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Transcript of the Testimony of Joseph Pavlovich

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STATEMENT UNDER OATH

OF

JOSEPH PAVLOVICH

taken pursuant to Notice by Leslie Blake, a Court Reporter and Notary Public in and for the State of Kentucky, at the Crowne Plaza Hotel, 1375 South Broadway, Lexington, Kentucky, on Tuesday, October 18, 2011, beginning at 10:07 a.m.

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A P P E A R A N C E S

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25 * Exhibit not attached

P R O C E E D I N G S

ATTORNEY BAXTER:

My name is Derek Baxter. Today is
October 18th, 2011. I'm with the Office of the
Solicitor, U.S. Department of Labor. With me are
Steve Caudill and Dean Cripps, accident investigators
with the Mine Safety and Health Administration, MSHA,
an agency of the United States Department of Labor.
There are no people present today from the State of
West Virginia Accident Investigation Team. There's
also Norman Page, the Accident Investigation Team
leader from MSHA, present.

And all members of the Mine Safety and
Health Accident Investigation Team and all members of
the State of West Virginia Accident Investigation Team
participating in the investigation of the Upper Big
Branch Mine explosion shall keep confidential all
information that is gathered from each witness who
voluntarily provides a statement until the witness
statements are officially released. MSHA and the
State of West Virginia shall keep this information
confidential so that the other ongoing enforcement
activities are not prejudiced or jeopardized by a
premature release of information. This

1 confidentiality requirement shall not preclude
2 investigation team members from sharing information
3 with each other or with other law enforcement
4 officials. The team members' participation in this
5 interview constitutes their agreement to keep this
6 information confidential.

7 Government investigators and specialists

8 have been assigned to investigate the conditions,
9 events and circumstances surrounding the fatalities
10 that occurred at the Upper Big Branch Mine South on
11 April 5th, 2010. The investigation is being conducted
12 by MSHA under Section 103 of the Federal Mine Safety
13 and Health Act and the West Virginia Office of Miners'
14 Health, Safety and Training. We appreciate your
15 assistance in this investigation. Would you please
16 swear in the witness?

17 -----

18 JOSEPH PAVLOVICH, HAVING FIRST BEEN DULY SWORN,
19 TESTIFIED AS FOLLOWS:

20 -----

21 ATTORNEY BAXTER:

22 You may have your personal attorney
23 present during the taking of this statement or another
24 personal representative, if MSHA has permitted it, and
25 may consult with your attorney or the representative

1 at any time. Your statement is completely voluntary.
2 You may refuse to answer any question, you may
3 terminate your interview at any time or request a
4 break at any time. Since this is not an adversarial
5 proceeding, formal Cross Examination will not be
6 permitted. However, your personal legal
7 representative may ask clarifying questions as
8 appropriate. Mr. Pavlovich, do you have an attorney
9 or a personal representative with you here today?

10 A. Are you, Eric?

11 ATTORNEY SILKWOOD:

12 I am.

13 A. I do have.

14 ATTORNEY BAXTER:

15 And would you please identify yourself
16 for the record?

17 ATTORNEY SILKWOOD:

18 I'm Eric Silkwood. I'm here on behalf of
19 Performance Coal Company from Guthrie & Thomas Law
20 Firm.

21 ATTORNEY BAXTER:

22 Okay. And Eric, are you representing Mr.
23 Pavlovich today?

24 ATTORNEY SILKWOOD:

25 No. I'm here on behalf of Performance.

1 ATTORNEY BAXTER:

2 Okay. And Mr. Pavlovich, do you have any
3 other attorney or personal representative with you?

4 A. No, I do not.

5 ATTORNEY BAXTER:

6 Okay. Your identity and the content of
7 this conversation will be made public at the
8 conclusion of the interview process and may be
9 included in the public report of the accident, unless
10 you request that your identity remain confidential or
11 your information would otherwise jeopardize a
12 potential criminal investigation. If you request us
13 to keep your identity confidential, we will do so to
14 the extent permitted by law. That means that if a
15 judge orders us to reveal your name or if another law
16 requires us to reveal your name or if we need to
17 reveal your name for other law enforcement purposes,
18 we may do so. Also, there may be a need to use the
19 information you provide to us or other information we
20 may ask you to provide in the future in other
21 investigations into and hearings about the explosion.
22 Do you understand?

23 A. Yes.

24 ATTORNEY BAXTER:

25 Do you have any questions?

1 A. No, I do not.

2 ATTORNEY BAXTER:

3 After the investigation is complete, MSHA
4 will issue a public report detailing the nature and
5 causes of the fatalities in the hope that greater
6 awareness about the causes of accidents can reduce
7 their occurrence in the future. Information obtained
8 through witness interviews is frequently included in
9 these reports. Since we will be interviewing other
10 individuals, we request that you not discuss your
11 testimony with any person aside from your personal
12 representative or counsel.

13 A court reporter will record your
14 interview. Please speak loudly and clearly. If you
15 do not understand a question asked, please ask us to
16 rephrase it. Please answer each question as fully as
17 you can, including any information you've learned from
18 someone else. We'd like to thank you in advance for
19 your appearance here. We appreciate your assistance
20 in this investigation. Your cooperation is critical
21 in making the nation's mines safer.

22 After we have finished asking questions,
23 you'll have an opportunity to make a statement and
24 provide us with any other information that you believe
25 to be important. If at any time after the interview

1 you recall any additional information that you believe
2 might be useful, please contact or have your
3 representative contact, as the case may be, Norman
4 Page at the phone number or e-mail address that may be
5 provided to you. Okay?

6 EXAMINATION

7 BY MR. CRIPPS:

8 Q. I'm going to start this off, Mr. Pavlovich, if you
9 don't mind. First of all, do you mind if I call you
10 Joe or would you rather be addressed as Mr. Pavlovich?

11 A. No. Joe is fine.

12 Q. Okay. And I'm Dean.

13 A. Okay.

14 Q. We was introduced earlier. I'd like to start off,
15 if you would, please, give us a description of your
16 work history and experiences.

17 A. Okay. I started out with the U.S. Bureau of Mines
18 in 1971. I worked with them a year's training in
19 Beckley and then about two years in the Wheeling field
20 office as an inspector trainee. And then I worked
21 about a year-and-a-half in Morgantown, West Virginia,
22 as an inspector. I left the agency after
23 four-and-a-half years and went to work for United
24 Pocahontas Coal Company in southern West Virginia as
25 the safety director over five mines and a surface ---

1 five underground mines and a surface mine. I worked
2 there two years, then I worked --- went to work at
3 allied Chemical Corporation, Shannon Branch Mine, in
4 Welch, West Virginia. I worked there one year as a
5 safety director. In 1978, I rehired in with MSHA ---
6 or maybe it was MESA then, I'm not sure, Bureau of
7 Mines, sometime in that stage as an inspector in
8 Birmingham, Alabama, which at that time was still
9 under District Seven.

10 In 1985 I was in the supervisory pool that was
11 started by MSHA. And in 1987 my first supervisor job
12 was in Delta, Colorado, where I was field office
13 supervisor for two years. In '89 I was promoted to
14 subdistrict manager in McAlester, Oklahoma, for four
15 years. And in 1993 I was promoted to district manager
16 in District 7, Barbourville, Kentucky. I retired the
17 last day of 2004 from MSHA. And since that time, I do
18 safety consulting work. I also work for a company
19 called Partnership for Energy and Environmental Reform
20 that primarily works in Ukraine, and I'm
21 vice-president with that company. So I travel to
22 Ukraine three or four times a year to assist with
23 safety projects in coal mining. I've done some work
24 for a company called Safety Solutions International.
25 I'm an associate with them. So I've been to Indonesia

1 three times. I've been to China with that company.
2 I've also done a lot of national work here in the
3 country with Safety Solutions at various coal
4 companies. I also have my own consulting firm and do
5 some safety consulting through that firm with local
6 mining companies. And so I continue to do safety
7 consulting work.

8 Q. Okay. The safety consulting firm that you have of
9 your own, what is that called?

10 A. Pavlovich & Associates, LLC.

11 Q. Okay. Who all is involved in Pavlovich &
12 Associates?

13 A. Myself.

14 Q. You're the only person?

15 A. Yeah.

16 Q. Do you have any engineers or any other people that
17 work for you?

18 A. No.

19 Q. Okay. Are you, yourself, a mining engineer?

20 A. No, I'm not. I have a degree in business
21 management.

22 Q. Okay. I guess the reason we're here today, we
23 want to talk about some safety audits that was
24 performed at some Massey mines, specifically at the
25 UBB, Upper Big Branch Mine. I've got a copy of an

1 audit here in front of me, and it's entitled Results
2 of Safety Audit, Safety Audit of Mine Facility for
3 Massey Energy, April 2009 to June 2009. It says it's
4 conducted by Joseph W. Pavlovich, Pavlovich &
5 Associates. Are you familiar with this?

6 A. Yes.

7 Q. Okay. Did you, in fact, prepare this document?

8 A. Yes.

9 Q. Okay.

10 A. Let me look through it.

11 Q. Oh, okay. Sure.

12 A. I'm just looking at the cover page.

13 Q. And what I'll tell you is that document is one
14 received I guess from Massey ---

15 MR. CAUDILL:

16 Yeah, Performance Coal.

17 BY MR. CRIPPS:

18 Q. --- Performance Coal. And it includes, I guess,
19 the pertinent results from the Upper Big Branch Mine,
20 and no other mines' results are included in there.

21 A. So you just have the information for Upper Big
22 Branch?

23 Q. That's correct.

24 A. That's okay.

25 ATTORNEY BAXTER:

1 And we'd like to mark that as Exhibit
2 One, Pavlovich Exhibit One.

3 (Pavlovich Exhibit One marked for
4 identification.)

5 BY MR. CRIPPS:

6 Q. When you perform these safety audits, who actually
7 hired you or contracted you to perform the audits?

8 A. I was originally contacted by Elizabeth
9 Chamberlin, who was corporate safety director for
10 Massey Energy, and asked if I would be interested in
11 performing safety audits at their various mines
12 throughout basically West Virginia, Kentucky, Virginia
13 area. I signed a contract with them to provide audit
14 results and information to Shane Harvey and primarily
15 worked with Elizabeth on scheduling audits and
16 providing results.

17 ATTORNEY BAXTER:

18 And when you say you signed a contract
19 with them, to whom are you referring?

20 A. Pardon me?

21 ATTORNEY BAXTER:

22 Who are you referring to when you say you
23 signed a contract with them?

24 A. With Massey, Massey Energy.

25 ATTORNEY BAXTER:

1 Okay.

2 BY MR. CRIPPS:

3 Q. Okay. Why did Elizabeth contact you to do these
4 audits?

5 A. I really don't know why.

6 Q. Let me clarify a little bit. I don't mean why did
7 she contact you specifically. Why did she make
8 contact --- why did Elizabeth want to have the audits
9 performed I guess is a better way to word this
10 question.

11 A. I don't know if she ever told me why she wanted
12 the audits performed. She just asked me, would you be
13 interested in doing some audits for the company at the
14 company mines, and I said, yes, I would be interested
15 in doing that. Now, as far as her specific reason for
16 wanting that, I don't know.

17 Q. Pavlovich & Associates, your company, was that
18 company in place prior to beginning these audits with
19 Massey?

20 A. Yes.

21 Q. Okay. So have you performed audits or services
22 for other mines prior to Ms. Chamberlin contacting
23 you?

24 A. I think I had done some other work for some other
25 companies through that. And I think I formed that

1 company pretty soon after I retired, so I may have
2 done some other small projects periodically, along
3 with the other things I did.

4 Q. Okay. Now, when you was contracted to do the
5 audits, what all did that contract entail as far as,
6 for example, detail doing the audits, writing reports,
7 making presentations, anything along that line?

8 A. Primarily it was performing the audits and
9 providing written feedback on the results of the
10 audit.

11 Q. What exactly is an audit? What did it entail?

12 A. I would visit a mine. Usually it would be a
13 one-day safety audit where I would show up at the mine
14 in the morning and receive my appropriate training
15 that was required by MSHA and then proceed underground
16 or to a surface mine, if it was a surface mine, and in
17 general observe conditions, violations, practices,
18 observed employees, discussed safety with employees
19 during the course of that day, similar to an
20 inspection. And then at the end of the day I did not
21 provide any written information to the mine management
22 personnel, but I would meet with mine management
23 people and discuss the findings of that day and make
24 any recommendations or anything else that was
25 appropriate. And basically the audits were to not

1 only determine things that needed attention or that
2 were in violation but also to point out good things
3 that were happening at the mine, for example, if I saw
4 extra work being done in a particular area or
5 discussed with employees about the plans and they knew
6 the requirements of the plans and things, I would
7 enter that also in my report, that there were positive
8 things and negative things.

9 Q. So you actually performed the audits yourself?

10 A. Yes.

11 Q. So you traveled either to the surface or
12 underground yourself?

13 A. Yes, I did.

14 Q. Thank you.

15 A. Now, initially --- okay. That is true, a true
16 statement, what you made there.

17 Q. Okay.

18 A. I did all those audits on my own.

19 Q. Feel free to add to the discussion if you think it
20 will help us in any way.

21 A. Okay. Prior to this explosion, I performed all
22 these audits on my own.

23 Q. Okay. In the course of your travels to the
24 various mines, what authority, if any, did you have as
25 far as when you observed conditions as far as maybe

1 taking things out of service or shutting down
2 equipment? Did you have any?

3 A. No, I never felt like I had authority to shut any
4 area down or to take equipment out of service. There
5 usually was a company person traveling with me who did
6 have that authority. So if we observed a condition
7 that probably required something to be taken out of
8 service immediately or repaired immediately, they
9 would always do that. But I personally did not tell
10 people you need to shut this down or you need to
11 withdraw these people. I didn't do that. That was
12 left up to the management person that was with me.

13 Q. Okay. Was there any instances when you was doing
14 the audit that that did, in fact, happen, I mean, that
15 the management person ---?

16 A. I'm sure there would have been. I mean, I can't
17 remember specific instances or at which mines, but at
18 times I may have seen a belt dragging in the tailpiece
19 or a tailpiece gobbled off or something where they
20 would immediately shut it down and clean it up.

