
11 you to call underground and tell these people to start
12 mining coal immediately? Did anyone ever do that?

13 A. No.

14 MR. FARLEY:

15 That's all I have.

16 RE-EXAMINATION

17 BY MR. STEFFEY:

18 Q. Just a few more questions here. Did you have any
19 code phrases to indicate that there was inspectors on
20 the property, you know, like did somebody call up and
21 say what's the weather like and say, oh, it's cloudy,
22 and that would tell me the inspector was there?

23 A. Oh, yeah.

24 Q. What were they?

25 A. Just like what you're saying, you know.

1 Basically, the most asked question was, you know, if
2 you had any company.

3 Q. Why would they have a little code phrase for that?
4 Were they aware that ---?

5 A. I don't know. It was just general practice. Like
6 I said, they do it everywhere, you know. It wasn't
7 just not only there.

8 Q. Blanchard ever give instructions to let them know
9 when inspectors were en route?

10 A. To me, no. Now, he could have told some of the
11 other people, but to tell me directly, he didn't.

12 Q. Now, you mentioned earlier that Blanchard signed
13 off on purchase orders?

14 A. He did.

15 Q. And requests --- I guess you make a request for a
16 purchase order also; is that correct?

17 A. Right.

18 Q. Did he ever deny the purchase of equipment doors?

19 A. Not that I'm aware of, no.

20 Q. When a supply motor entered the mine, how many
21 cars would they typically push or pull?

22 A. Just one or two normally.

23 Q. One or two? Did you ever seem them take two in?

24 A. Oh, yeah. Yeah.

25 Q. To the best of your knowledge, what situations

1 occurred underground that negatively affected mine
2 ventilation? Stoppings and out doors open, fans not
3 working, et cetera. What --- if you can tell us what
4 you know?

5 A. I was just hearing them reporting about, you know,
6 that they'd have a stopping crushed out or something
7 at different a area or something that we'd have to
8 repair them.

9 Q. Did it seem like this happened in some areas more
10 than others?

11 A. Yeah. I'd say, you know, in your old works and
12 stuff that it's probably more frequent.

13 Q. Do you know who the miners were that were on the
14 rock dust crew?

15 A. Ricky Wood was one of the guys, and then they just
16 --- they had various ones, you know. A lot of times
17 it was some of the red hats, you know, they had been
18 working so the black hats, you know, those kinds of
19 things.

20 Q. Did miners ever complain about the track
21 conditions at the mine?

22 A. Track conditions?

23 Q. Yeah.

24 A. Some. Yeah, some.

25 Q. What type of complaints did they have?

1 A. Just about --- you know, where a rail would break
2 or something, you know. And then actually at one time
3 the State wrote up the track from the drift panel all
4 the way to the sections to be repaired and re-ballast
5 and stuff.

6 Q. How often did they have to repair and re-ballast
7 tracks?

8 A. Oh, it was pretty much an ongoing thing. I mean,
9 it had deteriorated to the point to where they
10 actually did have to correct it, you know, from
11 outside all the way in, you know, with the ballast and
12 so forth, replacing ties and things.

13 Q. The person that did the examinations of the
14 ballast tracking prior to the crews going in the mine,
15 did he ever come out and put anything in the books
16 about the track being in poor condition in places?

17 A. Oh, I would say that they did, but you know, I
18 actually didn't see it.

19 Q. Okay. And you mentioned earlier that you never
20 went underground?

21 A. No, my job was outside.

22 Q. Okay. You also mentioned that you were an AMS
23 operator?

24 A. Was, yeah.

25 Q. Who gave you the training on the AMS system?

1 A. The electricians there that maintained the system.

2 Q. And who was that?

3 A. I can't recall his name now. I can't think of his
4 name right now.

5 Q. Okay. Who did he answer to? Who was his boss?

6 A. The chief electrician.

7 Q. And who was that?

8 A. You're asking me. I can't think of his name now.
9 I can't think of the name right now.

10 Q. There's no regulation that requires an AMS
11 operator to travel to the working section every six
12 months?

13 A. I'm not sure.

14 Q. Are they aware of that at the mine?

15 A. I'm not sure.

16 Q. Could you have an alarm, an AMS alarm while you're
17 operating equipment in the supply yard? Did that ever
18 happen?

19 A. Yeah, I'd say it would. Yeah. Yeah, we had
20 occasion that it would, yeah.

21 Q. How did you know you had an alarm?

22 A. We had an alarm outside, you know. You could hear
23 it.

24 Q. Okay. Then what happened?

25 A. Then we would just --- I would, you know, go in to

1 check it.

