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Transcript of the Testimony of Rick Nicolau

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STATEMENT UNDER OATH
OF
RICK NICOLAU

taken pursuant to Notice by Leslie Blake, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Beaver, West Virginia, on Thursday, May 19, 2011, beginning at 10:11 a.m.

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EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

One

Map

22*

* Exhibit not attached

P R O C E E D I N G S

1
2 -----
3 ATTORNEY BABINGTON:

4 My name is Matt Babington. Today is May
5 19th, 2011. It's a little after 10:00 a.m. I'm with
6 the Office of the Solicitor, U.S. Department of Labor.
7 With me is Jasey Maggard, an accident investigator
8 with the Mine Safety and Health Administration, MSHA,
9 an agency of the U.S. Department of Labor. We also
10 have Dean Cripps from MSHA at the table. And we also
11 have several people from the State of West Virginia.
12 I ask that they state their appearance for the record.

13 MR. TUCKER:

14 Bill Tucker, with the Office of Miners'
15 Health, Safety and Training.

16 MR. O'BRIEN:

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

19 ATTORNEY BABINGTON:

20 We also have a few people in the room.
21 I'd ask that they identify themselves for the record.

22 ATTORNEY KOERBER:

23 My name is Barry Koerber. I'm an
24 Assistant Attorney General, assigned to the West
25 Virginia Office of Miners' Health, Safety and

1 Training.

2 ATTORNEY WILSON:

3 Robert Wilson, with the Office of the
4 Solicitor, United States Department of Labor.

5 ATTORNEY BAXTER:

6 Derek Baxter, with the Office of the
7 Solicitor.

8 ATTORNEY BABINGTON:

9 Jasey Maggard will be conducting the
10 initial questioning today. All members of the Mine
11 Safety and Health Accident Investigation Team and all
12 members of the State of West Virginia Accident
13 Investigation Team participating in the investigation
14 of the Upper Big Branch Mine explosion shall keep
15 confidential all information that is gathered from
16 each witness who voluntarily provides a statement
17 until the witness statements are officially released.
18 MSHA and the State of West Virginia shall keep this
19 information confidential so that other ongoing
20 enforcement activities are not prejudiced or
21 jeopardized by a premature release of information.
22 This confidentiality requirement shall not preclude
23 investigation team members from sharing information
24 with each other or with other law enforcement
25 officials. Team members' participation in this

1 interview constitutes their agreement to keep this
2 information confidential.

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

12 You may have your personal attorney
13 present during the taking of the statement or another
14 personal representative, if MSHA has permitted it, and
15 you may consult with your attorney or representative
16 at any time. Mr. Nicolau, are you represented here
17 today?

18 MR. NICOLAU:

19 Yes.

20 ATTORNEY FRENCH:

21 Yes, he is. My name is Mark French.

22 ATTORNEY BABINGTON:

23 And Mr. French, you represent ---?

24 ATTORNEY FRENCH:

25 I represent Mr. Nicolau personally.

1 ATTORNEY BABINGTON:

2 Okay. Now, there's another attorney at
3 the table. I'd ask that he identify himself.

4 ATTORNEY PENCE:

5 Chris Pence, and I represent Performance
6 Coal Company.

7 ATTORNEY BABINGTON:

8 Your statement is completely voluntary.

9 You may refuse to answer any question, and you may
10 terminate your interview at any time or request a
11 break at any time. Since it's not an adversarial
12 proceeding, formal Cross Examination will not be
13 permitted. However, your attorney may ask clarifying
14 questions, as appropriate.

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

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

6 ATTORNEY FRENCH:

7 You got to say yes.

8 MR. NICOLAU:

9 Yes.

10 ATTORNEY BABINGTON:

11 Do you have any questions?

12 MR. NICOLAU:

13 No.

14 ATTORNEY BABINGTON:

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

1 clearly. If you do not understand a question asked,
2 please ask the interviewer to rephrase it. Please
3 answer each question as fully as you can, including
4 any information you've learned from someone else.

5 I'd like to thank you in advance for your
6 appearance here. We appreciate your assistance in
7 this investigation. Your cooperation is critical in
8 making the nation's mines safer. After we finish
9 asking questions, you'll have an opportunity to make a
10 statement and provide any other information that you
11 believe to be important. If at any time after the
12 interview you recall any additional information that
13 you believe might be useful, please contact us through
14 Counsel, either MSHA or the State of West Virginia.

15 Finally, any statements given by minor
16 witnesses to MSHA are considered to be an exercise of
17 statutory rights and protected activity under Section
18 105(c) of the Mine Act. If you believe you've been
19 discharged, discrimination or other adverse actions
20 taken against you as a result of your cooperation with
21 this investigation, you're encouraged to immediately
22 contact MSHA and file a complaint under Section 105(c)
23 of the Act. And Bill, do you have a statement you'd
24 like to make?

25 MR. TUCKER:

1 Yes. First of all, I'd like to say I
2 appreciate you coming in today. I'd just mention also
3 that you're protected by state law for appearing here
4 today against discrimination. If at any time you feel
5 like your employer discriminates against you for
6 appearing here today, I'll give you some contact
7 information for the Board of Appeals that hears those
8 type of cases. Just to remind you that, if that
9 were to occur, you'd have 30 days from the time that
10 it occurs to contact this Board. And here's a card
11 with my number on it if you need to contact me. If
12 you have any problems, ---

13 MR. NICOLAU:

14 Okay. Thank you.

15 MR. TUCKER:

16 --- give me a call. Thank you.

17 ATTORNEY BABINGTON:

18 Jasey?

19 MR. MAGGARD:

20 Rick, I'll start off with the questions,
21 and I appreciate you coming in today. Could you
22 please state your full name?

23 ATTORNEY BABINGTON:

24 I'm sorry. Before you answer the
25 question, we need to swear you in.

1 MR. NICOLAU:

2 Okay.

3 MR. MAGGARD:

4 Oh, that's right.

5 ATTORNEY BABINGTON:

6 That's my fault.

7 -----

8 RICK P. NICOLAU, HAVING FIRST BEEN DULY SWORN,

9 TESTIFIED AS FOLLOWS:

10 -----

11 MR. MAGGARD:

12 I'll start over. Thank you.

13 EXAMINATION

14 BY ATTORNEY MAGGARD:

15 Q. Could you state your full name and spell your last
16 name for us?

17 A. Rick P. Nicolau, N-I-C-O-L-A-U.

18 Q. Okay. And Rick, could you please give your
19 address and telephone number, please?

20 A. [REDACTED]

21 [REDACTED].

22 Q. Okay. Rick, could you please tell us a little bit
23 about your mining experience, how many years you've
24 worked in the mines, what kind of mining
25 certifications you've got, anything you can tell us

1 about your mining experience, please?

2 A. I think, roughly, 30 years experience. Sixteen
3 (16) are at that mines. Certified electrician, EMT.
4 I think that's all the cards I have.

5 Q. Okay. And you say you've worked 16 years at the
6 Upper Big Branch Mine; is that correct?

7 A. April 4th made me 16 years.

8 Q. And during the time that you've worked at Upper
9 Big Branch, what types of jobs have you performed?

10 A. I was a section electrician until 2001. That's
11 when I got the chief, the shift chief's job.

12 Q. Okay. And on April 5th what was your job title?

13 A. I was like chief over Headgate --- Tailgate 21 and
14 Headgate 22.

15 Q. So if I was looking at this map, it would be MMU
16 029 and MMU 040; is that correct?

17 A. Yes. MMU 040, I just acquired it about a month
18 before this happened. They was --- David Taraczkozy
19 was over that section prior. They just moved it up
20 there. You all seen how short it was in there, four
21 or five breaks. I just had it that long, you know.
22 And those guys on that section still portalled at UBB.
23 They had me at Ellis. The contact I had with them was
24 on the telephone, mine phone. And I might have been
25 up there four or five times in that month, you know.

1 Q. Okay.

2 A. I really wasn't too familiar with that tailgate a
3 whole lot then.

4 Q. Okay. And as far as your duties, what would you
5 --- what would be a normal day for you at Upper Big
6 Branch?

7 A. Mostly just to see everything was running and see
8 if anybody needed anything. If they had a problem
9 anywhere, I was the man they contacted, you know.

10 Q. And who did you report to?

11 A. Paul Thompson.

12 Q. And how many guys did you supervise? Was it just
13 primarily electricians?

14 A. Yes, just electricians.

15 Q. And what shifts did you ---?

16 A. I supervised all three shifts.

17 Q. Let's talk a little bit about April 5th. Was you
18 working that day?

19 A. Yes.

20 Q. And could you tell me about that day, what you was
21 doing that day and kind of from the beginning to
22 the ---

23 A. Yes.

24 Q. --- end as much as you can?

25 A. When I got there, the third shift electricians

1 from Headgate 22 and Tailgate 21, they called out the
2 report to me as usual. Headgate 22, everything was
3 fine, as I can remember, you know. And Tailgate 22
4 had a scoop down for a pump contactor, and they asked
5 --- they told me to send a pump contactor in with
6 dayshift or to bring one when I came. And I called,
7 you know, from Ellis punchout. While they had me
8 stationed, I called over to UBB to talk to Virgil
9 Bowman to ask him to check the warehouse and see if we
10 had a pump contactor. Virgil did, and we did not. So
11 I told him to call and get me one. The scoop was down
12 for ---. And they called Fairchild and got one. But
13 it was not a Massey bid --- not a Massey contract, so
14 they had to get three bids, the purchasing process is.
15 By the time they done that, it delayed it. I
16 didn't get the contactor that day until 1:30 that day,
17 when it come in over at Ellis. It got there at 1:30.
18 And I was getting ready to take the contactor in, and
19 I told Wayne Persinger, you know how long a ride it is
20 up there. It takes about an hour to get there. I
21 said, Wayne, when I take this contactor, I'll be
22 getting up there at 2:30, which is about the time they
23 leave. At UBB, they left a half-hour earlier than
24 Headgate 22. So I said, by the time I get there,
25 they'll be leaving. He said, well, just wait and let

1 evening shift take it. So that's the only thing that
2 saved me from being up there that day, you know. I
3 would have --- I was taking that contactor.

4 Q. You're a very lucky individual.

5 A. Very lucky, yeah.

6 Q. Do you remember when the scoop was located that
7 you're referring to?

8 A. It was right next to the longwall, where I think
9 it was one --- you walk up that entry on the longwall
10 section. That was the first scoop you come to on the
11 right there. I don't know what crosscut or nothing
12 that was.

13 Q. We have a map here. If you think you can locate
14 it on the map, maybe we can use a highlighter and mark
15 it where you ---.

16 MR. MAGGARD:

17 I guess we'll need to probably give this
18 an exhibit number.

19 ATTORNEY BABINGTON:

20 Jasey, are you planning on having him
21 mark where the scoop was?

22 MR. MAGGARD:

23 Yeah, where he thinks that scoop was
24 located.

25 A. I think it was right here. It's either here or

1 here, but I think it's here.

2 ATTORNEY BABINGTON:

3 So you marked where you thought the scoop
4 was with a yellow highlighter?

5 A. Yeah.

6 ATTORNEY BABINGTON:

7 Can you write off to the side --- you can
8 use that blue pen?

9 ATTORNEY FRENCH:

10 Yes.

11 ATTORNEY BABINGTON:

12 With that blue pen if you could just mark
13 in --- basically to write in that that's a scoop.

14 A. Unless it was in here. I'm not sure. It was here
15 or here.

16 ATTORNEY BABINGTON:

17 If you want to circle it with that yellow
18 highlighter. Mark the area where you think the
19 scoop ---.

20 A. It's right in here somewhere. That'd be okay to
21 do that?

22 ATTORNEY BABINGTON:

23 Yes, approximate location of the scoop.

24 A. Write scoop.

25 ATTORNEY BABINGTON:

1 And then write scoop. If you could
2 initial that, please?

3 WITNESS COMPLIES

4 ATTORNEY BABINGTON:

5 All right. Now, I'm going to mark this
6 map that you just marked up, I'm going to mark that
7 Nicolau Exhibit One.

8 (Nicolau Exhibit One marked for
9 identification.)

10 BY MR. MAGGARD:

11 Q. I don't suppose you remember the serial number of
12 that scoop, do you?

13 A. It was either 269 or 231, one of the two. 239 or
14 269.

15 Q. Okay.

16 A. I think that's what it was, 269.

17 Q. Do you know where that scoop --- when that scoop
18 broke down, do you know where it was coming from?

19 A. I assume to this section. I guess they were using
20 it on this section up here somewhere. I don't know.
21 I don't know if they moved belt that night or what.

22 Q. And as far as you know, it appears that that's in
23 the return air course; is that correct?

24 A. I do not know.

25 Q. Do you know?

1 A. I don't know.

2 Q. Okay.

3 A. I know right here was the belt on that section.

4 Is that what this line represents, the belt?

5 Q. Yeah.

6 A. That other scoop was parked right here. I know

7 where it was, the other scoop.

8 Q. Right there it was.

9 A. I knew this one was around the corner here

10 somewhere, right here. I'm not sure which --- exactly

11 which break it was in.

12 Q. As far as going to these sections, Headgate 22 or

13 Tailgate 22, do you remember the last time you

14 traveled into those sections?

15 A. No. It was probably the day before that. I was

16 up there just about every day, especially this one,

17 Headgate 22, you know.

18 Q. Do you remember the last work that you performed

19 on Headgate 22? Where was you at and ---?

20 A. The last work there, I can't remember that. I

21 know the last work we done here, we helped them set

22 this belt head here on the tailgate.

23 Q. And when would that have been? Would that have

24 been ---?

25 A. Like I said, probably about a month prior to when

1 this happened.

2 Q. So you were outside the Ellis Switch when the
3 accident occurred?

4 A. Ellis Portal, out there, outside, yeah, when the
5 accident occurred.

6 Q. So tell us about when it occurred and what you
7 saw, who all was with you and just anything you can
8 tell us about being at Ellis Portal?

9 A. I was talking to the evening shift electrician for
10 Headgate 22, Larry Richmond. Me and him was
11 discussing some stuff out there, maybe getting ready
12 to go in, like I said. And then I think it was about
13 3:04 or something, and we was seeing a lot of air and
14 high pressure coming out of the drift mouth, some
15 stuff flying and everything, you know. And we didn't
16 know what happened. Somebody said, well, maybe
17 there's a roof fall in there or something, you know.
18 And then I heard on the radio, somebody said the COs
19 was going off at UBB. You know, we couldn't hear them
20 or where they went off. Somebody said it on the mine
21 phone. I didn't hear --- see it --- hear it first
22 hand or nothing myself, but I did hear somebody say
23 the COs is going off. That's when everybody started
24 getting concerned.

25 Q. And when you were around the portals, how long had

1 you been there prior to the event?