21 Q. Who actually paid your company for the performance
22 of the work you did?

23 A. Massey Energy. I submitted an invoice to
24 Elizabeth Chamberlin, and Massey Energy sent me a
25 check.

1 Q. Okay. You said the contract that you had was
2 actually with Massey Energy?

3 A. Yeah.

4 Q. Who actually signed the contract from Massey?

5 A. Shane Harvey, I believe.

6 Q. Okay. Tell me about when you was going to do an
7 audit at a mine, what preparations would you make for
8 that audit?

9 A. Usually I would make a hotel reservation somewhere
10 as close to the mine as I could get.

11 Q. Okay. Let me be a little more specific. I'm not
12 a lawyer like some of these guys in here; I'm a coal
13 miner.

14 A. Me, too, so ---.

15 Q. Preparation for this inspection, I mean as far as
16 perhaps reviewing plans for the mine before going to
17 the mine, that type of preparation.

18 A. No. I don't remember ever reviewing a plan before
19 going to a mine. I've probably visited 40 to 60 of
20 the mines that they had, and I mean, I would have been
21 overwhelmed with them sending me plans, if it was
22 every plan for every mine. So what I would do is just
23 make arrangements to go to the mine. I would usually
24 either meet a safety person somewhere in an office who
25 would take me to a mine, or if I knew where the mine

1 was at, I might drive directly to the mine and meet
2 the management people there. I would discuss some of
3 the plan issues that I thought were pertinent at that
4 time as far as their requirements and roof bolting
5 requirements, in general, without a specific deep
6 review of the plan, and then get my hazard training
7 and proceed underground.

8 Q. Okay. But during your audits, you was actually
9 reviewing ventilation and roof control at each of the
10 mines?

11 A. I would always ask when I got onto a section what
12 are your requirements for your face ventilation,
13 whether you require line curtain on the face, whether
14 you required a quantity where you're mining, whether
15 you're bolting in idle places because they were all
16 somewhat different, and what your requirement in the
17 last open crosscut was, you know, whether they're
18 mining super sections, a single section, a walking
19 section where you had two miners but not operating at
20 the same time, you know, those type of pertinent
21 issues that you would normally find, how many shuttle
22 cars they were operating, what their bolting
23 requirements were as far as their length of bolts,
24 were they bolting intersections with specific length
25 bolts, like cable bolts, whether additional support

1 was required, which spacing was on roof support. So
2 primarily I would try to find that out when I got on
3 the section, keep talking to the foreman or the
4 miners. And then that also helped me know what they
5 knew about their plan and did they understand the
6 plan. So that was probably just a good general way of
7 acquiring that information and also determining what
8 do the employees here know.

9 Q. Okay. So then your observations was --- I guess
10 the way I'm understanding, if they was actually
11 complying with their plans?

12 A. Yeah, in those areas as far as ventilation. And
13 then they had also some company policies that exceeded
14 the plan. For example, early on they created a
15 company policy where they required 20,000 cubic feet
16 of air in every last open crosscut at every mine,
17 regardless of what the plan said. So some plans said
18 9,000, some said 12,000, some said 15,000, but the
19 Massey policy at that time was 20,000 in every last
20 open crosscut. So if I --- I didn't carry an
21 anemometer with me, but someone with me would have one
22 or the foreman would have one, and I'd go and say take
23 an air reading here. And if it was less than 20,000,
24 I would say, you know, that's an issue. Even though
25 it exceeded what the ventilation plan required, it

1 didn't meet or exceed the Massey requirement. So I
2 also tried to learn what requirements they had in
3 their safety program that were in excess of MSHA
4 requirements.

5 Q. Okay. Would you ever look at the plans of the
6 mines just to determine if the plan itself was
7 adequate or sufficient for the conditions ---?

8 A. No, I never evaluated to see if it was adequate or
9 sufficient, but I would look at the plans. Most of
10 the times they'd be on the bulletin board, and I'd
11 just take one off and glance through some of the
12 pages. If it was a mine that I thought may have been
13 gassy, I may have looked more at the ventilation
14 requirements or, you know, where their fans were,
15 where their bleeders were, those type things. I'd
16 always look at the map and determine, you know, where
17 sealed areas were, what strength seals you had. Of
18 course, after Sago, the strength of seals became an
19 issue, and some of that. So I'd ask them questions
20 about those type of things.

21 Q. Okay. Using Upper Big Branch, for example, that's
22 a mine that there's several seams mined above it. Did
23 you ever look at like, say, overlay maps of other
24 mines above there just to ---?

25 A. I may have looked at some of them, but I don't

1 remember if I --- I don't remember looking at them in
2 Upper Big Branch.

3 Q. Okay. The mines that you traveled to to do the
4 audits, who actually selected the mines for auditing?

5 A. Well, I don't know who actually selected them, but
6 usually I would get the mines that they wanted to be
7 audited from Elizabeth Chamberlin. I would call her
8 or she would call me and she'd tell me which mines
9 they wanted to go to. Sometime when I would show up
10 at a particular unit area, where maybe they had six or
11 seven mines, they may ask me, instead of going to this
12 mine, would you go to that mine or would you spend
13 another day and go to a particular mine. So some of
14 that is contingent upon the operating management at
15 that site. But usually I was directed to those sites
16 by Elizabeth prior to doing the audit.

17 Q. Okay. The mine itself where the audit was going
18 to be performed, ---

19 A. Uh-huh (yes).

20 Q. --- was they aware that you was coming to do the
21 audit?

22 A. I would say in most instances they were.

23 Q. Okay. So they would know when you was --- the
24 days you were going to be at the mine?

25 A. They may know the exact day I was going to be

1 there --- I was going to be in that area maybe for a
2 week, and I'd go to four mines that week. I don't
3 know exactly which one which day, but I didn't sneak
4 into the mines, if that's what you're asking.

5 Q. Okay. At the mine site itself, how did you
6 determine where to go in the mine? Did mine
7 management take you to a certain place or did you just
8 show up?

9 A. No. Usually I had to go to the map, and depending
10 on the number of working sections they had, I
11 would --- if they had one or two sections, I'd usually
12 go to the one section or both sections. If they had
13 more than two, I'd pick out two, somewhere where you
14 can get to manageable in the day. And then depending
15 on traffic and travel time, and I wouldn't pick two
16 that are, you know, ten miles here and ten miles
17 there. I'd try to get two that were close together,
18 where you could get into them and make it manageable
19 and be able to spend a reasonable amount of time on
20 the section. I would also maybe stop and if there
21 were seals along the way, I might stop and go into
22 where the seals were and examine those seals. I might
23 walk several belts or at least stop at belt drives and
24 examine belt drives on the way in or the way out. And
25 depending on what you saw there, you might walk part

1 of the belt. If there were other areas I thought I
2 needed to stop, like maybe just go through a door and
3 check a return, I might do that. So I would pretty
4 much make the determination. I don't remember anybody
5 specifically saying we want you to go here or you have
6 to go to this section or whatever. I mean, it's
7 pretty much where I wanted to go when I got to the
8 mine and I thought I'd try to give a big cross-section
9 overlook of the mine based on what they had.

10 Q. So you could travel anywhere in the mine that you
11 wanted without management interfering you?

12 A. Yes. I've never had anybody tell me, you know,
13 you can't go into an area. If I said I'd like to go
14 look at those seals, that's fine. Or if I wanted to
15 go to a particular section, that was okay.

16 Q. Do you feel for the most part that you had a true
17 representation of the mines that you traveled to?

18 A. I felt like I got to see a good representative
19 part of the mine, yes, for what you can do in a day.

20 Q. Right.

21 A. I mean, we're limited, you know, but ---.

22 Q. Was there --- I mean, was that the way the
23 contractor set it up one day at each mine?

24 A. No, I don't think that was in the contract. It
25 was just --- in fact, there was some mines that I did

1 spend maybe three days at or that I went back to a
2 couple times. Upper Big Branch, I think I went to it
3 three times over the course of two years maybe. There
4 was some other mines that had some problems, and
5 they'd ask me to maybe go and spend three days there.
6 So I'd spend more time at those particular mines. It
7 was basically just I guess what management and safety
8 decided they needed some help on.

9 Q. So it may have been that a big four-unit mine like
10 UBB or a small one-unit mine, you still, for the most
11 part, spent one day ---?

12 A. Usually, yes. Yes. Even the big surface
13 operations, I'd be there usually a day.

14 ATTORNEY BAXTER:

15 And Joe, when you say management and
16 safety, can you clarify who you're talking about?

17 A. I would think that would be like corporate
18 management and safety, not individual mine management,
19 although I did have some safety and mine
20 representatives ask me doing a particular visit that,
21 you know, on a previous visit I had found some
22 problems at a particular mine, and they said we've
23 been working there and we want you to go back and look
24 at that mine again for us. That was the local people
25 that asked that. And you know, I never had any

1 problem with that. And no one at the company ever
2 seemed to have a problem if someone asked me to go to
3 a place to help out and try and observe what was
4 there. That was fine.

5 BY MR. CRIPPS:

6 Q. The audits that you performed at Upper Big Branch
7 Mine, I think one was in April of '09, did you, in
8 fact, go to Upper Big Branch and go underground there
9 yourself?

10 A. If I can look at the audit ---.

11 MR. CRIPPS:

12 You got a copy?

13 MR. CAUDILL:

14 Yeah, I got a copy.

15 ATTORNEY BAXTER:

16 We're handing you again what we've marked
17 as Exhibit One.

18 WITNESS REVIEWS DOCUMENT

19 A. Okay. I did a lot on that one, didn't I? Okay.
20 Now, what was your question again?

21 BY MR. CRIPPS:

22 Q. The report of the audit on April the 29th, 2009,
23 did you, in fact, travel underground at Upper Big
24 Branch that day?

25 A. Yes.

1 Q. We also have an audit that was conducted on
2 October the 29th of 2009.

3 MR. CAUDILL:

4 Have you got that one, Derek?

5 A. 2009?

6 BY MR. CRIPPS:

7 Q. Yes.

8 A. Yes. Okay.

9 Q. Did you go underground that day also and perform
10 that audit?

11 ATTORNEY BAXTER:

12 And we'll mark this as Exhibit Two.

13 (Pavlovich Exhibit Two marked for
14 identification.)

15 A. Yes. Every audit that I did at Upper Big Branch,
16 I did go underground.

17 BY MR. CRIPPS:

18 Q. Okay. How did you schedule to go to Upper Big
19 Branch on those dates? Do you recall why you observed
20 that mine on those particular days?

21 A. No. I mean, I just was asked to go to Upper Big
22 Branch.

23 Q. Okay. And that's by whom?

24 A. Elizabeth Chamberlin.

25 Q. Did the management at the mine at Upper Big Branch

1 know you were coming on those days?

2 A. Oh, I don't know. I assume they would have been
3 told I was coming, but I --- I mean, I didn't ask
4 anybody when I got to the mine did anybody tell you I
5 was coming here. I mean, they --- in fact, one
6 morning I got there I was supposed to meet Berman
7 Cornett, and I don't remember which one, they said, he
8 had already gone underground. So he didn't know I was
9 coming.

10 Q. Okay.

11 A. So you know, I don't really know. I knew where
12 Upper Big Branch was, and so I could get there myself
13 without going through any other office and I could
14 find the mine after I had been through it the first
15 time. So when they asked me to go --- if Elizabeth or
16 someone else called the mine, I wouldn't know.

17 Q. Okay. If you look back at the front page of that
18 sheet right there ---.

19 A. This one?

20 Q. Yes.

21 ATTORNEY BAXTER:

22 Exhibit One.

23 BY MR. CRIPPS:

24 Q. Exhibit One.

25 A. Okay.

1 Q. This says the date is April 2009 through June of
2 2009. So what do those dates mean?

3 A. Well, if you look on the second page there are it
4 looks like 27 sites that were audited. And I'm
5 assuming, unless I made a mistake on my dates, that
6 these 27 sites were audited during the months of April
7 through June.

8 Q. Okay.

9 A. Okay. I'm assuming that without looking at all of
10 them. And all of them aren't attached, but I think
11 each one that is in here --- there's 15 underground
12 mines, seven surface mines, four prep plants, five
13 highwall miners at 20 different resource groups. And
14 my introduction specifies that this audit was
15 conducted at selected mines and plants for Massey
16 Energy during the timeframe of April through June '09.

17 Q. Okay. And then this report is your report of the
18 results of all of these audits?

19 A. Yes. All of those audits were attached to this
20 report.

21 Q. Okay. I'm curious, as you went and performed
22 these audits over the course of these several months,
23 did you bring to the attention of management or
24 Elizabeth Chamberlin or Shane Harvey any concerns or
25 results that you may have witnessed during these

1 audits or did you wait and present them to them in
2 this report?

3 A. I think what I did with it --- this was pretty
4 much the first round of anything that I did. And what
5 I did was, at the end of each day, I would discuss
6 with mine management, personally, as we're sitting ---
7 like we're sitting here today, that here are the
8 things that I've identified, whether they're good
9 things, bad things, things needing attention,
10 recommendations, whatever. And then I would send to
11 Elizabeth and Shane Harvey an individual copy of that
12 report of that mine audit. Now, it may be a few days
13 before I got them all out, but I would notify them in
14 writing, not the mine --- I didn't give the mine
15 anything in writing. It was all through their
16 corporate office.

17 Q. So the report that you gave to Elizabeth and Shane
18 was actually a report in writing, ---

19 A. Yes.

20 Q. --- observing all the results?

21 A. Yes.

22 Q. And that report, you say, generally comes within a
23 few days of the actual visit to the mine?

24 A. I would try to make it fairly reasonable so that
25 they could identify anything that --- concerns that

1 were made, yes.

2 Q. So it's not like ---?

3 A. I didn't wait like five months and send them
4 something because what good does it do to get it five
5 months later?

6 Q. Right. Exactly. So anything in this report
7 should not have come as a surprise to either the
8 management at the specific mine ---?

9 A. Oh, the mine manager would have known everything
10 that I identified in here.

11 Q. And they would have known it the day of the audit?

12 A. Yes. I mean, I didn't --- I never would --- if it
13 was something I didn't discuss with them verbally, I
14 wouldn't put it in the report. But I made sure I went
15 through all my notes with them that afternoon or
16 whatever, you know, whenever I came out of the mine or
17 whenever we got off the pit and we'd sit down with
18 management and then identify, here's things that ---
19 here's some shortcomings I see, here's some problems I
20 see, here's some recommendations I make, here's some
21 good things that I've seen, and discuss that with them
22 right there. And then usually that would be --- I'd
23 say most times it was the mine superintendent. If
24 there was a safety person with me, they would also be
25 involved. Some days there was no safety person, just

1 the mine management person that took me in, like a
2 superintendent or general mine foreman, but usually a
3 superintendent or at least general mine foreman level,
4 someone in that status.