2 Q. Okay. The mine you're currently working at, do
3 you have a gate for a security guard set up?

4 A. We do not.

5 Q. You don't?

6 A. We don't.

7 Q. Okay. How do you know if there's inspectors on
8 the property; does anybody call you and tell you?

9 A. No, just when they arrive at the mine.

10 Q. What about cameras? Can you see them coming up
11 the hill on cameras?

12 A. No.

13 Q. You don't have any video systems or anything?

14 A. They've got some there, but they're not
15 operational, as far as I know, and it's unusual.

16 Q. What about UBB, are there cameras there?

17 A. They did have them. They were operational.

18 Q. Do they have voice recorders there? Did they
19 record anybody's conversations?

20 A. Not that I'm aware of. They could have them.

21 Q. Did anybody ever caution you to be careful of what
22 you say to an inspector?

23 A. No.

24 Q. Did anybody ever review the regulations with you
25 that are required for AMS systems? Did anybody ever

1 go over that with you?

2 A. Yeah, back when I first went to Brookville.

3 Q. Okay. Who did that?

4 A. The same guy that takes care of --- the guy's
5 first name is Virgil. I can't think of his last name
6 now. Give me a second.

7 Q. How'd he do that? How did he go over those
8 regulations with you?

9 A. Actually, out of the book.

10 Q. Out of the book? So he read them straight out of
11 the book to you?

12 A. Yes.

13 Q. Are there any maintenance records on the rock
14 dusting equipment?

15 A. I'm not sure whether they had anything --- any
16 kind of records on the rock dusting equipment. I
17 mean, they did a lot on the production equipment
18 stuff, but I'm not aware of anything on the rock
19 dusting equipment.

20 Q. Okay. Who is responsible for deciding how much
21 rock dust to order?

22 A. I would say the superintendent and the mine
23 foremen.

24 Q. And that was?

25 A. Everett Hager and Gary May, you know.

1 Q. And how much rock dust is typically ordered?

2 A. Normally I didn't order the rock dust. That was
3 done, you know, only through the purchasing agent, you
4 know.

5 Q. Okay.

6 A. Only when I ordered stuff it was done on an
7 emergency basis, you know, when the officers ---.

8 Q. And did they have to fill out a requisition for
9 rock dust?

10 A. They filled out a requisition for everything.

11 Q. Okay. Let's go over that requisition system. I
12 got one more question here. Well, we actually asked
13 that. These requisitions, was there ever anything
14 denied upon rock dusting? Did anyone ever deny that
15 purchase?

16 A. Not that I'm aware of.

17 Q. Or tell you to wait, say it was at the end of the
18 quarter? Were you --- let's talk about at the end of
19 the quarter. The end of the three-month period. Did
20 it seem like your denial on purchasing stuff, did it
21 come more toward the end of the quarter or was it just
22 consistent all the way through? How did that work?
23 Had you ever noticed a pattern?

24 A. No, but I'm sure it probably did so more toward
25 the end.

1 Q. Did they ever give you any specific instructions
2 about the end of the quarter about purchasing?

3 A. No. We were aware that they were on budget and so
4 forth, and they kept track of everything they used and
5 so forth.

6 Q. Nobody ever came in and talked about that?

7 A. Not to me, no, sir.

8 Q. Did anybody have to sign off on those requisitions
9 above Mr. Blanchard?

10 A. Sometimes with the main purchasing officers down
11 there at the office, they would sign off on it.

12 Q. And who was that?

13 A. Ronnie Williams.

14 Q. Okay. Ronnie Williams. What does he do?

15 A. Main purchasing agent at Marfork.

16 Q. So he would now complain to me how they work. Mr.
17 Blanchard would approve and then did it go to the
18 Marfork office to the main purchasing office? How did
19 that work? It came back to you signed off that it was
20 approved for you to buy stuff or disapproved, but how
21 many signatures were actually on that form who all
22 signed that form?

23 A. At times there was the main purchasing agent and
24 Mr. Blanchard's on different occasions.

25 A. Anybody else?

1 A. No, not normally. No.

2 Q. Mr. Blankenship ever have to sign anything?

3 A. His name was on there, but normally, no.

4 Q. Normally, no. What were the exceptions to that?

5 A. I don't know. I would say it was probably major,
6 you know, acquisitions and such as equipment, but I
7 was never ---.

8 Q. Did you ever receive instructions on their
9 purchasing --- on Massey's purchasing policies? Did
10 anybody ever cover those with you?

