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Statement Under Oath of Wayne Miller

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STATEMENT UNDER OATH

OF

WAYNE MILLER

taken pursuant to Notice by Brett Steele, 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 Thursday, May 13, 2010, beginning at 8:11 a.m.

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A P P E A R A N C E S

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I N D E X

1		
2	OPENING STATEMENT	
3	By Attorney Wilson	6 - 10
4	WITNESS: WAYNE MILLER	
5	EXAMINATION	
6	By Mr. Farley	10 - 33
7	EXAMINATION	
8	By Mr. Maggard	33 - 45
9	EXAMINATION	
10	By Mr. Beck	45 - 47
11	RE-EXAMINATION	
12	By Mr. Farley	48 - 49
13	RE-EXAMINATION	
14	By Mr. Maggard	49 - 51
15	RE-EXAMINATION	
16	By Mr. Beck	51 - 54
17	RE-EXAMINATION	
18	By Mr. Farley	54
19	RE-EXAMINATION	
20	By Mr. Maggard	54 - 55
21	RE-EXAMINATION	
22	By Mr. Farley	55 - 56
23	CLOSING STATEMENT	
24	By Attorney Wilson	56 - 58
25	CERTIFICATE	59

1
2
3
4
5
6
7
8
9
10
11
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14
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19
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21
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EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

One

Map

33*

*exhibit not attached

P R O C E E D I N G S

1
2
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4
5
6
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ATTORNEY WILSON:

Good morning.

MR. MILLER:

Good morning.

ATTORNEY WILSON:

My name is Bob Wilson. We're here this morning with Wayne Miller, from the Office of Miners' Health, Safety and Training. I'm with the Office of the Solicitor, United States Department of Labor. With me is Jasey Maggard, an accident investigator with the Mine Safety and Health Administration. Also present are several individuals from the State of West Virginia. I'll ask that they identify themselves for the record.

MR. BECK:

I'm Jim Beck, I work for Davitt McAteer on the independent team.

MR. FARLEY:

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

MR. O'BRIEN:

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

1 MS. MONFORTON:

2 Celeste Monforton with Davitt McAteer's
3 independent team.

4 ATTORNEY WILSON:

5 There are also several other members of
6 the investigation teams present in the room here
7 today. All members of the Mine Safety and Health
8 Administration Accident Investigation Team, and all
9 members of the State of West Virginia Accident
10 Investigation Team participating in the investigation
11 of the Upper Big Branch Mine explosion, shall keep
12 confidential all information that is gathered from
13 each witness who voluntarily provides a statement,
14 until the witness statements are officially released.
15 MSHA and the State of West Virginia shall keep this
16 information confidential, so that other ongoing
17 enforcement activities are not prejudiced or
18 jeopardized by a premature release of information.
19 This confidentiality requirement shall not preclude
20 investigation team members from sharing information
21 with each other, or with other law enforcement
22 officials. Everyone's participation in this interview
23 constitutes their agreement to keep information
24 confidential.
25 Mr. Miller, government investigators and

1 specialists have been assigned to investigate the
2 conditions, the events and circumstances surrounding
3 the fatalities that occurred at the Upper Big Branch
4 Mine on April 5th, 2010. The investigation is being
5 conducted by the Mine Safety and Health Administration
6 pursuant to Section 103(a) of the Federal Mine Safety
7 and Health Act, and by the West Virginia Office of
8 Miners' Health, Safety and Training. And we all
9 appreciate your assistance in this investigation.

10 After the investigation is complete, MSHA
11 will issue a public report detailing the nature and
12 the causes of the fatalities, in the hope that greater
13 awareness about the causes of accidents can reduce
14 their occurrence in the future. Information obtained
15 through witness interviews is frequently contained in
16 these reports. You should know that if you request
17 confidentiality, confidentiality will only be granted
18 on a case-by-case basis. Your statement may also be
19 used in other enforcement proceedings. You may have a
20 personal representative with you present during the
21 taking of your statement, and you may consult with a
22 representative at any time. Do you have a
23 representative with you today?

24 MR. MILLER:

25 No.

1 ATTORNEY WILSON:

2 You may refuse to answer any question,
3 and you may request a break at any time. A court
4 reporter will record your interview. Please speak
5 loudly and clearly. If you do not understand the
6 question asked, please ask that the question be
7 rephrased. Please answer each question as fully as
8 you can, including any information you have learned
9 from someone else.

10 Again, I would like to thank you in
11 advance for your appearance here today. We appreciate
12 your assistance in this investigation. Your
13 cooperation is critical in making the nation's mines
14 safer.

15 After we have finished asking questions,
16 you will have an opportunity to make a statement and
17 provide us with any additional information that you
18 believe to be important. If at any time after the
19 interview you recall any additional information that
20 you believe to be relevant to the investigation,
21 please contact either Norman Page at the number in the
22 letter provided to you or Terry Farley with the State.
23 At this time I would ask that the court reporter swear
24 in the witness.

25 -----

1 WAYNE MILLER, HAVING FIRST BEEN DULY SWORN, TESTIFIED
2 AS FOLLOWS:

3 -----

4 ATTORNEY WILSON:

5 All right. At this time, I'll turn it
6 over to Terry Farley.

7 EXAMINATION

8 BY MR. FARLEY:

9 Q. Good morning, Mr. Miller, how are you?

10 A. Good.

11 Q. Would you please begin with your name, home
12 address and phone number, please?

13 A. Hubert Wayne Miller, [REDACTED]

14 [REDACTED]

15 Q. Okay. Thank you. How long have you worked for
16 the West Virginia Office of Miners' Health, Safety and
17 Training?

18 A. About five and a half years.

19 Q. Okay. What's your current position with Miners'
20 Health, Safety and Training?

21 A. Electrical inspector.

22 Q. Okay. Did you start as an electrical inspector?

23 A. No.

24 Q. Okay. When did you become an electrical
25 inspector?

1 A. January 1st of 2005?

2 Q. Okay. And you work out of our Oak Hill office; is
3 that correct?

4 A. Yes, sir.

5 Q. Okay. Who's your immediate supervisor?

6 A. Steve Snyder.

7 Q. Okay. What's your total number of years that
8 you've worked in the coal mining industry?

9 A. A little over 40.

10 Q. A little over 40. Must have started young. Do
11 you mind telling us where you were before you came to
12 Miners' Health, Safety and Training?