2 A. Prior to the explosion?

3 Q. Right.

4 A. I'd been around there about all day.

5 Q. Okay. And had you been in your office and heard
6 any kind of telephone conversations, like calling out
7 pre-shifts or ---?

8 A. No, I didn't hear anything like that. Matter of
9 fact, you know, Greg Brock was my electrician on
10 Headgate 22. I remember talking to him that day. And
11 James Woods had called me a couple times during the
12 day, wanting to know about that contactor for that
13 scoop, you know, when I was going to --- they was
14 still waiting on it, you know.

15 Q. So as far as you know, other than the scoop, you
16 hadn't been --- nobody had ever discussed any kind of
17 problems ---

18 A. No.

19 Q. --- in pre-shifts or ---?

20 A. No. I heard nothing.

21 Q. Inside the mine.

22 A. No.

23 Q. Who else was at Ellis Portal when the accident
24 occurred?

25 A. I remember Marvin Perdue was there with me. There

1 were several people around at that time. Like I said,
2 it was shift change, you know. There were a lot of
3 people down there. I just heard Marvin saying he
4 thought there was a roof fall, you know. And I told
5 him I didn't think there'd be a roof fall that had
6 that much pressure coming out of it, you know. I
7 said, I don't think that was no roof fall. There was
8 a lot of people there.

9 Q. Do you recall people coming out of the mine prior
10 to the explosion?

11 A. Yeah. Ralph Plumley and them come out and stuff.

12 Q. Who was with Ralph?

13 A. Just his normal crew and stuff.

14 Q. Do you know who would be his normal crew?

15 A. No. They changed him around so much there lately.

16 I can't remember that boy's name. I know it was Kenny
17 Forston's son, the guy I used to work with. He was
18 working there with Ralph and ---. I'm not sure who
19 was with him, to tell you the truth.

20 Q. Was there anybody, prior to them, that came out
21 that you saw at Ellis Portal?

22 A. There probably was, Jasey. I can't remember, so I
23 couldn't give you their names.

24 Q. Tell us a little bit after the accident what do
25 you recall --- what kind of discussions were you

1 involved with, other than Marvin, and tell us about
2 the sequence of events, who you saw go underground,
3 anything you can tell us.

4 A. I'll tell you right after the accident happened, I
5 left. I had to go get a generator because, you know,
6 the power was powered up on that bench from
7 underground. And all of our power --- no telephones
8 or nothing, no way of contact. So I said I'd go down
9 to Marfork to see if I can get a generator down there.

10 Q. And what time did you come back to UBB with a
11 generator?

12 A. I didn't have one. I couldn't get one. I come
13 back up there and it was probably about, I don't know,
14 I'm going to say 4:30, five o'clock, when I got back
15 up there. It was a chaos scene, you know. Roads was
16 blocked down there and traffic everywhere. You
17 couldn't hard get back up there. Matter of fact, now
18 that you mentioned it, I can't even remember where the
19 generator come from, but we did end up getting it and
20 using it, you know. I think they brought it from
21 another mine somewhere.

22 Q. Okay. About what time did you get the generator
23 installed; do you know?

24 A. It was late. I think it was about 10 or 11
25 o'clock at night before we got everything hooked up.

1 Q. Was it raining that evening?

2 A. It might have been --- it wasn't a hard rain, I
3 don't believe. No, I don't think it was raining. I
4 don't remember no rain.

5 Q. As far as traveling these sections, are you very
6 familiar with the crossover area and how that was
7 ventilated and how Headgate 22 was ventilated?

8 A. Not really. I just know generally. I know the
9 intake is supposed to come up through here somewhere
10 and came down this way, I think.

11 ATTORNEY BABINGTON:

12 When you say come up through here and
13 down, you're indicating that it came up ---

14 A. Right.

15 ATTORNEY BABINGTON:

16 --- the Seven North Belt area?

17 A. Right.

18 ATTORNEY BABINGTON:

19 And then came down the crossover going
20 from Headgate 22 to Tailgate 22?

21 A. Yes, I think. I'm not sure. I'm not in
22 ventilation very much. Don't know much about it, but
23 I know when I'm in the intake and return. I keep that
24 in mind all the time for safety purposes, though.

25 BY MR. MAGGARD:

1 Q. Do you recall any kind of issues with ventilation,
2 any of the guys complaining about ventilation on
3 Headgate 22?

4 A. We've had times there was issues of ventilation up
5 there.

6 Q. Do you remember any examples of ---?

7 A. One day I had a federal guy with me, Chris Stone.
8 He went up there and he shut the section down that
9 day. He was checking equipment and stuff. He went up
10 there and --- but they wasn't mining coal whenever he
11 got up there because, you know, the section boss told
12 him they had some air problems. He was there, right,
13 and he took an air reading up there. They stopped
14 that day, and then they worked on air the rest of the
15 day. They never did start up again that day. That
16 was one day that I know of he done that.

17 Q. What about prior to the explosion, was they still
18 having ventilation problems, low air on the section?

19 A. No. That was the best that the air had been in a
20 long time, the last couple weeks. They done some work
21 on the air. They, you know, had air doing a lot
22 better. Had 23,000 or something the last open on
23 Headgate 22.

24 Q. Do you know what they did to improve the air on
25 Headgate 22, what kind of changes they might have

1 made?

2 A. They told me they went up there and replastered a
3 lot of the stoppings and stuff. And I think, you
4 know, on the ventilation for Headgate 22 it returned
5 down across the tailgate from over this overcast over
6 here and down behind the wall over there, if that's
7 correct. I'm not sure that's correct, but I think it
8 was.

9 ATTORNEY BABINGTON:

10 Hold on before you move on ---.

11 A. It'd be the return here.

12 ATTORNEY BABINGTON:

13 So you believe the return was in that
14 crossover, ---

15 A. Right.

16 ATTORNEY BABINGTON:

17 --- from Headgate 22 to Tailgate 22?

18 A. I think so, yes.

19 ATTORNEY BABINGTON:

20 That's your understanding?

21 A. Yes.

22 ATTORNEY BABINGTON:

23 And then once it went through the
24 crossover, where did you --- where do you believe the
25 return went?

1 A. Well, I thought it was --- went to the fan, you
2 know, to the Bandytown Fan.

3 Q. So it went down to the longwall headgate or
4 Headgate 140?

5 A. Yes.

6 Q. And it traveled inby, towards the fan?

7 A. Right. That's what I assumed, you know. Yes.

8 MR. TUCKER:

9 Before you move this map, Jasey, do you
10 think maybe you can get him to mark that other scoop
11 with a different marker, the location?

12 MR. MAGGARD:

13 Yes.

14 BY MR. MAGGARD:

15 Q. That would be this one here.

16 MR. CRIPPS:

17 Can we help him out a little bit and
18 clear things up? Well, let me ask --- the location of
19 the scoops ---.

20 EXAMINATION

21 BY MR. CRIPPS:

22 Q. Let me jump in. The day of the accident, did you
23 go underground?

24 A. No.

25 Q. Okay. So you mentioned the location of that one

1 scoop?

2 A. Right.

3 Q. How are you aware of the location of that scoop?

4 A. Just where we were checking, checking our
5 equipment.

6 Q. Okay. When was you checking equipment?

7 A. When I went with you all doing the investigation.

8 Q. So after the explosion?

9 A. After the explosion.

10 Q. So what you're marking on the map is actually the
11 location of the scoop ---

12 A. After the explosion.

13 Q. --- after the explosion?

14 A. Yes.

15 Q. Okay.

16 A. Yes.

17 Q. And the first time you went up there was with us;
18 is that correct?

19 A. After the explosion?

20 Q. After the explosion?

21 A. Yes.

22 Q. Okay. So you learned of the location of the scoop
23 the same day we learned of it; ---

24 A. Right.

25 Q. --- is that correct?

1 A. Yes.

2 Q. So if you would, go ahead and mark the location.

3 A. Right here. I think that's where I was at, right
4 here in this crosscut. We had a charger and
5 everything in there.

6 Q. Okay.

7 ATTORNEY BABINGTON:

8 All right. And just for the record, the
9 witness marked the second scoop with a blue
10 highlighter. Thank you, Mark. Can you also, with
11 that pen, write off to the side again scoop? Put like
12 Scoop Number Two and then put your initials on it,
13 please.

14 WITNESS COMPLIES

15 BY MR. CRIPPS:

16 Q. Okay. Now, if you recall, you had marked that
17 that other scoop was in a certain location here.

18 A. Yes.

19 Q. Do you recall if that is correct, or do you think
20 it could have possibly been over here?

21 A. Well, ---.

22 ATTORNEY BABINGTON:

23 Sorry. When you say over here,

24 Dean, can you be more clear?

25 MR. CRIPPS:

1 Okay.

2 BY MR. CRIPPS:

3 Q. It would have been ---?

4 A. Number Two entry instead of One.

5 Q. Actually, I think --- let's call that the Number
6 Four entry of the Headgate One North entry.

7 A. Okay.

8 Q. You know, the longwall belt is Number One. The
9 track and the intake is Two and Three. This would be
10 Number Four entry.

11 A. I'd say it was right here, the scoop.

12 Q. That is correct. That was the location of that
13 scoop.

14 A. Is that right?

15 Q. Yeah.

16 A. I'd say it was right here.

17 Q. Okay. If you would, take a --- use this green
18 highlighter and just mark right there.

19 A. Scoop?

20 Q. Yeah. Just put a dot right there and then ---.

21 WITNESS COMPLIES

22 A. Scoop Number One?

23 BY MR. CRIPPS:

24 Q. That's fine. Just so the map and the record is
25 clear of the actual locations.

1 A. I think that's where it was at; right?

2 Q. I've been up there several times, and that is the
3 location of it.

4 A. I know it was right there somewhere.

5 Q. Okay.

6 MR. MAGGARD:

7 Do you want to go ahead and ask more
8 questions?

9 MR. CRIPPS:

10 No. Go ahead. I just wanted to have
11 that marked.

12 MR. MAGGARD:

13 I thought you were doing well. Why don't
14 you go ahead.

15 BY MR. CRIPPS:

16 Q. Well, let me just clear up --- so by seeing the
17 location of the scoop, when we traveled up there after
18 the accident and knowing that the scoop had been broke
19 down prior to the explosion, is it your understanding
20 that that was the location that that scoop was in
21 prior to the explosion?

22 A. Yes.

23 Q. Okay.

24 A. I think so.

25 Q. Okay. And let me get this corrected. You did go

1 up there and work on that scoop that day?

2 A. No.

3 Q. Okay. And that's because you did not have the
4 parts to repair it?

5 A. If I had the parts, we probably could have got it
6 going before the explosion ever happened, you know, if
7 we had the part. But we didn't have it.

8 Q. Okay.

9 ATTORNEY BABINGTON:

10 One second. Sorry. Mr. Nicolau, if you
11 could wait until Dean finishes asking the question. I
12 know you're trying to be helpful and answer, but ---

13 A. I'm sorry.

14 ATTORNEY BABINGTON:

15 --- we'll get a clearer transcript. Not
16 at all.

17 BY MR. CRIPPS:

18 Q. Do you know, was that scoop --- and here we're
19 talking about the Scoop Number One as it's labeled on
20 the map. Was it on charge?

21 A. I don't think so. There was no charger there at
22 it.

23 Q. Okay. What about the scoop that we had marked as
24 Scoop Two on the map, do you understand that it was on
25 charge prior to the explosion?

1 A. Yes.

2 Q. Okay. So there is a charge station at that
3 location that you have circled in blue there?

4 A. It looked like there was to me. I don't know for
5 sure.

6 Q. Okay. Do you recall, was there a spare battery
7 there?

8 A. I think there was, yes.

9 Q. Okay. Do you know where the location of the
10 Tailgate Number Two belt drive is on that map?

11 A. Right there.

12 Q. Okay. It looks like it's probably ---.

13 A. Number Two entry, the crosscut?

14 Q. It's the intersection of the Number Five entry of
15 Headgate One North and Number Two entry of the
16 crossovers, does that sound ---?

17 A. Yes.

18 Q. Okay. And on this map it's where the two red
19 lines make a 90-degree turn; is that correct?

20 A. Yes.

21 Q. Also, with the Four gate there. Number Two Belt
22 dumps onto Tailgate Number One Belt going across the
23 crossover. Do you know what else is located in the
24 area of that belt drive, any other equipment,
25 chargers, power centers, belt starters, any of that

1 type of equipment?

2 A. There's a belt starter and everything here and a
3 belt box. A belt box was in this crosscut right here.

4 Q. Okay. And so that's the crosscut in ---?

5 A. It looks like there's a Two to One of this
6 tailgate section.

7 Q. Okay. And the crosscut between Two and One is
8 located actually in Number Two entry of the crossover?

9 A. Right.

10 ATTORNEY BABINGTON:

11 And that's the 22 crossover?

12 A. Uh-huh (yes).

13 MR. BABINGTON:

14 Is that a yes?

15 A. Yes.

16 BY MR. CRIPPS:

17 Q. Are you familiar with how the intake air was
18 routed into the Tailgate 22 unit?

19 A. I think it came through here.

20 Q. Okay.

21 A. There was an overcast right here across the
22 beltline, and I know the intake went over that
23 overcast. That's all I know right there.

24 Q. So the overcast you're pointing to is in what I'll
25 call Number Two entry of the crossovers?

1 A. Yes.

2 Q. Okay. And so that overcast was built over the top
3 of the belt?

4 A. I don't know which was done first, one or the
5 other, they put the overcast, then put the belt under
6 it or ---.

7 Q. Okay. If you would take that orange marker and
8 just circle that overcast so that we know you circled
9 in orange the intake overcast over the belt that we've
10 just been talking about.

11 WITNESS COMPLIES

12 BY MR. CRIPPS:

13 Q. Okay. And you've marked the intake beside it.

14 ATTORNEY BABINGTON:

15 And that's with the orange highlighter.

16 MR. CRIPPS:

17 That's with the orange highlighter.

18 A. I think that's correct. Now, like I say, I'm not
19 much on ventilation.

20 BY MR. CRIPPS:

21 Q. Okay.

22 A. We were talking about we had so much air right
23 there, but I heard them talking about that. Like they
24 had like 80-some thousand. I heard a couple people
25 say that over at the section.

1 Q. Where did you understand you had the 80,000 at?

2 A. Before we went over this overcast right here.

3 Q. And so that would be 80,000 going into the
4 Tailgate 22 unit?

5 A. Right.

6 Q. Okay. Do you know, did they ever try to regulate
7 that air down?

8 A. I don't know. I don't know that.

9 Q. Do you know if there was a regulator anywhere in
10 the intake or the return for that unit?

11 A. I don't know.

12 Q. Okay. When we went up there to do the
13 investigation, and you traveled with us, we found the
14 two scoops that we've talked about previously and also
15 a maintenance scoop parked up in the crossover
16 entries. Are you familiar with them?