5 Q. Was that daily closeout, what I referred to, was
6 that specified in the contract? Was that called for
7 or ---?

8 A. I don't think it was called for in the contract,
9 but it was something I felt that it was appropriate to
10 do. I didn't want to go to a mine and leave and not
11 tell them anything. I mean, you need to identify if
12 there are things that they need to look at or changes
13 and also tell them things that I thought were very
14 good. I mean, if I saw areas that were very clean or
15 whatever, I would identify that they were doing a good
16 job in those areas.

17 Q. Okay. The notes that you took while you was doing
18 the audits and the reports that you sent to Elizabeth,
19 do you still have copies of them or do you know where
20 they are located?

21 A. I'll put it this way. There's not any organized
22 set of notes anywhere that I could lay a hand on and
23 say these are the notes for this or this particular
24 mine. I mean, there are some notebooks scattered
25 around that probably have some notes for particular

1 things that I used to do that. Whether I kept them
2 all or not, I didn't ---. But there's nothing that
3 would be in those notes that wouldn't be in the
4 report. I mean, I didn't write all kind of stuff in
5 the notes and then not put it in the report. Whatever
6 I had in my notes is what I included here.

7 ATTORNEY BAXTER:

8 And Joe, can we request that you look for
9 the notes and send them to Norman Page if you can find
10 them?

11 A. Okay.

12 ATTORNEY BAXTER:

13 Thank you.

14 BY MR. CRIPPS:

15 Q. I'm trying to see how I'm going to say this. I
16 mean, do you feel that you explain the daily closeout,
17 I'll call it, where you explain deficiencies or good
18 things that you've seen, it was a part of the
19 contract? I mean, did you feel that, I mean, just as
20 a safety professional, a mine --- very experienced
21 mine safety person, was that your responsibility to
22 make those conditions known?

23 A. I felt it would be, yes.

24 Q. I mean, ---.

25 A. I mean, it does me no good to perform a safety

1 audit or any kind of an audit without providing
2 feedback as soon as possible to the people that are at
3 that site. So yeah, I felt it was very important that
4 at the end of the day that I discuss with the senior
5 management at that site anything that I had seen that
6 day that was pertinent to the audit.

7 Q. Was there any process or anything set up by which
8 you could actually follow up on the conditions that
9 you had seen?

10 A. No. I don't recall ever going back to see if
11 anything had been corrected, okay. It's not like an
12 MSHA guy, okay. You always got to go back and make
13 sure. I didn't --- basically, my responsibility in
14 this audit was to observe, to discuss, to accumulate
15 information and then to present that information to
16 management, whether it be verbally or in writing, and
17 any corrective actions were their responsibility, as
18 they would be for anybody, but it was not like I went
19 back to check, okay.

20 Q. Okay.

21 MR. CAUDILL:

22 April 29, 2009 you went to the Number Two
23 Section; is that correct. Those two reports said ---.

24 A. I think it says Four, but ---.

25 MR. CAUDILL:

1 Four Section. And in October 29, 2009

2 you also went back to Four Section?

3 A. I could have. Okay. That says Number Four

4 Section also.

5 MR. CAUDILL:

6 During your close-out on the April 29,

7 you said anything that you had in your close-out you

8 would mention in your April 29 audit. Did you check

9 to see if the conditions that you mentioned in the

10 April 29 audit had been corrected?

11 A. Oh, no. I didn't go back and look at those

12 specific things.

13 MR. CAUDILL:

14 But you were looking at the same area?

15 A. Primarily the areas I looked at were roof control,

16 ventilation, coal accumulations and rock dusting, in

17 general, electrical --- and I'm not talking --- I

18 needed to carry a feeler cage with me, so I didn't

19 check permissibility, but I look at the power center,

20 you know, make sure it was according to what Massey

21 standards were as far as being well lit, MSHA

22 standards as far as tagging, protection of cables,

23 those sort of things, the general electrical stuff,

24 stuff un-insulated as well. And I would often look at

25 firefighting equipment and got to also looking at the

1 areas that were required under the MINER Act with
2 communication systems and refuge chambers and those
3 type things, emergency stuff that, you know, became an
4 important thing. But generally, if I had found a
5 dirty belt on the Number Four Section that day, I
6 would have specifically went back and looked to see is
7 that belt still dirty or ---.

8 MR. CAUDILL:

9 If they were taking action.

10 A. Well, you know, that was how many months apart.
11 It's like four --- April to October, I mean, there's a
12 lot --- they could have cleaned that belt up a hundred
13 times and still --- I mean, you know, that didn't mean
14 it was the same condition I saw originally. So no, I
15 just did not go back to look and see if things that I
16 identified the first time were correct. Okay. That
17 was not anything specific to doing an audit.

18 MR. CAUDILL:

19 I have one more question and then I'll
20 give it back to you. You stated that Elizabeth
21 Chamberlin, ---

22 A. Uh-huh (yes).

23 MR. CAUDILL:

24 --- is that correct, ---

25 A. Uh-huh (yes).

1 MR. CAUDILL:

2 --- gave you the list of mines that she
3 wanted you to check.

4 A. Okay.

5 MR. CAUDILL:

6 Did she instruct you to provide special
7 attention to any particular mines, ones that they were
8 having trouble with?

9 A. I think originally some of the very first work
10 that I did for them was as a result of particular
11 mines receiving a pattern of violation notice, and so
12 Elizabeth asked me to go to those particular sites.

13 MR. CAUDILL:

14 Now, when you say those, could you ---
15 let me ask you this.

16 A. Okay.

17 MR. CAUDILL:

18 Was UBB included in that list?

19 A. The ones I remember right off going to first would
20 have been Chester Prep Plant and the Tiller Mine,
21 Tiller No. 1 in Virginia.

22 MR. CAUDILL:

23 Yes.

24 A. I think I also went to one of the Sidney mines,
25 but that may have been a little bit later. I don't

1 remember going to Upper Big Branch because of a
2 pattern issue.

3 ATTORNEY BAXTER:

4 Do you remember going there because it
5 was a problem mine for any other reason?

6 A. You know, they may have asked me to go one of
7 these other times because of the large number of
8 violations they were getting. And I'm not real sure
9 about that, but I remember on my second visit I think
10 that Berman Cornett, who was the safety guy at
11 that --- the first time I met him he was not the
12 safety person for Upper Big Branch. He was over the
13 unit that included Upper Big Branch. But when I went
14 back the second time he had been assigned to strictly
15 work at Upper Big Branch, along with another safety
16 person whose name I forget. And I mean, I don't know
17 exactly why, but I think maybe this second visit may
18 have been because of a large number of violations.
19 Well, in fact, it says the very --- Upper Big Branch
20 has experienced a large number of violations,
21 including many (d) Orders. So obviously that's why I
22 went back. Thanks. You should have told me that.

23 MR. CAUDILL:

24 I needed you to say it.

25 A. Is that the end of your questions, Steve?

1 MR. CAUDILL:

2 Yeah.

3 A. Okay.

4 MR. CAUDILL:

5 For now.

6 BY MR. CRIPPS:

7 Q. I want to get back to just your audits in general.

8 A. Okay.

9 Q. I know in your many years of experience with MSHA
10 you're familiar with audits being performed. With
11 MSHA, whenever there's audits and there's deficiencies
12 found, there's generally corrective action that's
13 taken. In the course of the audits you do for Massey,
14 are you aware of any corrective action or any means
15 that was set up to see that corrective action was
16 taken and to follow up on the deficiencies that you
17 found and reported?

18 A. I think that the 20,000 requirement in the last
19 open crosscut was somewhat because of my audits
20 because I think some of them I had found low air
21 quantity. So I think that's when Massey top
22 management said, we're going to set a policy that's
23 standard across the board, and that's what everybody
24 has to have. And that may have been a result. Now,
25 that was a corporate corrective action and then I

1 would say, okay, they're dealing with that issue. As
2 far as did I know that any of these things identified
3 in the audit were corrected, no, I do not. I never
4 received a report back from Massey saying we corrected
5 these things. I don't know how that was accomplished.

6 Q. Okay. In your discussions with Massey, when you
7 was discussing the contract part of the audits, did
8 that discussion come up at all about how they would
9 correct the findings of your audit?

10 A. No.

11 Q. Okay. I mean, I guess the question I have is if
12 there's really not a means set up to address the
13 findings of the audit, in your opinion, was Massey
14 really serious about taking care of the problems that
15 they found?

16 A. I don't think the means was set up with me.
17 You're correct. I mean, I think that responsibility
18 of corrective action came from the corporate level to
19 the president of that unit, to the mine
20 superintendent. And I would assume there was some
21 written feedback of corrective actions that were made.

22 Q. But you ---?

23 A. I didn't get those, no.

24 Q. Okay. So you were not involved in ---

25 A. No.

1 Q. --- in the response to the audits?

2 A. No.

3 Q. Okay.

4 A. And the only way I would have been is things that
5 they would have corrected while I was there, you know,
6 as I saw something, okay, we'll fix it right now. A
7 lot of times they did that. So at times I may even
8 write in there that, you know, the condition was
9 corrected immediately but probably not always. But
10 no, I was not involved in receiving any feedback or
11 anything about corrective actions, nor did I ever go
12 back specifically to check did you correct this.

13 Q. Was that frustrating at all to you, knowing that
14 there is possible conditions in the mine you observed
15 and not knowing that they were being corrected?

16 A. I didn't have my MSHA hat on, so ---.

17 Q. I understand. When you wore one as long as you
18 did, sometimes those things are hard to get --- hard
19 to take that hat off.

20 A. They are. But I felt like --- that they probably
21 had a program in place to respond to those audits. I
22 do know that there were even some mine superintendents
23 that were terminated as a result of an audit I did. I
24 didn't feel good about that, but you know, what
25 happens, happens. So there was certainly people

1 looking at them and paying attention to them or that
2 would have never happened.

3 OFF RECORD DISCUSSION

4 BY MR. CRIPPS:

5 Q. Any time you need a break, speak up if you need
6 one.

7 ATTORNEY SILKWOOD:

8 Can we take one real quick?

9 MR. CRIPPS:

10 Do what?

11 ATTORNEY SILKWOOD:

12 Can we take one real quick?

13 MR. CRIPPS:

14 Oh, you need ---? No, you can't take a
15 break.

16 SHORT BREAK TAKEN

17 ATTORNEY BAXTER:

18 Okay. Let's go on the record.

19 BY MR. CRIPPS:

20 Q. Joe, if you'll bear with me, I've got a couple
21 more questions, then I'm going to turn you over to
22 Steve. The audits that you performed, once they were
23 completed and you wrote your report, which we looked
24 at here this morning, to whom was that report given or
25 presented to?

1 A. I would transmit those through e-mail to Elizabeth
2 Chamberlin.

3 Q. Did you send them yourself to anyone else?

4 A. No.

5 Q. Do you know if anyone else received copies of your
6 reports?

7 A. Not really, no.

8 Q. Did you ever present your reports before Massey's
9 Board of Directors?

10 A. I have, but not these reports.

11 Q. Which reports were they?

12 A. After Upper Big Branch, I'm not sure exactly how
13 long after, Massey's Board of Directors basically
14 extended my original contract to provide safety audits
15 to the Board. And at that time I acquired three more
16 gentlemen who were safety professionals for many years
17 in the industry to assist me in performing what we
18 call Board of Directors audits. And those audits,
19 again, were transmitted to Elizabeth Chamberlin. And
20 prior to a board meeting, I would complete an
21 executive summary of the audits that were done during
22 that --- usually a quarter, and then we would be asked
23 to participate at the board meeting to discuss --- not
24 the whole lot of us, but some issues that they may
25 have. And I attended one of those meetings and the

1 other gentleman attended a second meeting because I
2 was out of the country. And to my knowledge, that was
3 the only two that we ever attended.

4 Q. Okay. I think you used the words you presented
5 safety audits to the board. What exactly do you mean
6 by that?

7 A. No. What I did was provided safety audits to
8 Elizabeth. And apparently, those went to the board
9 because some of the board members told me at the
10 meeting I went to, that we read your audits or we read
11 your summary, I guess it would have been.

12 Q. So these audits were in addition to the ones you
13 had performed previously?

14 A. Yes.

15 Q. And so these audits were actually underground
16 visits to mines?

17 A. Yes.

18 Q. Was Upper Big Branch one of those mines?

19 A. Oh, no. You guys were doing an investigation.
20 This was after the explosion.

21 Q. Okay. Who were the three individuals who joined
22 your firm to assist in these audits?

23 A. Ken Dealey (phonetic), Tommy Joe Stevens
24 (phonetic) and Jerry Collins (phonetic).

25 Q. Okay. And are you still performing these safety

1 audits?

2 A. No. That ended when Alpha bought Massey.

3 Q. Okay. Did you ever appear before Massey's board
4 and present findings of audits at UBB?

5 A. No.

6 Q. Do you remember the date that you actually was in
7 the meeting with the board?

8 A. I don't remember the date. It probably would have
9 been sometime around March of this year maybe.

10 Q. March of 2011?

11 a. I think so.

12 Q. Okay.

13 A. Sometime in that range, yeah.

14 Q. Okay. Do you recall who all was present in that
15 meeting?

16 A. There were about 40 people in the ---. I
17 mean ---.

18 Q. Massey's Board of Directors?

19 A. They identified themselves as members of the
20 Board, along with a lot of other, I guess, Massey
21 management.

22 Q. Okay. Was Elizabeth there?

23 A. Yes.

24 Q. Okay. How about Mr. Blankenship?

25 A. Oh, no. He was, I think, already --- had already

1 left the country, I believe.

2 ATTORNEY SILKWOOD:

3 He can answer what he wants. I'm not his
4 attorney, but we kind of had an agreement earlier that
5 these would be specific to UBB. So I'm not sure --- I
6 think we could probably move on.

7 MR. CRIPPS:

8 Okay. All right.

9 BY MR. CRIPPS:

10 Q. I read reports about a meeting of the Board of
11 Directors of Massey that occurred about February 2010.

12 A. Okay.

13 Q. Was you in that meeting?

14 A. Oh, no.

15 Q. Okay. I'm going to read you something from an
16 article actually I found online.

17 A. Okay.

18 Q. And it's someone addressing the Board. And it's
19 discussing audits which you was contracted to perform
20 at the target mine. And it says, to the extent
21 Pavlovich found problems, the Board was informed that
22 remedial actions have been or will be taken to fix
23 them. For example, after Pavlovich identified a need
24 for improved rock dust application at certain mines,
25 including in certain areas of UBB, the board was

1 informed that remedial action had been taken,
2 including deployment of additional pod and sling
3 dusters and reemphasis on existing rock dusting
4 policies and regulatory requirements. I know that's a
5 mouthful. Are you familiar with that statement?