13 A. Started out at Eunice Mines for Bethlehem Steel.
14 Went to Harris Mines for Eastern, worked at ---.

15 Q. This would have been my guess back in the '70s?

16 A. Yeah.

17 Q. Okay.

18 A. And then worked for Armco Steel, which later
19 became Eastern, which became Peabody. And I've done
20 some work as a directional driller underground.

21 Q. Okay. All right. Have you had any specialized
22 training relating to the type of work you do?

23 A. Other than just ---?

24 Q. Engineering, electrical matters, anything like
25 that?

1 A. No.

2 Q. Okay. Do you possess a West Virginia coal miner
3 electrician's certification?

4 A. Yes.

5 Q. Okay. How long have you had that certification?

6 A. Since '73.

7 Q. Okay. Do you possess West Virginia underground
8 mine foreman fire boss papers?

9 A. Yes.

10 Q. Are you currently assigned to inspect the Upper
11 Big Branch Mine?

12 A. Currently? No.

13 Q. Okay. Is it, to your knowledge, the Office of
14 Miners' Health, Safety and Training policy and
15 practice to do electrical inspections at all
16 underground mines at least once a year?

17 A. Yes.

18 Q. Okay. When did you first inspect at the Upper Big
19 Branch Mine?

20 A. I would say '06.

21 Q. 2006?

22 A. Yeah.

23 Q. What type of an inspection did you do at that
24 time?

25 A. Electrical.

1 Q. Okay. Now, that being about what, four years ago?

2 A. Uh-huh (yes).

3 Q. Is there anything particularly significant about
4 that inspection from four years ago that we might need
5 to know?

6 A. No.

7 Q. Okay. Was it your typical electrical inspection?

8 A. Yes.

9 Q. Now, just maybe in general terms, how do you
10 typically go about an underground electrical
11 inspection?

12 A. As to like where I start?

13 Q. Yes. Just a general idea as to how you proceed.

14 A. I will usually try to start on one end of the
15 mine, to the other, so I can keep in order what I'm
16 doing and work my way to the other end.

17 Q. Okay. Now, when is the most recent inspection you
18 made at the Upper Big Branch Mine?

19 A. I finished up at December of '09, and went back
20 one day about January the 3rd or 4th, to abate
21 violations and show the next inspector what I had done
22 and what he can pick up.

23 Q. Okay. Now, did you perform a complete electrical
24 inspection of the mine at this time?

25 A. No.

1 Q. Okay. When did you actually start this inspection
2 that you just referred to?

3 A. Probably late November.

4 Q. Late November, okay. November of 2009?

5 A. Yes.

6 Q. Okay. Do you recall how many Notices of Violation
7 you may have cited during that inspection?

8 A. No.

9 Q. Would you like to look at your inspection
10 report ---

11 A. Yeah.

12 Q. --- for that time, just to refresh your memory if
13 need be?

14 MR. FARLEY:

15 I've handed him a copy of his inspection
16 report dated 12/30/2009, which provides some summary
17 and encompasses Notices of Violation that he issued
18 during that inspection. Also, there's a copy of the
19 inspection report dated January 5, 2010, which has
20 some minor information about the same inspection.

21 BY MR. FARLEY:

22 Q. Now, if I understood you correctly, you didn't do
23 a complete electrical inspection at this time?

24 A. No.

25 Q. And why is that?

1 A. Randy Smith was assigned this mine and he started
2 the inspection, and he was moved to the assistant
3 inspector-at-large position out at Oak Hill, and he
4 didn't get to complete his assignments.

5 Q. Okay. So do you recall how many --- approximately
6 how many inspection days you sent there during the
7 month of December of 2009?

8 A. No. I've got nine here, but I don't know how many
9 of them were in December.

10 Q. Okay. All right. Now, at the time of this
11 inspection, when you took over for Randy Smith, before
12 entering the mine, did you review any of the mine
13 examination books?

14 A. The electrical books.

15 Q. Okay. Meaning the books that the mine operator
16 completes, referring to the mine equipment?

17 A. Mine equipment, yes. Electrical inspections.

18 Q. Okay. Now, when you entered the mine in general,
19 did the conditions in the mine correspond or were they
20 consistent --- the conditions of the equipment, I
21 should say, did they correspond or were they
22 consistent with what you read in the examination books
23 before you started?

24 A. Yes.

25 Q. Okay. Now, maybe if you referred to the map here,

1 do you recall --- now what you have in front of you is
2 a map of the general area of where the explosion
3 occurred.

4 A. Uh-huh (yes).

5 Q. Now, on the wall in front of you is a map --- a
6 smaller scale map of the entire mine. Feel free to
7 refer to either one. I think there's even a laser
8 pointer here if you would like to use it. Or you can
9 stand and point if you like. Do you recall how many
10 of their underground sections were operating at that
11 time in December?

12 A. The best I remember, what they called at that time
13 Number Four section, which was back ---.

14 Q. You can use the pointer if you like.

15 A. Yeah. I got to remember where that is, because I
16 didn't actually go there. But it is back off of the
17 left side here --- why ain't my pointer working. I'm
18 not sure exactly, but it was maybe this one.

19 Q. Okay. Now ---.

20 A. And I didn't go to that section, but that was one
21 of the sections working.

22 Q. Now, can you be a little more specific on where
23 you're pointing to?

24 A. That is what, 78 Break; right? And ---.

25 Q. Okay. Would it be just outby the existing

1 longwall panel there or the active longwall panel?

2 A. Yes, but I'm rethinking my thoughts now. I think
3 Number Four section was in here. I'm not sure.

4 Q. Okay. Well, now we say in here, can you be more
5 specific, please?

6 A. I know it was off of this panel over here on the
7 left, but I'm not exactly sure where. I didn't go to
8 that section because Randy Smith had already made it.

9 Q. Okay. Now, that would appear to be crosscut 55
10 coming from the Ellis Portal, Ellis switch?

11 A. I suppose.

12 Q. Okay.

13 A. That section was running, and the number --- what
14 did they call it? Number Three section, which is on
15 the south side of the mine, was working.

16 Q. Okay. When you say south side, would that be
17 closer to the main UBB Portal at Montcoal?

18 A. Yeah. This is the north side, and the south side
19 is on the other portal.

20 Q. Okay. Was 22 Headgate section operational at that
21 time?

22 A. No.

23 Q. Okay.

24 A. They had their equipment up there, but they had
25 some water and ventilation problems at 22. They call

1 that Two section at that time.