17 A. Uh-huh (yes).

18 Q. Were all those ---?

19 ATTORNEY BABINGTON:

20 I'm sorry, is that a yes?

21 A. Yes.

22 BY MR. CRIPPS:

23 Q. Were all those scoops assigned to the Tailgate 22
24 unit?

25 A. Yes.

1 Q. Would they actually be used on the Tailgate 22
2 unit?

3 A. Yes.

4 Q. Would they be used in the face area of that unit?

5 A. Yes.

6 Q. Okay. Since when we observed them they were out
7 in the crossover areas, out in what I call the mouth
8 of the unit, how did they travel from that location up
9 to the unit? What route did they travel?

10 A. I think the only route that would have been open
11 where they was just starting off there, where it was
12 tight, has to be at this one, whatever entry ---. Is
13 this the return right here probably?

14 Q. So you're indicating the Number One entry on the
15 tailgate ---?

16 A. I think that's where they would have to go up
17 there.

18 Q. Okay. Yes, and that is, in fact, the return for
19 that unit. And looking at the map, do you see sets of
20 doors around the mouth that would, in fact, allow that
21 equipment into that return entry to travel to the
22 unit?

23 A. I don't remember if they had any or not. I never
24 did see any in the explosion. I don't know if they
25 took them out if they had them or what. I seen some

1 doors messed up. Like the one we seen was laying on
2 that scoop we checked. I don't know if that was a
3 return door or what that was. I don't know where it
4 was at.

5 Q. Okay. When you was up there prior to the
6 explosion, did you recall any doors up there?

7 A. Yes. There were two doors in the track entry.
8 When you start in the track entry of that crosscut,
9 there were two doors right there.

10 Q. In the track entry of the crossover sections?

11 A. Yes.

12 Q. Okay.

13 A. I believe they were there.

14 Q. And so which --- looking at this map, which entry
15 was the track entry? I'm going to help you out a
16 little bit. The Number One entry, I'm going to call
17 it, is the return entry.

18 A. Right here was the track entry, wasn't it?

19 Q. Okay. You're referring to Number Three entry?

20 A. Yes.

21 Q. Yes, that is the track entry. Okay. Do you
22 recall where those doors were located?

23 A. They were right here.

24 Q. Okay. And are these the doors? In fact, on the
25 map that you're talking about, those are the doors

1 that's actually between Number Four and Number Five
2 entry of the Headgate One North entries?

3 A. I thought they was out here. You come out of the
4 track right here. When you turned off the track and
5 you pulled in this break, though, you had to stop and
6 open those doors to go up in there.

7 Q. Okay. You're talking about the track of the
8 longwall unit?

9 A. Right. See, that's the way you had to go when we
10 drove the crossover. You know, there was no tailgate
11 section whatsoever. When we pulled in there, we had
12 to set airlock doors there to go through.

13 Q. Okay. Was that, in fact, still the route you had
14 to take to go to that unit?

15 A. No.

16 Q. Okay. What was the route to get to the unit the
17 day of the explosion?

18 A. They came down here, and they had a back switch to
19 come in here.

20 Q. So by here, they'd come up to the --- towards the
21 Headgate 22 unit?

22 A. Right. Yes.

23 Q. And then they traveled ---?

24 A. Up the crosscut here.

25 Q. Okay.

1 A. I don't think they had track laid up there yet.

2 Q. Had track laid where?

3 A. Across that crosscut. I mean, they had some of
4 the old piece in there. When we drove the crosscut
5 across, I don't think the tailgate had the track laid
6 all the way up there and was using it all the way it.

7 Q. Okay. So then how did the --- the operating crews
8 for the Tailgate 22 unit, how did they actually get to
9 the section?

10 A. The men came --- the crews came and used this back
11 switch and parked right out here, and they walked down
12 here to go to their section.

13 Q. Okay. So they actually traveled up ---

14 A. The crosscut.

15 Q. --- Headgate 21?

16 A. No --- yeah, for just right here. Let me see.

17 I'm backwards here. They came down here at the Glory
18 Hole, in this switch here, and then they would come in
19 here and they'd park a mantrip right here and they
20 would walk down to the section.

21 Q. So you're indicating that they actually came up
22 into --- towards the Headgate 22 unit?

23 A. Yes.

24 Q. And then back switched into the track entry in the
25 crossovers, and would just travel a short distance?

1 A. Right.

2 Q. And then they walked across the crossover entries
3 up into the Tailgate 22 unit?

4 A. Yes.

5 Q. Okay. That's a pretty good walk for ---.

6 A. Well, they had an emergency ride there, I think.

7 Q. Where was the emergency ride?

8 A. I'm not sure.

9 Q. What's the emergency ride?

10 A. The three-wheeler-like thing they have.

11 Q. Battery-powered three-wheeler?

12 A. Battery powered.

13 Q. Is it a permissible ride?

14 A. I think so.

15 Q. Okay. So would the emergency ride have been up
16 near the face?

17 A. No. It would have been right here somewhere.

18 Q. Okay. By up here you're talking about the mouth
19 of the unit in the crossovers?

20 A. Yes.

21 Q. Okay.

22 A. I think they got their supplies --- they brought
23 them up the longwall entry and where the scoops were.
24 They would come down here and get their supplies right
25 now until they got their track. And they'd work on

1 connecting that track up, you know.

2 Q. Okay. So to your knowledge, there was no track in
3 the crossovers or up in the Tailgate 22 unit?

4 A. I don't think there was because, Jasey, remember I
5 think there was a rock fall in there. They had that
6 miner in there, cleaning up on that track entry and on
7 that crosscut there, and they was --- they just had
8 got that rock fall cleaned up and bolted right before
9 that happened.

10 Q. Where that bolting machine was at.

11 A. Yeah, where we checked that bolter and stuff
12 there. And I think then they were going to, you know,
13 connect all that up. But I don't think it was
14 connected yet.

15 Q. Okay. About how long before the explosion had it
16 been since you had been up to Tailgate 22?

17 A. Oh, it probably wasn't long. I might have been
18 over there --- matter of fact, you know, Chris Sloan
19 and I --- not Chris Sloan. What did I say? Stone.
20 Chris Stone, we went up there and did an exam on the
21 equipment.

22 Q. On Tailgate 22?

23 A. On Tailgate 22.

24 Q. When you traveled to that unit, what direction did
25 you travel? What route did you travel to get to the

1 Tailgate 22 unit?

2 A. We actually parked our rides up here at the ---
3 this Glory Hole, this track up here, and we
4 walked ---.

5 Q. So you're pointing to the mouth of Headgate 22
6 unit?

7 A. Yes, the mouth of Headgate 22.

8 Q. Okay.

9 A. We parked at the mouth of that and we walked over
10 to the tailgate section, done exams and stuff on the
11 equipment and stuff, and then we come out. And I
12 think --- I don't remember if that was the same day he
13 found the air --- low air or something up there. I
14 know before we left that day, we walked all the way
15 back up to 22 to the face.

16 Q. That's Headgate 22?

17 A. Yes.

18 Q. So that same day you was on Tailgate 22 section
19 and Headgate 22 section?

20 A. Yeah. A lot of days I was on both of them at the
21 same time.

22 Q. Okay. And you walked from one to the other?

23 A. Yes.

24 Q. Okay. Rick, I'm going to back up just a little.
25 You said the day you traveled with the MSHA inspector,

1 that he shut down the Headgate 22 unit?

2 A. One day he did, yes.

3 Q. You said that was because of ventilation problems
4 at the face?

5 A. Yes.

6 Q. Do you know what was done to correct those
7 ventilation problems?

8 A. I think that's when they plastered stoppings.

9 They done a lot of --- they pulled all the men off the
10 section and everything. Everybody was instructed to
11 --- they were checking stopping lines and stuff.

12 Q. Are you aware or have any knowledge of them ever
13 opening any doors at the mouth of Headgate 22 to
14 supply more air to the section?

15 A. I don't know about that, no.

16 Q. Okay. Haven't ever heard of that happening?

17 A. I mean, I've heard of it, them changing doors and
18 stuff around, but I never witnessed any of it or been
19 part of it, you know.

20 Q. Okay. Who took care of ventilation at the mine?

21 A. That's a hard question. You know, I've heard
22 different people, you know.

23 Q. Different people.

24 A. Mentioning ventilation. You know, Everett Hager
25 was there. He was working on air up there some.

1 Dino, the section boss, worked on it. They would
2 converse over the phone what they needed to do, you
3 know, like open a door here a little bit more or a
4 regulator or something here and there. Like I said, I
5 tried not to get too involved in that because I didn't
6 know much about it.

7 Q. So when they made those ventilation changes, did
8 they inform you or the examiners or the rest of the
9 miners?

10 A. They have held us out of the mine when they made
11 some major ventilation change. But a small
12 ventilation change, I don't think they ever told us
13 about it.

14 Q. Okay.

15 A. If we had a major ventilation change, like we're
16 changing some stoppings here and there, this or that,
17 they would notify us.

18 Q. What's the difference between a major and a small
19 ventilation change?

20 A. I'm talking about like open a regulator a couple
21 inches or something, you know, or build some stoppings
22 right there in a different direction is what I call a
23 major ventilation change or something.

24 Q. Okay.

25 MR. CRIPPS:

1 You want to go ahead, Buddy?

2 MR. MAGGARD:

3 I'm going to give it to Bill.

4 MR. TUCKER:

5 Okay.

6 EXAMINATION

7 BY MR. TUCKER:

8 Q. I'll be dancing around just a little bit, but try
9 to stay within what you've been questioned about so
10 far. In talking about the ventilation on 22 Headgate,
11 you mentioned you maybe heard a conversation with Dino
12 and Mr. Hager. But did you hear any other comments
13 from Dino complaining about as far as the ventilation
14 on 22 Headgate?

15 A. I said not at last. The last couple weeks
16 ventilation was really good there.

17 Q. Prior to that, say prior to the last couple weeks?

18 A. Oh, yeah, we've had problems up there before.

19 Q. Quite a few problems, you'd say, as far as on 22
20 Headgate?

21 A. I'm going to say not quite a few, you know. A
22 couple times maybe. The problems they had --- most
23 ventilation. We drove 21 before we had that Bandytown
24 Fan up there. We had problems getting there, you
25 know. Air --- you did everything. You tried to get

1 your air right and everything.

2 Q. Did you typically carry a detector with you?

3 A. Yes.

4 Q. As far as when you were traveling on 22 or
5 anywhere throughout the mine, do you ever like just
6 take it out and take a gas reading?

7 A. If we was working around, yes. Sometimes
8 especially if you'd hit a little high hole or
9 something, we would always read it, you know. That's
10 something you hardly ever seen in that mine, you know,
11 maybe one-tenth or something, one or two-tenths. You
12 hardly ever seen any methane in that mine.

13 Q. So as far as your personal detector, you never
14 picked up --- went into alarm or anything?

15 A. No.

16 Q. What about, you know, like standing around the
17 miner when they're mining and seeing it on the digital
18 readout, do you recall seeing the highest that you saw
19 on that, the highest?

20 A. I've seen three or four-tenths up around where
21 they was mining.

22 Q. Was that on 22 Headgate?

23 A. Uh-huh (yes).

24 Q. Okay. Did they cut a lot of rock up there?

25 A. Yes.

1 Q. How was it as far as the dust clearing out when
2 they was cutting that rock?

3 A. We just didn't know where you was cutting it at,
4 you know. They had ventilation on that. That's the
5 first day that we drove with the ventilation like that
6 with the belt in Number One, you know, and nobody was
7 crazy about that ventilation, the men that worked
8 there, you know. The first time we experienced that,
9 you know, me, too, it was something different, you
10 know.

11 Q. So some entries were worse than others as far as
12 dust lingering. Do you recall any specifics on that
13 where it might have been better than others?

14 A. Not really, no.

15 Q. Let's talk about the three scoops down at Tailgate
16 21.

17 A. Two scoops were ---.

18 Q. You mentioned there was three.

19 A. There was two scoops --- well, there was a service
20 scoop.

21 Q. Yeah, a service scoop. Were all three of those
22 permissible ---

23 A. Yes.

24 Q. --- maintained in permissible condition?

25 A. Yes.

1 Q. Okay. We talked a little bit about on April the
2 5th. And if I understand right, you were outside at
3 Ellis Portal ---

4 A. Yes.

5 Q. --- all day? Okay. Was you aware that the
6 longwall was done? I mean, when I say was you aware,
7 as far as on April the 5th, when you were there at the
8 mines, was you aware that the longwall was done?

9 A. I did hear that the longwall was down, yes.

10 Q. Did you hear any conversations say between Jack
11 Roles or anybody else that were talking to people on
12 the longwall crew?

13 A. No.

14 Q. As far as now after April 5th, have you had any
15 conversations with anybody as far as any kind of
16 problems they were having on the longwall?

17 A. No. That's something I dealt with very little,
18 the longwall, you know. I watched it run a time or
19 two in the 16 years I was there and took them apart a
20 time or two, but I know nothing about a longwall.

21 Q. But you haven't talked to anybody since as far as
22 any problems they were having, ---

23 A. No.

24 Q. --- say Jack Roles or anybody, what's going on, on
25 April 5th?

1 A. No, I haven't heard anything.

2 MR. TUCKER:

3 That's all I have now. I don't want to
4 bounce around too much on you all. I'll turn it back
5 over to Dean and Jasey.

6 ATTORNEY BABINGTON:

7 If you don't mind, I want to jump in with
8 a couple of clarifying ---.

9 EXAMINATION

10 BY ATTORNEY BABINGTON:

11 Q. On April 5th, what time did your shift start?

12 A. My shift starts at 6:00, 6:00 a.m.

13 Q. You mentioned that you got a call out from the
14 third shift?

15 A. Right.

16 Q. What time was that?

17 A. Probably 6:15 or something. I'm not sure.
18 Probably around there.

19 Q. Is that when you heard about scoops?

20 A. Yes.

21 Q. Just to clarify, you did not go underground at all
22 on April 5th?

23 A. No, I did not.

24 Q. You mentioned that you felt the explosion or you
25 first saw indication of something happening

1 underground at 3:04?

2 A. Something like that, yeah.

3 Q. What's your basis for believing it was 3:04? Did
4 you check your watch, check your clock?

5 A. Like I said, evening shift was starting. They go
6 in at 3:00, a couple minutes late getting to the
7 mantrip there, and everybody was walking to the
8 mantrip and getting on it. And it was --- you know,
9 the wind started coming out of the drift really bad.

10 Q. So you believe it was 3:04 based on the fact that
11 it was a couple minutes after the three o'clock ---
12 that time when the shift ---?