6 A. No.

7 Q. So you did not make that statement?

8 A. Oh, no. Uh-uh (no).

9 Q. Any idea who did?

10 A. No.

11 Q. Okay. Are you aware of any remedial action taken
12 at Upper Big Branch in regard to rock dust
13 application?

14 A. I'd have to look at my audits.

15 MR. CAUDILL:

16 There's the two we've discussed. Would
17 there be a third one?

18 A. That's an executive summary, is what the last one
19 is. But you're welcome to look.

20 ATTORNEY BAXTER:

21 We'll mark this one as Exhibit Three.

22 That's the executive summary of mine safety audits
23 conducted from September to December 2009.

24 (Pavlovich Exhibit Three marked for
25 identification.)

1 A. Now, did you ask me specifically about Upper Big
2 Branch?

3 BY MR. CRIPPS:

4 Q. Yes. Yes.

5 A. To be honest with you, I don't remember --- can
6 you repeat the question? I'm sorry.

7 Q. Okay. Well, let me tell you what I'm trying
8 to --- I'll tell you what I'm trying to find out.

9 A. Okay.

10 Q. We discussed earlier about the follow-up to your
11 audits, and you explained how that wasn't part of your
12 contract, and ---

13 A. Right.

14 Q. --- so you wasn't really familiar with that, yet
15 reportedly someone made a report to the Board of
16 Directors at Massey that remedial action had been
17 taken. I'm trying to find out who made that statement
18 to the board and how they knew that remedial action
19 had been taken.

20 Q. I wouldn't have any idea how. I mean, I'm --- and
21 I'm just guessing on this; okay? I would assume that
22 when my report got to the --- got to Elizabeth
23 Chamberlin or wherever at Massey headquarters, is that
24 report was sent to the president of that area, Sidney
25 Coal or something, they would have five or six miners,

1 and that person was responsible for reporting back to
2 upper management in Charleston or whatever that these
3 things have been corrected. So they would go to that
4 mine superintendent or whatever to ensure that
5 everything --- and I guess it was word of mouth, yes,
6 we have corrected them, come back, and then report
7 back that these have been corrected. And did somebody
8 --- did Massey send somebody to look at that? I don't
9 know. I never did go back to look at them, but I'm
10 assuming that they took enough effort after these were
11 sent in for someone to get some verification that
12 corrective action had been taken.

13 Q. Okay.

14 A. And I know that I did identify, as stated in
15 there, that at similar operations rock dusting was a
16 problem. And the specifics of that were every section
17 was provided with a sling duster. There were Bantam
18 dusters at all the belt drives pretty much that were
19 in use constantly. There were pod dusters, usually
20 track-mounted pod dusters that were available for use
21 regularly. There was an abundance of rock dust on
22 every site, including those super bags or whatever
23 they call them that are like a thousand-pound bag of
24 rock dust on the section. So all the equipment and
25 all the material was available at every mine I was at,

1 and I would look for that and ask them, do you have a
2 sling duster, do you have bags. Yes, yes, yes. There
3 were times when you'd find areas unsafe and that were
4 not adequately rock dusted or had not been sling
5 dusted and that the roof was not covered or the ribs
6 were hand sprinkled, and there might be one crosscut
7 length that might be --- and I would ask the foreman,
8 what is your procedure for rock dusting. And he would
9 say, I do it at the end of every shift. Maybe.
10 Except if I have a problem, then I don't do it, and
11 then the next guy picks it up. Well, I know how that
12 goes. And the next guy doesn't pick it up, and then
13 pretty soon you've got three or four crosscuts that's
14 not, and then it's picked up again. So what I said is
15 let's establish --- try to establish a more definitive
16 program of when you will rock dust. If it's specific
17 --- just like they elevated the ventilation in the
18 last row of the crosscut to 20,000, everybody knew
19 that. Everybody knew you were supposed to maintain
20 20,000. If you tell every foreman at the end of your
21 shift you rock dust with a sling duster what you mine
22 today, then you don't have a problem. And if it goes
23 leaving it for the next guy, then maybe the next guy
24 because, you know, then --- so I know that there was
25 an issue that was brought up somehow in management

1 that some policies were changed, and I can't say
2 everywhere, but people told me later that, you know,
3 we are now rock dusting at the end of every shift.

4 Q. Okay.

5 A. So you know, I'm thinking, someone, whoever made
6 that statement, is --- that's the remedial action
7 they're referring to.

8 Q. Do you know who Chris Blanchard is?

9 A. Chris who?

10 Q. Chris Blanchard?

11 A. You know, if he walked in this room, I may not
12 know him, but I know the name, and I know I've met him
13 before, yes.

14 Q. Okay. Do you recall specifically having
15 discussions with him about the mines at Performance
16 Coal?

17 A. No, I don't recall. But I've discussed that with
18 several people, so it could have been.

19 Q. Okay.

20 A. I don't know if it was him or not.

21 Q. You mentioned earlier that perhaps the president
22 of each individual company would be contacted by
23 Elizabeth. Chris, as I recall, is the president or
24 was the president of Performance Coal.

25 A. I think he was, yeah. I think that's where I met

1 him, probably at the office. I remember meeting him I
2 think once.

3 Q. Okay. Prior to the explosion and the audits that
4 you were conducting prior to the explosion, you've
5 already said that you gave the reports to Elizabeth
6 and you would give --- hand over reports to Elizabeth
7 and Shane Harvey.

8 A. Uh-huh (yes).

9 Q. Anyone else in Massey management or corporate
10 structure that you either gave the reports to or
11 talked to personally or on the phone about the results
12 of the audits?

13 A. Nobody that I can think of, other than the mine
14 management people or the safety people at that unit.
15 I don't remember talking to anybody out of the
16 corporate office or any of those ---.

17 ATTORNEY BAXTER:

18 And did you talk to Elizabeth Chamberlin
19 aside from e-mailing her the reports about the results
20 of the audits?

21 A. You know, I probably --- I don't remember ever
22 specifically calling her and saying, here's a problem
23 I've identified or whatever, but in the course of
24 discussion where she would say I need you to go to
25 these mines or this particular area, we may have

1 discussed some of that. So I can't put my thumb on a
2 particular thing and say, yes, I did talk to her about
3 this item. But you were talking about anybody other
4 than Elizabeth?

5 BY MR. CRIPPS:

6 Q. Correct.

7 A. Okay.

8 Q. Yes. And of course, when you was underground or
9 on site of a surface mine, prep plants, did you talk
10 much to the hourly guys, the miners?

11 A. I tried to talk to the hourly guys. And much of
12 that was like you talk to the continuous miner
13 operator about the red zone pretty much every outfit
14 and staying out of that red zone and the hazards of it
15 and also about his ventilation, his curtain, his
16 requirements, his water sprays, how many sprays you
17 got to have, what's your pressure required, that type
18 of thing, usually always the roof bolters about the
19 specifics of the plan, probably not so much the
20 shuttle cars. You might talk to the scoop operator
21 about the charging station and dusting. If the
22 electrician was at the power center when I looked at
23 the power center, then I talked to him about the power
24 center, usually lock-out/tag-out. That's always a big
25 issue with electricians. So that type of thing, yes.

1 Q. The kind of stuff you did when you still wore an
2 MSHA hat, huh?

3 A. Pretty much.

4 Q. How did the guys ---?

5 A. That's the only way I knew how to do an audit.
6 And I call them audits, but it's not like an MSHA
7 audit. It was more like an inspection.

8 Q. The hourly guys, did they seem receptive to you?
9 Did they ---?

10 A. Yeah. I mean, you know, I was pretty impressed
11 with the hourly guys' knowledge of their plans, what
12 they were supposed to do, their work ethic. I mean, I
13 thought they had some very good hourly employees. And
14 I thought they had some very good management people at
15 a lot of their mines. They were very impressive and
16 knew what they needed to be doing, and you know, the
17 guys were good at what they were doing.

18 Q. Okay.

19 MR. CRIPPS:

20 I'm going to take a break, and then
21 Steve ---.

22 SHORT BREAK TAKEN

23 EXAMINATION

24 BY MR. CAUDILL:

25 Q. Joe, what I'd like to do, I'd like to switch

1 gears. We've been talking generally about your
2 audits.

3 A. Uh-huh (yes).

4 Q. I'd like to pull back and just concentrate on your
5 audits at UBB.

6 A. Okay.

7 Q. Besides doing the audits at UBB, just kind of walk
8 me through the start of the day, how your day went,
9 who you talked to, where you traveled.

10 A. This first one was --- and I believe the very
11 first time I was there --- and you guys know because
12 you've researched this, was April 29th, April 29th.
13 Is that correct? Oh, you're asking the questions.

14 Q. From the information we have, yeah, that's
15 correct.

16 A. All right. So I met with Berman Cornett, who was
17 the safety --- I guess they'd call him the safety
18 director of Performance Coal. Berman was a --- had
19 previously been a mine superintendent, I think. Maybe
20 he had some illness or something that got him
21 disabled. And we also traveled with Rick Foster that
22 day to the Number Four Section. Now, I'll put this on
23 the record because sometimes it aggravates me, but
24 every time I go to a mine I have to receive the full
25 hazard training and get the 5023, and sometime that

1 takes you an hour, whatever. When I was with MSHA for
2 31 years, I could go to any mine and walk in and go
3 right in the mine. But all of a sudden, when I left
4 MSHA, I forgot everything I knew about safety,
5 so ---. That's MSHA's fault. But anyway, so you
6 know, when you get to a mine, you're always --- you
7 just can't go in the mine. You're delayed a while
8 until you get all your hazard training and all that
9 stuff. But anyway, we --- you don't want me to go
10 through this, on what ---?

11 Q. No, no. And I don't want you to read the audit
12 verbatim. I just want a description of what you did
13 there.

14 A. Okay. Well, I always said I looked at roof
15 control, I looked at ventilation. And this was prior
16 to, I'm guessing, the 20,000 requirement because, you
17 know, I'm saying the section was well ventilated with
18 12,000 and 14,000. And later, when they put in the
19 20,000 policy in each last open crosscut, that would
20 not have been well ventilated. Okay. So I'm guessing
21 this is before then.

22 Q. But you don't recall for sure?

23 A. I understand. But I know if it was a 20,000
24 requirement, I wouldn't have said it was very good
25 with 12,000 or 14,000. Because at that --- well,

1 after they put the 20,000 in, then I would start to
2 say --- if you had 18,000, I'd say you're not meeting
3 the company requirement.

4 There was an issue with rock dust on this belt,
5 and it was pretty black and ---.

6 Q. Do you recall what belt?

7 A. Yes.

8 Q. Can you describe it? Was it rib to rib, the
9 entire length of the belt?

10 A. It was pretty bad for most of the belt from what I
11 remember. And it was an --- I identified it was black
12 in color, and I would think that was pretty bad. I
13 remember talking in detail with Rick Foster about
14 that. Of course, Rick said, well, I had all the stuff
15 ready and I was ready to do it, the belt was ready to
16 break somewhere else, and they called me and said, you
17 need to splice this belt. And of course, I said,
18 well, you know --- he said, I could not splice the
19 belt and have coal all over the place or I can go
20 splice the belt and get my rock dust another day. So
21 anyway, he did have stuff sitting there like he was
22 preparing to rock dust, but that was an issue.

23 Q. You indicated Five, Six, Seven were not rock
24 dusted for three cross-cuts outby the face?

25 A. Right.

1 Q. And you said this was a pattern that you saw
2 within the mines? That's what you stated earlier.

3 A. At more than one mine, yes. Not only at Upper Big
4 Branch, but at more than one mine.

5 Q. And what do you feel was the cause for this? Was
6 it just ---?

7 A. Well, I felt it was the fact that if the policy
8 was we're going to rock dust at the end of every shift
9 with our --- either our sling duster, which does a
10 very good job, they just didn't get it. So at the end
11 of the shift something happened. Nobody wanted to
12 stay over between ---. And the issue was always we
13 can't sling dust while the guys are still up here
14 working.

15 Q. Okay.

16 A. So we almost have to have a guy stay over or shut
17 everything down there at the last half-hour and sling
18 dust. And they didn't always want to do that, I
19 guess. Or if a guy had problems, he didn't --- he
20 didn't get it sling dusted.

21 The other thing I found out that was happening was
22 if a guy is sling dusting a section and there's a
23 shuttle car parked in the crosscut, he doesn't get off
24 his scoop and go move that car to run a sling duster
25 through there. So that crosscut doesn't get sling

1 dusted. Okay. So you can almost take a --- there
2 would have been a shuttle car sitting here. There
3 would have been a miner sitting here. There would
4 have been a roof bolter sitting here. And I guess one
5 of the problems I had was every time the scoop came
6 out of a place after cleaning up, like scrapping up
7 after the miner would replace his bolter, the scoop
8 operator would go in and clean up. And then what he
9 would do is take about a half a bag of rock dust and
10 throw a little bit on the ribs and nothing on the
11 roof. And I said, if you're going to be in there rock
12 dusting, you need to throw some rock dust on the roof
13 also. You just can't always count on the sling duster
14 because there was some roof being missed. This says
15 roof in Number Five, Six and Seven entries are not
16 rock dusted for three crosscuts outby the face. So
17 that meant there was a little bit of hand sprinkling
18 on the rib, nothing on the roof.

19 Q. Do you recall the article that Mr. Cribbs was
20 talking about earlier --- or not necessarily recall
21 the article, do you recall him speaking about the
22 article? Within that same article, there's a
23 statement ---.

24 A. The one where they said corrective actions have
25 been taken?

1 Q. Remedial ---.

2 A. Yeah.

3 Q. Okay. Within that same article, there's a
4 quotation in there that relates to your report that
5 says that the problems with rock dusting was due to
6 lack of attention. Do you recall that?

7 A. I never saw that article.

8 Q. Not this article, but they had it in quotation
9 marks. And the reason I'm asking, because it's not in
10 any of ours either.