2 Q. Okay.

3 A. One and Two and the longwall were idle.

4 Q. Okay. Now, do you recall where and how you
5 entered the mine first? Did you enter at the UBB main
6 portal?

7 A. Main portal.

8 Q. Okay. Now, in your inspection report, I think you
9 show a Notice of Violation issued on December the
10 30th, 2009 there. You apparently cited the company
11 for not providing transportation to enter the mine?

12 A. Uh-huh (yes).

13 Q. Is that correct?

14 A. Yes.

15 Q. All right. Can you elaborate on that violation a
16 little bit, what led you to cite that violation?

17 A. It's a long story, but I was having trouble
18 getting in the mines everyday. And I understand that
19 you have to limit the number of mantrips, but I
20 finally told them that I was going to be in the mine
21 by 9:00. The mantrip we usually took in was the one
22 the chief on the midnight brought out. And I felt
23 that would give him --- he could be out here by 7:30,
24 which allowed him enough to do his normal duties and
25 give him an hour to charge, even if it's a little

1 extra. And I told him I went underground by nine
2 o'clock.

3 Q. Okay.

4 A. And this particular day, it was a little after
5 9:00, and I was going to be forgiving with him, and a
6 federal inspector came up, and asked where the
7 superintendent was, and they said, well, he's
8 underground. And I said, well, if he's underground
9 why don't I have a ride? Because I'd already asked
10 for one. So I issued the citation.

11 Q. Okay. Now, I assume that violation was abated, I
12 presume?

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

14 Q. Okay. Now, having asked that question, during
15 your inspection there in December of 2009, did any
16 employee of the UBB Mine or Performance Coal Company
17 at any time attempt to impede your inspection?

18 A. I don't know exactly how to answer that. The
19 president at one time directed the men that were
20 transporting me in another direction. He had a
21 longwall belt down, and we were on our way to the ---
22 probably Number Two section, and told him to go get
23 that belt started.

24 Q. Okay. Now, how much did that delay you in where
25 you were intending to go?

1 A. Maybe 20 minutes at the most.

2 Q. Okay. Did you by chance address it with him, or
3 anyone in management?

4 A. I didn't at that time, no.

5 Q. Okay. Now, feel free to use your inspection
6 report there.

7 A. Okay.

8 Q. What part of the mine did you actually inspect
9 during this period of time?

10 A. What is now called number 22 Headgate. Yeah.
11 Which is right here (indicating). They called that
12 Number Two section at the time.

13 Q. Okay. And where were the workings for 22 Headgate
14 at that time?

15 A. Not very far. Probably maybe up in here
16 (indicating).

17 Q. Meaning about half the distance we currently see
18 on the map, in by the location where the panel turns
19 off?

20 A. Yes.

21 Q. Okay. Is that fair?

22 A. Yes.

23 Q. Okay.

24 A. And I made that complete section of equipment.
25 And up the North Mains. All they had up there was a

1 distribution box and one pump. And this construction
2 area here, they had scoops and chargers.

3 Q. I think you're pointing to what we're now --- most
4 folks are referring to as the Eight North section?

5 A. Yeah. I think.

6 Q. Am I correct.

7 A. Uh-huh (yes). They called it North Mains at that
8 time.

9 Q. Okay. But the section was not active at the time?

10 A. No.

11 Q. Not actively producing?

12 A. Didn't have anything up there, any equipment other
13 than one pump and an electrical distribution box.

14 Q. Where was the pump located up there?

15 A. The best I remember, about in here. This area
16 right here (indicating).

17 MR. MAGGARD:

18 We've got that set area here in a larger
19 version. It might be easier for the witness to ---.

20 MR. FARLEY:

21 Okay.

22 BY MR. FARLEY:

23 Q. Why don't you mark the map for us ---

24 A. Okay.

25 Q. --- rather than trying to explain it?

1 A. Let's see here, they had --- now, the best I
2 remember, this pump was over in here. It may have
3 been --- that's just the best I remember. The
4 distribution box was about right here somewhere
5 (indicating). And that's all they had up there as far
6 as electrical equipment.

7 Q. Okay. Why don't you write up here pump. Make a
8 notation n on the map to what you're referring to
9 there.

10 WITNESS COMPLIES

11 A. And I'll say I'm going to try this right here.

12 BY MR. FARLEY:

13 Q. Okay. Let's start with Eight North here and work
14 our way back; okay? While you were in this area now
15 known as Eight North, did you --- were you in here,
16 where the faces are now located, or where the faces
17 were located at that time?

18 A. No.

19 Q. Okay. Did you take any methane readings in that
20 area up there?

21 A. Yes. I don't know that I took my spotter out, but
22 I kept my spotter on at all times, and it stays on.

23 Q. Okay. Do you recall that it alerted you to any
24 methane content whatsoever?

25 A. No, it did not.

1 Q. Okay. Now, outby the location where the
2 distribution box is, the map reflects that there's a
3 gas welled area, in a block, which is, according to
4 --- as the map reflects about probably 200 by 200.

5 A. Uh-huh (yes).

6 Q. Did you travel in the vicinity of that block?

7 A. No.

8 Q. Okay. And your methane detector did not indicate
9 you had any methane in that area?

10 A. No.

11 Q. Okay. All right. Did you find any problems with
12 the pump, and/or the distribution box during your
13 inspection up there?

14 A. With the pump, it had a breaker in it, which was
15 too large for the size pump.

16 Q. Okay. Is that something you cited?

17 A. Yes.

18 Q. Okay. Was it abated?

19 A. Yes.

20 Q. Okay. Now, I think you inspected what's now
21 called the 22 Headgate section?

22 A. Uh-huh (yes).

23 Q. Did you examine each piece of section equipment
24 or ---?

25 A. Yes.

1 Q. Okay. Did you specifically check the continuous
2 mining machine?

3 A. Yes.

4 Q. Okay. Did you happen to test or inspect the
5 methane monitor on the continuous mining machine?

6 A. No.

7 Q. Okay. Did you see the mining machine in
8 operation?

9 A. No. It wasn't running.

10 Q. Okay. Was it an idle day?

11 A. Well, that's more of the trouble they had over the
12 ventilation. They wouldn't run that section either.

13 Q. Okay. And when you say trouble with the
14 ventilation ---?

15 A. As I was explaining, they had water, somewhere
16 behind the longwall, was messing the ventilation up.
17 They weren't running their longwall Number One
18 section, which was now, I guess, Headgate 21, and the
19 22 Headgate section.