11 A. Nothing that was in writing. It was just stating,
12 you know, anything that you had to purchase had to be
13 requisitioned and he had to sign off on it.

14 Q. Okay.

15 MR. STEFFEY:

16 That's all I've got for right now.

17 MR. FARLEY:

18 I have nothing further.

19 ATTORNEY WILSON:

20 Okay. Let's go off the record.

21 OFF RECORD DISCUSSION

22 MR. WILSON:

23 All right. We're back on the record.

24 Dave?

25 MR. STEFFEY:

1 Just a few more questions here.

2 BY MR. STEFFEY:

3 Q. You mentioned there was a 45-minute rule regarding
4 in the meantime, if something is down for more than 45
5 minutes, be it a miner, belt, longwall, whatever, that
6 you were instructed to call Mr. Blanchard day or
7 night; is that right?

8 A. Exactly. Right.

9 Q. How were you made aware of any 45-minute rule?

10 A By memo sent out by him.

11 Q. Do you have that memo?

12 A. I don't, but that's how I recall it was put.

13 Q. Do you recall any other memo sent out by Mr.
14 Blanchard?

15 A. Nothing specific, no.

16 Q. Okay. What about if someone were injured, did he
17 have a 45 --- did he have a rule on that?

18 A. Oh, that was immediately.

19 Q. Immediate? What about if there was a safety
20 concern, if somebody had a concern about safety at the
21 mine, did he have any rules on calling him on that?

22 A. Not that I'm aware of.

23 Q. Do you remember --- you mentioned earlier that Mr.
24 Blanchard would deny things frequently that were
25 requested to be purchased; is that correct?

1 A. Right. Yes.

2 Q. Do you remember anything specifically that he
3 denied?

4 A. No. It was just various things for various
5 reasons. It was his reasons I guess, but you know,
6 there were times that he would deny stuff.

7 Q. But you don't remember anything in particular?

8 A. It didn't seem like it was anything in particular.

9 Q. Let's talk about that a little more there, you
10 know, his denials there. You said it didn't seem like
11 it was anything in particular. Was there any
12 particular time that he would deny stuff more so than
13 others?

14 A. I would think sometimes when you got down close to
15 the end of the quarter or something sometimes
16 everybody was aware that they were on budgets and
17 stuff. You know, that might have been some of the
18 reason for it. I'm not sure.

19 Q. What all would the budget have to do with buying
20 supplies for the mine?

21 A. I guess he wanted to stay within it.

22 Q. Okay. So then where did profitability rank on his
23 priorities?

24 A. That I couldn't tell you. I would think it would
25 rank pretty high with him, being the president.

1 Q. In your opinion, did he put profitability above
2 safety?

3 A. Not that I'm aware of.

4 Q. You mentioned earlier that you were the AMS
5 operator?

6 A. Right.

7 Q. What's the difference between an alert and an
8 alarm level with AMS?

9 A. We didn't distinguish anything different. We just
10 responded to all alarms.

11 Q. Do you think your training in that system was
12 adequate?

13 A. Oh, yeah.

14 MR. STEFFEY:

15 That's all I've got right now.

16 MR. WILSON:

17 Terry?

18 MR. FARLEY:

19 I've nothing further.

20 MR. WILSON:

21 Pat?

22 MR. MCGINLEY:

23 A few questions.

24 RE-EXAMINATION

25 BY MR. MCGINLEY:

1 Q. With regard to your training, you were asked
2 questions about the alarm system, earlier you were
3 asked about training with regard to the emergency fire
4 fighting plan, emergency response plan. Do you recall
5 that?

6 A. Right.

7 Q. You said you'd been trained. How long did that
8 training last and what was --- can you describe it?

9 A. It was just a matter of fact going over the book
10 that we have there, the procedures and stuff was all
11 it was.

12 Q. So did it last four hours, five minutes?

13 A. No, it was probably 30, 40 minutes, you know, to
14 go over the booklets and so forth.

15 Q. And just go through the book?

16 A. Yeah, at different times, you know, for different
17 things, you know.

18 Q. So how would that work? You'd open the book and
19 the electrician or whoever it was is doing the
20 training would point to things or just ---?

21 A. Yeah, right. Yeah.

22 Q. And say you've got to remember this or after you
23 had the various books or plans and you went through
24 that training, did you ever look at those books again?

25 A. Oh, yeah. They were there to be referred to at

1 all times.