11 A. In my report?

12 Q. Any reports we have. And they're specifically
13 talking about the Upper Big Branch Mine is the reason
14 I ask this, because it's in quotation marks. The
15 reference in the report says the problems with rock
16 dusting is due to lack of attention.

17 A. If I had told someone that --- I very well could
18 have made that statement, but it would have been the
19 fact that the guy wasn't doing it at the end of every
20 shift. That would have been my evaluation of lack of
21 attention, I guess is ---. You know, if you're going
22 to devote your attention to it, if somebody tells you
23 every day at this time you shall do such and such,
24 okay, and you say, well, I don't think I'll do that
25 today, maybe I won't do it tomorrow, to me that would

1 be a lack of attention. You're just not doing what
2 they want done.

3 Q. That was one of the problems you noted in your
4 report.

5 A. Okay. Is that a problem?

6 Q. What, not rock dusting?

7 A. Oh, well, rock dusting I meant.

8 Q. We're moving on to the rock dusting portion on
9 April 29th.

10 A. Okay.

11 Q. Do you want to carry on with your day?

12 A. Power centers, usually power centers were very
13 neat and clean, well organized, well lighted, pretty
14 good shape. Very seldom did you find much wrong with
15 a power center, except maybe a tag being off.

16 Firefighting equipment appeared to be good, operable.
17 Directional cones on the lifeline going into the
18 Number Four Section were backwards. I don't remember
19 why that was, but it was --- that was down in the
20 lower end of the mine, away from where the explosion
21 occurred, near the old portal.

22 Q. Right. Can we get the map out, make sure we
23 know ---?

24 A. Which one you want?

25 Q. The one of the left side.

1 A. This one?

2 ATTORNEY SILKWOOD:

3 Off the record.

4 OFF RECORD DISCUSSION

5 ATTORNEY BAXTER:

6 We're back on the record. And during the

7 break, Steve Caudill was sharing the article you

8 referred to, which I think is an attachment to a

9 Kenwood (phonetic) article. I think it's a --- it

10 looks like an attachment, I believe, to an

11 article ---.

12 MR. CAUDILL:

13 I'd like to say we just copied a couple

14 of pertinent pages out of the entire foot ridges on

15 the internet.

16 BY MR. CAUDILL:

17 Q. Now, you were referring to the Two Section. Can

18 you show me where that's at on here?

19 A. What section?

20 Q. Four Section.

21 A. It's down in here somewhere.

22 Q. Okay.

23 A. All right. And they were just punching these

24 small panels a little bit --- some little coal blocks

25 that were left. So it would have been one of these,

1 okay. And I'm not sure, but I remember we just walked
2 in and then walked through. And then the reason we
3 did that was they --- everything else was way out
4 here.

5 ATTORNEY BAXTER:

6 And can you describe the area you're
7 pointing to on the map?

8 A. Oh, which one of these?

9 MR. CRIPPS:

10 That's the North Portal.

11 BY MR. CAUDILL:

12 Q. North Portal.

13 A. North Portal, so this would have been the
14 area ---.

15 Q. Would be the south area of the mine?

16 A. South? Okay. South is the North Portal?

17 MR. CRIPPS:

18 Here's the south. This is the South
19 Portal and here's the North Portal.

20 A. Right.

21 BY MR. CAUDILL:

22 Q. That's south. This is the North Portal. That's
23 why they're --- they labeled them.

24 A. Okay. Well, I'm thinking we went in here.

25 Q. Okay. So you entered through the North Portal?

1 A. Yeah. And then we walked, walked the track. And
2 then as we turned left, somewhere on this south end is
3 where the lifeline cones were pointing the wrong way.

4 Q. So you walked the track the entire way in?

5 A. Yes, until we get up to the section belt, and then
6 we walked the belt the whole way, the entire way.

7 Q. Is that the only belt you traveled that day?

8 A. Well, probably what I did is stopped and looked at
9 every drive as we passed, okay. And I'm not sure ---.

10 Q. The reason I ask, there's no mention of it in your
11 report.

12 A. No. We usually would stop and look at drives for
13 at least the fire suppression, clean up, to make sure
14 there's no rubbing or any of that stuff. And it seems
15 to me like it was one of these two sections.

16 Q. Okay. But you're not sure?

17 A. No.

18 Q. It's been a while.

19 A. I can't remember. And I know when I looked at
20 that I thought, well, why are you even fooling around
21 with this. There was just nothing there to ---.

22 Q. Oh, are you talking about when you looked at it on
23 the mine --- when you visited the mines?

24 A. I mean, you know, you had two --- there was two
25 sections working down there and all the rest of the

1 mine was out there.

2 Q. Okay.

3 A. And this new portal was --- these entries were cut
4 and rock dusted. They were not yet traveled here.

5 Okay. Now, I think this was cut through. I'm not for
6 sure, but I know that the intent was, this is where
7 everybody was going to be portaling at. I remember
8 they got a new bathhouse also. I never did see that
9 new --- in fact, I never traveled these because during
10 my last audit there in November or December, this
11 still wasn't --- it was done, but it wasn't active and
12 they're still portaling here. This was a long tedious
13 drive up through. And I think that may be why I
14 didn't go up there, because this was a close --- very
15 close portal, and so we just went here.

16 Q. You're referring to the Ellis Portal that was not
17 in service yet?

18 A. It was the new portal, which I guess was the Ellis
19 Portal.

20 Q. That was not in service?

21 A. That was not in use yet. I never saw that portal
22 in use.

23 Q. Okay. How far did you make it up?

24 A. Well, we got down about this lifeline. There was
25 some problem with material on the scoop. There was a

1 metal bridge that went into the North Portal that was
2 just tore all to pieces, and I told them they needed
3 to replace that. It was not safe to travel across it.
4 And that was pretty much it. And then I closed out
5 that day with James Ferguson, Berman Cornett and Rick
6 Foster.

7 Q. Okay. Well, during these close-out conferences,
8 did you keep notes of what you discussed with these
9 individuals?

10 A. No. Usually I just discussed what was in my notes
11 from the underground visit.

12 Q. Now, during your travels underground on April
13 29th, did you talk to any rank-and-file miners?

14 A. You know, I'm thinking this day that there was
15 actually no one working down in that end of the mine
16 for some reason. I don't remember talking to anybody
17 that day.

18 Q. Okay. Did you talk to any examiners, ---

19 A. No.

20 Q. --- maintenance personnel?

21 A. Basically Rick Foster sounded like he was the only
22 one that ---.

23 Q. What was Rick Foster's job title at that time?

24 A. I think he was mine foreman. I identified him as
25 mine foreman, so he was the mine foreman for that

1 south end of the mine.

2 Q. Do you recall discussing any of the problems that
3 you had with Rick?

4 A. Oh, he was with me on the whole walk.

5 Q. Did he convey any plans to correct the conditions
6 to you?

7 A. Well, on the belts, you know, that was the black
8 belt basically where he said, you know, I was ready to
9 do this last night and they called me and needed the
10 belt spliced, and I left it and I went the made the
11 belt splice and I didn't get this rock dusted. But I
12 certainly --- all my stuff's here. I'm ready to rock
13 dust it. So I assumed he was going to rock dust it
14 that day.

15 Q. Were there accumulations along that belt also?

16 A. I don't remember seeing accumulations. I just
17 remember that float coal --- there was float coal. In
18 fact, I think I even mentioned the section was clean,
19 the ribs had been scooped and no trash ---.

20 Q. But you don't recall anyone working on that
21 section at that time?

22 A. I don't recall.

23 Q. Now, did you know that there wasn't anyone working
24 on that section before you went underground?

25 A. I don't think so.

1 Q. Did management suggest that we go to this section
2 since maybe time was limited or ---?

3 A. I really don't know, Steve. I don't remember. I
4 don't think so.

5 Q. The reason I'm asking is, as we get into October
6 29th, you go to another section that's idle.

7 A. I don't remember that.

8 Q. And you know, if I'm going to evaluate a mine, I
9 would want to go where the men are working.

10 A. You would think so.

11 Q. Yeah. On October 29th, Four Section, if you go
12 down into accumulations --- let's see. Where are we
13 at?

14 ATTORNEY BAXTER:

15 And we're looking at Exhibit Two now.

16 MR. CAUDILL:

17 Yes, that's Exhibit Two. I think it's
18 accumulations where he talks about it.

19 BY MR. CAUDILL:

20 Q. Okay. That's Two Section again --- or Two Section
21 instead of Four Section.

22 A. Okay. This is the Number Two Section that had
23 been closed.

24 Q. Right. Right.

25 A. Yeah. There was actually some guys working

1 there, ---

2 Q. Okay.

3 A. --- but they weren't producing.

4 Q. What were they doing?

5 A. These two guys were cleaning up a major spill at a
6 belt drive, the section belt drive, which is a real
7 short belt, so they were right there, close to the
8 section. And there was a foreman up there, and the
9 foreman also traveled through the section with us.

10 But I was thinking this was dated ---. I went on to
11 the longwall, but I don't guess it was ---.

12 Q. Did you say you went on to the longwall?

13 A. No. I think that was --- I have to look at this
14 last one.

15 Q. It's not in there, the longwall's not.

16 A. It's not?

17 Q. I don't think it is. If it is, I missed it.

18 ATTORNEY SILKWOOD:

19 And I think, Steve, this --- I think this
20 is the ---

21 A. That's the executive summary.

22 ATTORNEY SILKWOOD:

23 --- summary of the map after this one.

24 It's on a separate audit.

25 MR. CAUDILL:

1 Right.

2 BY MR. CAUDILL:

3 Q. So you did travel to the longwall?

4 A. Yeah.

5 Q. Okay. Can you describe --- because we don't have
6 a copy of that. We've asked for it several times, and
7 we have not received that audit.

8 A. Really?

9 Q. No. Can you talk about the conditions that you
10 recall on the longwall?

11 A. Yeah, I can.

12 Q. I'd like to hear it.

13 A. Why would they not have it?

14 ATTORNEY SILKWOOD:

15 I have given them all I can find. Is
16 there a date that I don't have? Do you remember when
17 it was?

18 A. Uh-huh (yes). It should be this one. This is
19 September to December. If you got the whole executive
20 summary ---.

21 ATTORNEY BAXTER:

22 You're looking at Exhibit Three now?

23 A. Yes. This would be Exhibit Three. And this is
24 the one that says Upper Big Branch Mine has instituted
25 internal safety inspections that were being conducted

1 daily on two shifts by experienced safety
2 personnel, ---

3 BY MR. CAUDILL:

4 Q. That's another question I got. Berman and ---?

5 A. --- one which was Jim somebody, who is on the
6 evening shift.

7 Q. Let's go ahead and get into that. Did you see
8 these audits during production? Were they --- was it
9 a paper --- that they had a form that they filled out
10 on?

11 A. No.

12 Q. I'm sorry?

13 A. No. I'm sorry. Primarily what --- I didn't see
14 any paperwork. They told me they were assigned every
15 day to spend every day underground as if they were
16 making inspections and to identify any violations that
17 they saw and ensure they were being corrected. And
18 that was what Berman told me during the day. And I
19 met Jim that afternoon. I'm thinking his name was
20 Jim, as I came out of the mine, he was there, getting
21 ready to go in. And he basically told me the same
22 thing, that he had been assigned to that same job task
23 of performing safety inspections on the evening shift.
24 And they were assigned to go underground and do that
25 every day.

1 Q. Did they tell you why they were assigned ---?

2 A. Yeah. It was because of the number of violations
3 or maybe they got a pattern letter or something. I
4 don't remember, but it was because of violations, the
5 number of large violations. So they were in an effort
6 to try to clean up the mine, was their opinion, and to
7 get things taken care of.

8 Q. And to your knowledge, you said that they did
9 not --- did they --- they didn't complete any forms to
10 say that they've completed these tasks or any ---

11 A. Oh, I don't know.

12 Q. --- problems that they find?

13 A. No, I didn't get into that with them. I mean,
14 they kind of indicated to me that they thought the
15 mine was improving significantly since they were
16 making their inspections and that corrective actions
17 were being taken. But no, they never showed me a kind
18 of form or anything that they ever filled out. So I
19 don't know.

20 Q. So they said that as the hazards were being
21 reported, corrective actions were being taken?

22 A. Yeah. I don't think they said hazards. They just
23 said citations.

24 Q. Violations. And in your record book it listed
25 violation or hazard?

1 A. Yeah.

2 Q. So those conditions that were listed in the book,
3 they said they were being corrected?

4 A. Not in the record book. The things that they had
5 identified to management.

6 Q. Okay.

7 A. No, they were not like making pre-shifts or
8 on-shifts. They were just going into the mine to make
9 an inspection, similar to what I was doing or what one
10 of your MSHA people would do.

11 Q. Okay. Then who did they report these inspections
12 to? Did they tell you that?

13 A. They said the mine superintendent.

14 Q. The mine superintendent. Who would that have been
15 at that time; ---

16 A. I have no idea.

17 Q. --- do you recall?

18 A. I'm not sure. You don't have anything.

19 Q. That's everything we received. Now, let's get
20 back to the longwall. You stated that you did travel
21 to the longwall. Which entry did you travel to the
22 longwall?

23 A. The headgate entry.

24 Q. The headgate side?

25 A. Uh-huh (yes).

1 Q. Then where did you go? You come up to the
2 headgate and then ---?

3 A. And I examined the belt entry.

4 Q. And how was that?

5 A. Needed rock dusted.

6 Q. You don't recall what day that was specifically,
7 do you?

8 A. This was October. It was either near --- I'm
9 thinking it was like the first week of December.

10 ATTORNEY SILKWOOD:

11 I think you're missing one.

12 A. Do you have that?

13 ATTORNEY SILKWOOD:

14 Let's go off the record for a second.

15 OFF RECORD DISCUSSION

16 ATTORNEY BAXTER:

17 Back on the record. We had an
18 off-the-record discussion during the break
19 concerning --- and Mr. Pavlovich --- concerning
20 another document. Mr. Pavlovich indicated that
21 there's another document entitled Follow-Up to
22 November 10, '09 Visit to Upper Big Branch or
23 something along those lines, which he's now sharing on
24 his computer with Mr. Caudill. It's a document that
25 MSHA has not yet received. And Eric, while we're

1 looking at it, I'll just make a request for this
2 document. It would fall into our previous document
3 request, of course. And I'll also take this
4 opportunity to ask you for any of the individual
5 reports that Mr. Pavlovich sent to Ms. Chamberlin,
6 which would also be responsive to our other request.