20 Q. Okay. Now, this explanation, who did that come
21 from?

22 A. Management.

23 Q. Okay. Were you, at any time, in the area where
24 this problem was said to have existed?

25 A. No. No.

1 Q. Okay. Did this require any evacuation of the
2 mine?

3 A. No.

4 Q. Okay.

5 A. They did mention ventilation changes. Some days I
6 was there that required evacuations.

7 Q. Okay.

8 A. I know on one particular day I went down there and
9 they didn't have anyone underground, they was making
10 ventilation changes.

11 Q. Okay.

12 A. Rather than the people making the changes.

13 Q. Do you recall the particular day. If you reviewed
14 your inspection report, can you tell us when that day
15 might have been?

16 A. Later in December.

17 Q. Later in December?

18 A. Yes, sir.

19 Q. Okay. After Christmas?

20 A. Probably after Christmas, yeah.

21 Q. Okay. While you were there, did you develop any
22 understanding of the Upper Big Branch Mine shift
23 schedule; how they operated?

24 A. No. But I knew what starting times and quitting
25 times were on the dayshift.

1 Q. Can you look and maybe --- can you tell us when?

2 A. I think the dayshift started at 7:00 and ended at
3 3:00.

4 Q. Okay.

5 A. And that's really the only shift I worked, while I
6 was there, so that's the only one I was interested in.

7 Q. Okay. Was the section now known as 22 Headgate
8 the only coal-producing --- as you said, it wasn't
9 producing at the time. Was that the only active
10 working section that you inspected during this ---

11 A. Yeah.

12 Q. --- December 2009 inspection?

13 A. Yes.

14 Q. Okay. Did you develop any understanding of what
15 the makeup of that section crew was? I mean, I guess
16 where I'm going with that question is, did it appear
17 to you that any one person might have been assigned
18 the duties of seeing to the ventilation, like a
19 ventilation man, or ventilation person?

20 A. No, I don't know.

21 Q. Okay. Do you know if they rotated shifts?

22 A. As far as I know, they did not.

23 Q. Okay. Now, was the continuous mining machine on
24 the 22 Headgate section the only mining --- continuous
25 mining machine that you inspected while you were

1 there?

2 A. Yes, but I was thinking there were two miners on
3 that section.

4 Q. Okay.

5 A. Yes.

6 Q. Did you happen to inspect both of them?

7 A. Yes.

8 Q. But you didn't check the methane monitor on
9 either; ---

10 A. No.

11 Q. --- is that correct? While you were outside the
12 mine, did you pay any particular attention to the mine
13 bulletin boards in and around the mine office?

14 A. I don't know that I paid particular attention, but
15 I noticed them as I go by.

16 Q. Okay. Did you ever notice any signs or letters or
17 memorandums that might have been addressed to
18 employees at Upper Big Branch or Performance Coal
19 Company, or employees of the mine that offered any
20 remarks such as vacation would be canceled if
21 production does not improve? Something like that?

22 A. Yes. I don't know where I saw it at, but it was a
23 letter from the president. I don't remember how it
24 was stated, but more or less if things didn't pick up,
25 they wouldn't need the people there.

1 Q. Okay. Do you recall the president's name who
2 might have ---?

3 A. Yeah. Chris Blanchard.

4 Q. Okay. Now, was this memorandum, or letter, or
5 sign, did it have a signature?

6 A. I don't recall.

7 Q. Okay. But you would have seen that in sometime in
8 December; is that correct?

9 A. Yeah.

10 Q. Okay. Now ---.

11 A. Now, let me make one more statement on that last
12 one. I could be mistaken. That could have been --- I
13 was there the year previous, too. It could have been
14 that year, I'm not certain.

15 Q. When you say the year previous, do you mean 2008?

16 A. '08. Yes.

17 Q. Okay. Do you recall when you were there in 2008?

18 A. It was the latter part of the year also.

19 Q. Okay. Were you there on a full electrical
20 inspection?

21 A. Yes, but I didn't get it completed either. We had
22 another electrical inspector was assigned that mine,
23 and he quit. And I was trying to catch up for him,
24 and the 7th of December, my wife had a heart attack so
25 I didn't --- I was off for a week.

1 Q. All right.

2 A. And Eddie Blake came in and helped me. But best I
3 remember we got the mines completed.

4 Q. Okay.

5 A. Or very near.

6 Q. Now, as for your December 2009 inspection of UBB,
7 I understand you took over for Randy Smith, who was
8 promoted?

9 A. Yeah.

10 Q. Now, did you actually --- did you complete the
11 electrical inspection at UBB in December, or did you
12 hand it off to someone else?

13 A. Yeah. I gave it to Eddie Blake, I didn't get it
14 completed.

15 Q. Okay. Were you involved in the Upper Big Branch
16 rescue and recovery operation after the explosion
17 occurred on April 5th of this year?

18 A. I was on the surface.

19 Q. Okay. How and when did you learn that this event
20 had occurred on April the 5th?

21 A. I was home. I only live about a quarter of a mile
22 from the main road, and I kept hearing ambulances go
23 by, and at first I thought it was a car wreck, and
24 then I thought it must be something like a fire, and
25 finally I went out and asked my neighbor what all the

1 ambulances were for, and he said that they were --- I
2 believe he said a roof collapsed at UBB. So then I
3 called my boss, which he wasn't home, but his wife
4 told me there was an event.

5 Q. Okay. What did you do then?

6 A. Got my work clothes back on and went to the mines.

7 Q. Okay. Do you recall what time you arrived there?

8 A. I'm thinking it would probably been closer to six
9 o'clock.

10 Q. Okay. All right. Did you arrive at the Upper Big
11 Branch Main Portal at Montcoal, or did you go to Ellis
12 Portal.

13 A. Main Portal, Montcoal.

14 Q. Okay. What did you do then?

15 A. Went to the mine office to see what was going on,
16 and Chris Adkins was there, explained to me that they
17 had an event, and I think at that time he told me
18 there were three fatalities.

19 Q. Okay. Now, when you say Chris Adkins, is he ---
20 do you know his position?

21 A. Well, I was told he was the vice president of
22 Massey operations, but I'm not sure.

23 Q. Okay. That's fine. Did he, in any way, describe
24 how or why the event might have occurred? Did he
25 provide any information on that?

1 A. No.

2 Q. Okay. Had any of the rescue teams arrived by that
3 time?

4 A. No.

5 Q. Okay. Okay. So around six o'clock, and after
6 your conversation with Mr. Atkins, what happened then?

7 A. I wrote him a closure order.

8 Q. Can you explain that?

9 A. To close the mines other than ---.

10 Q. Call it an order?

11 A. Yes.

12 Q. Okay.

13 A. Until the investigation's complete.

14 Q. Okay. What did you do the rest of the evening?

15 A. Until the rescue teams got there, I tried to keep
16 up on the map with what was going on, because they had
17 individuals underground.