2 Q. What would be a reason to refer to them as an
3 example?

4 A. I don't know. If you had questions about
5 something, whatever, you know, that you could just
6 refer to it.

7 Q. Did you ever refer to them with regard to
8 emergency response plans?

9 A. No. We had it posted. I mean, it was pretty
10 obvious of what you had to do there.

11 Q. What about the fire fighting plan, did you ever
12 refer to that after your training?

13 A. No.

14 Q. What about with regard to the CO monitors and
15 alarm; was there a book?

16 A. No, because you handle all that stuff on a daily
17 basis. It was just about it, you know.

18 Q. So what did the training entail for that?

19 A. Just actually doing it mostly.

20 Q. But you said that there were some trainings, what
21 was the training, just pointing out the equipment?

22 A. Well, just the procedures to go through when an
23 alarm sets off.

24 Q. Was there anything in writing in regard to those
25 procedures?

1 A. Well, it's in the laws.

2 Q. It's in the laws?

3 A. It's in the mine laws, yeah.

4 Q. There's a copy of the mine law there in the
5 office?

6 A. Yeah, they had handbooks all over.

7 Q. Do you open that book very often?

8 A. No, I didn't find it necessary to.

9 Q. How often do you think you looked at the mine
10 logs?

11 A. Not very often. I mean, it was --- like I say, it
12 was just a normal daily routine that you did all this
13 stuff.

14 Q. Are you familiar with the term S1 and P2?

15 A. Yeah, safety and so forth, yeah.

16 Q. What does S1 mean?

17 A. Safety.

18 Q. What else? What does that mean, safety?

19 A. I don't know.

20 Q. You just know that they're --- S1 had something to
21 do with safety?

22 A. Right, yeah.

23 Q. What about P2?

24 A. I don't know.

25 Q. You don't know what that means?

1 A. No.

2 Q. Did anyone ever call out to you from the mine to
3 report safety problems or safety concerns?

4 A. Not that I'm aware of, no.

5 Q. Never?

6 A. No.

7 Q. No?

8 A. Not that I'm aware of, no. I mean, there'd be
9 instances, you know, just like if you get a broke rail
10 or something on the track or something like that,
11 yeah, they would make you aware of it, you know,
12 whatever.

13 Q. But no --- and your concerns, no one called out
14 and said we don't have enough air here, we've got to
15 have air up to this continuous miner section?

16 A. Well, that was an ongoing thing, it seemed like,
17 you know, that they were working on the ventilation
18 and stuff.

19 Q. I understand that, but were they calling you and
20 saying ---?

21 A. Not specifically, no. They would just --- you
22 know, they would state it, you know, in their reports
23 when they called out different intervals during the
24 shift.

25 Q. Well, they were supposed to --- according to what

1 you said earlier, call and give a report if there was
2 a problem, if the continuous miner was down, something
3 interfering with production and then you were supposed
4 to call in and find out basically how and why and when
5 are you going to get it fixed; is that right?

6 A. Right.

7 Q. So did you ever have that happen where production
8 stopped because of ventilation and you had to call in
9 and say what's wrong with the ventilation?

10 A. Not that I'm aware of.

11 Q. So you never had any conversations with people in
12 the mine about ventilation problems impacting
13 production?

14 A. Not specifically, no.

15 Q. What do you mean not specifically?

16 A. Well, I never did hear anybody saying, you know,
17 that they would have to quit work on account of not
18 having enough air. I never heard anybody say that.

19 Q. Okay. That's what I was wondering. What about,
20 did anybody ever call out about water problems?

21 A. They were reported at times, you know, just doing
22 their normal reporting. I mean, they were --- I mean,
23 it was a --- that mine seemed like it had a lot of
24 water problems, you know. They were continuously
25 pumping areas and stuff.

1 Q. Well, if you're pumping adequately, there aren't
2 problems. So what --- if you can keep the water down
3 there aren't problems, but what would the water
4 problems be that they were calling out?

5 A. Just the times they would get a lot of
6 accumulation in a certain area of the mine, you know,
7 they would report that.

8 Q. And they say certain entries were not passable,
9 water roofed out?

10 A. No, I never did hear them say that.

11 Q. Never heard anybody say that there were certain
12 areas where that accumulation of water had made it
13 impossible to go through that area?

14 A. I just understood they had a lot of water in the
15 area back behind the longwall section, and I figured
16 they would refer to at times.

17 Q. What would they say about it?

18 A. I think that it was just a constant problem coming
19 in out there after they put that ventilation fan and
20 stuff in up there. They actually graded out an area
21 for like a sump for just the water to accumulate in to
22 keep it pumped out of that area.