7 MR. CAUDILL:

8 What I would like to do is see if we can
9 get this printed off, possibly give us about 10, 15
10 minutes to review it, and then we'll start the
11 questioning back up.

12 ATTORNEY SILKWOOD:

13 I don't know if they have a business
14 center here to be able to print it off.

15 MR. CAUDILL:

16 Do you have a thumb drive?

17 ATTORNEY SILKWOOD:

18 That's what I was asking.

19 MR. CAUDILL:

20 Do you have your --- do you have your
21 printer with you?

22 A. Yes.

23 ATTORNEY BAXTER:

24 We could go off the record.

25 OFF RECORD DISCUSSION

1 BY MR. CAUDILL:

2 Q. Give me just one second. Let me get a couple
3 paragraphs in front of you. We were talking about the
4 longwall and you described that you traveled up the
5 headgate entries to the longwall. You mentioned the
6 belt. Now, what kind of condition was the belt in?

7 A. The belt needed to be rock dusted.

8 Q. And who ---?

9 A. As best as I can --- we probably got over into the
10 belt entry some distance before the face and noticed
11 that there was no rock dust on the roof and the ribs
12 had been slightly hand dusted, no evidence of machine
13 dusting as far as I could see either way. And I can't
14 remember then if I walked outby or if I just walked
15 inby to the section and then checked some more of that
16 belt outby on the way out. I don't think I walked the
17 entire belt, but in my estimation the entire belt
18 needed to be rock dusted.

19 Q. You say that you saw some hand dusting, no machine
20 dusting. Is this pretty much consistent with what
21 you've been seeing on the sections that you mentioned
22 earlier?

23 A. It's very similar.

24 Q. So you traveled on up the belt to the headgate?

25 A. Uh-huh (yes). Yeah.

1 Q. From there you went ---?

2 A. As I recall, there were three entries, three or
3 four entries. I don't remember, but I walked over to
4 the further right most entry there was a mule parked
5 there behind the curtain or door, and it was for the
6 reason of there was some section taking weight on ---
7 near the headgate for about two or three crosscuts, I
8 think, yeah, about two or three crosscuts, quite a bit
9 of sloughage. They had put additional support in.

10 Q. What type of support?

11 A. I think they put some cribs in along the ribs
12 where it had sloughed. And then right there at the
13 headgate the roof looked good, the shields looked
14 good. Said there was over 40,000. I recall walking
15 down that face maybe five or six shield lengths. The
16 shearer was on its way back up to the headgate, and
17 not very far down --- I also met a federal inspector
18 there on the face. When we got back up to the
19 headgate, they took an air reading there. When we
20 first started down the face we had over 40,000. I
21 asked the inspector, he said, I was collecting rock
22 dust samples --- or not rock --- respirable dust
23 samples.

24 Q. Where did they take the air reading at?

25 A. I think it was just right down about to where we

1 got to.

2 Q. Which would have been?

3 A. At Shield Five.

4 Q. At Shield Five?

5 A. Yeah. And I didn't really ask at what location
6 were you supposed to take them. I know there's
7 velocities required at certain shield numbers in every
8 plan. And I kind of asked that inspector, I said, did
9 you check the air readings when you went down the face
10 or whatever? And he said, yeah. And I asked him at
11 the locations where they specified in their plan, did
12 they have the required velocities. He said, oh, yeah,
13 they had very good air down there. So I was pretty
14 comfortable. I wasn't going to go past the shearer
15 down into the dust, so I just took his word for it and
16 had made that comment.

17 Q. Well, you stated here that you have over 40,000
18 CFM available at the intake.

19 A. Uh-huh (yes).

20 Q. And then you said you took an air reading at
21 shield ---?

22 A. I'm thinking it was right at shield --- right
23 where it started around the corner or something,
24 but ---.

25 Q. I think --- correct me if I'm wrong here,

1 generally on the longwall when you take an air reading
2 you read feet per minute rather than ---.

3 A. No. Let me tell you something. It was 40,000 in
4 the intake, not on the face.

5 Q. Okay.

6 A. Okay. In the intake entries coming up that side,
7 that's where we got the 40,000 --- the intake on the
8 face because that's where I met the inspector and he
9 said he took the velocity reading. But I didn't write
10 down --- I didn't ask him, well, what were they or
11 write them down or anything. I just trusted him. I
12 said, if he said he had good air and they were
13 quality, then it was okay.

14 Q. Do you recall --- did you take one air reading to
15 get 40,000, two, three, four?

16 A. I didn't take them.

17 Q. Do you recall which intake entry you took the
18 reading in? Was it the belt? Was it the track?

19 A. No, I don't think it was the belt. I think it was
20 the track entry, because the track was pulled back
21 pretty far. And that's why we put an actual quantity,
22 because whatever we took was like 40,000, but I knew
23 it was more, so I said over 40,000.

24 Q. Okay. Did you proceed across the face?

25 A. No further than about Shield Five, where I met the

1 inspector. Because I said the shearer was coming that
2 way, and to proceed any further down, it would have
3 been downwind of the shearer.

4 Q. Uh-huh (yes).

5 A. I wasn't going there.

6 Q. Now, at the stage loader for the longwall, ---

7 A. Uh-huh (yes).

8 Q. --- did you look for the water sprays or something
9 to control the dust in that area?

10 A. I recall walking by that stage loader, but I
11 really don't remember that, Steve.

12 Q. Okay.

13 A. But I know that just outby the stage loader, I
14 specified here the bottom belt was cutting into the
15 stack. So it needed to be realigned at that point.
16 And that was really like right outby the stage loader.

17 Q. I assume Berman Cornett saw this condition also?

18 A. He was with me.

19 Q. He was with you. Did he do anything to correct
20 the condition?

21 A. Which one?

22 Q. The belt drive cutting into the stack.

23 A. I think he talked to the foreman about it. I
24 don't think he aligned it at that time when we saw it,
25 but I think he told the foreman about it, that it

1 needed to be aligned.

2 Q. What about the accumulations on the belt, did
3 Berman make any ---?

4 A. You mean no rock dusting?

5 Q. Yeah, no rock dusting.

6 A. I don't know. You mean did he correct it?

7 Q. Did he make any arrangements to have it corrected?

8 A. Not while I was there.

9 Q. Did you see this condition as a hazard?

10 A. Well, in my opinion, if you don't have adequate
11 rock dusting, you could always have a hazard.

12 MR. CAUDILL:

13 Do you have any questions? You're the
14 longwall guy.

15 MR. CRIPPS:

16 No. I don't think so.

17 BY MR. CAUDILL:

18 Q. You said you saw the shearer. Was it actually
19 cutting when you saw it?

20 A. Uh-huh (yes).

21 Q. Did you make note of the water sprays that were
22 there?

23 A. It was probably six or seven shields down from me,
24 cutting toward the headgate. It looked to me like a
25 lot of water. I had asked the inspector how all that

1 stuff looked and parameters, and I figured he would
2 have been checking his parameters. He said everything
3 looked fine, so I'm assuming the pressures were good
4 and the sprays were good.

5 Q. Did you talk to any of the longwall crew?

6 A. There was a couple guys there at the headgate
7 that --- we just briefly talked to them. Most of the
8 time, when I got there we started --- I started
9 calling --- the inspector came in, and I spent most of
10 that time talking to him about what he saw down on the
11 face, as far as his air, his --- whatever, the
12 tailgate. He said he went to the tailgate and it
13 looked good.

14 Q. I'm confused. Did you talk to the crew or not? I
15 know the inspector came.

16 A. I just briefly talked to them, but yeah.

17 Q. What did you say to them or what did they say to
18 you?

19 A. Probably hello, how you guys doing today or
20 something? I mean, I didn't ---.

21 Q. You didn't ---?

22 A. I didn't get into specifics, no, no. I didn't get
23 a chance to talk about specifics or anything to them
24 because pretty soon is when I started talking to the
25 inspector. And I don't remember encountering many of

1 the crew members as we came up the headgate.

2 Q. That was my next question. Did you encounter the
3 outby crew as you came up to the headgate entry?

4 A. I don't remember seeing anybody until we got outby
5 the face. We met the foreman there close by
6 somewhere.

7 Q. In your report you mention a piece of
8 nonpermissible equipment ---

9 A. Yeah.

10 Q. --- that was within 150 feet of the ---.

11 A. Parked right at the headgate. To direct the air
12 across the face they put a curtain in the headgate
13 entry, inby, to block the air from going in. There
14 appeared to be big pressure on those curtains. They
15 were blowing hard against them and they were good and
16 tight. There was a nonpermissible four-wheeler parked
17 right up against the curtain, which is too close.

18 Q. Right. And what was this --- did you question
19 what this four-wheeler was used for?

20 A. Well, I didn't ask them what they used it for. I
21 just said that looks like a nonpermissible four-
22 wheeler to me. Is it? The guy says, yeah. I'm
23 thinking it was the foreman. I said, you know, you
24 know where it's supposed to be? He said, well, it's
25 supposed to be there. I said 150 feet. And I took

1 out my little book and, as I recall, I drew the sketch
2 where this is the longwall face. 150 feet
3 perpendicular from the face is where you have to have
4 all nonpermissible equipment outby, and so then I
5 said, you can't have this up here this far.

6 Q. Do you recall any of the longwall crew talking to
7 you about safety conditions or conditions involved
8 or ---?

9 A. No. You mean any concerns about it?

10 Q. Yes.

11 A. No. I mean, I don't remember, Steve, having the
12 opportunity to talk to anybody that were any of the
13 crewmen for a very long period of time, like to ask,
14 you know, about safety conditions.

15 Q. What limited your opportunity?

16 A. They were all down next to the shearer. Those
17 couple guys that were --- I think there was two guys
18 at the headgate, an electrician and another guy. I
19 don't remember who they were. And just at that time I
20 walked up and said, hey, how are you guys doing today?
21 Everything's fine. You know, then the inspector came
22 up. Berman introduced me to him, said this is a
23 federal inspector. He's taking respirable dust
24 samples today, and so I started talking to him
25 about --- and I never really asked the crew is there

1 any problems or anything like that. No one identified
2 to me that they had any concerns.

3 Q. Do you recall the foreman that you spoke to about
4 the buggy?

5 A. No.

6 Q. Any other crew members?

7 A. Oh, no. I think one guy was the electrician that
8 was there.

9 MR. CRIPPS:

10 Let me ask a couple while you're looking.

11 RE-EXAMINATION

12 BY MR. CRIPPS:

13 Q. When you were up on the face, you said you made it
14 down to about Number Five Shield?

15 A. Not very far.

16 Q. Well, about how far down the face was the shearer
17 located?

18 A. I mean, I could see it coming pretty close, so I'm
19 saying it was another five to seven shields away, so
20 maybe it would have been 10, 12.

21 Q. And it was cutting towards the head?

22 A. As far as I remember, it was, yeah.

23 Q. Did you observe the location of the shearer
24 operators in relation to the shearer itself?

25 A. I mean, I didn't pay that much attention to him.

1 When I started talking to the inspector, then I kind
2 of lost focus with that and was talking to him, so ---
3 but I'm assuming they would have been upwind.

4 Q. Did you see them put shields in?

5 A. No.

6 Q. Okay. What's a mule? In your report you said
7 there was a mule parked between the doors.

8 A. You know those four-legged animals. It's the
9 machine that they use to haul shields with.

10 Q. Okay. A shield hauler?

11 A. A shield hauler.

12 Q. It's like a big scoop that they ---?

13 A. When they first --- I'm older than you are. When
14 they first came out and they first started having them
15 around there, then I think the brand name was a Patito
16 (phonetic), and they called them a Patito mule.

17 Q. Okay.

18 A. And so I've always called them the mule, but it's
19 a shield hauler, is what it is.

20 Q. So the mule you were talking about was actually a
21 four-wheeled, rubber-tired large scoop with a dump
22 bale on the front?

23 A. Yes.

24 Q. Okay. As opposed to a machine on the tracks that
25 goes down the longwall ---?

1 A. No, no. This was a rubber-tired machine. It was
2 off the track and it was actually sitting over in the
3 --- was it Three Entry? Number Three Entry, I guess.

4 Q. Okay. The doors that you say that it was between,
5 was those doors that led up to the Number One Unit?

6 A. No. This was quite a bit inby there --- on there.
7 And if you got your map ---. I think they were just a
8 set of equipment doors between Number Two and Three
9 Entry where you could drive that needle in that entry
10 and travel that entry. I don't think --- I don't even
11 think they started that --- okay. So this would have
12 been November and December.

13 Q. Here's November.

14 A. Okay. That looks like --- but I'm assuming they
15 would have been somewhere in here. Then December the
16 10th ---.

17 Q. Well, wait. December --- November the 10th, so it
18 would have been somewhere in here.

19 A. Okay. Well, I was there November 29th and, again
20 --- wait a minute. October 29th, November 10th.

21 You're right, it would have been somewhere in here.

22 ATTORNEY BAXTER:

23 Can you indicate where?

24 A. These were probably the doors right there.

25 BY MR. CRIPPS:

1 Q. You're pointing at Number 60 Crosscut.

2 A. That shows a set of doors in it, and I'm assuming
3 that --- because, as I recall, that thing was right I
4 think on the other side of those --- it was a set of
5 equipment doors. It wasn't a man door. It was
6 something where you could run a piece of equipment
7 over there.

8 Q. Okay. And you're referring to the same double
9 doors in Number 60 Crosscut ---

10 A. Yeah.

11 Q. --- at the Headgate One North Entry?

12 A. And that probably would have been about right.

13 MR. CAUDILL:

14 If you don't care, just make a mark where
15 you think it was with the red ink pen.

16 BY MR. CRIPPS:

17 Q. Where you called it the shield hauler.

18 WITNESS COMPLIES

19 A. Okay. I'm pretty sure that's where it would have
20 been. I don't think they would have moved those
21 doors. There would have been a set of doors just like
22 that where the shield hauler ---.

23 RE-EXAMINATION

24 BY MR. CAUDILL:

25 Q. Now, the adverse roof conditions you were talking

1 about earlier, the face was in this area, do you
2 recall which entry?

3 A. I'm thinking it was mostly in the track entry,
4 which would have been the Number Two Entry, in pretty
5 much every corner, and the ribs were starting to take
6 a lot of weight and there was a lot of crushing.

7 Q. You were marking the corners of the blocks?

8 A. Yes. And I think even though we're in the belt,
9 there was some crushing on these corners, as I recall,
10 and I think there was some crib sets and some clusters
11 of timber set where there was --- I mean, it ---.