18 Q. Sure.

19 A. And then when the rescue teams got there, and
20 Steve Snyder got there, I went down in the shop and
21 took notes as to which rescue teams, and who were on
22 the teams that went underground.

23 Q. All right. I think you just said that they had
24 people underground around the time of your arrival.

25 A. Uh-huh (yes).

1 Q. I assume you mean the Performance or Upper Big
2 Branch Mine employees?

3 A. Yes.

4 Q. Okay. Do you know who those people were? Or do
5 you have any knowledge of who they were?

6 A. Okay. That's Jaime Ferguson, Chris Blanchard and
7 Wayne Persinger. That is who Chris Adkins was trying
8 to contact on the phone.

9 Q. Okay. I think you told us that Blanchard was a
10 president or vice president.

11 A. Yeah. As far as I know he was the president of
12 Marfork.

13 Q. Okay. Now, what about Ferguson, do you know what
14 his position might have been?

15 A. He's Mr. Blanchard's assistant.

16 Q. Okay. What about Persinger?

17 A. He's Mr. Blanchard's assistant.

18 Q. Okay. Do you know how many assistants he might
19 have had?

20 A. No.

21 Q. I'm sorry. So after you talked to Steve Snyder,
22 you went to the shop area, and ---?

23 A. Yeah. I checked people in and out.

24 Q. Okay. Did you do anything else throughout the
25 evening and into the following morning?

1 A. No.

2 Q. Okay. You remained primarily in the shop area?

3 A. Yeah. And sometimes while there wasn't --- you
4 know when they're coming and going. I'd go out and
5 talk with the people in their rescue stations.

6 Q. Did you happen to see or hear anything that might
7 have suggested how this explosion occurred?

8 A. No.

9 Q. Okay.

10 ATTORNEY WILSON:

11 Jasey, just for the record let me mark
12 the map as Miller Exhibit Number One.
13 (Miller Exhibit Number One marked for
14 identification.)

15 EXAMINATION

16 BY MR. MAGGARD:

17 Q. Okay. Wayne, when you got --- I want to get on
18 this April 5th thing since that's the last --- which
19 is kind of fresh on our mind, but when you got there,
20 and Adkins was trying to get hold of Blanchard and
21 Persinger and Ferguson on the phone, was he able to
22 contact him, was --- who all was on the phone, what
23 parts of the phone did --- you know, that was working
24 on the system?

25 A. He was hollering every few minutes on the phone,

1 and I think he contacted one of them. I'm not sure,
2 and I think eventually the mine rescue team got with
3 them and brought them out. But he said they had made
4 it to the tailgate of the longwall, and there was so
5 much CO there that they came back out, because they
6 were not under rescue equipment.

7 Q. Who was already there when you got to the mines
8 that --- from the State office and the Federal people
9 that was there?

10 A. Gary Hall was there.

11 Q. Is that state?

12 A. State.

13 Q. Okay.

14 A. And shortly thereafter I got there, Jean Stuart
15 got there.

16 Q. And that's also State?

17 A. Yes.

18 Q. Was anybody from MSHA there?

19 A. After I got there, Fred Wills came. And then
20 there were several people with MSHA came, but I'm not
21 sure.

22 Q. About how long was you there that night?

23 A. I think I left there about 2:30 the next morning.

24 Q. Before you left at 2:30, did you see any of the
25 guys like Ferguson, Blanchard, Persinger come out of

1 the mine before you left?

2 A. No.

3 Q. Was they still in there?

4 A. No. As I understood, they brought them out on the
5 Ellis Portal, but I'm not sure about that.

6 Q. Are you familiar with their communication and
7 tracking system at the mine?

8 A. Not very.

9 Q. Let me ask you this before I forget. Do you know
10 who said they had made it to the tailgate at the
11 longwall?

12 A. That was the information that I got from listening
13 to Chris Adkins talk on the telephone.

14 Q. Do you know who he was talking to?

15 A. No, I don't know which one of them he was talking
16 to, no.

17 Q. Was any of them using radio sets trying to
18 communicate or was that not working?

19 A. They were not working, as I understood it.

20 Q. While you was there, was you ever approached by
21 anyone that maybe mentioned something, some
22 information, that as to the reason why the accident
23 occurred? Any kind of information that ---?

24 A. No.

25 Q. Give you any opinions on what they thought might

1 have happened?

2 A. Methane explosion.

3 Q. When you was making the Headgate 22 equipment,
4 could you kind of tell me what areas that you did make
5 in the last inspection that you had, electrical
6 inspection, you made all the equipment on this
7 section, you made this pump up here in this
8 distribution box. What other areas did you go?

9 A. Belt heads and drives, and of course each one of
10 them has got a power center and several of them got
11 pumps, chargers, take-ups, practical equipment related
12 to those.

13 Q. Could you kind of specify which areas you went to
14 on the map?

15 A. Okay. Naturally there's a belt drive here
16 (indicating). And a belt drive here.

17 Q. All right. When you say here, can you explain
18 where you're talking and who ---?

19 MR. FARLEY:

20 So wait. Just mark them again, ---

21 A. Okay.

22 MR. FARLEY:

23 --- if that works.

24 BY MR. MAGGARD:

25 Q. Or if you want to refer to spad numbers.

1 A. Yeah. I would say --- this belt battery's right
2 here and I guess that's the spad number right here.

3 Q. Can we read that spad number?

4 A. Yeah. 020237. I'm trying to get related on this
5 map, how that belt drive sits, because if the belt
6 were there, they would have to have another one here.

7 Okay. Here we go. Okay. 202170, here's the belt
8 drive.

9 Q. All right. And then you wrote belt drive in the
10 block next to ---.

11 A. Yeah.

12 Q. How's the track go in that area, does it go
13 outside the belt, or ---?

14 A. Not in this area, I don't think. I don't remember
15 that it does. Some areas they had belt and track in
16 the same entry but it wasn't here.

17 Q. What about ---?

18 A. Track and the same entry up here.

19 Q. As you was traveling along the track entries, is
20 that how you traveled into the mine from the UBB
21 Portal?

22 A. Yes.

23 Q. As you was coming up from UBB, did you kind of
24 spot it along the belt entries and notice any kind of
25 accumulations or ---?