13 A. I probably glanced at my watch. I don't remember
14 for sure.

15 Q. You mentioned that you went with Inspector Stone
16 on a permissibility check on Tailgate 22?

17 A. Yes.

18 Q. And around what date was that?

19 A. I'm not sure. It had to be pretty close ---
20 probably within two weeks of April 5, because you
21 know, we was up on that section. They wasn't in there
22 but four or five breaks. They was already up in there
23 a couple breaks, two or three breaks, you know. We
24 was up in the face when we done the permissibility
25 checks

1 Q. All right. You also indicated that you heard that
2 the longwall was down on the 5th?

3 A. Yes.

4 Q. Who did you hear that from?

5 A. Just people talking in the office out there as the
6 wall was down, you know, as to ---. This is common.
7 You hear that all the time, you know. I don't know
8 what even was down or what.

9 Q. Do you recall the names of any of the individuals
10 who you overheard it from?

11 A. No.

12 ATTORNEY BABINGTON:

13 Thank you.

14 RE-EXAMINATION

15 BY MR. MAGGARD:

16 Q. I have some questions here, Rick.

17 A. Okay.

18 Q. Where did they --- from the Tailgate 22 section,
19 where did they pick up the supplies they had from
20 Headgate One North? Where would they normally dump
21 supplies off at?

22 A. At one of these breaks beside the track right
23 here.

24 Q. Okay.

25 A. Just outby the mule train, I'm sure.

1 Q. Okay.

2 A. You know, one of them breaks they could have ---?

3 Q. So usually outby the mule train?

4 A. Yes.

5 Q. And what would they use to pick up those supplies?

6 A. A forklift.

7 Q. Did we find a --- after this --- when you went
8 with MSHA on the investigation, do you recall where we
9 found the forklift at for Tailgate 22?

10 A. Yes. I think it was parked in this break right
11 here.

12 Q. Could you possibly mark that for us?

13 MR. BABINGTON:

14 Let's use the green one again. If you
15 could use the green highlighter, and we'll have you
16 use the pen to mark out to the side what that mark
17 was.

18 A. See, I'm not a hundred percent sure, Jasey. It
19 was either this one or this one. I think it's right
20 here.

21 ATTORNEY BABINGTON:

22 If you want to make a dot with that green
23 highlighter?

24 A. This is that track. It was parked in this
25 breakthrough right here. Right there.

1 ATTORNEY BABINGTON:

2 With a pen, if you could then
3 indicate ---?

4 BY MR. MAGGARD:

5 Q. That that's the forklift.

6 WITNESS COMPLIES

7 BY ATTORNEY MAGGARD:

8 Q. How would they travel? What kind of route would
9 they go with that forklift to pick up those supplies?
10 We're showing some doors on this map here. How do you
11 think they would go to pick up those supplies?

12 A. I don't know if all this neutral was common or
13 not, you know. I don't know. This neutral might have
14 been common. It hadn't come through here or the belts
15 in that entry. And I don't remember, is there a
16 stopping here? Part of one? I don't know. I'm just
17 guessing. The only way we could have come is through
18 here somewhere.

19 Q. But would they come down the return air course or
20 how could they ---? You see those three check
21 curtains right here, and there's a track entry that's
22 an intake which is a Number Two entry on Headgate One
23 North, and then there's the Number Three entry that's
24 intake on Headgate One north. I was wondering how
25 would they get through here without knocking down one

1 of these curtains to get supplies?

2 A. I couldn't tell you for sure, Jasey. I never was
3 with them when they went and got anything or ---. I
4 don't know how they traveled that.

5 Q. Is there a way to get supplies from the return, go
6 through a set of doors? Is there another set of doors
7 down through here you would cut off to get over to the
8 intake entries to get to the track?

9 A. I don't recall any. There could have been. I
10 don't know.

11 Q. They used a forklift to get the supplies up to the
12 face at Tailgate 22?

13 A. Scoop.

14 Q. Let's get back on Headgate 22. And I'm going to
15 bounce around. Have you ever heard that from time to
16 time they'd have to just run one shuttle car due to
17 low air on the headgate section?

18 A. Two shuttle cars is all we had up there. We
19 didn't have three. We just had two shuttle cars up
20 there. I don't know about the just running the one.

21 Q. Okay. I got a production report here, and it does
22 indicate --- and there were several occurrences of
23 this ---

24 A. Is that right?

25 Q. --- over the last month. This one was April 1st,

1 and this was on evening shift. And they said they ran
2 one shuttle car, and they would specify what entry
3 they would run it in because due to ventilation. So I
4 was wondering if you've heard recently, you know, just
5 a little bit prior to April 5th --- I mean, this is
6 April 1st, of any low air on Headgate 22?

7 A. I would say it's probably in Number One entry.
8 Like I say, the intake come up to the middle entry,
9 until it got to the feeder, then it was switched over
10 to Number One. So maybe when he's cutting Number One
11 and couldn't run around this when he was cutting One,
12 he probably wouldn't have run one shuttle car. I'm
13 just guessing. I don't know.

14 Q. So they would run --- course the intake air across
15 the feeder is what you're ---?

16 A. Right.

17 Q. Okay.

18 A. That's how they would switch the air around.

19 Q. Okay. And as far as your knowledge of that
20 feeder, was it a permissible feeder?

21 A. Oh, yeah. Yeah, the feeder was permissible.

22 MR. MAGGARD:

23 I would like to add this as an exhibit to
24 just show that there has been some ventilation
25 problems on April 1st and to go with his testimony

1 that he is not aware of that break.

2 BY ATTORNEY MAGGARD:

3 Q. Rick, do you look at production records on a
4 normal basis?

5 A. Yes, to see if there's any trouble with the
6 equipment.

7 MR. TUCKER:

8 While he's finding that, Rick, just a
9 quick question. On the forklift at 22 Tailgate, is it
10 permissible?

11 A. I don't think it is. I never was around them very
12 much. That's an ALE on the 22 section. We always had
13 CLEs before. That's what was on 22 over there, and it
14 wasn't permissible.

15 MR. TUCKER:

16 Okay.

17 BY MR. MAGGARD:

18 Q. Yeah, I think this forklift was ALE. Rick, when
19 you went up on Headgate 22 and did the permissibility
20 on Tailgate 22, was this Section, Tailgate 22, just
21 starting out?

22 A. Yeah.

23 Q. Could that have possibly been around the 1st of
24 March? When did they start Tailgate 22?

25 A. I'm not sure. Probably around there.

1 Q. I did notice in one of the production reports that
2 they did have low air March the 1st on Headgate 22.
3 It showed that. And they did plaster and work on
4 stoppings that day. And I was curious if you knew
5 about that.

6 A. That sounds about right.

7 Q. Had your guys --- when they do --- they check
8 miners on the belt and the sections for Headgate 22
9 and Tailgate 22, do they check dust separation or is
10 that somebody else's duty?

11 A. You mean check the water sprays and stuff. If
12 they was caught up with their list and stuff, a lot of
13 times they would it to help dayshift out. Usually if
14 the section electrician got there, that's the first
15 thing they done, do a dust perimeter and stuff.

16 They'd check the dust perimeter and stuff.

17 Q. Are you aware of any kind of problems with keeping
18 water sprays unclogged or any problems with the
19 pressure pumps or ---?

20 A. That's one thing they had excellent, probably
21 above and beyond, is water. Them two sections had
22 been --- the maintenance on those pumps --- those BFD
23 pumps are the best pumps, more than adequate water
24 supply.

25 Q. If they did have ---.

1 A. ISC is the name of those pumps.

2 Q. You're pretty good with remembering models and
3 serial numbers, huh?

4 A. During our travels, I've ---.

5 Q. I was impressed. With the water sprays, if they
6 had to change any out, would they list that as down
7 time in a production report?

8 A. If they just had to stop and do it while they was
9 mining. A good, experienced miner operator, they was
10 fond of the water sprays. They didn't want to run
11 water sprays. They tried to keep dust down. They did
12 a good job of keeping their sprays up.

13 Q. I understand there was an area on this headgate
14 that they was going to put in a drive?

15 A. Yes.

16 Q. Do you know where that was located?

17 A. Right there was the feeder.

18 Q. Okay. And in that area, was ---? There was a lot
19 of dust, and they had to stop the miners several
20 times. And it did take a long time to go into that
21 area.

22 A. It took a long time cutting. They put it 11 or 12
23 feet away --- crosscut, it's going to be dusty even
24 though you blow the intake right in there and hang
25 curtain across it. If your intake is right on it, you

1 know, it still got to return back out of there until
2 you get that crosscut through. I'm sure it was dusty
3 doing that.

4 Q. Did they encounter any kind of adverse roof
5 conditions at any time on this Headgate 22 panel?

6 A. I don't think 22. I think they had some problems
7 on 21.

8 Q. What about problems with bottom tramming equipment
9 in Headgate 22?

10 A. Nothing --- I mean, it's a little bit but nothing
11 real bad.

12 Q. You said earlier that you carried a methane
13 spotter --- or detector. Was that your own personal
14 detector?

15 A. I keep mine with me. I charge mine at home every
16 night.

17 Q. Do you still have that detector today?

18 A. No. They got shuffled around, where I turned mine
19 in after this happened, and I've got one now I've had
20 the past six or eight months, you know.

21 Q. Okay. When you turned it in, who did you turn the
22 detector in to?

23 A. Just a pile of them at UBB.

24 Q. Did it have your name on it?

25 A. I think it did.

1 ATTORNEY BABINGTON:

2 It's been about an hour, so let's take a
3 couple-minute break. Let's go off the record.

4 SHORT BREAK TAKEN

5 MR. BABINGTON:

6 I just want to note that, you know,
7 before we were discussing the production report from
8 April 1st, and Mr. Nicolau said he didn't have any
9 personal knowledge about the contents of the document,
10 we're not going to make it part of an exhibit for your
11 interview. I just wanted to note that for the record.

12 RE-EXAMINATION

13 BY MR. CRIPPS:

14 Q. Okay. Rick, I'm going to back up a little bit.
15 You said you had about 30 years mining experience; is
16 that correct?

17 A. Yes.

18 Q. The last 16 of which has been at UBB?

19 A. Yes.

20 Q. Has that been uninterrupted at UBB?

21 A. Yes.

22 Q. So you have not left and went into any other
23 mines?

24 A. No.

25 Q. Prior to your employment at UBB, explain to me

1 your mining background.

2 A. I worked for Maven Energy for five or seven years
3 or something, an electrician there. I worked for them
4 as an electrician several years and a truck mechanic
5 for them for about three years.

6 Q. Okay. What about prior to that?

7 A. Westmoreland Coal, and I was an electrician there.
8 That's where I got my card, Eccles No. 6 Mine,
9 Westmoreland.

10 Q. So you got your electrical card while you were
11 working for Westmoreland?

12 A. Yes.

13 Q. Did you do any jobs prior to getting your
14 electrical card?

15 A. Just a mechanic always.

16 Q. So your entire mining career has basically been in
17 maintenance and as an electrician?

18 A. Mostly, yes.

19 Q. Did you ever run any equipment on the section?

20 A. Sometimes.

21 Q. What equipment did you operate?

22 A. Anything. I run it all.

23 Q. You ever run scoop?

24 A. Uh-huh (yes).

25 Q. Did you ever run shuttle car?

1 A. Yes.

2 Q. You ever run a miner?

3 A. Yes.

4 Q. I think you said earlier that you reported to Paul
5 Thompson; is that correct?

6 A. Yes.

7 Q. How long have you worked for Paul?

8 A. I don't know for sure on that because --- Jim
9 Kinder was the chief there. They offered me the
10 chief's job and took me off the section. Gary Mays
11 retired off of evening shift in 2001. That's when I
12 become evening shift chief, an assistant, and I helped
13 running the coal of the mine at UBB.

14 Q. Okay.

15 A. Then I think I went to dayshift. And I probably
16 was on dayshift now probably about five or six years,
17 I guess.

18 Q. So you worked straight dayshift?

19 A. Yes.

20 Q. For the last five or six years?

21 A. Well, unless they had a big job to do on the hoot
22 owl or something, I'd come out and work the third
23 shift with them, help Virgil or something I had to do
24 on one of the sections, I'd come out and work both
25 shifts that day.

1 Q. But you normally worked dayshift?

2 A. Dayshift, yes.

3 Q. Where did you portal at?

4 A. Ellis at last. When the explosion happened, I was
5 portalling at Ellis.

6 Q. Okay. Tell me, on April the 5th, run through the
7 management structure at the mine.

8 A. Like I said, I was the chief electrician over at
9 the Tailgate 21 and Headgate 22, officially, I guess
10 is what they call it. Everett Hager was the
11 superintendent. And I can't remember the black guy's
12 name. He was the mine foreman I think.

13 Q. Would have been Terry Moore?

14 A. Terry Moore, yeah. Terry Moore.

15 Q. Terry was what?

16 A. He was the mine foreman on that side, on Number
17 Two sections.

18 Q. You said Everett Hager was superintendent?

19 A. Yes.

20 Q. Okay. So which one of those positions is higher?

21 A. Everett Hager.

22 Q. So Terry Moore reported to Everett Hager?

23 A. Yes.

24 Q. Okay. Go ahead. What about on up the ladder?

25 A. On up the ladder, I guess Everett reported to

1 Chris Blanchard.

2 Q. And he was?

3 A. President of Performance.

4 Q. And so was he at the mine every day?

5 A. No.

6 Q. Where was he located?

7 A. Marfork, the office.

8 Q. Okay. So who was the highest member of management
9 at the mine every day?

10 A. I guess Everett on that side of the mines. I had
11 split up, south side, north side.

12 Q. And so Everett was the superintendent of the north
13 side?

14 A. Yes.

15 Q. Who was the superintendent of the south side?

16 A. I think Gary May.

17 Q. Gary May?

18 A. I think. I'm not sure.

19 Q. And then who did Gary May and Everett report to?

20 A. Chris Blanchard.

21 Q. Okay. Where did Wayne Persinger fit in?

22 A. I forgot about him being there.

23 Q. Okay.

24 A. He was --- I guess Wayne is the --- I guess he was
25 the general manager and president of Performance there

1 at the time.

2 Q. Okay. So ---.

3 A. And he reported to Blanchard. I guess that's the
4 way it went.

5 Q. So Everett and Gary reported to Wayne?

6 A. Yes.

7 Q. And then Wayne would report to Blanchard?

8 A. Right. Yeah, I think that's right.

9 Q. Okay. Where did Jason Whitehead fit in the
10 picture?

11 A. He's kind of like a floating superintendent, is
12 the way I see him. I don't know. You know, he's like
13 the next step above Chris.