12 Q. You say there were some timbers set there also?

13 A. I think so.

14 Q. Did you notice any convergence from the timbers?
15 Where they pushed down or ---?

16 A. No. I didn't see any split or any that were
17 broken. There might have been some wedges that were
18 mashed, but it wasn't excessive weight on them,
19 nothing that I would say would be real excessive. But
20 I would expect that, looking at the condition of the
21 ribs and the corners. The corners had fell off,
22 broken off pretty bad.

23 Q. Was a lot of floor heaving under it?

24 A. Steve, I don't remember a whole lot of floor
25 heave.

1 Q. Okay.

2 A. There might have been some over in the --- around
3 the stage loader somewhere. It was difficult in
4 getting by that last little bit of belt and the stage
5 loader. Now, I don't remember why it was, but I just
6 remember it was kind of difficult. There wasn't a
7 whole lot of clearance there. There was some timbers
8 set there, I think, and pretty difficult squeezing
9 alongside of it.

10 Q. So your entire clearance ---?

11 A. I do not remember.

12 Q. Did you find it difficult to get through?

13 A. Yeah. And it might have been just --- you know,
14 you always got stuff heaped up around there, and then
15 that --- you're walking over it and everything else.
16 It was just kind of difficult to get through.

17 RE-EXAMINATION

18 BY MR. CRIPPS:

19 Q. One quick question while Steve's looking. This
20 audit is dated November the 10th of 2009?

21 A. Yes.

22 Q. Was this your last trip underground at Upper Big
23 Branch?

24 A. Yes. The last time I remember being there, that
25 was that audit.

1 Q. Okay. And so you was not on the longwall any time
2 after that?

3 A. No, I do not --- I don't remember being in the
4 mine any time after this. And that was a ---
5 apparently, that was the only time I had been on this
6 longwall.

7 ATTORNEY BAXTER:

8 And can we go ahead and mark the
9 audit --- the November 10th, 2009 audit as Exhibit
10 Four. And then the map will be Exhibit Five.
11 (Pavlovich Exhibits Four and Five marked
12 for identification.)

13 RE-EXAMINATION

14 BY MR. CAUDILL:

15 Q. Well, once you left the longwall, where else did
16 you travel that day?

17 A. I think I said the Number One section. Where was
18 the Number One section?

19 MR. CAUDILL:

20 Do you want me to locate it or ---?

21 MR. CRIPPS:

22 Do what?

23 MR. CAUDILL:

24 Where would it have been?

25 MR. CRIPPS:

1 I'm guessing it was right in here,
2 because they didn't drill these entries up through
3 here.

4 MR. CAUDILL:

5 I'm looking for dates. What was the date
6 on the ---?

7 MR. CRIPPS:

8 November 10th.

9 A. November 10.

10 BY MR. CAUDILL:

11 Q. That's 11 --- no, that's 10/20.

12 OFF RECORD DISCUSSION

13 A. This section was being developed three directions
14 and ---.

15 BY MR. CAUDILL:

16 Q. By three directions you mean they were driving
17 straight ahead, left and right?

18 A. Yeah. And they probably had penetrated straight
19 ahead, left and right, about one crosscut. And I
20 don't think this was cut through yet, ---

21 Q. Okay.

22 A. --- okay, because I don't --- I think they told me
23 we were cutting this through and they may have had
24 that driven out there and they may have had --- but it
25 was a ventilation nightmare.

1 ATTORNEY BAXTER:

2 And what are you indicating by this
3 hasn't been cut through?

4 A. I'm thinking ---.

5 MR. CAUDILL:

6 The area between the crossover and ---

7 MR. CRIPPS:

8 The North Glory Main entries.

9 ATTORNEY CAUDILL:

10 --- the North Glory Main.

11 A. Now, there was all kinds of air up there, but it
12 was real high, as I recall. And there's a --- and the
13 curtains in some places were wanting to blow against
14 the ribs, and so I talked to them about that, I think.

15 BY MR. CAUDILL:

16 Q. If you could, Joe, just kind of circle this area
17 and mark it for us.

18 A. Okay. This is my description. The section was
19 developing three directions. It was going up the
20 faces straight ahead, which would have been this.
21 Okay? So this is the faces straight ahead, according
22 to what this says, because we came in from this way.

23 Q. And by this way you're indicating the longwall?

24 A. I mean, from the longwall to there. And I
25 identify that space as straight.

1 Q. Okay.

2 A. Driving to the left would begin a new longwall
3 headgate panel, so this would have been --- and I
4 identified that as new headgate. And cutting roof for
5 belt drive installation, which was somewhere
6 around --- oh, it comes right here. So it was in
7 here.

8 Q. And developing an area cut-through into entries to
9 the right.

10 A. So they were developing these two, and I
11 identified that area as cutting to right.

12 Q. Okay.

13 A. And they were also splitting some pillars to
14 install new longwall belts in a panel that was down
15 here, I think.

16 Q. So did they have part of these ---?

17 A. No, I'm not sure. There might have been one here
18 and one went through there and they were --- either
19 they were getting ready to do that or they were
20 already doing it. I think what they did was they
21 split these two pillars right here to bring this belt
22 up and bring it up to the new headgate, the new
23 longwall belt up. This was, I think, already cut. I
24 don't know about that one.

25 Q. You know, ---.

1 A. It was hard to pick out anything because it
2 was --- they were cutting all over the place. And
3 then ---.

4 Q. They --- oh, I'm sorry, one, two, three, four,
5 five, six, seven, eight, nine, ten, 11, 12 ---.

6 A. There was a lot. I mean, I walked all the way
7 around there and it was --- and it was wet and muddy
8 everywhere, and there was a great big waterhole where
9 those guys were putting that new belt drive in, and
10 they were working in water mid-thigh. And I talked to
11 them for a while. In fact, one of the guys I knew was
12 a UK graduate, an engineer who had been to Ukraine
13 with me about a year before. And when I was talking
14 to some of the miners, he went up and asked me, he
15 said, what's that guy's name? They said, Joe
16 Pavlovich. He said, I know that guy. So then I
17 talked to him inch water up to about his waist. Never
18 would have recognized you.

19 ATTORNEY BAXTER:

20 What was his name?

21 A. Brian --- it was a short last name, but he's a
22 mining engineer. And I knew him at UK, and he had
23 gone out west to work, but I guess the mine closed out
24 west, so he come back to work at Massey and then had
25 just been working there a short period of time. They

1 had him working on that crew. There was --- you know,
2 the way the air was coming up and trying to sweep all
3 the way around through these and they'd cut a lot of
4 places really high, run that belt drive, and it would
5 just --- it was difficult.

6 BY ATTORNEY CAUDILL:

7 Q. Did you speak to any of this crew up here?

8 A. I know I talked to some of the guys because I
9 remember when Brian came over to me he said, you were
10 talking to those guys and I heard your voice, and you
11 sounded familiar, and I went and asked them who you
12 were and they told me. That's how I knew you were up
13 here. So I remember talking, but what I talked about
14 with them --- I think it was those curtains being
15 blowed against the rib and the muddy, sloppy
16 conditions and cutting that face three ways. I said,
17 you know, why didn't you drive it one way first and
18 then back up and put it the other way where you could
19 have everything squared up and ventilated instead of
20 getting places driven off all over. But you know,
21 nobody ---.

22 Q. Did they give you any reason why they've done it
23 that way?

24 A. No.

25 Q. They didn't have a reason for it?

1 A. No. If they would have had a good reason --- a
2 reason, it wouldn't have been a good reason. So
3 sometimes you just don't even say.

4 Q. Now, you also mentioned this belt in your report
5 for the One Section. And by this belt, I'm indicating
6 the crossover belt, which would have been the One
7 Section belt at that time.

8 A. Okay. What I said was the belt drive needed
9 cleaned under the driveway. Coal spillage was
10 accumulating. The drive also needed some bottom
11 rollers replaced as the belt was dragging on the round
12 metal frames. And that was back --- I guess back
13 here. This would have been the drive.

14 Q. Yes.

15 A. That wasn't dumping on the longwall belt, was it?
16 Had to have been.

17 MR. CRIPPS:

18 It was.

19 A. It was dumping here on the longwall belt at that
20 time?

21 MR. CRIPPS:

22 That wasn't there at the time.

23 A. So it would have been actually over here.

24 BY ATTORNEY CAUDILL:

25 Q. Right.

1 A. All right. And I ended up --- I guess I did walk
2 most of the longwall belt.

3 Q. It looks like 20, 30, maybe more.

4 A. Uh-huh (yes). Well, that was 60, Break 60, and
5 this is 35. So it's like 30 --- just say 30 breaks.

6 Q. Thirty (30) breaks and 3,000 feet of belt. That's
7 a pretty good walk.

8 RE-EXAMINATION

9 BY MR. CRIPPS:

10 Q. The day you was up here on the longwall, ---

11 A. Uh-huh (yes).

12 Q. --- referring before to say that you had a close-
13 out conference --- or close-out meetings conducted
14 with Berman Cornett and Everett Hager, the mine
15 superintendent.

16 A. Uh-huh (yes).

17 Q. Was Everett with you when you walked that belt?

18 A. No. No, Everett didn't go in the mine.

19 Q. Okay. So it was just you and Berman?

20 A. Yes. Just Berman and I that day.

21 Q. Okay. When you observed the longwall belt being
22 dusted, was it running?

23 A. The longwall belt?

24 Q. Yes.

25 A. Oh, yeah.

1 Q. Did you tell the section foreman about it?

2 A. I don't remember that, Dean.

3 Q. Okay.

4 A. But I know I certainly told Berman about it.

5 Q. Okay. Did anyone take it out of service?

6 A. The belt?

7 Q. Yes.

8 A. No.

9 Q. So it continued to operate?

10 A. (Indicates yes).

11 ATTORNEY BAXTER:

12 Is that a yes?

13 A. No one took it out of service while I was there.

14 ATTORNEY BAXTER:

15 And it continued to operate, was I think

16 the question.

17 A. As far as I know, the belt continued to operate
18 while I was on the longwall. Yeah, I don't remember
19 anybody taking it out of service.

20 BY ATTORNEY CRIPPS:

21 Q. The close-out meeting you conducted with Berman
22 and with Kevin, ---

23 A. Yeah.

24 Q. --- was that conducted on the surface?

25 A. Yes.

1 Q. After you traveled outside?

2 A. Yes. After we came outside, it was in the mine
3 office there at that two-story building they had.

4 Q. But it was the same day that you conducted the
5 close-out?

6 A. Yeah.

7 Q. Okay.

8 A. Because I didn't go back again. So if I said I
9 conducted a close-out with them, that would have been
10 that day.

11 Q. And you did inform Everett of the condition of the
12 longwall belt as far as needing dusted?

13 A. I informed him of everything that I had in here.

14 Q. Okay.

15 ATTORNEY BAXTER:

16 In your November 10th audit?

17 A. November 10th audit, yes.

18 RE-EXAMINATION

19 BY ATTORNEY CAUDILL:

20 Q. Where were you at when you heard about the
21 explosion at UBB; do you recall?

22 A. Steve, I think I was at home. I know I was at
23 home. I was at home. Then, of course, the very first
24 two people I thought of was Berman, who I got to know
25 pretty well.

1 Q. You had traveled with him several days.

2 A. And Brian, who was that young engineer that was
3 working there. I worried about them quite a bit.

4 Q. Did anyone contact you after the explosion?

5 A. With Massey?

6 Q. Yes.

7 A. Immediately after? I attempted to call Elizabeth
8 Chamberlin to see if I could offer any assistance
9 because I've had a lot of experience in mine rescue,
10 command center, mine emergency work, and so on. I
11 couldn't get an answer there. I tried to call Stan
12 Suboleski, who --- I've known Stan for a while.
13 Stan's on the board. And I called him at his home and
14 his wife had said he had already boarded a plane for
15 Charleston. So I knew he was on his way. So I called
16 his cell phone and left a cell phone number. I got a
17 message and I left some information that, you know,
18 I'm at home and if you need me for anything, I'll be
19 available to try and help. And I --- actually, the
20 next call I got may have been a day later. I think
21 Stan called me back and probably Elizabeth called me
22 back. They said, we appreciate your offer. By then
23 things were, I guess, in hand. I don't know --- you
24 know, I know the recovery wasn't done yet, but ---.
25 So no, I never did go back over there.

1 Q. Did anyone from Massey contact you after the
2 explosion concerning conditions within the mines?

3 A. No, not that I recall. The only contact I had
4 after that was when they contacted me about doing the
5 audits for the board.

6 RE-EXAMINATION

7 BY MR. CRIPPS:

8 Q. This November 10th audit report we are looking at,
9 this, the best I can tell, was your third safety audit
10 at Upper Big Branch?

11 A. Yeah.

12 Q. Why did you go to Upper Big Branch on November the
13 10th?

14 A. You know, I don't remember what happened on the
15 29th, but I identified this as a follow-up safety
16 audit, so I know I was going back because I guess on
17 the 29th I didn't get much done. I don't remember
18 what happened. But I got to that one section, Number
19 Two Section I was, that MSHA had an order on it. And
20 it was --- I was very confused about that because the
21 section was driving five entries up, turned to the
22 right and did the same five entries. And MSHA put an
23 order on it because they didn't have a plan approved
24 for that. I don't know why you have to have a plan
25 approved. They didn't change anything. I mean, you

1 didn't change to a double split of air or --- and I
2 think I identified that in the report.

3 Q. That was in the October 29th report?

4 A. That was in the 29th report. And we --- I
5 remember getting up as far as where the new entries
6 were --- had cut into the mine or where they had
7 driven outby, I don't remember how they drove that,
8 but where you're calling the Ellis Portal was, where
9 that --- those entries intersected with the main
10 entries. And I remember getting up to there and
11 Berman and I were talking about, this is where the new
12 portal is going to be. We don't have it open yet, but
13 it's ready to be opened pretty soon. But as I recall,
14 when I got there on the 10th, it still wasn't open.
15 They were still waiting for the bathhouse trailer or
16 something, so I never did go to that portal. And I
17 think the reason I came back here was I was still
18 over --- around Performance. Of course, you had all
19 those mines in that area, and to get back into these
20 other sections, I came back on that day just to go
21 back in there. And I think that may have been the
22 day --- when I showed up that morning, I asked
23 somebody there in the bathhouse, where's Berman at,
24 and they said, he's already gone underground. So they
25 called him while they were giving me --- while they

1 were discussing something, he got outside pretty
2 quick, and then we went in. So I don't think he knew
3 I was coming that day or he wouldn't have gone
4 underground. But I know it was a follow up to the
5 29th that ---.