1 A. Not that I recall.

2 Q. As far as you know, did the rock dust appear
3 adequate or could you ---?

4 A. Yes.

5 Q. What other belt drives did you ---?

6 A. Okay. Got one here (indicating)

7 Q. Can you tell us where you're marking that one?

8 A. Okay. This is at the mouth of the longwall belt.

9 Q. Okay.

10 A. And I think they called this --- let me think.

11 One of them the mother drive, which I believe would be
12 this one. And I think two more, there may be one, but
13 there may be one more, too, before you get to Ellis
14 switch.

15 Q. Is that basically all the equipment that you
16 checked during that inspection?

17 A. Yeah.

18 Q. When you was up at Headgate 22, could you kind of
19 explain how in-depth you went on permissibility with
20 this?

21 A. Well, I check --- I don't know exactly what you
22 want, but ---.

23 Q. Just tell us what you ---.

24 A. Permissibility?

25 Q. Yeah.

1 A. I know the one miner on the right side, you were
2 asking about the methane detector, the head was off of
3 it. And it was down in the --- say if this was the
4 face, which was probably back here a bit, it was down
5 here. And the other miner was down in here. And they
6 were doing some work on it.

7 Q. Now, this would be inby wherever the belt tail
8 was.

9 A. Yeah. Right.

10 Q. Or feet.

11 A. Yeah.

12 Q. And that would be the Number One entry, and the
13 other one you're saying was in the Number Three?

14 A. Right.

15 Q. Okay.

16 A. And I know this miner was particularly --- they
17 had pulled it back probably to find a high spot to
18 change heads or whatever reason, but they pulled it
19 back quite a ways.

20 Q. How much equipment did they have up there?

21 A. Two miners, three shuttle cars and two bolters.
22 Oh, charger and scoops.

23 Q. Overall, what kind of condition would you say
24 their equipment is in?

25 A. It was good. Good.

1 Q. Did you have to issue any kind of permissibility
2 violations while you were up there?

3 A. No.

4 Q. Could you show us some pumps that are ---
5 electrical pumps that you --- some areas you think
6 they are located and the ones that you check?

7 A. The only one I specifically remember was this one
8 up here.

9 Q. Okay.

10 A. The other ones I don't specifically remember where
11 they were.

12 Q. What kind of pump was that up here, was it a
13 permissible pump or non-permissible?

14 A. Non-permissible.

15 MR. FARLEY:

16 And you're referring to the one ---?

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

18 BY MR. MAGGARD:

19 Q. Who normally traveled with you when you ---?

20 A. Either Virgil Bowman, or Tom Sheets.

21 Q. Did he take any notes or photographs?

22 A. No, he didn't take any photographs, I'm sure. And
23 I don't recall that he took any notes.

24 Q. Did you review the electrical map while you was
25 there?

1 A. Yeah.

2 Q. Did it match what you saw during your inspection?

3 A. Yeah. To the best I recall.

4 Q. Do you recall on the electrical map any
5 permissible pumps in this headgate area between the
6 longwall panel and Bandytown fan?

7 A. I don't recall. They were going to send a pump
8 through a borehole, but they hadn't got that done yet.
9 I thought that maybe that might have been part of the
10 ventilation problem they were talking about.

11 Q. Up here in this headgate, how did the roof
12 conditions on this section appear to be?

13 A. Appeared to be all right, the best I remember.

14 Q. Did any of the miners express any concerns to you
15 about anything about the mine or ---?

16 A. No.

17 Q. Have you ever went on a complaint at this mine?
18 Complaint investigation?

19 A. No, I don't think so.

20 Q. Have you ever seen any electrical safety features
21 bypassed at this mine?

22 A. You're talking about bridged out?

23 Q. Right.

24 A. No.

25 Q. Could you kind of go over some of the weaknesses

1 that they --- that the mine operator --- just kind of
2 go over some things that you've cited a lot at the
3 mine. Some areas that maybe needed improvement.

4 A. The biggest thing I recall is like, for instance,
5 the pumps would have the wrong size breakers in them.
6 Maybe the wrong size cables; not so much wrong with
7 their specific equipment, but things outby that a lot
8 of people feel like aren't important.

9 Q. How did they do as far as permissibility on pumps?

10 A. I mean, other than the breaker sizes and cables'
11 sizes, good.

12 Q. Okay. Did you ever observe them doing a weekly
13 electrical exam, or a monthly electrical exam?

14 A. No.

15 Q. How did they normally perform their monthly
16 electrical exams at the mine as far as breaker testing
17 and ---?

18 A. I couldn't tell you. They were with me when I did
19 mine.

20 Q. Have you ever inspected the CO system at the mine?

21 A. No. A CO system's not in state law.

22 Q. When you was there, did most of the guys that you
23 ran into or observed in the mine wear multigas
24 detectors?

25 A. I don't know that most of them did.

1 Q. Would you say over half?

2 A. I don't know about over half.

3 Q. Okay.

4 A. Probably. Probably did. I know the people that
5 traveled with me had them on.

6 Q. When was the last time you was at the longwall
7 section?

8 A. I've never been on this longwall section.

9 Q. Never?

10 A. No.

11 Q. Have you been on a panel in the past ---?

12 A. A longwall panel?

13 Q. Yeah.

14 A. No, not at this mine.

15 Q. Do you know of any kind of data communication they
16 may have as far as getting production information from
17 longwall ---

18 A. No.

19 Q. --- to the outside?

20 A. No.

21 Q. Did they have any kind of space for telephone for
22 the longwall?

23 A. Not that I know of.

24 Q. Have you ever observed the operator give an
25 electrical retraining class?

1 A. No.

2 Q. Do you know who does their electrical retraining?

3 A. I think Dave Terry does most of their electrical
4 retraining.

5 Q. Where does he do this at?

6 A. Different offices, I assume. I know they have an
7 office down at UBB, and one down at Marfork.

8 Q. Did they have an approved plan with the State of
9 West Virginia, or do you know?

10 A. As far as I know, they do.

11 Q. Do you think there's --- I know this is a big
12 mine, it's hard to do an entire electrical inspection,
13 it'd take a long --- a lot of days to do that. Do you
14 feel that there --- the mine operator's adequately
15 staffed as far as electrical maintenance personnel?

16 A. Be hard to say, but I'd say probably not.

17 Q. Had you had conversations with any of the miners
18 at the mine that said they weren't adequately staffed
19 in their opinion?