14 Q. Above Chris Blanchard?

15 A. Yes.

16 Q. So he was, in fact, above Chris Blanchard in the
17 management chain?

18 A. The way I understand it. That's what they tell
19 me. Yeah, he was up above.

20 Q. Okay. So to your knowledge, Gary May and Everett
21 Hager reported directly to Wayne Persinger?

22 A. Yes.

23 Q. And Wayne reported directly to Chris Blanchard?

24 A. Yes.

25 Q. Who did Paul Thompson report to?

1 A. Keith Hainer.

2 Q. Okay. Who was he?

3 A. Chief of maintenance for Massey.

4 Q. Where is he located?

5 A. Wash Branch, is that the name of it?

6 ATTORNEY PENCE:

7 You have to answer based on your
8 knowledge.

9 A. Okay. Wash Branch is what I know the name of it.

10 BY MR. CRIPPS:

11 Q. Where is that located?

12 A. On 19, next to Charleston down there somewhere. I
13 never been there. I don't know.

14 Q. So it's not at the UBB Mine?

15 A. No.

16 Q. Okay. Did Paul ever have to answer to anybody at
17 the mine site?

18 A. Well, Blanchard would call me or him, either one,
19 if he had a problem or something was going on. Like
20 if a miner was giving him trouble or something, you
21 know, he might call Paul or he would call me, you
22 know.

23 Q. And when he called you, what were the calls
24 generally about?

25 A. Asked me what was the problem. You know, if the

1 problem was persisting --- like if the same problem
2 showed up on a production report two or three days in
3 a row, then he would --- like say a shuttle car broke
4 chain three days straight, he'd call and ask me why
5 did this chain break, and they would not check ---
6 replaced it, does it need a new one or what? You
7 know, he just --- very observant on it, you know.
8 I'll give him credit for that. He was very observant
9 on it.

10 Q. Did he ever put any pressure on you to take
11 shortcuts to get the equipment running?

12 A. (Indicates no).

13 Q. You got to answer.

14 A. No.

15 Q. Okay. Prior to the accident, which happened on
16 Monday, April the 5th, what was the last shift you
17 worked?

18 A. I can't remember. I don't know if I worked ---
19 might have worked Sunday, the day before that. I'm
20 not sure.

21 Q. The day before was Easter Sunday. And as I
22 understand through other reports and interviews, the
23 mine was idle that day. Do you recall that?

24 A. That might be true. I don't remember.

25 Q. Okay. So you don't recall if you worked ---

1 A. No.

2 Q. --- on that Sunday?

3 A. I don't recall, no.

4 Q. Okay. Are you aware of anyone working that
5 Sunday?

6 A. No.

7 Q. Earlier in the interview, on the day of the
8 explosion, on April 5th, I've got it written down here
9 that you said that you was outside the Ellis
10 Portal ---

11 A. Yes.

12 Q. --- prior to the explosion.

13 A. Right.

14 Q. Where exactly was you located just immediately
15 prior to the explosion?

16 A. Working on a charger out there by the portal, a
17 scoop charger.

18 Q. So was you actually in the mouth of the portal or
19 was you outside the portal?

20 A. Outside.

21 Q. Okay. You said that you had just taken call out
22 reports from the electricians. Do you recall that?

23 A. I took that that morning from the hoot owl
24 electricians. I hadn't took any from the dayshift.

25 Q. Okay. That's where I was confused.

1 A. Okay.

2 Q. Now, when you got the call from the hoot owl
3 electrician, that's when you found out that the scoop
4 at the mouth of Tailgate 22 was down at the contactor?

5 A. Yes.

6 Q. Okay. And then that afternoon you had talked to
7 the electrician off of Tailgate 22?

8 A. Yes.

9 Q. But you had not talked to the electrician off of
10 Headgate 22, which I think you said was Greg Brock?

11 A. I don't recall talking to him. You know, I don't
12 think they had no problems. They hadn't heard of no
13 problems they had that day, you know.

14 Q. Okay. Was it normal for the electricians to call
15 you near the end of their shift and give you a report?

16 A. Yeah. The only time they called me, if something
17 was wrong or they needed to have evening shift bring
18 something, like a part or something, somebody to give
19 them trouble, they would call me, but a lot of times
20 they didn't. By the end of the day I was always up
21 there usually. You know, they couldn't call me
22 because I was usually on the section, 22 usually.

23 Q. Would the electricians normally call out and talk
24 to the electrician on the oncoming shift?

25 A. Like I said, if he needed something he would.

1 Q. Okay.

2 A. If everything was going good, he probably
3 wouldn't. They're supposed to, really. The company
4 wants them to discuss, but you know, we had so much to
5 do, really, we didn't get it done exactly right, like
6 the company wanted it sometimes.

7 Q. I think you said earlier in your interview that
8 the ventilation on Headgate 22 unit was different from
9 the way you'd normally ventilate; is that correct?

10 A. Yes.

11 Q. Okay. Explain to me the difference between now
12 and the way you normally ventilated.

13 A. All the panels they drove there before on the
14 south side of the mines, when they had a longwall
15 there before, the intake always went up Number Three
16 entry. You know, the belt track was in Number Two,
17 the return was in Number One.

18 Q. Okay.

19 A. This was altogether different.

20 Q. Okay. How was they doing this currently?

21 A. The intake was in the track in the belt entry ---
22 the track entry going up Number Two, the belt was in
23 Number One, then in the face area the --- like I said,
24 they had to sweep the air across the end of the feeder
25 and up across the faces.

1 Q. Okay. And then the return was in Number One
2 entry?

3 A. No. The return was Number Three.

4 Q. Number Three, that's correct. Okay. Why did they
5 change this one; do you know?

6 A. I do not know.

7 Q. The previous panels, the way you said it
8 ventilated the track and the belt you said was in
9 Number Two entry?

10 A. Yes.

11 Q. Were these development panels ---

12 A. Yes.

13 Q. --- for longwalls?

14 A. Yes.

15 Q. And in fact, would there sometime have to be a
16 belt installed in Number One entry prior to the
17 longwall starting up?

18 A. Yes.

19 Q. If you said that when they was developing these
20 panels the belt for the beltline was located in Number
21 Two entry?

22 A. Yes.

23 Q. When did the belt get installed in the Number One
24 entry?

25 A. They would usually --- it was usually 4,000 or

1 5,000 feet behind, after they drove the --- they would
2 start on the --- you know, putting the belts ---
3 five-foot belts in Number One entry.

4 Q. So they would be installing the belts into the
5 turn entry as the section was advancing?

6 A. Yes.

7 Q. Then what would they do once the longwall started
8 operating? What would they do? I'm talking about the
9 belts in the Number Two entry.

10 A. They'd usually move belt, like the next panel,
11 they would pull it. We'd reset the heads on the next
12 panel, the next panel side of it.

13 Q. So that belt would be on the surface then?

14 A. Yes.

15 Q. And the belt in the Number One entry would be used
16 for the longwall?

17 A. Right. Yes.

18 Q. And so the belt in the Number One entry would
19 actually be being installed in the return entry while
20 the section was advancing?

21 A. Yes.

22 Q. Okay. And they did that on all three shifts,
23 installed the belt, I mean?

24 A. No. I'm not sure about that. They might have had
25 people putting instruction on third shift, but I think

1 most of the head stuff was set was on dayshift.

2 Q. Okay. So the belt work would be going on in that
3 return entry on the shifts that they were producing
4 coal on the unit?

5 A. I can't say for sure on that. I don't know for
6 sure that was the case. You know, I know we done
7 stuff down there, but I don't know, you know, ---.

8 Q. Okay.

9 A. To what extent, I don't know.

10 Q. You said earlier that you had traveled with an
11 MSHA inspector. How often did you travel with MSHA
12 inspectors?

13 A. A lot of times, when they checked equipment and
14 stuff. You know, I didn't travel with them very much,
15 sometimes when they were doing airways and stuff. But
16 when they checked equipment, I usually always went ---
17 one of my sections, I would always travel with them.

18 Q. So when an inspector would ride, they would inform
19 you that they was going to be doing equipment, and you
20 would know to travel with them?

21 A. Yes.

22 Q. Okay. Did you ever have prior notice of MSHA
23 inspectors coming to the mine?

24 A. You mean like a day in advance or something?

25 Q. Yeah, like a day in advance.

1 A. No.

2 Q. Okay. What about the day that inspectors arrived,
3 would you have notice?

4 A. They always radioed on --- they had MSHA coming
5 through the guard gate down there, and I didn't know
6 what kind of inspector it was. Nobody knew where they
7 was going or nothing. We just knew that MSHA was on
8 the property.

9 Q. So by that, that means when MSHA arrived at the
10 guard shack, the guard would have been radioed?

11 A. Yes.

12 Q By radio I mean up to the office?

13 A. Yes.

14 Q. And I'm familiar with the UBB Portal and the Ellis
15 Portal. There are guard shacks at both portals, and
16 then you have to drive some distance from the guard
17 shack to the portal; is that correct?

18 A. That's correct.

19 Q. Okay. And so in the period of time it would take
20 an inspector to drive there, did the people at the
21 mine generally know the inspector was there?

22 A. Generally they would, you know.

23 Q. Okay. Did you have authority to take equipment
24 out of service?

25 A. Yes.

1 Q. Do you recall ever taking anything out of service
2 for unsafe conditions?

3 A. Yes.

4 Q. Can you give me some examples?

5 A. I'd see a shuttle car a bad place, unsafe or
6 something, just take it out of service and fix it, you
7 know. Anything, a miner or anything, anything we seen
8 unsafe we stopped and fixed it right then.

9 Q. Did anybody ever give you any problems about
10 taking stuff out of service for unsafe conditions?

11 A. No.

12 Q. By anybody, I mean any management people above
13 your level?

14 A. No.

15 Q. They never questioned your judgment?

16 A. No.

17 Q. Was you ever pressured to put equipment back into
18 service that was still in an unsafe condition?

19 A. No.

20 Q. Were there ever any threats against you for having
21 equipment shut down?

22 A. No.

23 Q. Did you ever have any equipment operators, any
24 other miners make complaints to you about unsafe
25 equipment?

1 A. I'm sure there has been at the time of --- you
2 know, as we addressed it, you know, they did it.
3 Somebody told me the brakes wasn't right or something,
4 any time they said something, we took care of it
5 immediately.

6 Q. Did you feel that if a miner made a complaint to
7 you, that you could ask the foreman without ---?

8 A. Yeah. Yes. Definitely.

9 Q. I don't know if we questioned, and I'm going to go
10 over this map. While we was doing our investigation
11 after the explosion, you traveled with us several
12 days. I'm going to point here to a location near the
13 mouth of Tailgate 22 section. It's near where one of
14 the scoops was parked in the charge station. Do you
15 recall us seeing a box there that appeared to be a
16 step-up box?

17 A. Yes.

18 Q. Are you familiar with that step-up box?

19 A. I've used them before.

20 Q. Okay. Do you know why it would be located in the
21 area that we found it?

22 A. They just moved all that equipment. They just
23 moved that section up there. They moved that section
24 from right here, they moved all this equipment up here
25 to this.

1 Q. Okay. So they moved it from the mouth of Headgate
2 One North?

3 A. This crosscut they had down here.

4 Q. Okay. So the equipment that's now on Headgate ---
5 I'm sorry, on Tailgate 22 ---

6 A. Yeah.

7 Q. --- was used to mine the panel at the mouth of the
8 longwall?

9 A. It mined all this right here.

10 Q. Okay. It mined the Tailgate One North?

11 A. Well, it mined part of --- we drove part of it up
12 here with the 12s. They stopped us right in here
13 somewhere and brought the 14, 15s in and finished it
14 up here.

15 Q. Okay.

16 A. That's when they made us go down here to start 21.
17 That was this right here. We put in all these --- let
18 us put these block up to here, and we went there and
19 started doing all this.

20 Q. Okay. And that's at the mouth of Headgate One
21 North? You talking about this?

22 A. Six North belt was actually Headgate 21 at that
23 time we started it when we finished driving this
24 tailgate up here.

25 Q. Okay. So was that prior to the longwall actually

1 starting up?

2 A. Yes.

3 Q. Okay. And so was the Headgate One North entry
4 still being developed?

5 A. That's where we came here and started developing,
6 One North.

7 Q. Okay. We drove this tailgate up here so far with
8 12s and management made a decision to finish it with
9 14, 15s, pulled these 12s out, we went down here and
10 started developing this Headgate 21 right here.

11 Q. Okay. So this small panel at the mouth of the
12 Headgate One North, ---

13 A. Yes.

14 Q. --- when was that panel actually developed?

15 A. That was drove later, after this was. They come
16 down here and we didn't have no place for them to go,
17 and they drove to a panel over in here.

18 Q. Okay. So that was also prior to the longwall
19 starting up?

20 A. Yes.

21 Q. Okay. And then the equipment that was used to
22 drive this short panel at the mouth of the longwall,
23 when this panel was finished, where did that equipment
24 move to?

25 A. It came up here. That's why I said, that move

1 box --- that's what they used that move box for, I'd
2 say, to move that up there.

3 Q. So you're indicating that equipment was moved to
4 Tailgate 22?

5 A. Yes.

6 Q. And so that would have been a month or so prior to
7 the explosion?

8 A. Probably a month. Maybe even a little bit before
9 that, you know.

10 Q. Okay.

11 MR. CRIPPS:

12 Okay. That's all I've got.

13 RE-EXAMINATION

14 BY MR. TUCKER:

15 Q. I'll bounce around just a little bit on you. You
16 was talking about being outside on April 5th, working
17 on the charger next to the portal?

18 A. Uh-huh (yes).

19 Q. Are you aware of the Ellis construction site
20 there?

21 A. Yeah.

22 Q. And that they were cutting some rock there?

23 A. Right. Getting ready to put belt head, yes.

24 Q. All right. And going in and out of the mines
25 there, did you ever observe which way that dust was

1 traveling?

2 A. I'll be honest with you, I've seen it go both
3 ways.

4 Q. Okay. On April the 5th, being down next to the
5 portal, was any dust coming out the portal on April
6 the 5th?

7 A. I can't remember, to tell you for sure. It seems
8 like there might have been. I don't know. I don't
9 know.

10 Q. You don't know for sure?

11 A. I don't know for sure.

12 Q. And that day you was outside, so you wouldn't know
13 as far as being underground?

14 A. I never did go underground that day, no.

15 Q. So traveling in from Ellis, where would be the
16 first set of doors you'd encounter on the track?

17 A. They had a set in right there inby Ellis, in there
18 about six or seven breaks.

19 Q. How would those doors --- when you'd come upon
20 them, would they be open, shut?

21 A. Shut.

22 Q. They'd be shut. Was that all the time or
23 sometimes you'd go in and they'd be open? How'd that
24 work?

25 A. They were mostly shut all the time.

1 Q. When you say mostly, do you remember any times in
2 specific that they were open or ---?

3 A. They might have been open at one time, but I don't
4 know. They might have been doing something there and
5 one morning could have been open was --- I don't know.

6 Q. That is what I'm trying to understand, because you
7 mentioned that that dust sometimes would travel outby,
8 toward the portal and sometimes it would travel inby.