6 Q. Okay. Very early in the interview we was
7 discussing these audits and your reasoning, and you
8 had mentioned that you was looking for the conditions,
9 violations and also practices. In your three
10 visits --- in the reports I was reading in all three
11 visits you noted deficiencies in rock dusting in the
12 mine.

13 A. Uh-huh (yes).

14 Q. Did you identify that as a practice to anybody in
15 management or to Elizabeth or anyone else?

16 A. I did. And it may not have been just because of
17 this mine, but it was --- I won't say it was in all
18 mines, but it was in several of the mines I visited.
19 And I already specified about the dust being on the
20 section. That was --- I mean, usually I did not find
21 a belt that had not been dusted, okay. Outby areas
22 usually were pretty well rock dusted. The problems I
23 was having was only on the sections. Once the section
24 advanced far enough, they would pick up those missed
25 areas with the bulk dusters, I'm assuming, because it

1 looked better. Some mines, you still find those areas
2 in outby. So I said, you know, you've got a problem
3 with this and you need to establish a more concise
4 program of --- and specific program of when you're
5 going to rock dust and how you're going to rock dust.

6 Q. I'm reading the reports. It's --- I mean, you
7 recognize the condition of the rock dusting, and you
8 pointed it out to --- I mean, upper members of
9 management. I mean, Rick Foster, was superintendent
10 of the ---.

11 A. He was the mine foreman. A lot of guys, yeah.

12 Q. And Everett Hager. I mean, those are top
13 management officials at the mine. When Everett finds
14 out about this, he lets the belt continue to run. One
15 thing I read when I read about your first trip there,
16 when you was at the belt line with Rick Foster,
17 the ---.

18 A. Yeah, that belt line wasn't running.

19 Q. Okay. But it was black. You described it, and I
20 can kind of picture it in my mind, which they had
21 obviously needed rock dusted. You pointed that out to
22 them. But the fact is, he already knew that. And
23 that's evidenced by the fact that, first of all, he
24 said he was going to rock dust it yesterday and also
25 the fact that he had material there to do it, but he

1 had chose to go do something else when he ---.

2 A. Right. He said they had a choice of making a belt
3 splice or rock dusting. If he didn't make a belt
4 splice, he was going to have coal all over. And I
5 think that was like the Number One belt.

6 Q. Okay. Or if the belt ---?

7 A. Now, I don't know if he's the only guy that can do
8 both. If he's the only guy that can rock dust and
9 make belt splices, but I mean, just like you guys, I
10 hear a lot of excuses. I'm not going to argue. It's
11 not my position to argue. It's really not my position
12 to --- I mean, here's what I'm identifying. Here's
13 what I'm going to write in my report. You really need
14 to give your excuse to somebody else. I mean, I'm
15 just here to do a job.

16 Q. But the fact is, you did identify those conditions
17 and that practice to not only management at the mine,
18 but corporate management as well?

19 A. Yes.

20 Q. And that's clearly in the reports?

21 A. Yes.

22 Q. Okay.

23 RE-EXAMINATION

24 BY MR. CAUDILL:

25 Q. They were identified on all three of your audits.

1 Every belt line you traveled had a problem.

2 A. Yeah, I don't remember that, but ---. There are
3 probably --- I don't remember the first one, but if
4 it's in there, it's in there.

5 Q. Let me rephrase that. Every day you traveled,
6 every day you performed an audit, you had an issue
7 with a belt.

8 A. Okay.

9 Q. It may not have been all belts, but ---.

10 A. Yeah, okay. It could have very well been. Yeah.
11 I mean, I'll stand on what the audit says. Whether I
12 confirm it here verbally or whatever, if it's in my
13 audit, I'll stand on that's what I saw, because I
14 mean, I didn't bring any of this stuff to the mine
15 with me. I found it all there and that's what I was
16 being paid to do, was to be honest and provide what
17 information I was seeing. So you know, ---.

18 Q. By recognizing that on all three audits, during
19 your close-out did you discuss that?

20 A. During my close-out I would discuss every issue
21 that I had in my notes that subsequently went here.
22 So if it's in here, it would have been --- in the
23 audits. I'm sorry. If it's in the audits, the
24 written audits, it would have been discussed during
25 the close-out, yes.

1 Q. So during the final close-out, you did mention
2 that we found this on all three of my audits?

3 A. Well, no, I may not have summarized all three
4 audits.

5 Q. Okay. Okay.

6 A. But I would have said, today, here's what I found.
7 Okay. I may have not gone back and said --- I mean,
8 you guys got computers that tell you this violation
9 has been issued so many times in the last year. I
10 didn't have that, so I just would have said here's
11 what I found today.

12 Q. So you wrote most of your violations?

13 A. I never did one on a computer. Put it that way.
14 What is it, iPower (phonetic) or whatever?

15 Q. Yeah.

16 A. I have no familiarity whatsoever other than
17 telling my inspectors you have to use that.

18 MR. CAUDILL:

19 That's all I've got.

20 ATTORNEY BAXTER:

21 Can we take just a minute --- let's go
22 off the record and take a five-minute break.

23 SHORT BREAK TAKEN

24 MR. CAUDILL:

25 Let's go back on the record.

1 BY MR. CAUDILL:

2 Q. I got a couple more questions ---

3 A. Okay.

4 Q. --- and it's concerning the executive summary.

5 A. Uh-huh (yes).

6 Q. September to December 2009. In particular, I want
7 to talk about the ratings, how you rated each
8 individual area that you inspected. It's rated as
9 excellent, good, average, below average, poor.

10 A. Uh-huh (yes).

11 Q. Can you explain to me how you arrived at these and
12 what each one means?

13 A. I can, but do you not have the written context of
14 that? Okay. Let's look at page two of the paper that
15 you've given me.

16 Q. Yes.

17 A. It says, for each of the mines' ratings for each
18 compliance category had been applied in the
19 Performance chart portion of this report. The
20 foundation for the ratings is the subjective
21 evaluation based on the auditor's 37 years of coal
22 mine safety and health experience and evaluations of
23 over 250 coal mines. Ratings were applied based on
24 the auditor's industry experience, taking into
25 consideration the current enforcement climate of the

1 regulatory agencies, the comparative observations of
2 similar mining operations, and the opinion of the
3 level of compliance being achieved in the overall
4 area. So primarily it's my perception of what I
5 should expect, okay. And I figured, having continued
6 to inspect and go to mines after I retired from MSHA
7 and probably been in a hundred mines in the last seven
8 years, I can set a standard for what I feel is
9 exceptional or poor or average or whatever based on
10 what I think the agency is going to accept, based on
11 what I think the State's going to accept, and based on
12 my own personal observation and what I see everywhere
13 else. And that's why I put that in there.

14 I don't do a numbers rating like some people do,
15 where they apply all kind of numbers and formulas.
16 You know what I found? They don't come out any
17 better. I've done some of those for people in the
18 past and sometimes they're not as realistic as your
19 own perception. So that's what that is based on. And
20 so if you say, you know, is it below average and ---
21 one of them here would be the mine, but it says
22 combustibles below average. That means that I would
23 expect to go in the mine and see a certain standard.
24 And if I see less than that standard of combustible
25 materials, then I'm going to say you're below average

1 or you're poor, okay.

2 Q. So below average, would that be a safety
3 concern --- potential safety concern that you wanted
4 to increase?

5 A. I certainly think it's something that needs to be
6 improved. I mean, there needs to be improvement in
7 that area of clean up of combustible materials in that
8 particular instance to be acceptable.

9 Q. Okay. And then average would be ---?

10 A. I would think that if you were average I would not
11 expect to --- an MSHA inspector, in the normal mode,
12 to come in and give you a citation, okay. That may
13 mean you're right at the borderline, but you would not
14 got a citation. But you're somewhere better ---.

15 Q. And then after you increase up the scale to above
16 average?

17 A. Then if I go in and I'm wading in rock dust up to
18 my ankles and I don't find any coal on your belts and
19 the belt drives are clean and spotless and everything,
20 I might say you're excellent, okay.

21 Q. Okay. Now, I have one question on this chart.
22 You listed each individual mine, didn't you?

23 A. Yes.

24 Q. And we're concentrating on the Upper Big Branch
25 mines. On the outby areas, where it says combustible

1 you have nothing marked.

2 A. I don't know why.

3 Q. That was my question. Can you explain to us ---?

4 A. No, I can't.

5 Q. And also you have the seals marked as E and A, and
6 there's numerous seals in that area.

7 A. That means I didn't look at them.

8 Q. Okay.

9 A. I didn't get to any of the seals. You know what,
10 that --- no being anything under combustibles is an
11 omission on my part. And I apologize for it. I
12 don't --- it should not have been.

13 Q. Okay.

14 A. There should have been a rating on combustibles
15 outby.

16 Q. Based on the report and the accumulations, would
17 you consider the belt as an outby area?

18 A. Oh, absolutely.

19 Q. Okay. Based on the reports that we've read here
20 today, ---?

21 A. Two belts. It was on two belts and I would have
22 rated it definitely below average at least, maybe
23 poor.

24 MR. CAUDILL:

25 Derek, do you have anything?

1 ATTORNEY BAXTER:

2 No.

3 MR. CAUDILL:

4 That's all I have, Joe. I appreciate
5 your time. Thank you for coming by and seeing us.

6 ATTORNEY BAXTER:

7 On behalf of MSHA and the Office of
8 Miners' Health Safety and Training, I want to thank
9 you for appearing and answering questions here today.
10 Your cooperation is very important to the
11 investigation as we work to determine the cause of the
12 accident. We request that you not discuss your
13 statement with any person, aside from your personal
14 representative. After questioning other witnesses, we
15 may call you if we have any follow-up questions. If,
16 at any time, you have additional information regarding
17 the accident that you would like to provide to us,
18 please contact Norman Page, the Accident Team leader.
19 And at this point I'll just note the request I made
20 earlier to Mr. Silkwood and yourself regarding the
21 communications to Ms. Chamberlin that you had at the
22 end of each visit related to Upper Big Branch.

23 A. Which one?

24 ATTORNEY BAXTER:

25 You would send the individual reports to

1 her directly.

2 A. That's the same report that you have. Is that
3 what you're talking about? I'm not sure what you're
4 asking for.

5 ATTORNEY BAXTER:

6 Any e-mails.

7 A. No. I think you asked for my --- if I had notes.

8 ATTORNEY BAXTER:

9 And that's another request.

10 A. Oh, okay. So you're making another request?

11 ATTORNEY BAXTER:

12 Right. Right.

13 A. And what is this other request? Do I have e-mails
14 with her?

15 ATTORNEY BAXTER:

16 Go ahead.

17 MR. CRIPPS:

18 Earlier in the interview you stated that
19 at the end of your audits, within a few days you would
20 send a report to Elizabeth Chamberlin and Shane
21 Harvey, ---

22 A. Yeah.

23 MR. CRIPPS:

24 --- informing them of the results of the
25 audit. Those are the records that he's requesting.

1 A. That's what you have.

2 MR. CAUDILL:

3 This is what you sent?

4 A. That's exactly what I sent them. Now, the one ---
5 I don't remember why. See, they attached that when
6 someone provided it to you. That report --- let's see
7 what you got there, Steve. The one that says
8 executive summary would have had a discussion as it
9 appears here and also these charts. And the charts
10 would have been the end of it. The report would not
11 have been. I mean, I would not have reattached the
12 report to the executive summary. They've already been
13 sent in. And this one --- okay. But this is
14 basically what I would have sent. It's just attached
15 now to this report, also.

16 ATTORNEY SILKWOOD:

17 I think that's ---.

18 A. So there wouldn't be anything else that I have
19 that's not here.

20 ATTORNEY SILKWOOD:

21 I think that's what they want to make
22 sure, is that this that says --- or the results of
23 April to June ---.

24 A. This is the '09, April to June ---.

25 ATTORNEY SILKWOOD:

1 This is a compilation of two months of
2 audits. Wouldn't the thing that you sent to Elizabeth
3 after you went to UBB have been identical to the UBB
4 portion of this or is there something else out there?

5 A. See, I think that would have already been sent. I
6 think --- I really don't remember.

7 ATTORNEY BAXTER:

8 Yeah. But that is the question. Is it
9 identical or is there a separate ---?

10 A. It's identical. It would have been the same exact
11 thing. I would not have changed the report any. No
12 one has ever asked me to --- when I sent something in,
13 nobody ever said, hey, how about taking that out or
14 changing something or that makes us look bad. I mean,
15 I've never had any of that. So whatever I sent was
16 accepted. And I would have sent that same exact thing
17 prior to and attached it to these if I did that. I
18 can't remember exactly how, but I know I didn't do
19 duplicates of audits, so it would have been the same
20 thing. Trust me, I know.

21 ATTORNEY BAXTER:

22 If you wish, you may now go back over any
23 answer you've given during this interview. You may
24 also make any statement that you'd like to make at
25 this time.

1 A. I appreciate the courteousness and professionalism
2 of your investigation team and the questioning, and I
3 know you guys will come up with a good answer. I did
4 get to visit a lot of Massey mines during the two or
5 three years, whatever, I did audits for them and I
6 will say that, you know, there were some mines that
7 were actually outstanding and there were mines that
8 needed work to be done.

9 As far as the employees go, I think they had a lot
10 of very good people working at the mines, hard-working
11 people and a lot of people that tried to do things
12 right. They provided me a lot of professional
13 courtesy when I was there, while I was there, on
14 repeat visits, and I can say I never had a bad word
15 from anyone there or any argument about any of the
16 things I identified. In fact, pretty much everybody
17 said we appreciate your help and we'll take care of
18 all this stuff. And so that's kind of what I stood
19 on. It's certainly a very unfortunate accident. I
20 hate that it happened, and I know a lot of people hate
21 that it happened, including you guys. But we've all
22 got a job to do, and I know you'll do a good job, and
23 I appreciate that. So thank you.

24 ATTORNEY BAXTER:

25 Okay. And again, I want to thank you for

1 your cooperation with us here today.

2 * * * * *

3 STATEMENT UNDER OATH CONCLUDED AT 1:23 P.M.

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1 COMMONWEALTH OF KENTUCKY

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CERTIFICATE

I, Leslie Blake, a Notary Public in and for
the Commonwealth of Kentucky, 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