20 A. No.

21 Q. Is there anything else you can tell us, any other
22 places you've been in the mine that you might have
23 some concerns about, you know, as far as the cleanup,
24 water accumulations, roof fall --- roof conditions,
25 bottom conditions, anything that you think we should

1 --- might be beneficial in the investigation for us to
2 know about?

3 A. No. I can tell you nothing I saw. I have some
4 hearsay information but, I guess it's record, but a
5 guy told me on the Headgate 17, and one of the
6 previous 16 or 15, that, you know, when they were
7 there, that the bottom hooved and cracked, and they
8 got methane out of the bottom, and they were down for
9 a while. So I suppose that's matter of record, if
10 they were down. Of course that was after the fact
11 that they told me that.

12 Q. How long did he say they were down?

13 A. They didn't say.

14 MR. MAGGARD:

15 I guess that's all I got.

16 MR. BECK:

17 A couple questions.

18 EXAMINATION

19 BY MR. BECK:

20 Q. I believe I heard you agree or say that it is the
21 policy of the Office of Miners' Health, Safety and
22 Training to conduct an electrical inspection once each
23 year?

24 A. Yes.

25 Q. Does that always happen?

1 A. No.

2 Q. What's some of the reasons why it doesn't happen?

3 A. Understaffed. I'll give you the instance of last
4 year. We had a man promoted, and course that wasn't
5 the only mines he didn't have finished, so we had
6 other mines to go to. And the year before that they'd
7 hired a guy that had worked, I think seven months and
8 quit. And he had mines that he didn't get to, so ---.
9 We don't always get to them, no.

10 Q. Is that frequent --- I mean, is that a frequent
11 thing?

12 A. Well, we've got --- last year they came from other
13 regions to help us, but we didn't get them all
14 completed, as best I remember. And the year before
15 that, we got most of the mines at least started, but
16 not completed. Some of them not completed.

17 Q. In your career as an electric inspector, have you
18 ever found a methane monitor bridged out, or
19 jeopardized?

20 A. In my career, probably, yes.

21 Q. How do you know if one's bridged out, or
22 jeopardized?

23 A. Well, you do the test or --- with the gas, or
24 simply try the test button. I don't always use the
25 gas.

1 Q. Have you ever found that at Upper Big Branch?

2 A. No.

3 Q. No? What is the policy on checking methane
4 monitors on equipment?

5 A. I do the test button and zero.

6 Q. Gas is not ---?

7 A. Well, actually the methane monitors on the miner
8 is not part of state law, it's federal law.

9 Q. Okay. But you would know if one was bridged out
10 if you tested it to ---?

11 A. Yeah.

12 Q. And when you say you check the miner, for example,
13 or the bolt, what is it that you check as part of your
14 electrical inspection?

15 A. The permissibility, the lights, the cable, the
16 panic bars, miners got a power center trip switch,
17 these stops on both sides and switches.

18 MR. BECK:

19 That's all I have.

20 ATTORNEY WILSON:

21 Okay. We're going to take a five-minute
22 break.

23 A. Okay.

24 ATTORNEY WILSON:

25 And then we'll confer, and when we come

1 back, we'll finish up.

2 A. All right.

3 SHORT BREAK TAKEN

4 ATTORNEY WILSON:

5 Terry? Let's go.

6 MR. FARLEY:

7 Oh. I'm sorry.

8 RE-EXAMINATION

9 BY MR. FARLEY:

10 Q. You made mention of a methane bleeder that
11 resulted in the mine being idled, or down for some
12 period of time based on secondhand information you got
13 from someone else.

14 A. Yeah.

15 Q. Did the individual happen to indicate when this
16 occurred?

17 A. No, he didn't. But that was on Headgate 17, as he
18 said and the one previous, which was, you know, the
19 longwall was out of that mine for a while.

20 Q. Okay.

21 A. And I think that this is the first longwall panel
22 they had; correct, since they built the longwall back?

23 Q. I'm not certain.

24 A. I'm not either, but I think it is. So it would
25 have been a good while back over a year or two or

1 more.

2 Q. Okay. All right. Now, I think you indicated that
3 your source told you that that may have occurred as a
4 result of hooving in the mine floor?

5 A. Uh-huh (yes).

6 Q. Now, while you were inspecting here in December of
7 2009, did you notice any evidence of the floor hooving
8 anyplace.

9 A. No. Not that I recall.

10 RE-EXAMINATION

11 BY MR. MAGGARD:

12 Q. During your inspections of this mine, what would
13 you say is the highest concentration of methane you've
14 observed?

15 A. I don't remember picking up a tenth.

16 Q. Okay.

17 A. But I'm not inby, you know, I'm always in an outby
18 position.

19 Q. Most time outby?

20 A. Yeah.

21 Q. When you got to the mine at six o'clock and Chris
22 Adkins was on the telephone, which individuals did you
23 understand him to say had made it up to the tailgate?

24 A. I don't recall.

25 Q. You said that Persinger, Blanchard, and who else

1 was underground?

2 A. Ferguson, I think.

3 Q. You're not sure if it was all three or a couple?

4 A. I'm not positive, but I think it was all three.

5 Q. Okay. About what time --- was that right around
6 six o'clock they was up there or ---?

7 A. Yeah.

8 Q. Okay. Did you have any other information on that?

9 Did you hear anything else that, I mean, like about
10 what they were doing?

11 A. Well, they were seeing if they could, as I
12 understood it, find anything that would help them to
13 get someone out or whatever.

14 Q. Do you know where the three individuals he said
15 that were fatalities, where they were at?

16 A. They were on the mantrip, that one mantrip that
17 they brought on outside.

18 Q. Was it already outside when you arrived?

19 A. Yes.

20 MR. MAGGARD:

21 I guess that's all I got.

22 BY MR. MAGGARD:

23 Q. Oh, yeah, one other question. Had you ever heard
24 that was any information you might have obtained that
25 might have indicated that it was possible that this

1 mine may have been operating two miners at the same
2 time on the headgate section or anywhere else in the
3 mine?

4 A. I don't know how to answer that. I worked there
5 at one time, but I was on the midnight shift.
6 Therefore, it didn't produce coal. But I'm just about
7 reasonably positive that they did at that time. But
8 that was back in '94, '95, '96.

9 MR. BECK:

10 Couple questions.

11 RE-EXAMINATION

12 BY MR. BECK:

13 Q. Do you know when the last full electrical
14 inspection was done at Upper Big Branch?

15 A. I'm reasonably sure that we finished, Eddie Blake
16 and I, in '08.

17 Q. '08? Which month, approximately?

18 A. That'd been December.

19 Q. And you described a situation when inspectors at a
20 mine doing an electrical inspection, and something
21 happens that he has to go somewhere else? For
22 example, the fellow that got promoted?