9 A. Inby. I have seen it do that.

10 Q. Say, recently, just a week --- say the week prior
11 to the explosion, coming in and out of the mines, can
12 you recall which way that dust was traveling then?

13 A. No. Not for sure. I mean, I couldn't tell you
14 for sure.

15 Q. There's some other sets of doors up here on the
16 headgate of the longwall, these double doors. When
17 was the last time that --- had you been up in this
18 area, say, a week prior to the explosion, on the
19 headgate side?

20 A. Maybe two weeks or something. Like I said, I
21 helped them set this belt head right here.

22 Q. I just wondered if you had any --- what your
23 recollection was at least before ---.

24 A. I came in from this way.

25 Q. You came in from 22 Headgate side?

1 A. Yes. For the past month or so, I didn't come up
2 here to hit any longwall traffic or anything.

3 Q. Okay.

4 A. I would have came up by the Glory Hole.

5 Q. Okay. And the last time you were up there, say,
6 was a week prior to April 5th, if I understood you
7 right, you walked from basically the mouth of 22 up
8 to --- Headgate up to 22 Tailgate?

9 A. Yes.

10 Q. Okay. The rock duster that they used to rock dust
11 on the track, the crop duster, ---

12 A. Uh-huh (yes).

13 Q. --- did you ever work on any of them?

14 A. Very little. I have worked on it a time or two.
15 I can probably count on one hand in 10 years, 16 years
16 I've been there I worked on them.

17 Q. Okay. And that just happened to be that you
18 was ---?

19 A. I was probably around and they messed a plug up or
20 something on it, uh-huh (yes).

21 Q. So had you heard much discussion as far as the
22 condition of the rock dust or did you have any
23 knowledge of ---?

24 A. I think one of them was --- we got two of them, an
25 orange one and a white one. I think one of them was

1 down at the time and they were just using, I think,
2 the white one or something.

3 Q. One was down and they told them to use the green?

4 A. I think so.

5 Q. And I guess they typically operated it on the
6 midnight shift, so ---?

7 A. They don't a lot of dusting on the evening shift.

8 Q. The evening shift also?

9 A. Yeah.

10 Q. So where do they keep it at, over on the UBB side
11 or Ellis side?

12 A. Yes, UBB side.

13 Q. So you wouldn't be around up there very much?

14 A. No.

15 Q. I'll try not to go back here no more, but I want
16 to ask you one more question. As far as --- and I
17 know like when you are outside, towards the drift, you
18 don't hear lots maybe. Did they have a telephone
19 outby the drift, a mine phone?

20 A. No.

21 Q. But I was just wondering say around 2:30 to three
22 o'clock on April 5th, did you hear any call outs?

23 A. No.

24 Q. Okay. Did you talk to anybody on Headgate 22 on
25 April 5th that you can recall?

1 A. I can't recall talking to anybody that day. I
2 thought about that. All day I didn't hear nothing
3 from them.

4 Q. Now, you mentioned you had talked to Mr. Woods.

5 A. Yeah.

6 Q. And you mentioned that he was waiting on a part
7 for the scoop. Did you talk about anything else other
8 than ---?

9 A. No. They had real good equipment there. The
10 miners was about brand new and shuttle cars. There
11 wasn't much trouble up there.

12 Q. So he didn't indicate any problems they were
13 having?

14 A. No.

15 Q. Now, so when you come in from Ellis, you had the
16 airlock doors just inside there a little ways. And
17 then you said you were going up to 22 Headgate. Where
18 would be the next set of doors that you would go
19 through?

20 A. Seventy-eight (78) break. There's four doors up
21 there.

22 Q. Can you show us on this map?

23 A. Not real good on one of ---.

24 Q. This is as you make the turn?

25 A. Yeah. There's a turn here.

1 Q. Well, right here. That's where this map picks up
2 at, isn't that right, here? This is the switch
3 there ---

4 A. Yeah.

5 Q. --- at 78, so that would be, ---

6 A. Right in here.

7 Q. --- with this map, it was up here. So would it be
8 this set of doors here that you ---?

9 A. Yes, right here.

10 Q. Just after you made the turn to 78?

11 A. Right.

12 Q. So what kind of shape was those doors in?

13 A. It was manually operated, you know.

14 Q. Did they have a lot of pressure on them?

15 A. No.

16 Q. Pretty easy to open?

17 A. Pretty easy to open.

18 Q. Could you hear or detect much leakage around those
19 doors or ---?

20 A. I've seen --- they got a violation on them for
21 leaking before, I know. They repair them and stuff.
22 I guess swag bumped them and stuff.

23 Q. Have you ever came upon those doors and one set of
24 them would be open and nobody would?

25 A. No.

1 Q. What about the --- as far as going up on the
2 longwall, you said it had been probably about a month
3 since you went up there?

4 A. Yeah. And I used to have to go --- when they'd
5 drive this across, I used to come up this way and
6 there was a set of doors right there where you turn in
7 the longwall or went around a curb where it was a ---
8 right in here somewhere.

9 Q. Down at the mouth?

10 A. Yeah.

11 Q. Longwall, right here by the switch?

12 A. Right.

13 Q. What those doors? Were those manual doors also?

14 A. Manual.

15 Q. And did you ever come upon those and they'd be
16 left open?

17 A. No. These doors up here, they were electric at
18 times. You know, we'd put a lot of jacks and stuff on
19 them all the time. Sometimes they was electric and
20 sometimes they was manual, you know.

21 Q. Just prior, say a week or two prior to the
22 explosion, were they manual at that time or automatic?

23 A. I'm thinking one set of them. There were two
24 doors. One set of doors itself as electric. The
25 other three was manual, if I remember right.

1 Q. What about the --- when you're saying --- as far
2 as working in behind the longwall, did you ever have
3 any reason to go up there to work on anything say the
4 couple months prior to the explosion as far as helping
5 with pumps or anything like that?

6 A. Yeah. I went up there and worked on air pumps and
7 stuff.

8 Q. Do you recall maybe the last time, roughly, that
9 you would have been up there?

10 A. Probably a couple months like, say, before the
11 explosion or something.

12 Q. How would you describe the water?

13 A. Nothing real deep, you know. This Number Three
14 entry, there was a couple places it got pretty deep up
15 in here.

16 Q. On the headgate side, is that --- you're
17 pointing ---

18 A. Yeah.

19 Q. --- to the headgate side?

20 A. Like there was a swag around Break 100 or
21 something up in there or something. It was getting
22 pretty deep. I had trouble keeping the point down.

23 Q. Do they have a lot of problem out of the pumps?

24 A. They put Jeremy Burghduff up there at those pumps.
25 Once they put him over, I never did hardly have to go

1 work on them no more. He took good care of those air
2 pumps and stuff.

3 Q. So you were up there about every day?

4 A. Yes.

5 Q. They wouldn't as far as you having to go out
6 there ---?

7 A. No.

8 RE-EXAMINATION

9 BY MR. MAGGARD:

10 Q. When you had to go work on the air pumps, was that
11 a problem? Was the water real deep at that time?

12 A. I never did see it roofed or anything like that,
13 just a couple of feet deep.

14 Q. If, let's say, those pumps weren't working for a
15 few days, how long would it take for it to roof, would
16 you know?

17 A. I don't think they ever let it go that long. Like
18 I say, they had somebody on every day to check them
19 and stuff.

20 Q. Do you ever recall a time that it had roofed
21 back ---

22 A. No.

23 Q. --- behind the longwall?

24 A. No.

25 Q. Have you ever been involved with the Bandytown

1 Fan?

2 A. Yes.

3 Q. Was you involved with ---?

4 A. Kind of the finishing parts of it, then I'd help
5 haul these couple of things.

6 Q. Are you familiar with the dampers of that fan, how
7 they were aligned?

8 A. The what?

9 Q. Baffles.

10 A. No.

11 Q. Do you ever recall the baffles being changed?

12 A. While I was there, I think they took them off or
13 something.

14 Q. What about the air compressors, are you familiar
15 with those?

16 A. Yes.

17 Q. How many air compressors did they have on April
18 5th?

19 A. Two. I think two, two diesels and one electric.
20 I think one of the diesels was all they used. One was
21 for backup and they'd run the electrical.

22 Q. Okay. Have they had any issues with maintaining
23 the diesels?

24 A. Yeah. It gave trouble a time or two.

25 Q. How often did that happen?

1 A. Not very often.

2 Q. I know you had a lot of equipment to take care of.
3 Do you feel that you had enough people to do the job
4 to keep everything up to par and keep it maintained
5 where you wouldn't ---?

6 A. Not to do it the way you need to do it, you know.
7 You needed more people than what we had.

8 Q. Was you involved with outby work, electrical work,
9 very often outby the sections?

10 A. Sometimes.

11 Q. Do you think you have enough people at the mine to
12 maintain all the outby equipment, the pumps, all the
13 trickle dusters, chargers, head drives?

14 A. Are you asking my personal opinion?

15 Q. Yes.

16 A. No.

17 Q. What supplies for the section was particularly
18 rock dusted? Did they keep enough rock dust up on the
19 section?

20 A. They gave you what you asked for as far as
21 supplies.

22 Q. Would there ever be times they'd run out and not
23 have some for a while?

24 A. No, not that I'm aware of.

25 Q. I was noticing that Andrew Lucas --- I assume he

1 worked for you?

2 A. Yes.

3 Q. He was having trouble maintaining rock dust on the
4 Headgate 22 section power center. They was using his
5 rock dust quite often. Do you know why that was
6 happening?

7 A. Probably because they were too lazy to get it from
8 the supply hold and bring it up there and that was
9 handy to dust a place right quick.

10 Q. Where would the supply hole be for Headgate 22?

11 A. We'd check that scoop ---.

12 Q. The one that was in the return?

13 A. The one that was in the return, yeah.

14 Q. Okay.

15 A. There was a set of supply doors right there.
16 Return to the intake air. That's where they're
17 supplied at, right there.

18 Q. How much rock dust in that area?

19 A. There should be several pallets of it, bag dust
20 and, you know, bulk dust, too.

21 Q. What about a --- what kind of rock duster did they
22 use on Headgate 22?

23 A. Bucket duster for the scoop.

24 Q. Do you know where it's located at?

25 A. It should have been up there somewhere. I don't

1 know where. We didn't find it nowhere.

2 Q. So you don't remember seeing it during our
3 investigation?

4 A. No, I don't remember seeing it.

5 Q. Was it working?

6 A. Oh, yeah.

7 Q. How often would they use that duster; do you know?

8 A. Every day. Should be every day. A lot of times
9 one of the last things, you know, they done at the end
10 of the shift was run dust across it.

11 A. As far as entries on the Headgate 22, which
12 entries have you traveled? Have you traveled all
13 three of them prior to April 5th?

14 A. Yes.

15 Q. How was the --- in your opinion, how was the
16 condition of the rock dust up there?

17 A. I think it was good because they just --- they
18 just had dusted that area prior to this explosion.

19 Q. What area are you referring to?

20 A. I'm talking about the belt, the nuclear ---.

21 Q. The belt and the ---?

22 A. Yes.

23 Q. The belt entry or intake or ---? Just the belt
24 entry?

25 A. The belt and the intake, yes.

1 Q. What about the return, how did it work?

2 A. It looked good.

3 Q. How deep was it?

4 A. It didn't look light, you know, to me or nothing.

5 I always thought they done a good job rock dusting up
6 there.

7 Q. And how long would you say it's been since you've
8 been up there prior to April 5th, since you might have
9 observed rock dusting up there on that section?

10 A. I can't remember their names, but I went --- I
11 think it was Kevin Lyle, an inspector --- I don't know
12 if it was him or ---. I went with him on a dust
13 survey one time not too long before this and they took
14 dust samples up there between the crosscuts on the
15 belt. They took dust samples, and I think everything
16 looked pretty good as far as I knew.

17 Q. As far as rock dusting like the North Glory Mains
18 and Six and Seven North belt and the track entry, how
19 would they rock dust the other entries? Could they
20 get to every entry with a pod duster?

21 A. Yeah, with a hose. They would have to put a long
22 hose on it.

23 Q. How long of a hose did they have on it?

24 A. 200 or 300 feet. That's the way Ralph and them
25 does it right now, you know. Ralph Plumley, that's

1 the way they're dusting now.

2 Q. Okay. What about did anybody ever take a piece of
3 equipment on the tailgate side of the longwall to rock
4 dust, if you can recall?

5 A. I don't know if they have or not.

6 Q. When you went down to the pumps, how long ago was
7 that when you worked on the air pumps on the longwall,
8 behind the longwall, toward the Bandytown Fan? How
9 long prior to ---?

10 A. I'd say probably months. Like I said, didn't have
11 to go there much because Jeremy Burghduff took care of
12 all that.

13 Q. When you traveled the tailgate entry, what did it
14 look like as far as rock dust?

15 A. I'm not sure, Jasey. I knew it was dusted. I
16 don't know how good or how bad. You know, I can't
17 say.

18 Q. How long prior to April 5th do you believe it was
19 dusted?

20 A. Well, the wall was running.

21 Q. Was it like --- was it dusted when it was
22 developed or had it been dusted since it was
23 developed? What do you ---?

24 A. They dusted it when they developed it, I know.
25 But I don't know if the longwall dusted it or not.

1 I'm not sure where they even dust. I don't know. I
2 don't know if that's part of their ---. Since I never
3 worked on one, I don't know.

4 Q. Since you've been at UBB for a long period of
5 time, how many ignitions have you seen or heard of
6 since you've been at UBB?

7 A. I've heard of inundations, they call it, where
8 methane come out of the bottom. Danny Lafferty told
9 me they had two prior to this at ---.

10 Q. And do you recall what timeframe that was when
11 they had them?

12 A. No. That's been years ago.

13 Q. Okay.

14 A. When we was on the south side. It's been a long
15 time ago.

16 MR. MAGGARD:

17 I'm going to pass it on to Dean. I'm
18 sure he's got some more questions.

19 RE-EXAMINATION

20 BY MR. CRIPPS:

21 Q. Who's Danny Lafferty?

22 A. Danny Lafferty? He's the maintenance chief on the
23 longwall, as far as I know.

24 Q. The inundations that he told you about, where did
25 he say they occurred?

1 A. One of the south side panels. I'm not sure which
2 one.

3 Q. On the longwall face?

4 A. Yeah.

5 Q. Okay. You said you had been to the pumps behind
6 the longwall and worked on the air pumps?

7 A. Uh-huh (yes).

8 Q. And you looked at the map and you was pointing at
9 the headgate area of the longwall. Have you, in fact,
10 traveled the tailgate entries inby the longwall face?