23 Q. When you say that fan, do you mean the Bandytown
24 fan?

25 A. Right.

1 MR. MCGINLEY:

2 That's all I have. Thank you.

3 MR. FARLEY:

4 I don't have nothing further.

5 MR. STEFFEY:

6 I have just a couple more.

7 RE-EXAMINATION

8 BY MR. STEFFEY:

9 Q. Did Mr. Blanchard ever come to the mine to give
10 the employees any safety talks?

11 A. Not that I'm aware of.

12 Q. Did he ever come to the mine to talk to them about
13 production?

14 A. Oh, yeah.

15 Q. How often did that happen?

16 A. He was there quite often. I mean, you know, he
17 was ---.

18 Q. What sort of things did he say about production?

19 A. Really, I wasn't privy to a lot of those meetings
20 and stuff. You know, they were between him, the mine
21 foreman, and superintendents and stuff.

22 Q. Do you know of any complaints to MSHA about safety
23 concerns?

24 A. There was just --- there was one here a while
25 back, you know, at the mine we're I'm at now. They

1 were --- had to shoot out for maybe a belt head or
2 something. I understand somebody had called and they
3 were concerned about it, you know, disturbing some of
4 the --- I don't know whether it was just ribs or
5 pillars or whatever was in that area.

6 Q. And the management people that were UBB, are they
7 at the mine you're at now?

8 A. Any of the management people?

9 Q. Yeah, any of the section bosses, foremen, outby
10 bosses?

11 A. Yeah, the mine foreman.

12 Q. What's their attitude toward safety complaints?

13 A. They're pretty aware of them, you know. They're
14 pretty receptive to them.

15 Q. What about if they would have made the complaint
16 to MSHA --- would they rather have you make the
17 complaint to MSHA or would they rather it be made to
18 the company?

19 A. Well, they rather it be made to the company and
20 have it solved there, you know, rather it --- that was
21 my understanding, you know. That's how it was stated
22 on the --- discussed somebody calling in, you know.

23 Q. What about this discussion? Who discusses what?

24 Did you ever see anything discussed like that at UBB?

25 A. No. There was just one instance there, that I

1 know of.

2 Q. Did they ever tell the miners at UBB call in to us
3 before you call MSHA, anything like that?

4 A. Not to call in, but to --- you know, if they had a
5 concern, they did want you to try to resolve it there
6 rather than have them involved in it.

7 Q. Okay. Have you ever seen any pumps took
8 underground that were bound for the back side of the
9 longwall?

10 A. Any pumps?

11 Q. Yeah. Did they ever order any or ---?

12 A. It's my understanding that they ordered some air
13 pumps at one time that I saw that they were putting in
14 that area.

15 Q. So you actually saw these pumps come into the mine
16 and go underground?

17 A. I did, yeah.

18 Q. How many pumps were there?

19 A. Maybe a half dozen. I'm not sure of the number,
20 you know. It wasn't an extreme amount of them.

21 Q. And who'd you buy these pumps from?

22 A. I have no idea who they got them from.

23 Q. Anybody ever --- from engineering ever come to
24 look at the water?

25 A. Not that I'm aware of, no. They could have, but

1 I'm not aware of it.

2 MR. STEFFEY:

3 That's all I got for right now.

4 MR. FARLEY:

5 I have nothing further.

6 ATTORNEY WILSON:

7 All right, then, Mr. Justice. On behalf

8 of MSHA and the Office of Miners' Health, Safety and

9 Training I want to thank you for appearing and

10 answering our questions today. Your cooperation is

11 very important as we work to determine the cause of

12 the accident. Again, because we will be interviewing

13 other individuals, we request that you not discuss

14 your testimony with anyone. After questioning other

15 witnesses, we may have some follow-up questions and we

16 may contact you. If at any time you think of

17 additional information that you believe to be

18 important, please contact either the Office of Miners'

19 Health, Safety and Training or me at the contact

20 information that was provided to you.

21 Before we finish up and go off the record

22 I want to give you an opportunity, if there's anything

23 else that you would like to add to the record or any

24 other information that you have or if you would just

25 like to make any sort of a statement, you can do so

1 now.

2 A. No.

3 MR. WILSON:

4 All right. Then, again, I want to thank
5 you for your cooperation here today, and we'll go off
6 the record.

7 * * * * *

8 STATEMENT UNDER OATH CONCLUDED AT 10:00 A.M.

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1 STATE OF WEST VIRGINIA)

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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.



Danielle Ohm