23 A. Uh-huh (yes).

24 Q. Or for whatever reason he can't complete it, and
25 it's handed off to another inspector, ---

1 A. Uh-huh (yes).

2 Q. --- how does that work? I mean, how do you know
3 that you're not doing the same thing over again, and
4 missing something here, or missing something there?

5 A. About all you can do is get with that individual,
6 and get with their notes and go from there.

7 Q. So you look at his notes and talk to each other?

8 A. Yeah.

9 Q. There was a discussion about a memo that was
10 supposed to have been posted on a bulletin board from
11 Chris Blanchard, the president of Performance Coal,
12 more or less stating that if things didn't pick up,
13 then vacation would be canceled?

14 A. It didn't say vacation was canceled. The way I
15 understood it, it said that the people in charge, they
16 wouldn't need them anymore if they didn't pick things
17 up.

18 Q. In your travels, have you ever seen that anywhere
19 else? Anything similar to that? Whether it be at
20 Massey Mine or another company?

21 A. No.

22 Q. Would that have been --- do you think people would
23 have taken that as a threat?

24 A. Well, it seemed threatening to me.

25 Q. We talked about some of the things that you

1 thought were their shortcomings in their electrical
2 area. If I understand right, one of them being not
3 enough attention to outline things.

4 A. Uh-huh (yes).

5 Q. Is that something that is common in this mine or
6 other Massey mines? Is that like a common
7 denominator, or mines in general?

8 A. Pretty much common to mines in general.

9 Q. Why do you think that is?

10 A. Well, in my opinion, just like a pumper and he's
11 supposed to --- or a mine foreman or whoever needs to
12 pump water, he'll grab the pump and set it and won't
13 pay particular attention to what size cable's on it or
14 who get one starter box to go with a pump --- wrong
15 size pump. That's my opinion, and I haven't seen it
16 done.

17 Q. So you claim that they're just placing more focus
18 on things where the actual production is going on?

19 A. Right.

20 Q. And one last thing. You stated that you thought,
21 but probably weren't adequately set in their
22 electrical or maintenance roles.

23 A. Yes.

24 Q. What makes you feel that way?

25 A. Just back when I was talking about the pumps

1 should go --- the pumper is supposed to install the
2 pump, the electrician should be there to make sure
3 they're properly installed.

4 Q. Who is, or who was the maintenance chief at UBB,
5 when you were there?

6 A. Rick Nicole.

7 ATTORNEY WILSON:

8 Terry, anything?

9 RE-EXAMINATION

10 BY MR. FARLEY:

11 Q. One final thing. When we started out here, I
12 think you indicated that you began your inspection at
13 UBB, you were taking over from Randy Smith?

14 A. Yes.

15 Q. Okay. So he would have --- is it fair that he
16 would have completed some portion of the electrical
17 inspection before you got there?

18 A. Yes.

19 MR. FARLEY:

20 That's all.

21 ATTORNEY WILSON:

22 Jasey?

23 RE-EXAMINATION

24 BY MR. MAGGARD:

25 Q. Since, you know, you used to work there ---. I

1 opened that up; didn't I? Are you familiar with the
2 P2 Manual?

3 A. No.

4 Q. Okay. Did the move crew run a lot of coal on the
5 third shift after a belt move?

6 A. No. Not when that was there.

7 Q. Did you ever see any kind of signs posted, memos
8 allowing P2 or S1 standard to be violated by Chris
9 Blanchard?

10 A. No. Chris Blanchard wasn't there when I was
11 there.

12 Q. But after --- during your inspection you never
13 seen any other memos or --- that might have mentioned
14 those kinds of standards?

15 A. No.

16 MR. MAGGARD:

17 Okay. That's all.

18 MR. FARLEY:

19 One more thing.

20 RE-EXAMINATION

21 BY MR. FARLEY:

22 Q. I think you indicated that you may have worked at
23 the Upper Big Branch Mine in the 1990s?

24 A. Uh-huh (yes).

25 Q. Okay. Approximately, when was that again?

1 A. '95 or '96.

2 Q. Okay. The fact that you may have worked there 14,
3 15 years ago, does that have any impact on your
4 ability to do your job now?

5 A. No.

6 ATTORNEY WILSON:

7 All right. Is that all? Okay. Mr.

8 Miller, again, on behalf of MSHA and the Office of
9 Miners' Health, Safety and Training, I want to thank
10 you for appearing and answering questions today.
11 You're cooperation is very important to the
12 investigation as we determine the cause of the
13 accident. Because we will be interviewing other
14 witnesses, we require that you not discuss your
15 testimony with any other person. After questioning
16 other witnesses we may call you if we have any follow-
17 up questions that we feel we need to ask you. If at
18 any time you have additional information that you
19 would like to provide the Accident Investigation Team,
20 please contact us at the contact information that has
21 been provided to you.

22 At this time, I want to give you the
23 opportunity to provide us with any additional
24 information that you think may be important. Or if
25 you would like, you can make any kind of a statement

1 at this time?

2 A. The only thing you asked me about, a letter ---
3 threatening letter about people losing their vacation.
4 I didn't read any threatening letter, but those people
5 did not get their Christmas vacation last year, at the
6 end of '09. A lot of people were scheduled --- you
7 know, Massey schedules their vacation off the 20th, I
8 think it's Christmas and New Year's. And those people
9 didn't get that vacation.

10 ATTORNEY WILSON:

11 And how do you know this?

12 A. From being down there and talking to people. I
13 didn't see a letter on it, no.

14 ATTORNEY WILSON:

15 And do you know why they didn't get their
16 vacation?

17 A. Because of production being down or whatever. I
18 don't know for a fact, no.

19 ATTORNEY WILSON:

20 And you know this just because you were
21 at the mine that week, and normally they would be off,
22 but they were working?

23 A. Right.

24 ATTORNEY WILSON:

25 Did you talk to anybody about that?

1 A. Well, I'm sure I did. I don't particularly
2 remember generally who or what, but I know some of
3 them were upset because they didn't get the vacation.

4 ATTORNEY WILSON:

5 All right. Any other follow-up questions
6 on that? Was there anything else?

7 A. That's all.

8 ATTORNEY WILSON:

9 All right. Thank you very much. Off the
10 record.

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STATEMENT UNDER OATH CONCLUDED AT 9:23 A.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Brett Steele, 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.



Brett Steele