11 A. Are you talking about up and over here?

12 Q. Yes, on the tailgate side of the longwall?

13 A. I've been up there before. It's been a long time
14 ago.

15 Q. Okay. Was that what you was referring to, that
16 you was up there a few months prior to the explosion?

17 A. No. I was talking about these pumps over in here.

18 Q. And so how did you actually travel to those pumps?

19 A. Walked.

20 Q. Walked from where?

21 A. Up one of these entries right here.

22 Q. So you walked up the headgate entries?

23 A. Yeah.

24 Q. Okay. So had you ever traveled the tailgate
25 entries or the entries on the tailgate side of the

1 longwall back to the --- near the Bandytown Fan?

2 A. I've been over there before, but --- like before
3 the wall started, like where the --- if you got a map
4 there, I'll show you. Where the wall started, it's
5 back a ways. We would actually start setting the air
6 pumps before the wall ever started. That's mostly
7 when I worked on them. Like this area was all mined,
8 really.

9 Q. That's the area going back towards the Bandytown
10 Fan ---

11 A. Yeah.

12 Q. --- behind the longwall?

13 A. That's when I mostly worked on them, before the
14 wall started. When they was putting the pumps in, you
15 know, dealing with the power up in there. They put
16 the pumps in and stuff, and it was all new to us
17 and ---.

18 Q. Okay. Where was it that you had to put the pumps
19 in?

20 A. They put them in about three or four spots down
21 through here.

22 Q. Okay. So you're indicating the actual headgate
23 entries they had to --- it was between ---?

24 A. It was in the right --- in this far entry. Had
25 four entries. It was Number Four is where we had the

1 pumps at.

2 Q. Okay. And that's behind the longwall set-up
3 entries ---

4 A. Right.

5 Q. --- between the longwall set-up entries and the
6 Bandytown Fan?

7 A. Yes.

8 Q. And you helped set those air pumps up prior to the
9 longwall ---

10 A. Yes.

11 Q. --- starting? Do you recall ever traveling up
12 these tailgate entries after the longwall started
13 producing?

14 A. I can't recall. Just when I traveled with you
15 all, you know, when we walked up there and stuff. I
16 don't think I ever walked up there ---

17 Q. Okay.

18 A. --- after the longwall started.

19 Q. So the only air pumps that you worked on after the
20 longwall started was the ones over on the headgate
21 side ---

22 A. Yes.

23 Q. --- at approximately, what did you say, was it 100
24 Crosscut?

25 A. Something in that --- up through here somewhere.

1 Q. So those air pumps actually are inby the longwall
2 face?

3 A. I don't know if they have any more down here or
4 not. I don't know if they put any more down that way
5 or not.

6 Q. So when you worked on them, you was actually able
7 to walk up the headgate side, all the way behind the
8 longwall face?

9 A. Yeah. After that, they had to put more cribs and
10 stuff. I've not been up there since they've done
11 that. I don't know if it's still walkable now or not,
12 you know.

13 Q. Okay. So just so I'm clear, the air pumps that
14 you worked on were actually the air pumps behind the
15 longwall set-up entries, ---

16 A. Right.

17 Q. --- but you accessed them by traveling up the
18 headgate entry?

19 A. Yes.

20 Q. Okay. Jasey was asking you about the Headgate 22,
21 about getting the rock dust, and they said they had
22 the rock dust in the return. Is that where they
23 stored a lot of their supplies?

24 A. They actually stored them in the intake. When
25 they unloaded, they had to put a --- it's a scoop

1 bucket. I don't know if they stored any in the return
2 very much or when they got it out of the intake they
3 took it and used it or what.

4 Q. You said they unloaded it and put it in a scoop
5 bucket. How did they unload it?

6 A. Forklift, CLA forklift.

7 Q. So how were the supplies delivered to the unit?

8 A. On track.

9 Q. On a flatcar?

10 A. Flatcar.

11 Q. On the track?

12 A. Uh-huh (yes).

13 Q. And the track was in the intake entry?

14 A. Right.

15 Q. And then the forklift would take the pallets off
16 the flatcar?

17 A. They stuck it there beside of the track.

18 Q. Okay. There was a set of equipment or roof
19 between the intake and the return?

20 A. Yes, on Headgate 22.

21 Q. I never remember seeing anything over there, but I
22 never did get over there. We had one, you know, on
23 22, I know.

24 Q. Okay. Do you ever know --- was the forklift
25 taking those supplies over in the return entry?

1 A. No.

2 Q. Have you ever heard of it?

3 A. I've heard of it.

4 Q. Okay. But you didn't ever see it?

5 A. No.

6 Q. Okay. Would that have been acceptable if you had
7 seen it?

8 A. No.

9 Q. Why is that?

10 A. It's a piece of equipment in the return.

11 Q. Okay. Do you think the equipment operators would
12 have realized that?

13 A. They should know better. They've been instructed
14 not to take it over.

15 Q. I asked earlier about who was in charge of
16 ventilation, and I think your answer was you really
17 didn't know. In your 16 years at UBB, do you know who
18 was in charge of ventilation?

19 A. Wendell Wills was. Before he retired --- or left
20 there, he was the best ventilation man they had there.

21 Q. What was his name?

22 A. Wendell Wills.

23 Q. Wendell Wills?

24 A. Uh-huh (yes).

25 Q. Okay. And he took care of the ventilation?

1 A. Yes.

2 Q. Did he do a good job?

3 A. Real good.

4 Q. When did he retire?

5 A. He had been gone a couple years from there.

6 Q. Okay. So after Wendell left, is that when --- let
7 me rephrase that. When Wendell left, then who took
8 over ventilation?

9 A. I guess whoever Wayne Persinger said to work on
10 it. He was the new superintendent, you know.

11 Q. Okay.

12 A. I guess he overseen it. I don't know who he had
13 doing it or ---.

14 Q. When did Chris Blanchard come into the mine?

15 A. He'd been coming off and on the last two or three
16 years, as far as I know, you know.

17 Q. Was Wendell still there when Chris Blanchard
18 started?

19 A. Yes.

20 Q. Okay. Do you know, did Wendell have authority to
21 take care of the ventilation on his own at the mine?

22 A. I would say he did, yeah, or he should have. You
23 know, I think he did.

24 Q. Did you ever see Chris Blanchard underground?

25 A. Yes.

1 Q. Okay. Do you ever know of Chris Blanchard making
2 any ventilation changes?

3 A. I've seen him help working on ventilation.

4 Q. When he was working on it, was he directing the
5 work?

6 A. I don't know about that. I seen him there
7 plastering a stopping. They was building a --- they
8 called it a regulator.

9 Q. Do you know if Chris ever directed ventilation
10 changes being made of people underground?

11 A. I don't know about that.

12 Q. Do you know if Chris directed any ventilation
13 changes at all?

14 A. I don't know for sure.

15 Q. On Easter Sunday, you said earlier you don't
16 recall if you worked or not. There's been some talk
17 about a possible ventilation change made on that day.
18 Have you heard anything about that?

19 A. I did hear a rumor that somebody worked on
20 ventilation that day.

21 Q. Okay. Do you ---?

22 A. That was the rumor, yeah.

23 Q. Do you have any knowledge of a ventilation change
24 being made ---

25 A. That day, no.

1 Q. --- on Easter Sunday?

2 A. No.

3 Q. So do you have knowledge --- or do you know if
4 Chris Blanchard or Jason Whitehead was at the mine on
5 Easter Sunday?

6 A. I have no idea.

7 MR. CRIPPS:

8 Okay. That's all I've got. Go ahead,
9 Bill.

10 RE-EXAMINATION

11 BY MR. TUCKER:

12 Q. I'm going to switch gears a little bit.

13 A. All right.

14 Q. Have you ever participated in any equipment moves?

15 A. Yes.

16 Q. How do they usually work when you have an
17 equipment move?

18 A. Usually they'll just pick entries like off a
19 section, pick the entry they're going to take it down.
20 It's probably the intake or something, tram it down.

21 Q. How would they prepare for it as far as --- would
22 they post anything or how ---?

23 A. Post an equipment move. And they use step-up
24 boxes like the transformers. Build the transformers
25 there, flip-flop the cables back and forth between the

1 belt heads and maybe down to the mouth.

2 Q. The ones that you have first-hand knowledge of,
3 who ordered that or oversaw it?

4 A. Usually the section boss was there to coordinate
5 and usually I was there for the electrical part of it,
6 you know.

7 Q. When then moved equipment like that, who all would
8 be around? Would there be, say, a mine foreman or a
9 section boss? How would that work? Would they have
10 ---? Say if it was on the intake and they were just
11 tramming it, would they have people inby doing other
12 things or ---?

13 A. Just moving stuff. You know, there might be a
14 miner tramming here and another miner tramming back
15 here, you know, tramming two miners at the same time.

16 Q. Okay. What about as far as bringing stuff out on
17 the track or taking something in, perhaps, let's say,
18 a power center or shuttle car or something, do you
19 have any knowledge of that?

20 A. Before they done that. I don't know if they've
21 done that or not.

22 Q. Let's say they have done that, do they have any
23 equipment at the portal? Is there one at Ellis also?

24 A. Yes.

25 Q. Do you know of any instances where something would

1 come up unplanned, just out of the blue, and you have
2 to bring something outside ---?

3 A. I was trying to think. I'm sure there has been.
4 I can't recall.

5 Q. As far as your recollection, you don't recall
6 anything specific?

7 A. Not specifically. Not at the moment. I'm sure
8 we've done that before.

9 Q. I was just wondering if they did, how they'd work
10 that, how they coordinate that. And you wouldn't
11 know? You have no knowledge of that?

12 A. If something would happen like that, you know,
13 something had to come out --- if we had a lot of
14 people inby or something, we'd usually wait a weekend
15 until you know, we wasn't working or something. If we
16 had to move a miner on a rail or something, we'd make
17 sure everybody was outby. Wendell was real good about
18 that.

19 Q. Say in the last year, anything come to mind?

20 A. We haven't really moved much in the last year.
21 The only move I know of in the last year was where
22 they moved --- they called it the Route Four section
23 to the barrier section. Portal section up there, and
24 they trammed everything up that moved to the portal
25 section. But the barrier --- move to the barrier

1 section. They moved it on track. I remember Everett
2 --- they were pretty good about that. They had the
3 lights on at both portals and they were moving the
4 section.

5 Q. The barrier section?

6 A. Uh-huh (yes).

7 Q. The best you can recall it, is that on the weekend
8 or through the week or ---?

9 A. Both.

10 Q. Both.

11 MR. TUCKER:

12 All right. That's all I have for now.

13 RE-EXAMINATION

14 BY ATTORNEY BABINGTON:

15 Q. I have a couple quick follow-ups. We talked
16 before about security. The security guard would call
17 up to the office when inspectors came on mine
18 property?

19 A. Yes.

20 Q. Based on your experience, would then the office
21 call to the working sections that an inspector was on
22 the property?

23 A. I have seen them do it.

24 Q. Were you ever on a section when the office called
25 and said an inspector is on his way or we have company

1 or anything like that?

2 A. They said we have company, that's it.

3 Q. How would the crews on the section react to that
4 information?

5 A. Just depends if they were doing right or wrong.

6 Q. Okay. What if they were doing right, what would
7 they do?

8 A. It was usually done right. I'd say the last ten
9 years they pretty much mine right there.

10 Q. Were there any cases where you've been there where
11 they've been doing something they shouldn't have been
12 doing?

13 A. Maybe years ago, long years ago, when I first
14 started there. It has got better every year since
15 I've been there as far as running by the book.

16 Q. What kind of stuff? If they were doing something,
17 what would they do? You talked about putting up a
18 stopping, doing a particular thing. Can you give me
19 an example?

20 A. Maybe running a curtain. You know, years ago,
21 when I first started ---.

22 Q. You also mentioned that people dusted on the
23 evening shift?

24 A. Uh-huh (yes).

25 Q. Do you recall, is that the working sections or is

1 there a special crew who was doing dusting?

2 A. Special crew outby the beltline and stuff, the pod
3 duster like Jasey was talking about.

4 Q. Do you recall who was on that crew?

5 A. I know they fired a guy over it. They caught him
6 sleeping. He wasn't dusting. I forget his name.
7 They had two guys that done that all the time. I
8 can't remember names.

9 Q. And that was on the evening shift?

10 A. Evening shift.

11 Q. Was there another crew on the hoot owl?

12 A. I think so. They done a lot of dusting.

13 Q. Was there one rock dust crew --- with the evening
14 shift, was there one rock dust crew for that entire
15 shift for the entire mine?

16 A. You mean for evening shift, like for the entire
17 mine?

18 Q. Correct.

19 A. They had certain areas they made every day, you
20 know, doing dusting, you know.

21 Q. Would there be certain areas --- there wasn't like
22 a rock dusting crew for the south side and then a rock
23 dusting crew for the north side?

24 A. No.

25 Q. So these two guys would be assigned areas, and it

1 could be anywhere?

2 A. Right. It could be anywhere, yes.

3 Q. And is that same true for the hoot owl shift?

4 A. I would say. I'm not sure.

5 Q. You worked the evening shift; right?

6 A. Day shift.

7 Q. Day shift. Okay. Sorry. Thank you.

8 RE-EXAMINATION

9 BY MR. MAGGARD:

10 Q. You was talking about the forklift not being
11 allowed in the return. Have you ever had to remove
12 the forklift out of the return or have somebody else
13 move one out of the return?

14 A. I'm sure I have at some time, Jasey.

15 Q. Has that been in the last year or ---?

16 A. I'm trying to remember.

17 Q. It's two years now?

18 A. I can't say for sure, but I'm sure it's happened
19 before, you know.

20 Q. You was talking about moving equipment to the
21 barrier section.

22 A. Right.

23 Q. When you moved the equipment to the barrier
24 section, was there --- what part of that did you play?

25 A. None. That was Doughnut. David Taraczkozy. I

1 had nothing to do with it.

2 Q. Did they have any kind of issues with the
3 equipment up there when they first started, as you
4 recall?

5 A. No. I was telling --- they had an issue one --- I
6 don't know if it was a Saturday or a Sunday I was
7 working. I was in the office at Ellis and they called
8 me and --- Gary May called me and he put his
9 electrician on the phone. They said they had trouble
10 with a methane monitor, and he asked me how to bypass
11 the methane monitor. I told him, I said, I can't
12 remember for sure how you do it. We don't have to
13 make no practice of doing it. I said, what's it
14 doing? He said, it's showing F4. I said, I've got a
15 sensor in my dinner bucket. I said, I'm going to 22,
16 and I'll meet you at Ellis Switch. I made it up
17 there. Him and his electrician was with me. I gave
18 him the sensor. They went back to the barrier
19 section, and I went to the cleanup section. That's
20 the last I heard of that. I don't know what they
21 found that day, whether they got it fixed or what.

22 Q. What about any other sections? Have you had any
23 problems on methane monitors in any of the other
24 sections or ever heard anybody ever asking to bypass
25 one?

1 A. We just didn't --- there was no reason to bypass.
2 We had everything fixed.

3 Q. Have you ever --- I'm going to switch gears a
4 little bit here. Have you ever had to assist in
5 ventilation changes at the mine, fix stoppings, take
6 stoppings out or --- here recently, you know, prior to
7 the accident?

8 A. No. After the accident they were changing some
9 areas. They sent us in there to help them do that.
10 Prior to that, I never did that.

11 Q. As far as the --- and we talked a lot about rock
12 dusting, but as you know about it, when they rock
13 dusted outby the sections, you know, down the North
14 Glory Mains, the Old North Glory Mains, all that, did
15 they primarily dust the belts or did they sometimes do
16 other --- you know, dust the intakes or was it
17 primarily the belts they dusted?

18 A. The most I've ever seen dusted were the belts, you
19 know, because I ride up through there and the belts of
20 the track ---. What they done in other entries, you
21 know --- I went over and checked some pumps and stuff,
22 you know, and I never seen nothing black, you know,
23 or ---.

24 Q. What about the trickle dusters? Do you recall how
25 many trickle dusters you had?

1 A. A bunch of trickle dusters. That is what Everett
2 Hager was big on. He got on them fire bosses. He
3 wanted trickle dusters running all the time.

4 Q. And how big an area would the trickle duster
5 affect?

6 A. I really don't know about that. I've wondered
7 about that myself, you know. I guess it depends on
8 how much air you've got going down the belt.

9 Q. And do you recall the locations of trickle
10 dusters? Did you have them on most of the belts going
11 toward Ellis Switch or how was that?

12 A. Most of the ones I ever had that I seen.

13 Q. And how often would they run the trickle dusters?

14 A. They would run all the time the belt was running.
15 He wanted trickle dusters running.

16 Q. And do you recall what direction airflow went on
17 Headgate 22 belt? Did it go inby or outby?

18 A. I can't recall.

19 Q. What about any of the other belts? Do you have
20 any ideas what direction the airflow was going?

21 A. Probably inby. That Bandytown Fan that we put in,
22 everything wanted to go inby, toward that fan.

23 RE-EXAMINATION

24 BY MR. CRIPPS:

25 Q. The continuous miners, were they equipped with a

1 methane monitor bypass?

2 A. (Indicates yes).

3 Q. Was that a yes?

4 A. Yes. I'm sorry.

5 Q. Explain to me what that is.

6 A. The way I understand it, it's just something in
7 the readout itself. It's got a --- I guess it's got a
8 tube in the panel, the electrical panel itself, and
9 you can operate two functions on a remote box to
10 bypass the methane monitor. The cutters or nothing
11 won't run, but it will let the pump motor run to start
12 to back the miner up.

13 Q. Will the miner tram in both directions?

14 A. I'm not sure.

15 Q. Okay. But it's a --- you perform some functions
16 on the radio remote control?

17 A. Yes.

18 Q. And then that allows the machine to be operated
19 with the methane monitor malfunctioning?

20 A. It will allow it to back up. It won't let the
21 cutters or nothing run.

22 Q. Okay. Will that operate regardless of what the
23 malfunction is with the methane monitor?

24 A. I don't know.

25 Q. Okay. So you don't know if there is a malfunction

1 on the methane monitor that would not allow this
2 bypass of the monitor?

3 A. I don't know that for sure.

4 Q. Okay. But if the continuous monitor is cutting
5 and the sensor is bad on a methane monitor, with this
6 methane monitor bypass, the machine should be able to
7 get out of the cut without jumpering out the methane
8 monitor?

9 A. Should be able to if you know how to do it. I
10 have a sticker I just keep in my hat that tells you
11 how to do it. They get wore off.

12 Q. Were both the miners on Headgate 22 equipped with
13 this ---?

14 A. Every miner we had there, they was supposed to be
15 --- see, we got the first lightweight remote there at
16 that mine. I was the first one to have one. I know
17 for a while there we got some readouts that didn't
18 have the methane monitor bypass in it for a year or
19 two. But I think after 2003 or something, they said
20 they all had them in. Every one you got automatically
21 had that.

22 Q. So the miners on Headgate 22 and Tailgate 22 had
23 that feature?

24 A. Should have, yeah.

25 Q. To your knowledge, they did have it?

1 A. Yeah.

2 Q. I forgot what I was going to ask you. One thing I
3 wanted to talk about, it's been a little over 13
4 months, I guess, since the explosion, and this is your
5 first interview you've had with MSHA; is that correct?

6 A. That's correct.

7 Q. Had you been requested prior to today to be
8 interviewed by MSHA?

9 A. Yes.

10 Q. Okay. What was the reason you didn't come in?

11 ATTORNEY FRENCH:

12 Based upon attorney advice.

13 MR. CRIPPS:

14 Okay.

15 ATTORNEY FRENCH:

16 We'll leave it at that.

17 MR. CRIPPS:

18 Okay.

19 BY MR. CRIPPS:

20 Q. Have you ever been --- in discussions with upper
21 management that you work for, is there anything ---
22 any management person that advised you or indicated to
23 you that you shouldn't talk to MSHA?

24 A. That I shouldn't talk to MSHA?

25 Q. Should not talk to MSHA or be interviewed?

1 A. No.

2 RE-EXAMINATION

3 BY MR. MAGGARD:

4 Q. You said that you didn't detect any methane on
5 Headgate 22, not much to speak of, like .3 or .4
6 maybe, is that what you said?

7 A. Yeah, outby, you know. I mean, .3 or .4 is
8 probably in the face area.

9 Q. Have you ever heard of the section running into
10 the methane and they had to shut down ---

11 A. Oh, yeah.

12 Q. --- and work on ventilation?

13 A. It's happened before, yeah.

14 Q. What's the highest concentration you ever heard
15 the guys mention that you can recall?

16 A. I heard them say they had five percent up there
17 before. The four employees cutting up to that fan,
18 you know, --- that fan.

19 Q. What about on the current panel that they're on
20 right now on Headgate 22, have you heard of any
21 methane that was out of the ordinary?

22 A. They've got a couple percent up there before. You
23 know, had ventilation --- like I said, had some
24 ventilation problems before the last ---. I've heard
25 of that. I never did see it myself. But I know they

1 had some methane up there.

2 Q. What about the Glory Hole area in --- I guess you
3 guys would refer to Eight and Nine North up that way,
4 north of Headgate 22.

5 A. Yes.

6 Q. Prior to the accident, had you been up in that
7 area ---?

8 A. We had a pump we had to go over and check on the
9 track.

10 Q. Would you have been up there maybe a few weeks
11 prior to the accident or how soon?

12 A. I'm sure.

13 Q. How did that area look as far as rock dust
14 accumulations?

15 A. It didn't look bad.

16 Q. At the Glory Hole itself, how did it look?

17 A. There was some accumulated around where the belt
18 had at the Glory Hole, but it was fine and everything
19 was soaked with water up there, you know. It was so
20 wet around there and muddy. I had a pump over there
21 and I checked every week, too, a sump pump over there.

22 Q. Do you have much familiarity with the CO system at
23 the mine?

24 A. I've helped Virgil and them calibrate them before,
25 you know, a time or two when one of them was off.

1 Not much, you know.

2 Q. If you was checking like a beltline that had six
3 or seven sensors on it, how many of them would you
4 check on a monthly calibration or 31-day calibration?

5 A. I'd do a bunch of them in a day.

6 Q. Could you get them all?

7 A. Can't get them all. Too many in the mines. But
8 you'd get a bunch of them.

9 Q. Is that something also that you might need more
10 people to work on if you can't get them all?

11 A. Two people could probably do it if that's all they
12 had to do. But if you got other things coming up and
13 stuff, you know, it's easy to get behind on that.

14 Q. Had you ever had any belt fires in the mines in
15 the recent months prior to the explosion?

16 A. Not in the recent months. There's only one that I
17 ever heard of before, and that was the fire eight
18 years ago or something, a long time. They said it was
19 a belt fire. I came out of the mouth, there was smoke
20 out there and they told us to get out, and I did, and
21 they said the head drive up there was on fire or
22 something.

23 Q. Have you ever had any smoke or anything like ---?

24 A. That's the only time I knew of, right there, that
25 time.

1 Q. Okay. As far as a CO system, did you have a lot
2 of nuisance alarms on the system?

3 A. For that many, probably not that bad.

4 Q. But did you have a few?

5 A. Yeah, we had a few.

6 Q. Do you know why they were --- why you had nuisance
7 alarms? Is there a reason for it or ---?

8 A. Any time you had an alarm, Virgil and I would go
9 check it.

10 Q. What about escapeway drills, did you participate
11 in escapeway drills?

12 A. Uh-huh (yes).

13 Q. When's the last time you participated in that?

14 A. About two or three weeks ago.

15 Q. Okay. What about prior to the accident? Did you
16 do one regularly or ---?

17 A. The section men did.

18 Q. But as far as you personally ---?

19 A. I don't know when the last time was I done it.
20 The section men did it. They complained about that
21 wall up there, the longwall. It takes about
22 two-and-a-half hours to walk that, you know. Well,
23 they did do those drills.

24 Q. Had you ever heard any of the longwall employees
25 talk about any kind of air fluctuations across the

1 face from time to time, mention anything about it?

2 A. No. Nobody talked amongst the longwall, really.

3 Q. Never heard them say they've run into any methane
4 across the face?

5 A. No.

6 Q. What about --- I know we talked about this water,
7 which you had to have some air pumps on the back end
8 and in between the Bandytown and back in the longwall.
9 What caused all that water?

10 A. I'm not sure where it came in from. You know,
11 they was talking about grading the bottom the way ---.
12 They decided not to grade it and grade air pumps.
13 That's a decision management made.

14 Q. When did the water start occurring?

15 A. It was wet all the time they drove that up, you
16 know.

17 Q. I don't know if I asked you about the headgate, a
18 little bit about the Glory Hole. What about the
19 crossover, the crossover entries in between Headgate
20 22 and Tailgate 22, what do you recall about the rock
21 dusting in those areas? Was it as good as Headgate 22
22 or not as good?

23 A. I thought it was good.

24 Q. And did you ever see any float dust in the same
25 areas of the mine like that around the beltlines,

1 other entries?

2 A. I'm sure there's been times they've been there,
3 you now, where we got violations on them. Actually,
4 Everett was pretty good on that. Everett was there
5 when they done that. He was pretty good about making
6 them dust.

7 Q. Thank you.

8 RE-EXAMINATION

9 BY MR. TUCKER:

10 Q. Just a couple more.

11 A. Okay.

12 Q. I know you mentioned that a couple weeks prior
13 that to April 5 of the explosion that the air seemed
14 to pick up on the 22 Headgate, according to your
15 people talk about them.

16 A. Uh-huh (yes).

17 Q. And I know you didn't go up to the longwall much,
18 but they portalled over there, at the same place. Did
19 you hear any discussion about the air on the longwall
20 during those last couple weeks prior to the explosion?

21 A. The only thing I remember about the longwall
22 ventilation, they shut it down there for a day or two.
23 There was something about on the tail. The air didn't
24 go this way far enough or something. They had them
25 down for a couple days, the ventilation. I heard them

1 talk about that. That was the last ventilation issue
2 I heard about on the longwall. That wasn't too far
3 when it happened, I know, two or three weeks or
4 something. They got a violation for the air not going
5 the right way for a certain distance or something. I
6 didn't understand what they was talking about. I
7 didn't understand how it goes one way and then back
8 the other way or something. It was above my head.

9 Q. An air reversal?

10 A. Yes. That's what they was talking about. And
11 that was the last issue I heard about the air on the
12 longwall, you know.

13 Q. Did you have any reason to go up around the Eight,
14 Nine --- up in this part of the mines here?

15 A. Yeah, for that pump up there I checked.

16 Q. And where was that?

17 A. It was in the face of the belt entry.

18 Q. Okay. And how often did you have to go check
19 that?

20 A. Once a week.

21 Q. Okay.

22 A. Now, the week prior to this happening, I didn't
23 go. I sent a guy to check it, Persinger.

24 Q. So do you recall any methane issues up in that
25 area at any time?

1 A. No.

2 Q. Did you ever work on the communication tracking
3 system any?

4 A. No.

5 Q. Do you know who they had working on that?

6 A. Gary Kiblinger.

7 Q. Just one person?

8 A. No. He had two on it.

9 Q. He had a helper?

10 A. Yeah.

11 Q. They worked --- so basically one shift they were
12 working on that?

13 A. Yes.

14 Q. How was it working at the time of the explosion,
15 to the best of your recollection?

16 A. They was working on advancing the --- face issue.
17 Like on Headgate 22, I know they had --- in the intake
18 there, they had it right to the power center. It
19 worked good.

20 Q. Your handheld radios, is that the type you had?

21 A. Yeah. Did they work pretty good? Did you ever
22 have any dead spots?

23 A. They worked pretty good.

24 Q. Did you also still use the check-in board for
25 going in and out of the mines?

1 A. Yes.

2 MR. TUCKER

3 That's all I have for now. Thank you.

4 ATTORNEY BABINGTON:

5 We're going to take a quick break. And

6 then we'll have final follow-ups. Let's go off the

7 record.

8 SHORT BREAK TAKEN

9 ATTORNEY BABINGTON:

10 Let's go back on the record. Jasey, do

11 you have any other questions?

12 MR. MAGGARD:

13 No, I don't. I just want to say I

14 appreciate you coming in.

15 ATTORNEY BABINGTON:

16 Dean, do you have anything else?

17 MR. CRIPPS:

18 Nothing else.

19 ATTORNEY BABINGTON:

20 Bill?

21 MR. TUCKER:

22 I don't have anything. I appreciate you

23 coming in.

24 ATTORNEY BABINGTON:

25 On behalf of MSHA and the Office of

1 Mines' Health, Safety and Training, I want to thank
2 you for appearing and answering questions today. Your
3 cooperation is very important in the investigation to
4 determine the cause of the accident.

5 Again, we request that you not discuss
6 your testimony with any person aside from your
7 personal representative to preserve the integrity of
8 the investigation. After questioning other witnesses,
9 we may call you if we have any follow-up questions.
10 If at any time you have additional information
11 regarding the accident that you'd like to provide to
12 us, you know, please contact your Counsel, either MSHA
13 or the State of West Virginia.

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

18 A. I have none.

19 ATTORNEY BABINGTON:

20 Thank you, Rick. And thank you for
21 cooperating. Off the record.

22 * * * * *

23 STATEMENT UNDER OATH CONCLUDED AT 12:45 P.M.

24 * * * * *

25

1 COMMONWEALTH OF PENNSYLVANIA)
2 COUNTY OF (_____)

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CERTIFICATE

I, Leslie Blake, a Notary Public in and for
the Commonwealth of Pennsylvania, 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.

Leslie Blake

